11-0000 MANAGEMENT OCCUPATIONS

General Facts

- Education Levels
  - Range from *High School*-Masters Degree
- Job Zones
  - Range from 3-5
- 11 Series occupations account for a large percentage of our assigned SOCs.

2000 SOC codes no longer in use and their 2010 replacements

2000 SOC	Transitional SOC (Current)	2010 SOC (O*Net Online)
11-3041- Compensation and Benefits Managers		11-3111- Compensation and Benefits Managers
11-3042-Training and Development Managers		11-3131-Training and Development Managers
11-3049-Human Resources Managers, All Other		11-3121-Human Resources Manager
11-9011-Farm, Ranch, and Other Agricultural Managers		11-9013-Farmers, Ranchers, and Other Agricultural Managers
11-9012-Farmers and Ranchers		11-9013-Farmers, Ranchers, and Other Agricultural Managers

Breakdown of the 11-0000 Series

- 11-1000 Top Executives
- 11-2000 Advertising, Marketing, Promotions, Public Relations, and Sales Managers
- 11-3000 Operations Specialties Managers
- 11-9000 Other Management Occupations

Breakdown of the 11-1000 Series

11-1000 Top Executives

- *11-1010 Chief Executives*
  - **11-1011 Chief Executives**
  - 11-1011.03 Chief Sustainability Officers
- *11-1020 General and Operations Managers*
  - **11-1021 General and Operations Managers**
- *11-1030 Legislators*
  - 11-1031 Legislators

11-1010
11-1011 Chief Executives

- Determine and formulate policies and provide overall direction of companies or private and public sector organizations within guidelines set up by a board of directors or similar governing body. Plan, direct, or coordinate operational activities at the highest level of management with the help of subordinate executives and staff managers.

  - *Illustrative Examples: Governor*
  - *License is NOT inherent to this occupation*
  - *Extensive 75% International Travel is normal to the occupation*
  - *Coding Tip: Consider 11-1021 when not an executive position or when only managing daily operations.*

11-1020
11-1021 General and Operations Managers

- Plan, direct, or coordinate the operations of public or private sector organizations. Duties and responsibilities include formulating policies, managing daily operations, and planning the use of materials and human resources, **but are too diverse and general in nature to be classified in any one functional area of management or administration**, such as personnel, purchasing, or administrative services. Excludes First-Line Supervisors.
  - *License is NOT inherent to this occupation*
  - *Extensive 75% International Travel is normal to the occupation*
  - This is one of the more common, and least well defined, managerial occupations.
  - Coding Tip: Mange the daily operations of a company.
  - Supervision note: It is normal for General and Operations Managers to manage other lower level managers, however, if they are managing a same level occupation (i.e. other gen/ops managers or executives), consider adding a peer level supervision point.

Breakdown of the 11-2000 Series
11-2000 Advertising, Marketing, Promotions, Public Relations, and Sales Managers

- *11-2010 Advertising and Promotions Managers*
  - 11-2011 Advertising and Promotions Managers
- *11-2020 Marketing and Sales Managers*
  - **11-2021 Marketing Managers**
  - **11-2022 Sales Managers**
- *11-2030 Public Relations and Fundraising Managers*
  - 11-2031 Public Relations and Fundraising Managers

11-2020 Marketing and Sales Managers

11-2021 Marketing Managers

- Plan, direct, or coordinate marketing policies and programs, such as determining the demand for products and services offered by a firm and its competitors, and identify potential customers. Develop pricing strategies with the goal of maximizing the firm's profits or share of the market while ensuring the firm's customers are satisfied. Oversee product development or monitor trends that indicate the need for new products and services.

  - *Illustrative Examples: Internet Marketing Manager, Marketing Administrator, Marketing Director*
    - *License is NOT inherent to this occupation*
    - *Extensive 75% International Travel is normal to the occupation*

11-2020 Marketing and Sales Managers Cont.

11-2022 Sales Managers

Plan, direct, or coordinate the actual distribution or movement of a product or service to the customer. Coordinate sales distribution by establishing sales territories, quotas, and goals and establish training programs for sales representatives. Analyze sales statistics gathered by staff to determine sales potential and inventory requirements and monitor the preferences of customers.

- *Illustrative Examples: District Sales Manager, Export Manager, Regional Sales Manager, Sales Director*
  - *License is NOT inherent to this occupation*
  - *Extensive 75% International Travel is normal to the occupation*

Breakdown of the 11-3000 Series

11-3000 Operations Specialties Managers

- *11-3010 Administrative Services Managers*
  - **11-3011 Administrative Services Managers**
- *11-3020 Computer and Information Systems Managers*
  - **11-3021 Computer and Information Systems Managers**
- *11-3030 Financial Managers*
  - **11-3031 Financial Managers**
    - **11-3031.01 Treasurers and Controllers**
    - **11-3031.02 Financial Managers, Branch or Department**
- *11-3050 Industrial Production Managers*
  - **11-3051 Industrial Production Managers**
- *11-3060 Purchasing Managers*
  - 11-3061 Purchasing Managers
- *11-3070 Transportation, Storage, and Distribution Managers*
  - 11-3071 Transportation, Storage, and Distribution Managers
- *11-3110 Compensation and Benefits Managers*
  - 11-3111 Compensation and Benefits Managers
- *11-3120 Human Resources Managers*
  - **11-3121 Human Resources Managers**
- *11-3130 Training and Development Managers*
  - 11-3131 Training and Development Managers

11-3010 Administrative Services Managers

11-3011 Administrative Services Managers

- Plan, direct, or coordinate one or more administrative services of an organization, such as records and information management, mail distribution, facilities planning and maintenance, custodial operations, and other office support services. Medical records administrators are included in "Medical and Health Services Managers" (11-9111). Excludes "Purchasing Managers" (11-3061).
  - *Illustrative Examples: Facilities Manager, Records and Information Manager, Records Management Director*
  - *No License is inherent to this occupation*
  - *Some, National 50% travel is normal to this occupation*

11-3020 Computer and Information Systems Managers

11-3021 Computer and Information Systems Managers

- Plan, direct, or coordinate activities in such fields as electronic data processing, information systems, systems analysis, and computer programming. Excludes "Computer Occupations" (15-1111 through 15-1199).
  - *Illustrative Examples: Chief Technology Officer, Information Technology Systems Director, Management Information Systems Director*
  - *No License is inherent to this occupation*
  - *Extensive 80% National travel is normal to this occupation*

11-3030 Financial Managers

11-3031 Financial Managers

- *Illustrative Examples: Comptroller, Financial Director*

11-3031.01 Treasurers and Controllers (JZ5, Master's)

- Direct financial activities, such as planning, procurement, and investments *for all or part of an organization*.
  - Prepare and file annual tax returns or prepare financial information so that outside accountants can complete tax returns.
  - Prepare or direct preparation of financial statements, business activity reports, financial position forecasts, annual budgets, or reports required by regulatory agencies.
  - Supervise employees performing financial reporting, accounting, billing, collections, payroll, and budgeting duties.
    - *Only a CPA license is inherent to this occupation*
    - *Some, National 50% travel is normal to the occupation*

11-3030 Financial Managers Cont.

11-3031.02 Financial Managers, Branch or Department (JZ 4, Bachelor's)

- Direct and coordinate financial activities of workers in a branch, office, or department of an establishment, such as branch bank, brokerage firm, risk and insurance department, or credit department.
  - *License is not inherent to this occupation*
    - *For more specific information regarding series licenses, please see the "general" section of the PWRA for 11-3031.02*
  - *Some, National 50% travel is normal to the occupation*
  - *Coding Tip: If the job duties are narrowly focused on overseeing one specific financial function (i.e. Accounting), consider 11-3031.02*

11-3050 Industrial Production Managers

11-3051 Industrial Production Managers (JZ 3, Bachelors)

- Plan, direct, or coordinate the work activities and resources necessary for manufacturing products in accordance with cost, quality, and quantity specifications.
- There are several sub-groups listed, but they are not currently in use.
  - *Illustrative Examples: Manufacturing Director, Plant Manager, Production Control Manager*
    - *License is not inherent to this occupation*
    - *Some, National 50% travel is normal to the occupation*

11-3120 Human Resources Managers

11-3121 Human Resources Managers

- Plan, direct, or coordinate human resources activities and staff of an organization. Excludes managers who primarily focus on compensation and benefits (11-3111) and training and development (11-3131).
  - *Illustrative Examples: Job Analysis Manager, Labor Relations Director, Personnel Manager, Position Description Manager*
  - *Extensive National 80% travel normal to the occupation*
  - *No license is inherent to the occupation*
  - ***Use 11-3049.99 in the Reference Application for the worksheet until we update with current 2010 data*
  - Coding Tips: If a HR Manager is managing the Training and Development Manager and/or the Compensation and Benefits Manager, a peer level supervision point is appropriate.
  - It is reasonable for the HR Manager to oversee training/development and/or compensation/benefits functions as well as other HR functions and therefore a combination of duties with the Training and Development Manager and/or Compensation and Benefits Manager is not advised.

Breakdown of the 11-9000 Series

11-9000 Other Management Occupations

- *11-9010 Farmers, Ranchers, and Other Agricultural Managers*
  - **11-9013 Farmers, Ranchers, and Other Agricultural Managers**
- *11-9020 Construction Managers*
  - 11-9021 Construction Managers
- *11-9030 Education Administrators*
  - 11-9031 Education Administrators, Preschool and Childcare Center/Program
  - 11-9032 Education Administrators, Elementary and Secondary School
  - **11-9033 Education Administrators, Postsecondary**
  - 11-9039 Education Administrators, All Other
- *11-9040 Architectural and Engineering Managers*
  - **11-9041 Architectural and Engineering Managers**
- *11-9050 Food Service Managers*
  - **11-9051 Food Service Managers**
- *11-9060 Funeral Service Managers*
  - 11-9061 Funeral Service Managers
- *11-9070 Gaming Managers*
  - 11-9071 Gaming Managers
- *11-9080 Funeral Service Managers*
  - 11-9081 Lodging Managers
- *11-9110 Medical and Health Services Managers*
  - **11-9111 Medical and Health Service Managers**

11-9000 Series (continued)

- *11-9120 Natural Science Managers*
  - **11-9121 Natural Science Managers**
  - **11-9121.o1 Clinical Research Coordinator**
- *11-9130 Postmasters and Mail Superintendents*
  - 11-9131 Postmasters and Mail Superintendents
- *11-9140 Property, Real Estate, and Community Association Managers*
  - 11-9141 Property, Real Estate, and Community Association Managers
- *11-9150 Social and Community Service Managers*
  - **11-9151 Social and Community Service Managers**
- *11-9160 Emergency Management Directors*
  - 11-9161 Emergency Management Directors
- *11-9190 Miscellaneous Managers*
  - 11-9199 Managers, All Other

11-9013 Farmers, Ranchers, and Other Agricultural Managers (formerly 11-9011)

11-9013 Farmers, Ranchers, and Other Agricultural Managers

- Plan, direct, or coordinate the management or operation of farms, ranches, greenhouses, aquacultural operations, nurseries, timber tracts, or other agricultural establishments. May hire, train, and supervise farm workers or contract for services to carry out the day-to-day activities of the managed operation. May engage in or supervise planting, cultivating, harvesting, and financial and marketing activities.
- **This is a new occupational code (formerly 11-9011) and it has sub-occupations which do not all have the same job zones. See next slide.*

11-9013 Farmers, Ranchers, and Other Agricultural Managers Cont. (formerly 11-9011)

- **The new 2010 SOC 11-9013 includes:**
- **11-9013.01 Nursery and Greenhouse Managers (JZ3)**
- **11-9013.02 Farm and Ranch Managers (JZ4/Bachelors-JZ/Education gathered from O*Net data using old 2000 code 11-9011.02)**
- **11-9013.03 Aquacultural Managers (JZ4)**

11-9030 Education Administrators

11-9033 Education Administrators, Postsecondary (JZ 5, Master's)

- Plan, direct, or coordinate research, instructional, student administration and services, and other educational activities at postsecondary institutions, including universities, colleges, and junior and community colleges
  - **Assign a special skill point for teaching courses, rather than a combination of occupations with a post-secondary teacher.*
  - **Grant-writing duties reasonably fit with the O*NET core tasks of strategic planning and budgeting, therefore, no special skill point should be assigned.*
  - *Coding Tips:*
    - *Consider this occupation when a professor is also administering the department in which they are teaching.*

11-9040 Architectural and Engineering Managers

11-9041 Architectural and Engineering Manager (JZ 5, Bachelor's)

- Plan, direct, or coordinate activities in such fields as architecture and engineering or research and development in these fields. Excludes "Natural Science Managers" (11-9121).
  - *Illustrative Examples: Engineering Design Manager, Global Engineering Manager, Mechanical Engineering Director*
  - *Extensive National 75% travel is normal to the occupation*
  - *At this level a Professional Engineer License is acceptable.*
  - *Coding Tip: IT Managers should be classified under 11-3021.*

11-9050 Food Service Managers

11-9051 Food Service Managers (JZ 3, High School)

- Plan, direct, or coordinate activities of an organization or department that serves food and beverages. Excludes "Chefs and Head Cooks" (35-1011).
  - *Illustrative Examples: Banquet Director, Food Service Director, Tavern Operator*
  - *Some National 50% travel is normal to the occupation*
  - *According to the OOH, the Foodservice Management Professional (FMP) certification is NOT required for entry into the occupation. As such, a point should be assigned for any license/certification.*

11-9110 Medical and Health Services Managers

11-9111 Medical and Health Services Managers (JZ 5, Bachelor's)

- Plan, direct, or coordinate medical and health services in hospitals, clinics, managed care organizations, public health agencies, or similar organizations.
  - Direct, supervise and evaluate work activities of medical, nursing, technical, clerical, service, maintenance, and other personnel.
  - Maintain communication between governing boards, medical staff, and department heads by attending board meetings and coordinating interdepartmental functioning.
    - *Illustrative Examples: Clinic Director, Hospital Administrator, Medical Records Administrator, Mental Health Program Manager*
    - *Extensive National 75% travel is normal to the occupation*
    - *No license is inherent to the occupation*
    - ***We often use this code for Nurse Managers or Pharmacy Managers, which are primarily engaged in managerial tasks.*
      - *However, if the job includes overseeing general retail operations as well as the pharmacy, consider 11-1021.*

11-9120 Natural Science Managers

11-9121 Natural Science Managers (JZ 5, Bachelor's)

- Plan, direct, or coordinate activities in such fields as life sciences, physical sciences, mathematics, statistics, and research and development in these fields.
  - ***If a Phd is required than do not assign a point for research/publish duties because those duties are subsumed in the 2 education points.*
  - If asking for a Bachelor's and publishing duties then assign a point (just editing-no point).

11-9121.01 Clinical Research Coordinators

- Plan, direct, or coordinate clinical research projects. Direct the activities of workers engaged in clinical research projects to ensure compliance with protocols and overall clinical objectives. May evaluate and analyze clinical data.
  - If the employer's job duties match that of 11-9121.01-Clinical Research Coordinator, use the worksheet and wage from 11-9121.00-Natural Sciences Managers, and code as 11-9121.00

11-9150 Social and Community Service Managers

11-9151 Social and Community Service Managers (JZ 4, Bachelor's)

- Plan, direct, or coordinate the activities of a social service program or community outreach organization. Oversee the program or organization's budget and policies regarding participant involvement, program requirements, and benefits. Work may involve directing social workers, counselors, or probation officers.
  - *Illustrative Examples: Child Welfare Director, Family Service Center Director, Youth Program Director*
  - *Some National 50% travel is normal to the occupation*
  - *No license is inherent to the occupation*

11-9151 Social and Community Service Managers continued

- The main employers for the occupation are governments and the Health Care and Social Assistance industry, which employs people in the following NAICS areas: Individual and Family Services; Community Food and Housing, and Emergency and Other Relief Services; Vocational Rehabilitation Services; Child Day Care Services.
- For NGOs that are engaged in international human rights work, please consider another SOC such as the Public Relations Manager or Gen/Ops Manager.

11-9199.00 - Managers, All Other

- **This SOC may ONLY BE USED after going through the "All Other Review" process, which includes a final review by the federal supervisors.**
- Reference: S:\CO Use\Carlson Responses\All Other SOCs\Clarification on Uses of All Other SOCs (choose either Contractor or Federal)
- All managers not listed separately AND that cannot be reasonably classified elsewhere.
- Also see S:\Common\All Other Process Update MAR 2015.docx for general information on usage of All Other SOC codes.

11-9199.00 - Managers, All Other continued

- The Managers that can be classified elsewhere are:
  - 11-9199.01 Regulatory Affairs Managers - review the specific industry/area involved in the employer's job duties and try to find a more specific manager or specialist classification. *Consider 11-9121 for managing regulatory affairs in the drug development process*
  - 11-9199.02 Compliance Managers - review the specific industry/area involved in the employer's job duties and try to find a more specific manager or specialist classification.
  - 11-9199.03 Investment Fund Managers – Consider 11-3031.02

11-9199.00 - Managers, All Other continued

- 11-9199.04 - Supply Chain Managers – Consider 11-3071.03 (11-3071) - Logistics Managers
- 11-9199.09 Wind Energy Operations Managers- Consider 11-9041
- 11-9199.10 Wind Energy Project Managers- Consider 11-9041
- 11-9199.11 - Brownfield Redevelopment Specialists and Site Managers - See either 11-9041 or 11-9121, depending on the focus in the job duties.

11-9199.00 - Managers, All Other continued

- Try to find a reasonable, specific SOC, and consult direct title match before using 11-9199.00 Managers, All Other.
- Below are a few that often cannot reasonably classify elsewhere.
  - 11-9199.07 Security Managers
  - 11-9199.08 - Loss Prevention Managers
  - If the job is solely focused on regulatory affairs and there is no other reasonable SOC to cover the job, consider 11-9199.01 Regulatory Affairs Managers

Most Commonly Asked Questions

- General and Operations Manager vs. Medical and Health Services Manager
- Treasurer and Controller (Jz5)vs. Financial Manager, Branch or Department (Jz4)
- Marketing Manager vs. Sales Manager
- Administrative Services Manager vs. Education Administrator
- Natural Science Manager and Clinical Research Coordinator
- Engineering Manager vs. Computer and Information Systems Manager
- Computer and Information Systems Manager vs. Computer Systems Analyst

QUESTIONS?

13-000 Business and Financial Operations Occupations

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23-000 Legal Occupations

AILA Doc. No. 18010230. (Posted 1/2/18)

13-000 Business and Financial Operations Occupations

AILA Doc. No. 18010230. (Posted 1/2/18)

Breakdown of 13 Series

- **13-1000 - Business Operations Specialists**

- 13-1011 Agents and Business Managers of Artists, Performers, and Athletes
- 13-1021 Buyers and Purchasing Agents, Farm Products
- 13-1022 Wholesale and Retail Buyers, Except Farm Products
- 13-1023 Purchasing Agents, Except Wholesale, Retail, and Farm Products
- 13-1031 Claims Adjusters, Examiners, and Investigators
- 13-1032 Insurance Appraisers, Auto Damage
- 13-1041 Compliance Officers
- 13-1051 Cost Estimators
- 13-1074 Farm Labor Contractors
- 13-1078 Human Resources, Labor Relations and Training Specialists, All Other
- 13-1081 Logisticians
- 13-1111 Management Analysts
- 13-1121 Meeting, Convention, and Event Planners
- 13-1131 Fundraisers
- 13-1141 Compensation, Benefits, and Job Analysis Specialists
- 13-1151 Training and Development Specialists
- 13-1161 Market Research Analysts and Marketing Specialists
- 13-1199 Business Operations Specialists, All Other

Breakdown of 13 Series (Cont.)

- **13-2000 – Financial Specialists**

  - 13-2011 Accountants and Auditors
  - 13-2021 Appraisers and Assessors of Real Estate
  - 13-2031 Budget Analysts
  - 13-2041 Credit Analysts
  - 13-2051 Financial Analysts
  - 13-2052 Personal Financial Advisors
  - 13-2053 Insurance Underwriters
  - 13-2061 Financial Examiners
  - 13-2071 Credit Counselors
  - 13-2072 Loan Officers
  - 13-2081 Tax Examiners and Collectors, and Revenue Agents
  - 13-2082 Tax Preparers
  - 13-2099 Financial Specialists, All Other

Buyers and Purchasing Agents

- **13-1021 Buyers and Purchasing Agents, Farm Products**
  - Job Zone 3, High School
  - Purchase farm products either for further processing or resale. Includes tree farm contractors, grain brokers and market operators, grain buyers, and tobacco buyers.
  - *Illustrative examples: Cotton Broker, Fruit Buyer, Livestock Buyer*

- **13-1022 Wholesale and Retail Buyers, Except Farm Products**
  - Job Zone 3, High School
  - Buy merchandise or commodities, other than farm products, for resale to consumers at the wholesale or retail level, including both durable and nondurable goods. Analyze past buying trends, sales records, price, and quality of merchandise to determine value and yield. Select, order, and authorize payment for merchandise according to contractual agreements. May conduct meetings with sales personnel and introduce new products. Includes assistant wholesale and retail buyers of nonfarm products.
  - *Illustrative examples: Gold Buyer, Merchandise Buyer*

- **13-1023 Purchasing Agents, Except Wholesale, Retail, and Farm Products**
  - Job Zone 4, Bachelor's Degree
  - Purchase machinery, equipment, tools, parts, supplies, or services necessary for the operation of an establishment. Purchase raw or semi-finished materials for manufacturing.
  - *Illustrative examples: Equipment, Supplies, and Tools Purchasing Agent; Radio Time Buyer*

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13-1081 – Logisticians

- Job Zone 4, Bachelor's Degree
- Analyze and coordinate the logistical functions of a firm or organization. Responsible for the entire life cycle of a product, including acquisition, distribution, internal allocation, delivery, and final disposal of resources.
- **Sample of reported job titles:** Integrated Logistics Support Manager (ILS Manager), Logistician, Logistics Team Lead, Production Planner

13-1111 – Management Analysts

- Job Zone 5, Bachelor's Degree
- Conduct organizational studies and evaluations, design systems and procedures, conduct work simplification and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively. Includes program analysts and management consultants.
- **Sample of reported job titles:** Management Analyst, Business Analyst, Administrative Analyst, Employment Programs Analyst, Program Management Analyst, Quality Control Analyst
- **Coding Tips:** No licenses are normal to the occupation, assign a special skills pt if there are any license requirements such as Six Sigma, Project Management Professional (PMP), etc

13-1131 Fundraisers

- 27-3031 - Public Relations Specialists has been authorized to use for ACWIA wage purposes.
- This code is not currently in the PWRA and therefore see cross references in 27-3031 and 11-2031.

13-1151 (13-1073) vs 25-9031

- 13-1151: Plan, organize, direct and design training or orientation for employees of businesses and organizations to improve work performance (job training). According to OOH, they "help plan, conduct, and administer programs that train employees [emphasis added] and improve their skills and knowledge" and "create, administer, and deliver training programs for businesses and organizations."
- 25-9031 - Instructional Coordinators : Designing curriculum that is intended to be used in a school system or for a teacher to present in a class.

13-1161 - Market Research Analysts and Marketing Specialists (formerly 19-3021)

- Job Zone 4, Master's Degree
- Research market conditions in local, regional, or national areas, or gather information to determine potential sales of a product or service, or create a marketing campaign. May gather information on competitors, prices, sales, and methods of marketing and distribution.
- **Sample of reported job titles:** Market Research Analyst, Market Analyst, Project Manager, Market Research Consultant, Client Service and Consulting Manager, Market Research Manager, Product Line Manager, Business Development Specialist, Client Services Vice President, Communications Specialist
- **Coding Tips:** DO NOT develop or implement marketing strategy. Only measure the effectiveness of the strategy and support decision makers through research and information gathering. Consider the Marketing Manager if the job includes developing or implementing the marketing strategy.

Overview of Financial Licenses

- There are no prerequisites to obtaining a financial license. Only requirements are company sponsorship and the ability to pass a criminal background check.

- **Series 3**
  A securities license entitling the holder to sell commodities or futures contracts
- **Series 7**
  General Securities Registered Representative Examination: Provides the qualifications necessary to make different types of trades with all types of corporate securities, excluding commodities and futures. Must pass the exam prior to registering with the FINRA as a representative of a registered firm. Must also pass this exam in order to qualify to take other principal exams offered by FINRA.
- **Series 6**
  Uniform Securities Agents State Law Examination : Examination measures an individual's knowledge of the securities business in general, customer protection requirements and recordkeeping procedures. Provides the qualifications necessary to become a limited registered representative who solicits orders for corporate debt and equity securities such as common and preferred stock and bonds.
- **Series 63**
  A securities license entitling the holder to solicit orders for any type of security in a particular state. This license is required in addition to the Series 7 or Series 6.
- **Series 65**
  A securities license required by most U.S. states for individuals who act as investment advisors. The Series 65 exam, called the Uniform Investment Adviser Law Examination, covers laws, regulations, ethics and topics such as retirement planning, portfolio management strategies and fiduciary responsibilities.

Reference: http://www.investopedia.com/articles/financialcareers/07/securities_licenses.asp#axzz20nWN2ja3

13-2011 – Accountants and Auditors

- Job Zone 4, Bachelor's Degree
- Examine, analyze, and interpret accounting records to prepare financial statements, give advice, or audit and evaluate statements prepared by others. Install or advise on systems of recording costs or other financial and budgetary data.
- **Sample of reported job titles:** Accountant, Certified Public Accountant (CPA), Staff Accountant, Accounting Manager, Cost Accountant, General Accountant, Accounting Officer, Business Analyst, Accounting Supervisor, Financial Reporting Accountant Auditor, Internal Auditor, Auditor-in-Charge, Assurance Manager, Audit Manager, Internal Audit Director, Assurance Senior, Audit Partner, Deputy for Audit, Financial Auditor
- This occupation focuses on internal flow of money within an organization.

Coding Tips:

- Add a special skills point for a CPA, experience with a Big 4 Accounting Firm (PWC, Deloitte, KPMG, Ernst & Young) or graduation from an Ivy League school is required.
- No financial licenses are normal to this SOC and any financial license listed should be assigned a special skills pt. If an application requires multiple financial licenses, for example a Series 7 and a Series 63 License, 2 special skills points should be assigned. Although one is a prerequisite for the other, neither is normal to the occupation and each requires successful completion of a separate test.

13-2011.01 - Accountants

- **13-2011.01 - Accountants**
- Analyze financial information and prepare financial reports to determine or maintain record of assets, liabilities, profit and loss, tax liability, or other financial activities within an organization.
- *Knowledge of or experience in an international accounting standard merits a special skills point. Ex: IFRS standards or a specific country's accounting standards.
- https://www.onetonline.org/link/summary/13-2011.01

13-2011.02 - Auditors

- **13-2011.02 - Auditors**
- Examine and analyze accounting records to determine financial status of establishment and prepare financial reports concerning operating procedures.
- *Knowledge of or experience in an international accounting standard merits a special skills point. Ex: IFRS standards or a specific country's accounting standards.
- https://www.onetonline.org/link/summary/13-2011.02

Budget and Credit Analysts

13-2031 – Budget Analysts

- Job Zone 4, Bachelor's Degree
- Examine budget estimates for completeness, accuracy, and conformance with procedures and regulations. Analyze budgeting and accounting reports.
- **Sample of reported job titles:** Budget Analyst, Budget Officer, Budget and Policy Analyst, Chief Financial Officer (CFO), Cost Accountant, Staff Analyst, Accounting Supervisor, Budget Coordinator
- Help organizations determine the best use of financial resources.

13-2041 – Credit Analysts

- Job Zone 4, Bachelor's Degree
- Analyze credit data and financial statements of individuals or firms to determine the degree of risk involved in extending credit or lending money. Prepare reports with credit information for use in decision making.
- **Sample of reported job titles:** Credit Analyst, Analyst, Credit Manager, Underwriter, Credit Administrator, Credit and Collections Analyst, Credit Representative, Credit Risk Analyst, Risk Analyst
- Help organizations determine risk of lending money

13-2051 – Financial Analysts

- Job Zone 4, Bachelor's Degree
- Conduct quantitative analyses of information affecting investment programs of public or private institutions. Conducts financial analysis to forecast business, industry, or economic conditions in order to provide sound advice on investment decisions.
- **Sample of reported job titles:** Financial Analyst, Securities Analyst, Investment Analyst, Equity Research Analyst, Credit Products Officer, Operational Risk Analyst, Planning Analyst
- Focus on the external flow of money
- **Coding Tips:** No financial licenses are normal to this SOC and any financial license listed should be assigned a special skills pt. If an application requires multiple financial licenses, for example a Series 7 and a Series 63 License, 2 special skills points should be assigned. Although one is a prerequisite for the other, neither is normal to the occupation and each requires successful completion of a separate test.

13-2051 – Financial Analysts continued

- Series 7 is considered a special skill point. If a Series 63 License is also required an additional skill point should be assigned.

- Series 7 License provides an individual with the qualifications necessary in order to make different types of trades with all types of corporate securities, excluding commodities and futures. It is also one of the steps necessary in order for a member firm associate to register with FINRA. The Series 7 exam must be passed in order to take many other principal exams offered by FINRA.

- More information on the Series 7 License for financial occupation may be found at:
- http://www.investopedia.com/professionals/series7/

- Completion of the Series 63 exam will entitle an individual with the qualifications necessary to become a limited registered representative who solicits orders for corporate debt and equity securities such as common and preferred stock, bonds, warrants, and more.

- More information on the Series 63 License for financial occupations may be found at:
- http://www.investopedia.com/professionals/series63/

13-2052 – Personal Financial Advisors

- Job Zone 4, Bachelor's Degree
- Advise clients on financial plans using knowledge of tax and investment strategies, securities, insurance, pension plans, and real estate. Duties include assessing clients' assets, liabilities, cash flow, insurance coverage, tax status, and financial objectives.
- Must hold a financial license in order to give financial advice
- **Coding tips:** All financial licenses are normal to this occupation with the exception of the Series 3 license as it focuses on the sale of commodities and futures contracts. Assign a special skills pt if the employer requests a Series 3 license for this SOC.

13-2053 – Insurance Underwriters

- Job Zone 4, Bachelor's Degree

- Review individual applications for insurance to evaluate degree of risk involved and determine acceptance of applications.

- **Sample of reported job titles:** Underwriter, Account Underwriter, Customer Service Representative, Personal Lines Underwriter, Underwriting Director, Health Underwriter, Life Underwriter, Automobile and Property Underwriter, Commercial Lines Underwriter, Commercial Underwriter

- For beginning underwriters , there are 2 certification programs:
  - **AU: Associate in Commercial Underwriting**
  - **API: Associate in Personal Insurance**

- For underwriters with at least 3 years of experience:
  - **CPCU (Chartered Property and Casualty Underwriter)**

13-2061 – Financial Examiner

- JZ4, Bachelor's Degree
- Enforce or ensure compliance with laws and regulations governing financial and securities institutions and financial and real estate transactions. May examine, verify, or authenticate records.
- **Sample of reported job titles:** Compliance Officer, Compliance Vice President, Compliance Director, Community Reinvestment Act Officer (CRA Officer), Compliance Specialist, Compliance Manager, Internal Auditor, Compliance Analyst, Finance Director, Bank Secrecy Act-Anti-Money Laundering Officer (BSA/AML Officer)

13-2099 - Financial Specialists, All Other

- Only use these occupations after going through the "All Other" process
  - The "All Other" Process can be found at: S:\Standard_Operating_Procedures\Production\PW26 Use of All Other SOCs - Federal Review

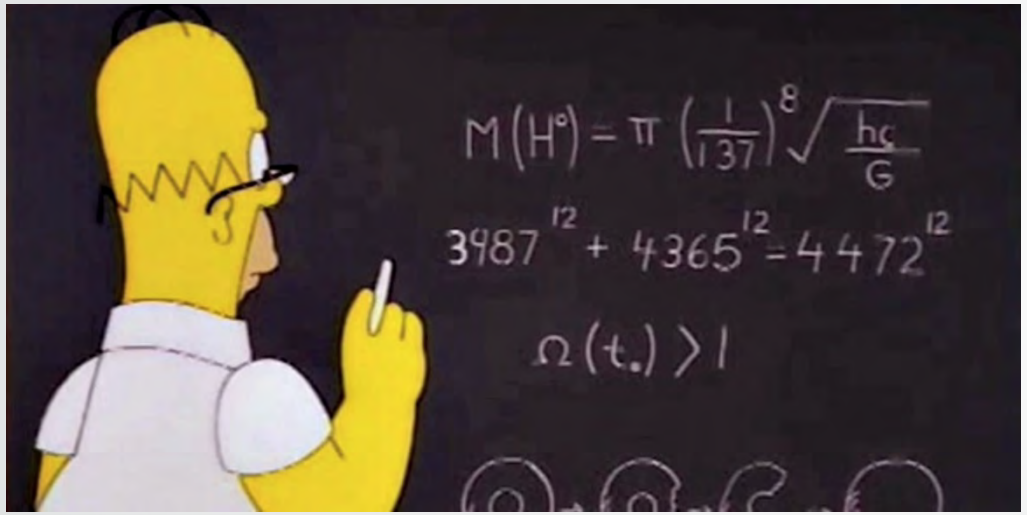
- 13-2099.01- Financial Quantitative Analysts
  - No job zone available, do not use.

- **13-2099.02 - Risk Management Specialists**

- 13-2099.03 - Investment Underwriters
  - No job zone available, do not use.

- **13-2099.04 - Fraud Examiners, Investigators and Analysts**

Questions?



15-series

Other Mathematical Occupations

AILA Doc. No. 18010230. (Posted 1/2/18)

15-Series
Other Mathematical Occupations

- 15-2011 – Actuaries
- 15-2021 – Mathematicians
- 15-2041 – Statisticians
  - 15-2041.01 - Biostatisticians
  - 15-2041.02 - Clinical Data Managers
- 15-2031 – Operation Research Analyst

- 15-2011 – Actuaries
  - Analyze statistical data, such as mortality, accident, sickness, disability, and retirement rates and construct probability tables to forecast risk and liability.
  - May ascertain insurance rates required and cash reserves necessary to ensure payment of future benefits.
- 15-2021 – Mathematicians
  - Conduct research in fundamental mathematics or apply mathematical theories and techniques to the solution of practical problems in business, engineering, the sciences, or other fields.

- 15-2041 – Statisticians
  - Apply statistical theory and methods to collect, organize, interpret and summarize numerical data to provide usable information.
  - May perform some SAS programming
  - Can develop software but for statistical modeling only

- 15-2041.01 - Biostatisticians
  - Develop and apply biostatistical theory and methods to the study of life sciences.
  - Design research studies in collaboration with physicians, life scientists, or other professionals.

- 15-2041.02 - Clinical Data Managers
  - Apply knowledge of health care and database management to analyze clinical data, and to identify and report trends.
  - Design and validate clinical databases including designing or testing logic checks.

Case Studies

AILA Doc. No. 18010230. (Posted 1/2/18)

Case Study #1: Job Duties

- Analyze statistical data, such as mortality, marital rates and retirement rates, and construct probability tables to forecast risk and liability for payment of future benefits. Ascertain insurance rates required and cash reserves necessary to ensure payment of future benefits. Ascertain premium rates required and cash reserves and liabilities necessary to ensure payment of future benefits. Analyze population and pension plan specific experience data to determine mortality and other demographic assumptions used in Funded and Unfunded Pension Risk Transfer transactions. Analyze the financial impact of various pension plan risks. Employ risk management strategies when evaluating and pricing pension plan liabilities. Analyze block of inforce business to track performance expectations, and to assist in underwriting smaller transactions. Assist in mining and scrubbing complex pension plan datasets. Research emerging trends in mortality improvements across different countries, and the pension risk transfer market. Perform discounted cash flow analysis on pension plan liabilities. Calculate duration of pension plan cash flows. Run models that calculate capital shocks that feed into required capital calculations for pension risk transfer product pricing.

- Bachelor's degree or foreign equivalent in Actuarial Science, Mathematics, Statistics, or a related field plus three (3) years of experience in the position offered or as an Actuarial Associate Experienced, Actuarial Associate Entry, or a related position. Must have three (3) years of experience with: actuarial present value of single life and joint & survivor annuities; processing, validation and reconciliation of census data; programming, updating, and tailoring actuarial valuation software; applying life contingencies to present value calculations and annuity values; producing liabilities for benefit plans. Must have passed the following Society of Actuary (SOA) preliminary actuarial exams: P, FM, and MLC.

Case Study #1: Job Duties

- Analyze statistical data, such as mortality, marital rates and retirement rates, and construct probability tables to forecast risk and liability for payment of future benefits. Ascertain insurance rates required and cash reserves necessary to ensure payment of future benefits. Ascertain premium rates required and cash reserves and liabilities necessary to ensure payment of future benefits. Analyze population and pension plan specific experience data to determine mortality and other demographic assumptions used in Funded and Unfunded Pension Risk Transfer transactions. Analyze the financial impact of various pension plan risks. Employ risk management strategies when evaluating and pricing pension plan liabilities. Analyze block of inforce business to track performance expectations, and to assist in underwriting smaller transactions. Assist in mining and scrubbing complex pension plan datasets. Research emerging trends in mortality improvements across different countries, and the pension risk transfer market. Perform discounted cash flow analysis on pension plan liabilities. Calculate duration of pension plan cash flows. Run models that calculate capital shocks that feed into required capital calculations for pension risk transfer product pricing.

- Bachelor's degree or foreign equivalent in Actuarial Science, Mathematics, Statistics, or a related field plus three (3) years of experience in the position offered or as an Actuarial Associate Experienced, Actuarial Associate Entry, or a related position. Must have three (3) years of experience with: actuarial present value of single life and joint & survivor annuities; processing, validation and reconciliation of census data; programming, updating, and tailoring actuarial valuation software; applying life contingencies to present value calculations and annuity values; producing liabilities for benefit plans. Must have passed the following Society of Actuary (SOA) preliminary actuarial exams: P, FM, and MLC.

Case Study #1: Determination

- 15-2011
- --Analyst Notes: JD is in line with 15-2011. EE will analyze statistical data, such as mortality, marital rates and retirement rates, and construct probability tables to forecast risk and liability for payment of future benefits; and research emerging trends in mortality improvements across different countries, and the pension risk transfer market. ONET: Analyze statistical data, such as mortality, accident, sickness, disability, and retirement rates and construct probability tables to forecast risk and liability for payment of future benefits. May ascertain insurance rates required and cash reserves necessary to ensure payment of future benefits.

Case Study #2: Job Duties

- Develop mathematical or statistical models of phenomena to be used for analysis or for computational simulation. Assemble sets of assumptions and explore the consequences of each set. Provide inputs to Statistical Analysis Plan (SAP) for designing of clinical trials. Apply mathematical theories and techniques to the solution of practical problems in business, engineering, the sciences, or other fields. Conduct research to extend mathematical knowledge in traditional areas, such as algebra, geometry, probability, and logic. Use Base/SAS and SAS/Stat for analysis. Perform computations and apply methods of numerical analysis to data. Develop new principles and new relationships between existing mathematical principles to advance mathematical science. Apply Mathematical methods in designing of statistical ouputs using Proc Freq, Proc Means, Proc Univariate. Done design, sampling, questionnaire development, protocol writing, analysis and report writing for many observational research studies and clinical trails. Develop computational methods for solving problems that occur in areas of science and engineering or that come from applications in business or industry. Address the relationships of quantities, magnitudes, and forms through the use of numbers and symbols. Must have strong knowledge of INFORM, Medidata, RAVE, SAS, Oracle Clinical, OC/RDC, Documentum, 21CFR Part 11, MedDRA, LIMS, MS Visio and MS Project.

- Masters in Science, Engineering, Computers, Mathematics, Statistics, Biology, Chemistry, Pharmaceuticals, QA, Regulatory or related field of study

Case Study #2: Job Duties

- Develop mathematical or statistical models of phenomena to be used for analysis or for computational simulation. Assemble sets of assumptions and explore the consequences of each set. Provide inputs to Statistical Analysis Plan (SAP) for designing of clinical trials. Apply mathematical theories and techniques to the solution of practical problems in business, engineering, the sciences, or other fields. Conduct research to extend mathematical knowledge in traditional areas, such as algebra, geometry, probability, and logic. Use Base/SAS and SAS/Stat for analysis. Perform computations and apply methods of numerical analysis to data. Develop new principles and new relationships between existing mathematical principles to advance mathematical science. Apply Mathematical methods in designing of statistical ouputs using Proc Freq, Proc Means, Proc Univariate. Done design, sampling, questionnaire development, protocol writing, analysis and report writing for many observational research studies and clinical trails. Develop computational methods for solving problems that occur in areas of science and engineering or that come from applications in business or industry. Address the relationships of quantities, magnitudes, and forms through the use of numbers and symbols. Must have strong knowledge of INFORM, Medidata, RAVE, SAS, Oracle Clinical, OC/RDC, Documentum, 21CFR Part 11, MedDRA, LIMS, MS Visio and MS Project.

- Masters in Science, Engineering, Computers, Mathematics, Statistics, Biology, Chemistry, Pharmaceuticals, QA, Regulatory or related field of study

Case Study #2: Determination

- 15-2021
- --Analyst Notes: Duties are in line with 15-2021. Duties focus on developing mathematical models to be used for analysis of practical problems. Supporting JD: Develop mathematical or statistical models of phenomena to be used for analysis or for computational simulation. Apply mathematical theories and techniques to the solution of practical problems in business, engineering, the sciences, or other fields. Conduct research to extend mathematical knowledge in traditional areas, such as algebra, geometry, probability, and logic. ONet: Conduct research in fundamental mathematics or in application of mathematical techniques to science, management, and other fields. Solve problems in various fields using mathematical methods.

Case Study #3: Job Duties

- Collect and validate large datasets from a variety of sources and file types; analyze and interpret data trends/patterns; estimate distributions, perform multiple and logistic regression analyses, test for differences across populations; summarize findings in reports and exhibits. Project management including project cost estimation, client interfacing, document management, and project oversight as needed. Uses SAS, Excel, STATA & Access; and knowledge of US Federal employment laws.
- 2 yrs' exp. with advanced statistical analysis incl.:data cleaning, validation, and quality control of large datasets (over 500 million rows or 100 gigs) in variety of formats incl. unstructured files; statistical analysis incl. linear and logistic regressions and population distribution analysis; study design development and evaluation of alternative statistical methods; project quality control and oversight; advanced experience with SAS, Excel, STATA and Access; project management experience in consulting environment; and working knowledge of US Federal employment laws.

Case Study #3: Job Duties

- Collect and validate large datasets from a variety of sources and file types; analyze and interpret data trends/patterns; estimate distributions, perform multiple and logistic regression analyses, test for differences across populations; summarize findings in reports and exhibits. Project management including project cost estimation, client interfacing, document management, and project oversight as needed. Uses SAS, Excel, STATA & Access; and knowledge of US Federal employment laws.
- 2 yrs' exp. with advanced statistical analysis incl.:data cleaning, validation, and quality control of large datasets (over 500 million rows or 100 gigs) in variety of formats incl. unstructured files; statistical analysis incl. linear and logistic regressions and population distribution analysis; study design development and evaluation of alternative statistical methods; project quality control and oversight; advanced experience with SAS, Excel, STATA and Access; project management experience in consulting environment; and working knowledge of US Federal employment laws.

Case Study #3: Determination

- 15-2041
- --Analyst Notes: Best match to 15-2041. JD focuses on performing statistical analysis on large datasets utilizing models to improve and optimize company's business. ONET 15-2041: Develop or apply mathematical or statistical theory and methods to collect, organize, interpret, and summarize numerical data to provide usable information; Analyze and interpret statistical data to identify significant differences in relationships among sources of information.

15-2031
Operation Research Analyst

AILA Doc. No. 18010230. (Posted 1/2/18)

Real World Definition

Employing techniques from other mathematical sciences, such as mathematical modeling, statistical analysis, and mathematical optimization, operations research arrives at optimal or near-optimal solutions to complex decision-making problems. Because of its emphasis on human-technology interaction and because of its focus on practical applications, operations research has overlap with other disciplines, notably industrial engineering and operations management, and draws on psychology and organization science. Operations research is often concerned with determining the maximum (of profit, performance, or yield) or minimum (of loss, risk, or cost) of some real-world objective. Originating in military efforts before World War II, its techniques have grown to concern problems in a variety of industries.

Example: 13 series: 13-2051, 13-1111, and/or 13-1161

AILA Doc. No. 18010230. (Posted 1/2/18)

O*NET Definition

Formulate and apply mathematical modeling and other optimizing methods to develop and interpret information that assists management with decision making, policy formulation, or other managerial functions. May collect and analyze data and develop decision support software, service, or products. May develop and supply optimal time, cost, or logistics networks for program evaluation, review, or implementation.

ORA encompasses a wide range of problem-solving techniques and methods applied in the pursuit of improved decision-making and efficiency. Nearly all of these techniques involve the construction of mathematical models that attempt to describe the system.

Mathematical Modeling

Examples of analytical techniques:

Monte Carlo simulations

linear and nonlinear programming

dynamic programming

queuing and other stochastic-process models

Markov decision processes

econometric methods

neural networks

expert systems

decision analysis

the analytic hierarchy process

Examples of advanced mathematical concepts:
Matrix Algebra, Linear Programming, stochastic processes, Monte Carlo simulations, Bayesian probability or Applied Mathematics;

Software specific to mathematical modeling:
LINDO, AMPL, SAS, CPLEX

Other SOCs to Consider

13-1111 – Management Analyst

13-1161 – Market Research Analyst

13-2051 – Financial Analyst

15-1121 – Computer Systems Analyst

15-2041 - Statistician

11-2021 – Marketing Manager

Recap: When to Use ORA (15-2031)

- It should only be used in rare instances and extreme careful consideration of other SOCs should be made prior to assigning it.
- Things to consider:
  - Providing mathematical modeling of operations
  - Projections of possible outcomes supported by mathematical analysis
  - Master's Degree or higher with a solid grounding in advanced mathematics
  - Because the field relies so heavily on computers, an understanding of how they work is essential. And familiarity with software such AMPL, LINDO, CPLEX, SAS, etc

Case Studies

Case Study #4: Job Duties

- Utilizing qualitative and quantitative research methodologies in education or social sciences, work with CTAC staff to inform and assist efforts of states, school districts and schools to build capacity and create sustainable, systemic change that benefits students and educators. Formulate and apply mathematical/statistical modeling and methodologies to develop and interpret information that assists CTAC and client organizations with decision making, program implementation and policy formulation. Manage small and large scale research projects in education and/or community development. Develop research and evaluation questions, determine appropriate research and evaluation methodologies and develop research and evaluation project plans and strategies. Coordinate, develop and conduct surveys, interviews and focus groups. Design and conduct advanced statistical analyses; select appropriate methodologies such as Value Added Modeling, Hierarchical Linear Modeling, and Individual Growth Modeling. Analyze results and outcomes using statistical analysis software such as SPSS, SAS or STATA. Communicate concepts of research, analysis, statistics and management applications to diverse groups. Communicate findings and relevance to policy makers and practitioners.

- Must demonstrate ability to use statistical analysis software such as SPSS, SAS or STATA and demonstrated experience communicating findings orally and in writing to broad audience.

Case Study #4: Job Duties

- Utilizing qualitative and quantitative research methodologies in education or social sciences, work with CTAC staff to inform and assist efforts of states, school districts and schools to build capacity and create sustainable, systemic change that benefits students and educators. Formulate and apply mathematical/statistical modeling and methodologies to develop and interpret information that assists CTAC and client organizations with decision making, program implementation and policy formulation. Manage small and large scale research projects in education and/or community development. Develop research and evaluation questions, determine appropriate research and evaluation methodologies and develop research and evaluation project plans and strategies. Coordinate, develop and conduct surveys, interviews and focus groups. Design and conduct advanced statistical analyses; select appropriate methodologies such as Value Added Modeling, Hierarchical Linear Modeling, and Individual Growth Modeling. Analyze results and outcomes using statistical analysis software such as SPSS, SAS or STATA. Communicate concepts of research, analysis, statistics and management applications to diverse groups. Communicate findings and relevance to policy makers and practitioners.

- Must demonstrate ability to use statistical analysis software such as SPSS, SAS or STATA and demonstrated experience communicating findings orally and in writing to broad audience.

Case Study #4: Determination

- 15-2041
- Analyst Notes: The employee will design and conduct statistical analyses; select appropriate methodologies such as Value Added Modeling, Hierarchical Linear Modeling and Individual Growth Modeling. Analyze results and outcomes using statistical analysis software such SAS. Job duties are focused on statistical analysis & analyzing clinical data which are Statistician duties. O*net states that Statisticians: Develop or apply mathematical or statistical theory and methods to collect, organize, interpret, and summarize numerical data to provide usable information.

Case Study #5: Job Duties

- For a food product importer/distributor, work closely with Management on important management issues and policy formulation; assess and document existing business procedures; develop mathematical modeling and optimizing methods to analyze, design, and implement optimal system; make recommendations for new methods/procedures, implementation plans, schedules and written reports for management to evaluate, maintain recordkeeping database and produce reports; review reports and recommend productivity and efficiency improvements; research and analyze other comparable organizations /operations.
- The employee will be using simulation software, queueing theory, stochastic process models, and combinatorial optimization to perform computational and statistical analysis (which help to research maximum performance with minimum risk and cost).
- proficiency in SAS, SPSS, MS-Excel Program, ERP, Object Oriented, and UML

Case Study #5: Job Duties

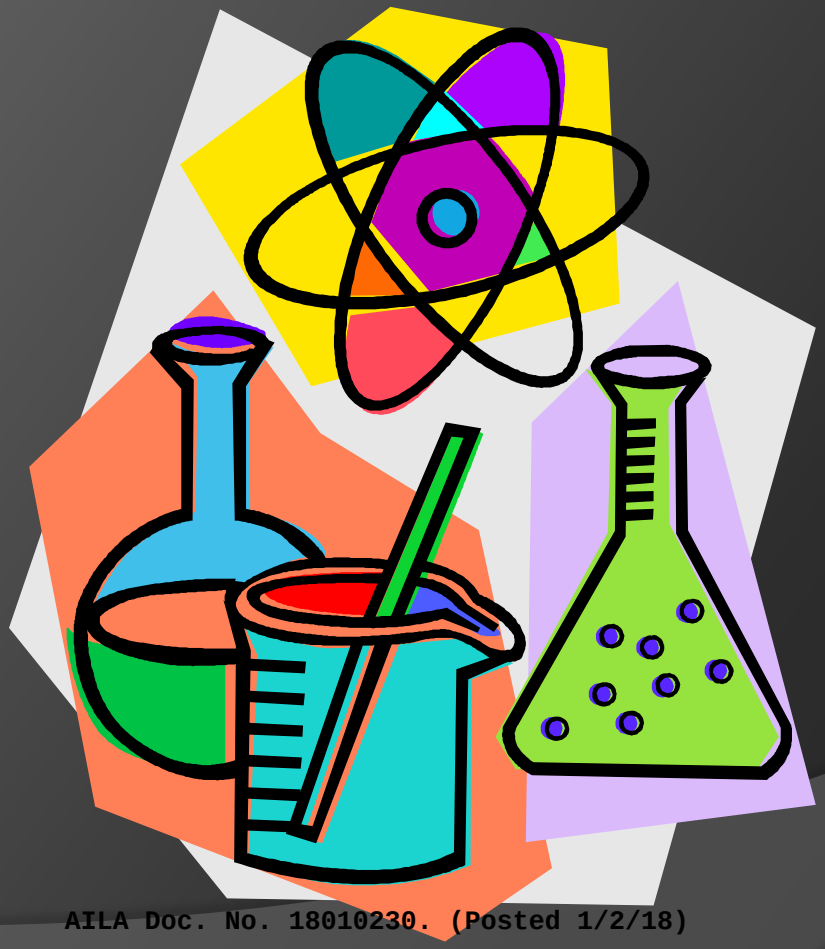
- For a food product importer/distributor, work closely with Management on important management issues and policy formulation; assess and document existing business procedures; develop mathematical modeling and optimizing methods to analyze, design, and implement optimal system; make recommendations for new methods/procedures, implementation plans, schedules and written reports for management to evaluate, maintain recordkeeping database and produce reports; review reports and recommend productivity and efficiency improvements; research and analyze other comparable organizations /operations.
- The employee will be using simulation software, queueing theory, stochastic process models, and combinatorial optimization to perform computational and statistical analysis (which help to research maximum performance with minimum risk and cost).
- proficiency in SAS, SPSS, MS-Excel Program, ERP, Object Oriented, and UML

Case Study #5: Determination

- 15-2031
- --Analyst Notes: JD is in line with 15-2031. EE work closely with Management on important management issues and policy formulation; use simulation software, queueing theory, stochastic process models, and combinatorial optimization to perform computational and statistical analysis; and make recommendations for new methods/procedures, implementation plans, schedules and written reports for management. Requires proficiency in SAS and SPSS. ONET: Formulate and apply mathematical modeling and other optimizing methods to develop and interpret information that assists management with decision making.

Questions?

19-0000 LIFE, PHYSICAL, AND SOCIAL SCIENCE OCCUPATION



Breakdown of the 19-0000 Series

- **19-1000 Life Scientists**
- **19-2000 Physical Scientists**
- **19-3000 Social Scientists and Related Workers**
- **19-4000 Life, Physical, and Social Science Technicians**

Breakdown of the 19-1000 Series

19-1000 Life Scientists

- *19-1010 Agricultural and Food Scientists*
  - 19-1011 Animal Scientists
  - 19-1012 Food Scientists and Technologists
  - 19-1013 Soil and Plant Scientists
- *19-1020 Biological Scientists*
  - 19-1021 Biochemists and Biophysicists
  - 19-1022 Microbiologists
  - 19-1023 Zoologists and Wildlife Biologists
  - 19-1029 Biological Scientists, All Other
- *19-1030 Conservation Scientists and Foresters*
  - 19-1031 Conservation Scientists
  - 19-1032 Foresters
- *19-1040 Medical Scientists*
  - 19-1041 Epidemiologists
  - 19-1042 Medical Scientists, Except Epidemiologists
- *19-1090 Miscellaneous Life Scientists*
  - 19-1099 Life Scientists, All Other

19-1010- Agricultural and Food Scientists

19-1011 Animal Scientists

- Conduct research in the genetics, nutrition, reproduction, growth, and development of **domestic** farm animals.

19-1012 Food Scientists and Technologists

- Studies food processing, deterioration of food and food content

19-1013 Soil and Plant Scientists

- Conduct research in breeding, physiology, production, yield, and management of crops and agricultural plants, their growth in soils, and control of pests; or study the chemical, physical, biological, and mineralogical composition of soils in relation to plant or crop growth

19-1020 Biological Scientists

- This is probably the most used broad occupation in the 19-0000 series

19-1020 Biological Scientists

19-1021 Biochemists and Biophysicists

-Study the chemical composition and physical principles of living cells and organisms

19-1022 Microbiologists

- Investigate the growth, structure, development, and other characteristics of **microscopic organisms**, such as bacteria, algae, or fungi.

19-1023 Zoologists and Wildlife Biologists

- Study the origins, behavior, diseases, genetics, and life processes of animals and wildlife.

19-1021 Biochemists and Biophysicists vs. 19-1022 Microbiologists

19-1021, Biochemists and Biophysicists	19-1022, Microbiologist
•Studies the chemistry and physics within and outside of the cells •Understands the chemical reactions involved in life processes such as metabolism, reproduction, growth, and heredity. •Studies at the molecular level	• Studies the microscopic organisms themselves: bacteria, algae, or fungi

19-1040 Medical Scientists

19-1041 Epidemiologists

Investigate and describe the determinants and distribution of disease, disability, and other health outcomes and develop the means for prevention and control. (Disease spreading throughout the population.)

19-1042 Medical Scientists, Except Epidemiologists

Conduct research dealing with the understanding of human diseases and the improvement of human health. Engage in clinical investigation or other research, production, technical writing, or related activities.

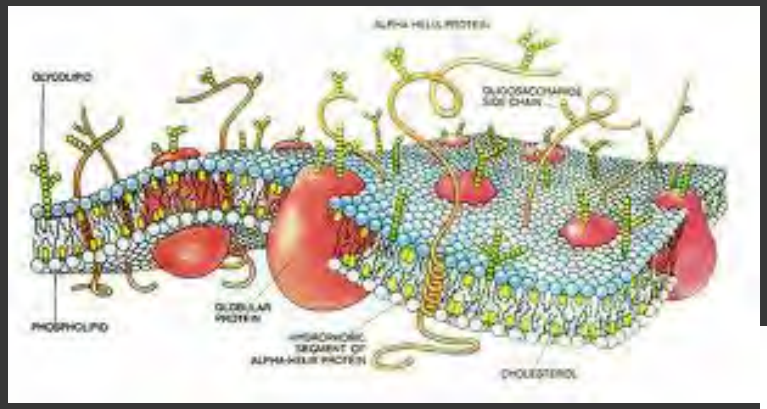
19-1021 Biochemists and Biophysicists vs. 19-1022 Microbiologists vs.19-1042 Medical Scientists, Except Epidemiologists

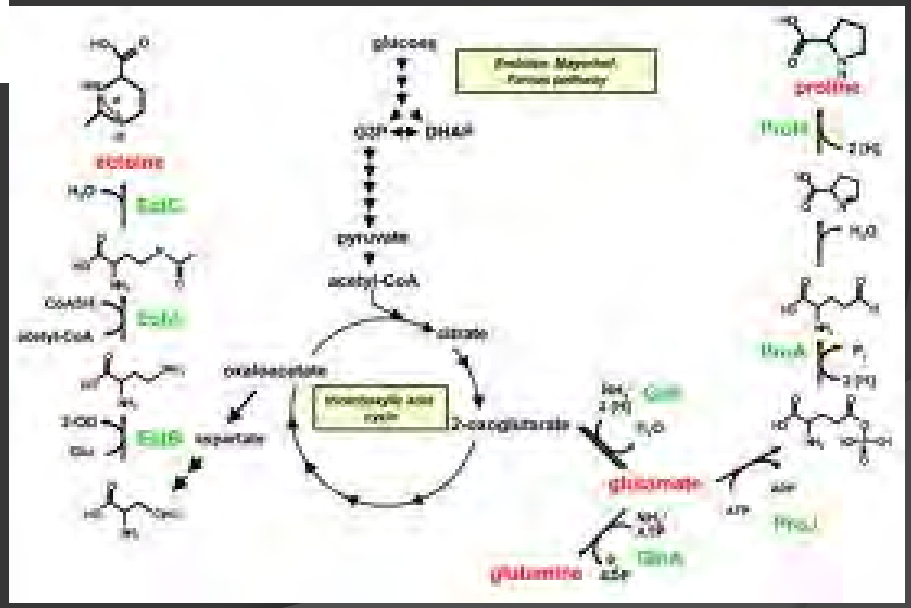
19-1021 Biochemists and Biophysicists	**19-1022 Microbiologists**	**19-1042 Medical Scientists, Except Epidemiologists**
• Studies the disease at the molecular level (i.e, "What's the structure or composition of the disease?)	•Investigate the relationship between organisms and disease including the control of epidemics and the effects of antibiotics on **microorganisms**	• Studies how the disease affects the whole system (i.e., "How does the disease affect the whole body?")

19-1021 Biochemists and Biophysicists vs. 19-1022 Microbiologists vs.19-1042 Medical Scientists, Except Epidemiologists

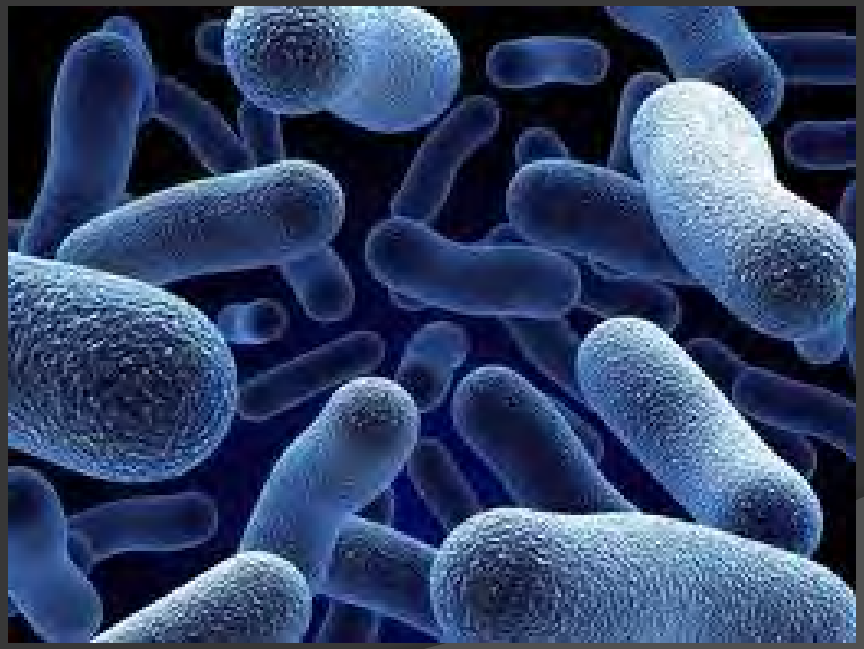
19-1021 Biochemists and Biophysicists	**19-1022 Microbiologists**	**19-1042 Medical Scientists, Except Epidemiologists**
Develop and test new drugs and medications intended for commercial distribution.	Study the effects of antibiotics on microorganisms	Standardize drug dosages, methods of immunization, and procedures for manufacture of drugs and medicinal compounds.

19-1021 Biochemists and Biophysicists

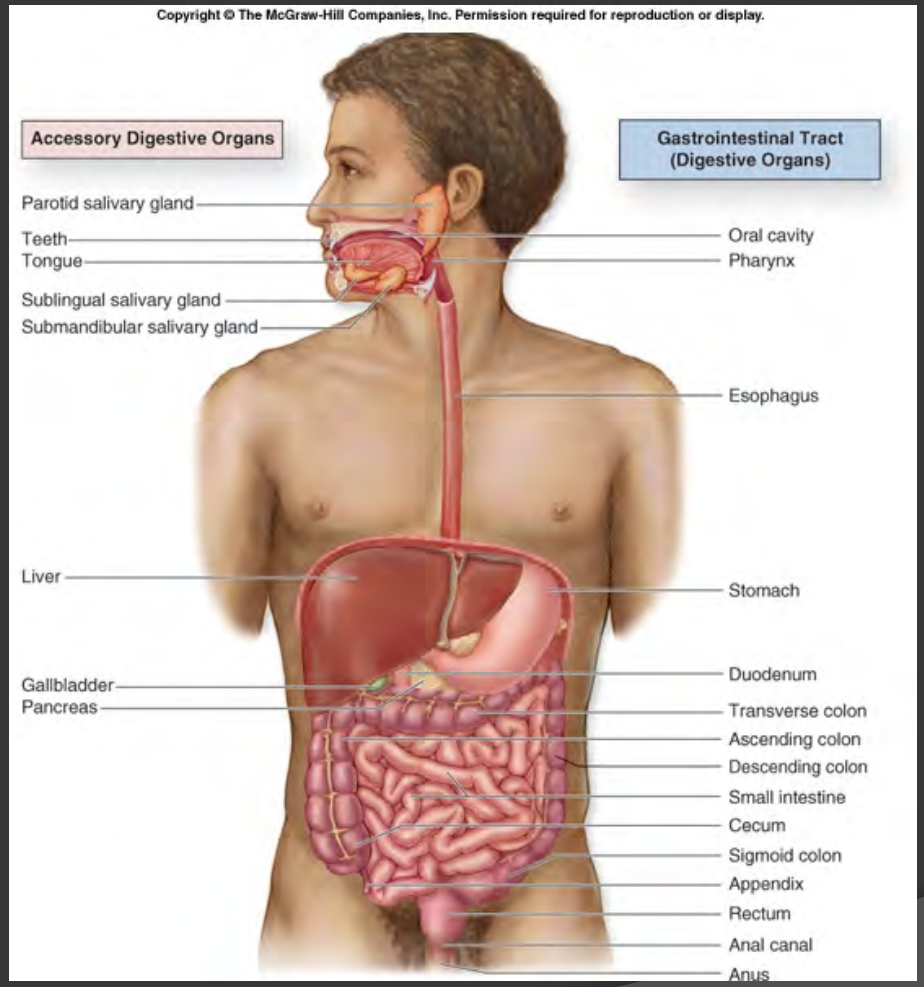




19-1022 Microbiologists



19-1042 Medical Scientists, Except Epidemiologists



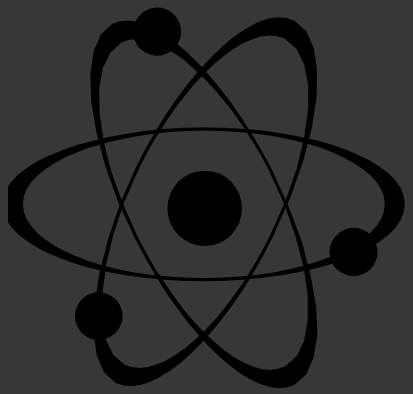
Breakdown of the 19-2000 Series

19-2000 Physical Scientists

- *19-2010 Astronomers and Physicists*
  - 19-2011 Astronomers
  - 19-2012 Physicists
- *19-2020 Atmospheric and Space Scientists*
  - 19-2021 Atmospheric and Space Scientists
- *19-2030 Chemists and Materials Scientists*
  - 19-2031 Chemists
  - 19-2032 Materials Scientists
- *19-2040 Environmental Scientists and Geoscientists*
  - 19-2041 Environmental Scientists and Specialists, Including Health
  - 19-2042 Geoscientists, Except Hydrologists and Geographers
  - 19-2043 Hydrologists
- *19-2090 Miscellaneous Physical Scientists*
  - 19-2099 Physical Scientists, All Other

19-2012 Physicists

- May collaborate with other scientists in the design, development, and testing of experimental, industrial, or medical equipment, instrumentation, and procedures.



19-2030 Chemists and Materials Scientists

- Their focus is research and not developing processes for manufacturing purposes.
- Chemists- Focus on quantitative and qualitative chemical analysis
- Material Scientists- Focus on study the structures and chemical properties of various natural and manmade materials, including metals, alloys, rubber, ceramics, semiconductors, polymers, and glass. (How to make better and stronger materials.)

19-2040 Environmental Scientists and Geoscientists

19-2041 Environmental Scientists and Specialists, Including Health

- Study pollutants or hazards in the environment

19-2042 Geoscientists, Except Hydrologists and Geographers

- Structure and composition of the earth

19-2043 Hydrologists

- Research the distribution, circulation, and physical properties of underground and surface waters

Breakdown of the 19-3000 Series

19-3000 Social Scientists and Related Workers

- *19-3010 Economists*
  - 19-3011 Economists
- *19-3020 Market and Survey Researchers*
  - 19-3021 Market Research Analysts
  - 19-3022 Survey Researchers
- *19-3030 Psychologists*
  - 19-3031 Clinical, Counseling, and School Psychologists
  - 19-3032 Industrial-Organizational Psychologists
  - 19-3039 Psychologists, All Other
- *19-3040 Sociologists*
  - 19-3041 Sociologists
- *19-3050 Urban and Regional Planners*
  - 19-3051 Urban and Regional Planners
- *19-3090 Miscellaneous Social Scientists and Related Workers*
  - 19-3091 Anthropologists and Archeologists
  - 19-3092 Geographers
  - 19-3093 Historians
  - 19-3094 Political Scientists
  - 19-3099 Social Scientists and Related Workers, All Other

19-3011 Economists

- Conduct research, prepare reports, or formulate plans to aid in solution of economic problems arising from production and distribution of goods and services.
- If focused on quantitative analysis for investment purposes, consider 13-2051, Financial Analysts.

19-3031 Clinical, Counseling, and School Psychologists

AILA Doc. No. 18010230. (Posted 1/2/18)

19-3031 Clinical, Counseling, and School Psychologists

- 19-3031.01 School Psychologists: Investigate processes of learning and teaching and develop psychological principles and techniques applicable to educational problems.
- 19-3031.02 Clinical Psychologists: Diagnose or evaluate mental and emotional disorders of individuals through observation, interview, and psychological tests, and formulate and administer programs of treatment.
- 19-3031.03 Couseling Psychologists: Assess and evaluate individuals' problems through the use of case history, interview, and observation and provide individual or group counseling services to assist individuals in achieving more effective personal, social, educational, and vocational development and adjustment.

Breakdown of the 19-4000 Series

19-4000 Life, Physical, and Social Science Technicians

- *19-4010 Agricultural and Food Science Technicians*
  - 19-4011 Agricultural and Food Science Technicians
- *19-4020 Biological Technicians*
  - 19-4021 Biological Technicians
- *19-4030 Chemical Technicians*
  - 19-4031 Chemical Technicians
- *19-4040 Geological and Petroleum Technicians*
  - 19-4041 Geological and Petroleum Technicians
- *19-4050 Nuclear Technicians*
  - 19-4051 Nuclear Technicians
- *19-4060 Social Science Research Assistants*
  - 19-4061 Social Science Research Assistants
- *19-4090 Miscellaneous Life, Physical, and Social Science Technicians*
  - 19-4091 Environmental Science and Protection Technicians, Including Health
  - 19-4092 Forensic Science Technicians
  - 19-4093 Forest and Conservation Technicians
  - 19-4099 Life, Physical, and Social Science Technicians, All Other

General Notes on 19-4000

- These occupations mostly:
  - Assist scientists
  - Set up laboratories
  - Common procedures and experiments
  - **Generally should have a Bachelor's degree

General Notes

- Do not use the “9”, “All Other” SOCs
- Some of the SOCs include teaching duties. If the employer is teaching for a postsecondary institution and doing research in a field, please use the appropriate 25-1000 Postsecondary Teachers SOC

17-0000 ARCHITECTURE AND ENGINEERING OCCUPATIONS

AILA Doc. No. 18010230. (Posted 1/2/18)

Breakdown of the 17-0000 Series

- **17-1000 Architects, Surveyors, and Cartographers**
- **17-2000 Engineers**

Breakdown of the 17-1000 Series

17-1000 Architects, Surveyors, and Cartographers

- 17-1010 Architects, Except Naval
  - 17-1011 Architects, Except Landscape and Naval
  - 17-1012 Landscape Architects
- 17-1020 Surveyors, Cartographers, and Photogrammetrists
  - 17-1021 Cartographers and Photogrammetrists
  - 17-1022 Surveyors

17-1011 Architects, Except Landscape and Naval (JZ 5, Master's)

- Plan and design structures, such as private residences, office buildings, theaters, factories, and other structural property.
- **Special skill points include if the ask for LEED certification.**
- Job Title Samples: Architect, Project Architect, Project Manager, Architectural Project Manager, Principal, Design Architect
- THINK: Not only focused on drafting and design, but also will meet with clients to discuss structure specifications, materials, color, equipment, estimated costs, or construction time.

17-1012 Landscape Architects (JZ 4, Bachelor's Degree)

- Plan and design land areas for projects such as parks and other recreational facilities, airports, highways, hospitals, schools, land subdivisions, and commercial, industrial, and residential sites.
- **Every state now requires landscape architects to be licensed.**
- Job Title Samples: Landscape Architect, Project Manager, Golf Course Architect, Land Planner, Designer, Landscape Designer, Planner

Cartographers, Photogrammetrists & Surveyors

- **17-1021.00 - Cartographers and Photogrammetrists (JZ 4, Bachelor's)**
  - Collect, analyze, and interpret geographic information provided by geodetic surveys, aerial photographs, and satellite data. Research, study, and prepare maps and other spatial data in digital or graphic form for legal, social, political, educational, and design purposes.
  - **Cartographers are general mapmakers**, and **photogrammetrists are specialized mapmakers who use aerial photographs** to create maps.
  - **Some states require that Cartographers and photogrammetrists must be licensed.**

Cartographers, Photogrammetrists & Surveyors

- **17-1022.00 – Surveyors (JZ 4, Bachelor's)**
  - **Make exact measurements** and **determine property boundaries**. Provide data relevant to the shape, contour, gravitation, location, elevation, or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction, and other purposes.
  - Surveyors work with civil engineers, landscape architects, and urban and regional planners
  - **All states require that surveyors must be licensed before they can certify legal documents.**

17-2031 Biomedical Engineers (JZ 4, Bachelor's)

- Apply knowledge of engineering, biology, and biomechanical principles to the design, development, and evaluation of biological and health systems and products, such as artificial organs, prostheses, instrumentation, **medical information systems**, and **health management and care delivery systems**.
- Design and develop medical diagnostic and clinical instrumentation, equipment, and procedures, using the principles of engineering and biobehavioral sciences.
- Biomedical engineers work in manufacturing, universities, hospitals, research facilities of companies and educational and medical institutions, teaching, and government regulatory agencies.

17-2041 Chemical Engineers (JZ 4, Bachelor's)

- **Design chemical plant equipment and devise processes for manufacturing chemicals and products**, such as gasoline, synthetic rubber, plastics, detergents, cement, paper, and pulp, by applying principles and technology of chemistry, physics and engineering.
- Chemical engineers work mostly in **offices** or **laboratories**. They may spend time at industrial plants, refineries, and other locations, where they monitor or direct operations or solve onsite problems.

17-2131 Materials Engineers (JZ 4, Bachelor's)

- Evaluate materials and develop machinery and ***processes to manufacture materials for use in products that must meet specialized design and performance specifications***. Develop new uses for known materials. Includes those engineers working with composite materials or specializing in one type of material, such as graphite, metal and metal alloys, ceramics and glass, plastics and polymers, and naturally occurring materials. **Includes metallurgists and metallurgical engineers, ceramic engineers, and welding engineers.**

Scientists vs. Engineers

Scientists (Chemical, Material)	***Engineers (Chemical, Material)***
•Focus is developing new material or chemicals •Small scale	•Taking the new materials or chemicals and developing a way to manufacture the product •Larger scale

17-2051 Civil Engineers (JZ 4, Bachelor's)

- Perform engineering duties in planning, designing, and overseeing construction and maintenance of building structures, and facilities, such as roads, railroads, airports, bridges, harbors, channels, dams, irrigation projects, pipelines, power plants, **and water and sewage systems.**
- There is a subcategory of Civil Engineers called Transportation Engineers (17-2051.01).
  - Develop plans for surface transportation projects, according to established engineering standards and state or federal construction policy. Prepare designs, specifications, or estimates for transportation facilities. Plan modifications of existing streets, highways, or freeways to improve traffic flow.

17-2112 Industrial Engineers (JZ 4, Bachelor's)

- Design, develop, test, and evaluate integrated systems for managing industrial production processes, including human work factors, quality control, inventory control, logistics and material flow, cost analysis, and production coordination.
  - Not just focused on logistics, they devise **efficient** ways to use workers, machines, materials, information, and energy to make a product or provide a service.

17-2141 Mechanical Engineers (JZ 4, Bachelor's)

- Perform engineering duties in planning and designing tools, engines, machines, and other mechanically functioning equipment. **Oversee installation, operation, maintenance, and repair** of equipment such as centralized heat, gas, water, and steam systems
  - **Mechanical engineers who sell services publicly must be licensed in all states and the District of Columbia.**

AILA Doc. No. 18010230. (Posted 1/2/18)

Electrical Engineer and Electronics Engineer (JZ 4, Bachelor's)

- 17-2071 Electrical Engineer:
  - Electrical engineers design, develop, test, and supervise the manufacturing of **electrical equipment** such as **electric motors**, radar and navigation systems, communications systems, or **power generation equipment**. Electrical engineers also design the electrical systems of automobiles and aircraft.
  - Design, implement, maintain, or improve electrical instruments, equipment, facilities, components, products, or systems for commercial, industrial, or domestic purposes.
  - THINK: POWER GENERATION, POWER SUPPLY, POWER CONTROL

Electrical Engineer and Electronics Engineer (JZ 4, Bachelor's)

- 17-2072 Electronics Engineer:
  - Research, design, develop, or test electronic components and systems for commercial, industrial, military, or scientific use employing knowledge of electronic theory and materials properties. Design **electronic circuits** and components for use in fields such as **telecommunications**, **aerospace guidance** and propulsion control, acoustics, or instruments and controls.
  - Key words: Integrated Circuit (IC), Application Specific Integrated Circuit (ASIC), Semiconductor, SoC (System on Chip), Wafer
  - THINK: ELECTRONIC **DEVICES**

17-2061 Computer Hardware Engineers (JZ 4, Bachelor's)

- Research, design, develop, or test computer or computer-related equipment such as keyboards, hard drives, for commercial, industrial, military, or scientific use. May supervise the manufacturing and installation of computer or computer-related equipment and components.
- THINK: **ACTUAL Hardware** and not necessarily the circuit within the hardware that makes the computer work.

17-2171 Petroleum Engineers (JZ 4, Bachelor's)

- Devise methods to improve oil and gas extraction and production and determine the need for new or modified tool designs. **Oversee drilling,** offer technical advice, and also find new ways to extract oil and gas from older wells.
- THINK: Not focused on **WHERE** the oil and gas are, but instead on what are the safest and most efficient ways of getting it **OUT**.

17-2081 Environmental Engineers (JZ 4, Bachelor's)

- Research, design, plan, or perform engineering duties in the **prevention, control, and remediation of environmental hazards** using various engineering disciplines. Work may include **waste treatment**, site remediation, or pollution control technology.
- Research the environmental impact of proposed construction projects.
- THINK: Work to improve or maintain the natural environment (air, water, and/or land resources)

ENGINEERING LICENSURE

- Most engineers are not required to be licensed. Licensure is required when services are offered directly to the public. Fundamentals of Engineering (FE) exam can be taken upon graduation from an accredited engineering program. Engineers passing the FE exam are often called Engineers in Training (EIT) or Engineer Interns (EI). After completing the required work experience, the Principles and Practice of Engineering exam can be taken. Licensed engineers are called Professional Engineers (PE). A PE has a higher level of responsibility than an unlicensed engineer.

Questions?

31-0000 Healthcare Support Occupations

35-0000 Food Preparations and Serving Related Occupations

45-0000 Farming, Fishing, and Forestry Occupations

Internal Use Only

31-0000 Healthcare Support Occupations

Internal Use Only

31-0000 General Facts

- **Job Zones**
  - Range from 2-3
- Education Levels
  - Range from High School Diploma to Associate's

Internal Use Only

31-1000 Nursing, Psychiatric, and Home Health Aides

2000 SOC	Transitional SOC (current)	2010 SOC (O*Net Online)
31-1011-Home Health Aides	**31-1011-Home Health Aides**	31-1011-Home Health Aides
31-1012 -Nursing Aides, Orderlies, and Attendants	**31-1012 -Nursing Aides, Orderlies, and Attendants**	31-1014 - Nursing Assistants
		31-1015 - Orderlies
31-1013 - Psychiatric Aides	**31-1013 - Psychiatric Aides**	31-1013 - Psychiatric Aides

31-1000 Nursing, Psychiatric, and Home Health Aides

31-1011-*Home* Health Aides-

- Provide "individualized healthcare". Administer prescribed oral medications. (O*Net)
- Location: "in a client's home; others work in small group homes or larger care communities" (OOH 2012-2013)

31-1012 -Nursing Aides, Orderlies, and Attendants

- Nursing Assistants
  - Provide healthcare. Administer drugs and treatments. (More advanced treatments, such as catheterizations, irrigations, massages, etc.) (O*Net)
  - Location: "in hospitals and residents of long-term care facilities, such as nursing homes" (OOH 2012-2013)

39-9021- Personal Care Aides

- Provide housekeeping duties, preparing meals, and monitoring medication.
- Location: "at the person's home or in a care facility" (O*Net)

31-2000 Occupational Therapy and Physical Therapist Assistants and Aides

"Assistants"

- Assist in therapy treatments and procedures, i.e. selecting therapy activities (more responsibility)
- Most states require license

"Aides"

- "Aid" the Assistant or Therapist
- Delegated, selected, or routine tasks, i.e. preparing the patient and treatment area
- Not licensed

Internal Use Only

Additional 2000-2010 SOC Changes for 31-0000 Series

Transitional SOC (current)	2010 SOC (O*Net Online)
Some SOC occupations that collect blood samples: -31-9092 – Medical Assistants -29-2012 – Medical and Clinical Laboratory Technicians (focus on testing)	31-9097 -Phlebotomists (New)

- 2010 SOC includes a new SOC code 31-9097- Phlebotomists (data collection underway). Phlebotomists focus on drawing blood.

35-0000 Food Preparations and Serving Related Occupations

Internal Use Only

35-0000 General Facts

- **Job Zones**
  - Range from 1-3
- Education Level
  - High School Diploma

Internal Use Only

35-1000 Supervisors of Food Preparation and Serving Workers

- **35-1011 Chefs and Head Cooks**
  - Supervise or coordinate activities of cooks or workers engaged in food preparation
  - Are allowed to have one specialty. (Example: Japanese, Italian, etc.) If there is more than one specialty, add one wage level for each additional specialty.

Internal Use Only

35-2010 Cooks

35-2014 – Cooks, Restaurant

- Additional special skills wage levels are added for knowledge of specialties, i.e. (Japanese, Italian, etc.)
- <u>However,</u> if the specialty food is prepared from recipe, no wage levels should be added.
  - *Example: "Prepare and cook Japanese food from recipe"*

Internal Use Only

35-2010 Cooks

Cooks are categorized by establishment and type of food:

- 35-2011 – Cooks, Fast Food
- 35-2012 – Cooks, Institution and Cafeteria
- 35-2013 – Cooks, Private Household
- 35-2014 – Cooks, Restaurant
- 35-2015 – Cooks, Short Order
- 35-2019 – Cooks, All Other
  - Includes the Illustrative examples of “Falafal Cart Cook”, “Fraternity House Cook” (SOC Manual, Direct Title Match)

45-0000 Farming, Fishing, and Forestry Occupations

Internal Use Only

45-0000 Farming, Fishing, and Forestry Occupations

- **Job Zones**
  - Range from 1-3
- Education Level
  - High School Diploma

Internal Use Only

45-2000 Agricultural Workers

- **45-2021 – Animal Breeders**
  - Focus is selecting and breeding animals
    - Focus is research in breeding, use 19-1011 – Animal Scientists
- **45-2093 – Farmworkers, Farm, Ranch, and Aquacultural Animals**
  - Attends to animals produced for animal products. If tending show animals, such as show horses, code as 39-2021- Nonfarm Animal Caretakers.

Internal Use Only

45-3010 Fishing and Related Fishing Workers

45-3011 – Fishers and Related Fishing Workers

Use specifically for those catching fish and other aquatic animals from rivers, lakes, or oceans. If working on fish farms, code as 45-2093 –Farmworkers, Farm, Ranch, and Aquacultural Animals.

Internal Use Only

45-4010 Forest and Conversation Workers

45-4011 Forest and Conservation Workers

- Includes forester aides, seedling pullers, and tree planters.
  - raising and transporting seedlings
  - spray or inject vegetation with insecticides to kill insects or to protect against disease or with herbicides to reduce competing vegetation
  - thin or space trees, using power thinning saws

Internal Use Only

2000-2010 SOC Changes for 45-0000 Series

2000 SOC	Transitional SOC (current)	2010 SOC (O*Net Online)
45-1012 – Farm Labor Contractors	**13-1074 – Farm Labor Contractors**	13-1074 – Farm Labor Contractors

Questions?

37-0000

Building, Grounds, and Maintenance

37-0000 General Facts

- **Job Zones**
  - Range from 1-3
- Education Levels
  - High School Diploma

37-1011 First-Line Supervisors/Managers of Housekeeping and Janitorial Workers

- Directly supervise and coordinate work activities of cleaning personnel in hotels, hospitals, offices, and other establishments.

37-1012 First-Line Supervisors/Managers of Landscaping, Lawn Service, and Groundskeeping Workers

- Plan, organize, direct, or coordinate activities of workers engaged in landscaping or groundskeeping activities

37-1012

Directly supervise and coordinate activities of workers engaged in landscaping or groundskeeping activities. Work may involve reviewing contracts to ascertain service, machine; and workforce requirements; answering inquiries from potential customers regarding methods, material, and price ranges; and preparing estimates according to labor, material, and machine costs.

37-2011 Janitors and Cleaners, Except Maids and Housekeeping Cleaners

- DOES strip & wax floors or shampoo carpets using industrial equipment. Also includes 'high rise' window cleaners, pool cleaners
- Can work inside and outside the building
- Gather and empty trash; sweep, mop, and/or vacuum office rooms/floors; service, clean or supply restrooms in office buildings; conduct other related janitorial services.

37-2012 Maids and Housekeeping Cleaners

- Does NOT strip & wax floors or shampoo carpets using industrial equipment, Does NOT care for children or cook, Does not do laundry nor wash linen, May iron linens if combined with 51-6011 but only sheets
- Perform any combination of light cleaning duties to maintain private households or commercial establishments such as hotels, restaurants, and hospitals in a clean and orderly manner. Duties include making beds, replenishing linens, cleaning rooms and halls and vacuuming.

37-2021 Pest Control Workers

- Only use when simply applying and no license required on application.

37-3011 Landscaping and Groundskeeping Workers

- May lay landscaping stone/blocks eta all with OUT mortar

37-3011

- Landscape or maintain grounds of property using hand or power tools or equipment. Workers typically perform a variety of tasks, which may include any combination of the following: sod laying, mowing, trimming, planting, watering, fertilizing, digging, raking, sprinkler installation, and installation of mortarless segmental concrete masonry wall units.

37-3012 Pesticide Handlers, Sprayers, and Applicators, Vegetation

- Use this when mixing the chemicals as well as applying them.

- Use this when mixing the chemicals as well as applying them; generally more complex decision making (type, dilution, method of applying …) decision making.

37-3012

Mix or apply pesticides, herbicides, fungicides, or insecticides through sprays, dusts, vapors, soil incorporation, or chemical application on trees, shrubs, lawns, or botanical crops. Usually requires specific training and State or Federal certification.

37-3013 Tree Trimmers and Pruners

Using sophisticated climbing and rigging techniques, cut away dead or excess branches from trees or shrubs to maintain right-of-way for roads, sidewalks, or utilities, or to improve appearance, health, and value of tree. Prune or treat trees or shrubs using handsaws, hand pruners, clippers, and power pruners. Works off the ground in the tree canopy and may use truck-mounted lifts.

- **SCA Job Title**
- **Key Duties**
- **SOC Code**
- Brush/Precommercial Thinner
- Trim limbs, branches, vegetation using saws or knives
- 45-4011.00 - Forest and Conservation Workers
- Tree Planter
- Plant trees using a dibble, hoe dad and other tools for planting trees
- 45-4011.00 - Forest and Conservation Workers
- Brush/Precommercial Thinner
- Spray chemicals
- 37-3012.00 - Pesticide Handlers, Sprayers, and Applicators, Vegetation
- Slash Piler/Burner
- Pile limbs into a group and set fire to help prevent wildfires
- 19-4093.00 - Forest and Conservation Technicians

Combos	WASH IRON DRY APPAREL AND LINENS	51-6011+51-6021
	Clean rooms & public areas daily including dusting, sweeping, mopping and vacuuming. Strip and make beds & replenish linens. Restock supply closets. Empty trash. Wash laundry.	37-2012+51-6011
	Clean, vacuum, sweep and dust guest rooms, bathrooms and public areas. Do laundry and iron linens.	37-2012+51-6021+51-6011

AILA Doc. No. 18010230. (Posted 1/2/18)

Combos	WASH IRON DRY APPAREL AND LINENS	51-6011+51-6021
	Clean rooms & public areas daily including dusting, sweeping, mopping and vacuuming. Strip and make beds & replenish linens. Restock supply closets. Empty trash. Wash laundry.	37-2012+51-6011
	Clean, vacuum, sweep and dust guest rooms, bathrooms and public areas. Do laundry and iron linens.	37-2012+51-6021+51-6011

Area of Intended Employment

Extract from PWD rev 06JUL

Office of Foreign Labor Certification

Area of Intended Employment

- Normal commuting distance to the place (address) of intended employment
- Statistical Areas defined by the Office of Management and Budget (OMB)
  - Metropolitan and Micropolitan Areas (MA or MSA)
  - All of MSA, if near the core
  - CSA is often reasonable
- The borders of MAs are not necessarily controlling

AILA Doc. No. 18010230. (Posted 1/2/18)

- Metropolitan Statistical Areas (MSA)
  - Have at least one urbanized area of **50,000** or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties
  - Defined in terms of whole counties (or equivalent entities),
  - May have Metropolitan Divisions
    - Those that contain a single core with a population of 2.5 million or more may be subdivided to form smaller groupings of counties referred to as Metropolitan Divisions
- Micropolitan Statistical Areas (MSA)
  - Have at least one urban cluster of at least **10,000** but less than 50,000 population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties
  - Defined in terms of whole counties (or equivalent entities),
  - Will be treated the same as Metropolitan Statistical Areas,
  - thus the same abbreviation

AILA Doc. No. 18010230. (Posted 1/2/18)

- Combined Statistical Areas (CSA)
  - A Combined Statistical Area may comprise two or more Metropolitan Statistical Areas, a Metropolitan Statistical Area and a Micropolitan Statistical Area, two or more Micropolitan Statistical Areas, or multiple Metropolitan and Micropolitan Statistical Areas that have social and economic ties as measured by commuting, but at lower levels than are found among counties within Metropolitan and Micropolitan Statistical Areas
  - Combinations for adjacent areas with an employment interchange of 25% or more are automatic
  - Combinations for adjacent areas with an employment interchange of at least 15% but less than 25% are based on local opinion as expressed through the Congressional delegations

AILA Doc. No. 18010230. (Posted 1/2/18)

Example using MAs

- Metropolitan and Micropolitan Areas
  - With divisions
  - Without divisions
- Combined Statistical Area
- 50 mile radius
- Adjacent but not combined MAs

AILA Doc. No. 18010230. (Posted 1/2/18)

40060 Richmond, VA Metropolitan Statistical Area

Principal City: Richmond

Amelia County, Caroline County, Charles City County, Chesterfield County, Cumberland County, Dinwiddie County, Goochland County, Hanover County, Henrico County, King and Queen County, King William County, Louisa County, New Kent County, Powhatan County, Prince George County, Sussex County, Colonial Heights city, Hopewell city, Petersburg city, Richmond city

47900 Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area

Principal Cities: Washington, DC; Arlington, VA; Alexandria, VA; Reston, VA; Bethesda, MD; Gaithersburg, MD; Frederick, MD; Rockville, MD

13644 Bethesda-Gaithersburg-Frederick, MD Metropolitan Division

Frederick County, Montgomery County

47894 Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division

District of Columbia, DC; Calvert County, MD; Charles County, MD; Prince George's County, MD; Arlington County, VA; Clarke County, VA; Fairfax County, VA; Fauquier County, VA; Loudoun County, VA; Prince William County, VA; Spotsylvania County, VA; Stafford County, VA; Warren County, VA; Alexandria city, VA; Fairfax city, VA; Falls Church city, VA; Fredericksburg city, VA; Manassas city, VA; Manassas Park city, VA; Jefferson County, WV

12580 Baltimore-Towson, MD Metropolitan Statistical Area

Principal Cities: Baltimore, Towson

Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County, Queen Anne's County, Baltimore city

548 Washington-Baltimore-Northern Virginia, DC-MD-VA-WV Combined Statistical Area

Baltimore-Towson, MD Metropolitan Statistical Area

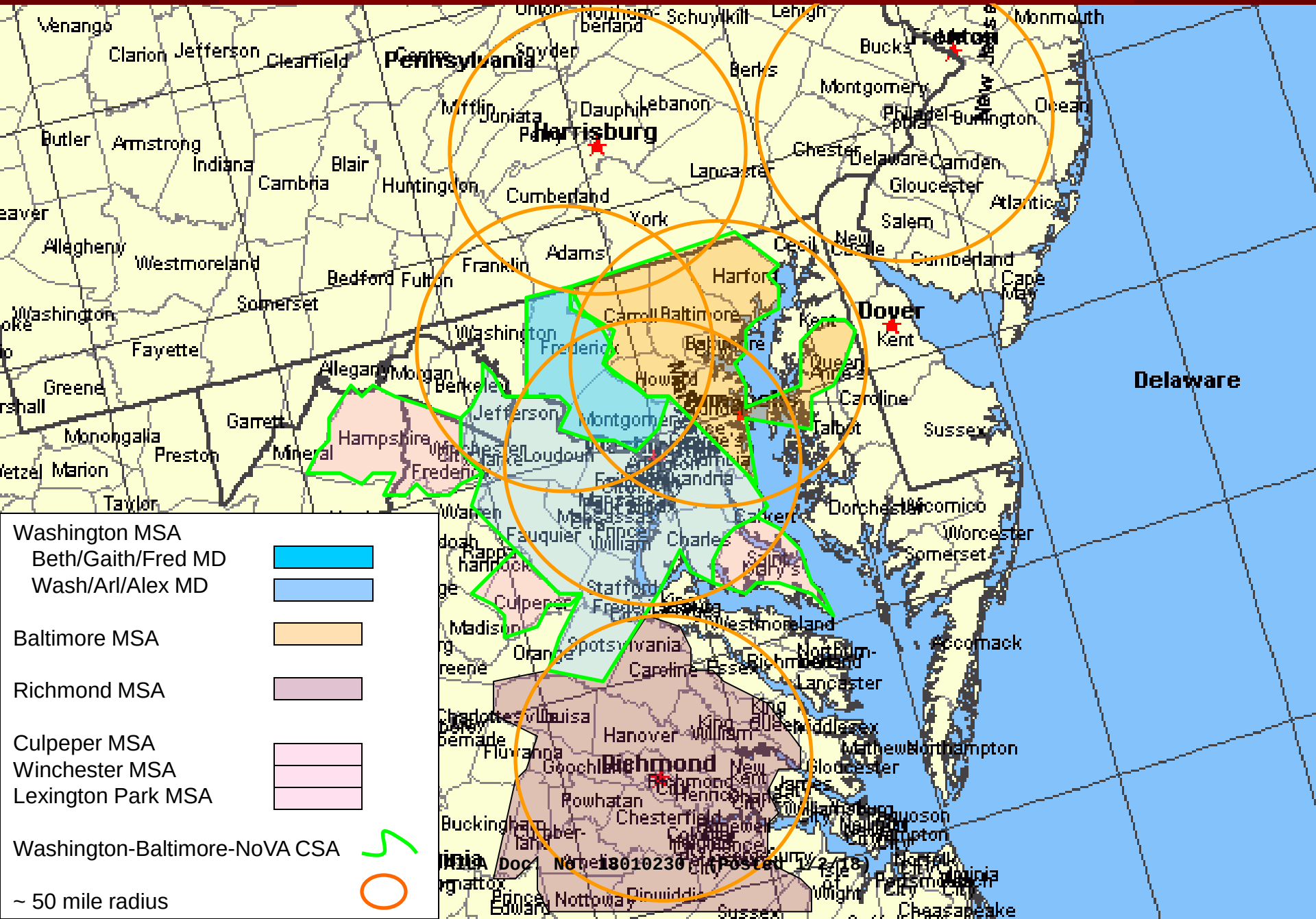
Culpeper, VA Micropolitan Statistical Area

Lexington Park, MD Micropolitan Statistical Area

Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area

Winchester, VA-WV Metropolitan Statistical Area

Metro/Micro SA, CSA, 50 mile example



Hiett, Talecia - ETA

From:	Adjibodou, Renata - ETA
Sent:	Thursday, April 27, 2017 9:54 AM
To:	zzETA-COL-FED
Cc:	Urbanski, Michael - ETA CTR; Kho, Irene - ETA; Banos, Janet - ETA; Woods, Alexander T - ETA
Subject:	Center Directive: 11-9033.00 - Education Administrators, Postsecondary - PWRA Update and Guidance Change

Good Morning:

The purpose of this email is to provide Center guidance regarding the occupation of 11-9033.00 - Education Administrators, Postsecondary.

If the job duties on the Form ETA-9141 align with 11-9033.00 - Education Administrators, Postsecondary and the incumbent will also teach courses, please assign a special skill point ***rather than*** a combination of occupations with a post-secondary teacher. The teaching duties increase the complexity of the position and are indicative of skills of a higher wage level worker. The guidance update can be found in the PWRA "Key Usage Info" section for 11-9033.00 - Education Administrators, Postsecondary.

Please see your Supervisor, Team Lead or 11-000 series SME with any questions.

Renata

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PH: 202-693-3126

We help U.S. employers fill jobs while protecting U.S. and foreign workers

AILA Doc. No. 18010230. (Posted 1/2/18)

Hiett, Talecia - ETA

From: Adjibodou, Renata - ETA
Sent: Monday, June 12, 2017 9:54 AM
To: zzETA-COL-FED
Cc: Urbanski, Michael - ETA CTR
Subject: Center Directive: 25-2021.00 - Elementary School Teachers, Except Special Education PWRA update and Guidance Change

25-2021.00 - Elementary School Teachers, Except Special Education

The purpose of this email is to provide Center guidance regarding 25-2021.00 - Elementary School Teachers, Except Special Education. If the job duties on the Form ETA-9141 indicate the incumbent will teach kindergarten and elementary students, please select the higher of the two wages and do NOT add a license point. This guidance is documented in the PWRA "General" section for 25-2021.00 - Elementary School Teachers, Except Special Education.

Please see your supervisor, Team Lead or SME with any questions.

Renata

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AILA Doc. No. 18010230. (Posted 1/2/18)

Hiett, Talecia - ETA

From: Adjibodou, Renata - ETA
Sent: Tuesday, August 15, 2017 4:56 PM
To: zzETA-COL-ALL GROUP
Subject: Center Directive: 29 Series Number of Months for Training: Fellowships

As a follow-up to our recent training on the 29 Series SOC code, please see guidance below.

> The purpose of this email is to provide Center guidance regarding the evaluation of the Residency/Fellowship requirements for all proffered Physician job opportunities. While a single residency is normal for all physicians, additional residences/fellowships will result in additional points. If the employer's training requirements on the Form ETA-9141 do not equate to a completed fellowship, a RFI should be sent to the employer for clarification. If the employer's RFI response indicates that a completed fellowship is not required, an Additional Note should be included in Item F.7 on the Form ETA-9141.
>
> The guidance update for residencies/fellowships can be found in the "General Reference" section of the PWRA under the "Physicians" topic and "Residency/Fellowship" subtopic.

Please contact your team leads and/or supervisors with any questions. Renata

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AILA Doc. No. 18010230. (Posted 1/2/18)

Hiett, Talecia - ETA

From: Adjibodou, Renata - ETA
Sent: Monday, March 27, 2017 1:26 PM
To: zzETA-COL-FED
Cc: Urbanski, Michael - ETA CTR
Subject: Center Guidance: Preferences vs. Requirements

The purpose of this email is to provide Center guidance regarding prevailing wage requests (PWRs) that list requirements and/or preferences. When the Form ETA-9141 indicates preferences in Sections E.a.5 or E.b.5, please evaluate them as requirements. If the preference listed is not within the scope of the SOC, please assign a special skill point. For example, the 9141 indicates a CPA license is preferred but not required and the CPA license is not normal to the occupation, a special skill point will be assigned. The guidance update for preferences can be found in the "General Reference" section of the PWRA under the "Preference vs. Requirements" Topic.

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AILA Doc. No. 18010230. (Posted 1/2/18)

Hiett, Talecia - ETA

From: Adjibodou, Renata - ETA
Sent: Friday, March 24, 2017 9:25 AM
To: zzETA-COL-FED
Subject: Center Guidance: PWRA for JD LLM and State Bar license

The purpose of this email is to notify the Center of the recent guidance change and updates to the Prevailing Wage Reference Application (PWRA) for the education requirement of a Master of Laws (LLM) and the occupation of 23-1011 – Lawyer. The Center has reevaluated the education requirement for a LLM to indicate when an employer requires a LLM for any occupation, an education point should be added as this is an advanced degree requirement. The guidance update for the LLM education requirement can be found in the "General Reference" section of the PWRA under the "Education" Topic.

Additionally for the occupation of 23-1011- Lawyer, if the employer requires more than one state bar license(s), please assign one special skill point. Do not add a point for each state bar license. Furthermore, when considering a non-attorney SOC and the employer is requiring a State Bar License, please assign a point. The guidance for a State Bar License requirement for a non-attorney SOC may also be found in the "General Reference" section of the PWRA under the "License" Topic.

Please review the following updates to the PWRA "Key Related Info" section for 23-1011 - Lawyer:

(1) If an LLM (Master of Laws) is required, treat LLM as also requiring a J.D. Thus, when an LLM is required, add an education point for the LLM as this is an advanced degree requirement.

(2) One state bar license is normal to the occupation of a Lawyer/Attorney. If more than one state bar license(s) is required add one point, regardless of the number of bar licenses required. Do not add a point for each state bar license.

(3) Add a point if it is a non-attorney SOC coding, but the employer is requiring a State Bar License.

(4) One additional special skills point should be assigned for the requirement of specialty bars and certifications such as Patent and Trademark offices, etc.

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H. R. 4818

One Hundred Eighth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twentieth day of January, two thousand and four

An Act

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2005, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consolidated Appropriations Act, 2005".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

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Sec. 2. Table of contents.
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DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

Title I—Agricultural Programs
Title II—Conservation Programs
Title III—Rural Development Programs
Title IV—Domestic Food Programs
Title V—Foreign Assistance and Related Programs
Title VI—Related Agencies and Food and Drug Administration
Title VII—General Provisions

DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

Title I—Department of Justice
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Title III—The Judiciary
Title IV—Department of State and Related Agency
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Title VIII—Patent and Trademark Fees
Title IX—Oceans and Human Health Act

DIVISION C—ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2005

Title I—Department of Defense—Civil
Title II—Department of the Interior
Title III—Department of Energy
Title IV—Independent Agencies
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Title VI—Reform of the Board of Directors of the Tennessee Valley Authority

DIVISION D—FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2005

Title I—Export and Investment Assistance

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Title II—Bilateral Economic Assistance
Title III—Military Assistance
Title IV—Multilateral Economic Assistance
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DIVISION E—DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

Title I—Department of the Interior
Title II—Related Agencies
Title III—General Provisions
Title IV—Urgent Wildland Fire Suppression Activities
Title V—General Reduction

DIVISION F—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

Title I—Department of Labor
Title II—Department of Health and Human Services
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DIVISION G—LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2005

Title I—Legislative Branch Appropriations
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DIVISION H—TRANSPORTATION, TREASURY, INDEPENDENT AGENCIES, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2005

Title I—Department of Transportation
Title II—Department of the Treasury
Title III—Executive Office of the President and Funds Appropriated to the President
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Title I—Department of Veterans Affairs
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DIVISION J—OTHER MATTERS

Title I—Miscellaneous Provisions and Offsets
Title II—225th Anniversary of the American Revolution Commemoration Act
Title III—Rural Air Service Improvement Act of 2004
Title IV—L–1 Visa and H–1B Visa Reform Act
Title V—National Aviation Heritage Area Act
Title VI—Oil Region National Heritage Area Act
Title VII—Mississippi Gulf Coast National Heritage Area Act
Title VIII—Federal Lands Recreation Enhancement Act
Title IX—Satellite Home Viewer Extension and Reauthorization Act of 2004
Title X—Snake River Water Rights Act of 2004

DIVISION K—SMALL BUSINESS

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to "this Act" contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 4. STATEMENT OF APPROPRIATIONS.

The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2005.

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DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

TITLE I

AGRICULTURAL PROGRAMS

PRODUCTION, PROCESSING, AND MARKETING

OFFICE OF THE SECRETARY

For necessary expenses of the Office of the Secretary of Agriculture, $5,124,000: *Provided*, That not to exceed $11,000 of this amount shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary.

EXECUTIVE OPERATIONS

CHIEF ECONOMIST

For necessary expenses of the Chief Economist, including economic analysis, risk assessment, cost-benefit analysis, energy and new uses, and the functions of the World Agricultural Outlook Board, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1622g), $10,317,000.

NATIONAL APPEALS DIVISION

For necessary expenses of the National Appeals Division, $14,331,000.

OFFICE OF BUDGET AND PROGRAM ANALYSIS

For necessary expenses of the Office of Budget and Program Analysis, $8,228,000.

HOMELAND SECURITY STAFF

For necessary expenses of the Homeland Security Staff, $775,000.

OFFICE OF THE CHIEF INFORMATION OFFICER

For necessary expenses of the Office of the Chief Information Officer, $16,595,000.

COMMON COMPUTING ENVIRONMENT

For necessary expenses to acquire a Common Computing Environment for the Natural Resources Conservation Service, the Farm and Foreign Agricultural Service, and Rural Development mission areas for information technology, systems, and services, $125,585,000, to remain available until expended, for the capital asset acquisition of shared information technology systems, including services as authorized by 7 U.S.C. 6915–16 and 40 U.S.C. 1421–28: *Provided*, That obligation of these funds shall be consistent with the Department of Agriculture Service Center Modernization

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Plan of the county-based agencies, and shall be with the concurrence of the Department's Chief Information Officer.

OFFICE OF THE CHIEF FINANCIAL OFFICER

For necessary expenses of the Office of the Chief Financial Officer, $5,742,000: *Provided*, That the Chief Financial Officer shall actively market and expand cross-servicing activities of the National Finance Center: *Provided further*, That no funds made available by this appropriation may be obligated for FAIR Act or Circular A–76 activities until the Secretary has submitted to the Committees on Appropriations of both Houses of Congress and the Committee on Government Reform of the House of Representatives a report on the Department's contracting out policies, including agency budgets for contracting out.

WORKING CAPITAL FUND

For the acquisition of disaster recovery and continuity of operations technology of the National Finance Center's data, $12,850,000, to remain available until expended.

OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

For necessary salaries and expenses of the Office of the Assistant Secretary for Civil Rights, $818,000.

OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, $19,889,000.

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

For necessary salaries and expenses of the Office of the Assistant Secretary for Administration, $669,000.

AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

(INCLUDING TRANSFERS OF FUNDS)

For payment of space rental and related costs pursuant to Public Law 92–313, including authorities pursuant to the 1984 delegation of authority from the Administrator of General Services to the Department of Agriculture under 40 U.S.C. 486, for programs and activities of the Department which are included in this Act, and for alterations and other actions needed for the Department and its agencies to consolidate unneeded space into configurations suitable for release to the Administrator of General Services, and for the operation, maintenance, improvement, and repair of Agriculture buildings and facilities, and for related costs, $163,870,000, to remain available until expended: *Provided*, That not to exceed 5 percent of amounts which are made available for space rental and related costs for the Department of Agriculture in this Act may be transferred between such appropriations to cover the costs of new or replacement space 15 days after notice thereof is transmitted to the Appropriations Committees of both Houses of Congress.

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HAZARDOUS MATERIALS MANAGEMENT

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), $15,532,000, to remain available until expended: *Provided*, That appropriations and funds available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

DEPARTMENTAL ADMINISTRATION

(INCLUDING TRANSFERS OF FUNDS)

For Departmental Administration, $22,626,000, to provide for necessary expenses for management support services to offices of the Department and for general administration, security, repairs and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department: *Provided,* That this appropriation shall be reimbursed from applicable appropriations in this Act for travel expenses incident to the holding of hearings as required by 5 U.S.C. 551–558.

OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL RELATIONS

(INCLUDING TRANSFERS OF FUNDS)

For necessary salaries and expenses of the Office of the Assistant Secretary for Congressional Relations to carry out the programs funded by this Act, including programs involving intergovernmental affairs and liaison within the executive branch, $3,852,000: *Provided,* That these funds may be transferred to agencies of the Department of Agriculture funded by this Act to maintain personnel at the agency level: *Provided further,* That no funds made available by this appropriation may be obligated after 30 days from the date of enactment of this Act, unless the Secretary has notified the Committees on Appropriations of both Houses of Congress on the allocation of these funds by USDA agency: *Provided further,* That no other funds appropriated to the Department by this Act shall be available to the Department for support of activities of congressional relations.

OFFICE OF COMMUNICATIONS

For necessary expenses to carry out services relating to the coordination of programs involving public affairs, for the dissemination of agricultural information, and the coordination of information, work, and programs authorized by Congress in the Department, $9,365,000: *Provided,* That not to exceed $2,000,000 may be used for farmers' bulletins.

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OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General, including employment pursuant to the Inspector General Act of 1978, $78,289,000, including such sums as may be necessary for contracting and other arrangements with public agencies and private persons pursuant to section 6(a)(9) of the Inspector General Act of 1978, and including not to exceed $125,000 for certain confidential operational expenses, including the payment of informants, to be expended under the direction of the Inspector General pursuant to Public Law 95–452 and section 1337 of Public Law 97–98.

OFFICE OF THE GENERAL COUNSEL

For necessary expenses of the Office of the General Counsel, $35,861,000.

OFFICE OF THE UNDER SECRETARY FOR RESEARCH, EDUCATION AND ECONOMICS

For necessary salaries and expenses of the Office of the Under Secretary for Research, Education and Economics to administer the laws enacted by the Congress for the Economic Research Service, the National Agricultural Statistics Service, the Agricultural Research Service, and the Cooperative State Research, Education, and Extension Service, $592,000.

ECONOMIC RESEARCH SERVICE

For necessary expenses of the Economic Research Service in conducting economic research and analysis, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) and other laws, $74,768,000.

NATIONAL AGRICULTURAL STATISTICS SERVICE

For necessary expenses of the National Agricultural Statistics Service in conducting statistical reporting and service work, including crop and livestock estimates, statistical coordination and improvements, marketing surveys, and the Census of Agriculture, as authorized by 7 U.S.C. 1621–1627 and 2204g, and other laws, $129,480,000, of which up to $22,405,000 shall be available until expended for the Census of Agriculture.

AGRICULTURAL RESEARCH SERVICE

SALARIES AND EXPENSES

For necessary expenses to enable the Agricultural Research Service to perform agricultural research and demonstration relating to production, utilization, marketing, and distribution (not otherwise provided for); home economics or nutrition and consumer use including the acquisition, preservation, and dissemination of agricultural information; and for acquisition of lands by donation, exchange, or purchase at a nominal cost not to exceed $100, and for land exchanges where the lands exchanged shall be of equal value or shall be equalized by a payment of money to the grantor which shall not exceed 25 percent of the total value of the land

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or interests transferred out of Federal ownership, $1,110,887,000: *Provided,* That appropriations hereunder shall be available for the operation and maintenance of aircraft and the purchase of not to exceed one for replacement only: *Provided further,* That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for the construction, alteration, and repair of buildings and improvements, but unless otherwise provided, the cost of constructing any one building shall not exceed $375,000, except for headhouses or greenhouses which shall each be limited to $1,200,000, and except for 10 buildings to be constructed or improved at a cost not to exceed $750,000 each, and the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building or $375,000, whichever is greater: *Provided further,* That the limitations on alterations contained in this Act shall not apply to modernization or replacement of existing facilities at Beltsville, Maryland: *Provided further,* That appropriations hereunder shall be available for granting easements at the Beltsville Agricultural Research Center: *Provided further,* That the foregoing limitations shall not apply to replacement of buildings needed to carry out the Act of April 24, 1948 (21 U.S.C. 113a): *Provided further,* That funds may be received from any State, other political subdivision, organization, or individual for the purpose of establishing or operating any research facility or research project of the Agricultural Research Service, as authorized by law: *Provided further,* That all rights and title of the United States in the 1.0664-acre parcel of land including improvements, as recorded at Book 1320, Page 253, records of Larimer County, State of Colorado, shall be conveyed to the Board of Governors of the Colorado State University for the benefit of Colorado State University.

None of the funds appropriated under this heading shall be available to carry out research related to the production, processing, or marketing of tobacco or tobacco products.

BUILDINGS AND FACILITIES

For acquisition of land, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities as necessary to carry out the agricultural research programs of the Department of Agriculture, where not otherwise provided, $187,838,000, to remain available until expended.

COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

RESEARCH AND EDUCATION ACTIVITIES

For payments to agricultural experiment stations, for cooperative forestry and other research, for facilities, and for other expenses, $660,781,000, as follows: to carry out the provisions of the Hatch Act of 1887 (7 U.S.C. 361a–i), $180,148,000; for grants for cooperative forestry research (16 U.S.C. 582a through a–7), $22,384,000; for payments to the 1890 land-grant colleges, including Tuskegee University and West Virginia State University (7 U.S.C. 3222), $37,000,000, of which $1,507,496 shall be made available only for the purpose of ensuring that each institution shall receive no less than $1,000,000; for special grants for agricultural research (7 U.S.C. 450i(c)), $121,284,000; for special grants for agricultural

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research on improved pest control (7 U.S.C. 450i(c)), $15,280,000; for competitive research grants (7 U.S.C. 450i(b)), $181,000,000; for the support of animal health and disease programs (7 U.S.C. 3195), $5,098,000; for supplemental and alternative crops and products (7 U.S.C. 3319d), $1,196,000; for grants for research pursuant to the Critical Agricultural Materials Act (7 U.S.C. 178 et seq.), $1,111,000, to remain available until expended; for the 1994 research grants program for 1994 institutions pursuant to section 536 of Public Law 103–382 (7 U.S.C. 301 note), $1,087,000, to remain available until expended; for rangeland research grants (7 U.S.C. 3333), $1,000,000; for higher education graduate fellowship grants (7 U.S.C. 3152(b)(6)), $3,000,000, to remain available until expended (7 U.S.C. 2209b); for higher education challenge grants (7 U.S.C. 3152(b)(1)), $5,500,000; for a higher education multicultural scholars program (7 U.S.C. 3152(b)(5)), $998,000, to remain available until expended (7 U.S.C. 2209b); for an education grants program for Hispanic-serving Institutions (7 U.S.C. 3241), $5,645,000; for noncompetitive grants for the purpose of carrying out all provisions of 7 U.S.C. 3242 (section 759 of Public Law 106–78) to individual eligible institutions or consortia of eligible institutions in Alaska and in Hawaii, with funds awarded equally to each of the States of Alaska and Hawaii, $3,500,000; for a secondary agriculture education program and 2-year post-secondary education (7 U.S.C. 3152(j)), $1,000,000; for aquaculture grants (7 U.S.C. 3322), $4,000,000; for sustainable agriculture research and education (7 U.S.C. 5811), $12,500,000; for a program of capacity building grants (7 U.S.C. 3152(b)(4)) to colleges eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321–326 and 328), including Tuskegee University and West Virginia State University, $12,411,000, to remain available until expended (7 U.S.C. 2209b); for payments to the 1994 Institutions pursuant to section 534(a)(1) of Public Law 103–382, $2,250,000; for resident instruction grants for insular areas under section 1491 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3363), $500,000; and for necessary expenses of Research and Education Activities, $42,889,000.

None of the funds appropriated under this heading shall be available to carry out research related to the production, processing, or marketing of tobacco or tobacco products: *Provided,* That this paragraph shall not apply to research on the medical, biotechnological, food, and industrial uses of tobacco.

NATIVE AMERICAN INSTITUTIONS ENDOWMENT FUND

For the Native American Institutions Endowment Fund authorized by Public Law 103–382 (7 U.S.C. 301 note), $12,000,000.

EXTENSION ACTIVITIES

For payments to States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Micronesia, Northern Marianas, and American Samoa, $449,225,000, as follows: payments for cooperative extension work under the Smith-Lever Act, to be distributed under sections 3(b) and 3(c) of said Act, and under section 208(c) of Public Law 93–471, for retirement and employees' compensation costs for extension agents, $277,742,000; payments for extension work at the 1994 Institutions under the Smith-Lever Act (7 U.S.C.

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343(b)(3)), $3,273,000; payments for the nutrition and family education program for low-income areas under section 3(d) of the Act, $58,909,000; payments for the pest management program under section 3(d) of the Act, $10,000,000; payments for the farm safety program under section 3(d) of the Act, $4,600,000; payments to upgrade research, extension, and teaching facilities at the 1890 land-grant colleges, including Tuskegee University and West Virginia State University, as authorized by section 1447 of Public Law 95–113 (7 U.S.C. 3222b), $16,912,000, to remain available until expended; payments for youth-at-risk programs under section 3(d) of the Smith-Lever Act, $7,538,000; for youth farm safety education and certification extension grants, to be awarded competitively under section 3(d) of the Act, $444,000; payments for carrying out the provisions of the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671 et seq.), $4,093,000; payments for Indian reservation agents under section 3(d) of the Smith-Lever Act, $1,774,000; payments for sustainable agriculture programs under section 3(d) of the Act, $4,100,000; payments for rural health and safety education as authorized by section 502(i) of Public Law 92–419 (7 U.S.C. 2662(i)), $1,981,000; payments for cooperative extension work by the colleges receiving the benefits of the second Morrill Act (7 U.S.C. 321–326 and 328) and Tuskegee University and West Virginia State University, $33,133,000, of which $1,724,884 shall be made available only for the purpose of ensuring that each institution shall receive no less than $1,000,000; for grants to youth organizations pursuant to section 7630 of title 7, United States Code, $2,667,000; and for necessary expenses of Extension Activities, $22,059,000.

INTEGRATED ACTIVITIES

For the integrated research, education, and extension grants programs, including necessary administrative expenses, $55,153,000, as follows: for competitive grants programs authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626), $43,058,000, including $12,971,000 for the water quality program, $14,967,000 for the food safety program, $4,200,000 for the regional pest management centers program, $4,500,000 for the Food Quality Protection Act risk mitigation program for major food crop systems, $1,400,000 for the crops affected by Food Quality Protection Act implementation, $3,131,000 for the methyl bromide transition program, and $1,889,000 for the organic transition program; for a competitive international science and education grants program authorized under section 1459A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3292b), to remain available until expended, $1,000,000; for grants programs authorized under section 2(c)(1)(B) of Public Law 89–106, as amended, $750,000, to remain available until September 30, 2006 for the critical issues program, and $1,345,000 for the regional rural development centers program; and $9,000,000 for the homeland security program authorized under section 1484 of the National Agricultural Research, Extension, and Teaching Act of 1977, to remain available until September 30, 2006.

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OUTREACH FOR SOCIALLY DISADVANTAGED FARMERS

For grants and contracts pursuant to section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279), $5,935,000, to remain available until expended.

OFFICE OF THE UNDER SECRETARY FOR MARKETING AND REGULATORY PROGRAMS

For necessary salaries and expenses of the Office of the Under Secretary for Marketing and Regulatory Programs to administer programs under the laws enacted by the Congress for the Animal and Plant Health Inspection Service; the Agricultural Marketing Service; and the Grain Inspection, Packers and Stockyards Administration; $721,000.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For expenses, not otherwise provided for, necessary to prevent, control, and eradicate pests and plant and animal diseases; to carry out inspection, quarantine, and regulatory activities; and to protect the environment, as authorized by law, $814,623,000, of which $4,119,000 shall be available for the control of outbreaks of insects, plant diseases, animal diseases and for control of pest animals and birds to the extent necessary to meet emergency conditions; of which $47,500,000 shall be used for the boll weevil eradication program for cost share purposes or for debt retirement for active eradication zones; of which $33,197,000 shall be available for a National Animal Identification program: *Provided,* That no funds shall be used to formulate or administer a brucellosis eradication program for the current fiscal year that does not require minimum matching by the States of at least 40 percent: *Provided further,* That this appropriation shall be available for the operation and maintenance of aircraft and the purchase of not to exceed four, of which two shall be for replacement only: *Provided further,* That, in addition, in emergencies which threaten any segment of the agricultural production industry of this country, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department such sums as may be deemed necessary, to be available only in such emergencies for the arrest and eradication of contagious or infectious disease or pests of animals, poultry, or plants, and for expenses in accordance with sections 10411 and 10417 of the Animal Health Protection Act (7 U.S.C. 8310 and 8316) and sections 431 and 442 of the Plant Protection Act (7 U.S.C. 7751 and 7772), and any unexpended balances of funds transferred for such emergency purposes in the preceding fiscal year shall be merged with such transferred amounts: *Provided further,* That appropriations hereunder shall be available pursuant to law (7 U.S.C. 2250) for the repair and alteration of leased buildings and improvements, but unless otherwise provided the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building: *Provided further,* That no funds shall be used to implement a national animal identification system prior

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to notification to the Committees on Appropriations which shall include a detailed explanation of the components of such system.

In fiscal year 2005, the agency is authorized to collect fees to cover the total costs of providing technical assistance, goods, or services requested by States, other political subdivisions, domestic and international organizations, foreign governments, or individuals, provided that such fees are structured such that any entity's liability for such fees is reasonably based on the technical assistance, goods, or services provided to the entity by the agency, and such fees shall be credited to this account, to remain available until expended, without further appropriation, for providing such assistance, goods, or services.

BUILDINGS AND FACILITIES

For plans, construction, repair, preventive maintenance, environmental support, improvement, extension, alteration, and purchase of fixed equipment or facilities, as authorized by 7 U.S.C. 2250, and acquisition of land as authorized by 7 U.S.C. 428a, $4,967,000, to remain available until expended.

AGRICULTURAL MARKETING SERVICE

MARKETING SERVICES

For necessary expenses to carry out services related to consumer protection, agricultural marketing and distribution, transportation, and regulatory programs, as authorized by law, and for administration and coordination of payments to States, $75,698,000, including funds for the wholesale market development program for the design and development of wholesale and farmer market facilities for the major metropolitan areas of the country: *Provided,* That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

Fees may be collected for the cost of standardization activities, as established by regulation pursuant to law (31 U.S.C. 9701).

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed $64,459,000 (from fees collected) shall be obligated during the current fiscal year for administrative expenses: *Provided,* That if crop size is understated and/or other uncontrollable events occur, the agency may exceed this limitation by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

FUNDS FOR STRENGTHENING MARKETS, INCOME, AND SUPPLY (SECTION 32)

(INCLUDING TRANSFERS OF FUNDS)

Funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), shall be used only for commodity program expenses as authorized therein, and other related operating expenses, except for: (1) transfers to the Department of Commerce as authorized by the Fish and Wildlife Act of August 8, 1956;

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(2) transfers otherwise provided in this Act; and (3) not more than $15,800,000 for formulation and administration of marketing agreements and orders pursuant to the Agricultural Marketing Agreement Act of 1937 and the Agricultural Act of 1961.

PAYMENTS TO STATES AND POSSESSIONS

For payments to departments of agriculture, bureaus and departments of markets, and similar agencies for marketing activities under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623(b)), $3,847,000, of which not less than $2,500,000 shall be used to make a grant under this heading.

GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the United States Grain Standards Act, for the administration of the Packers and Stockyards Act, for certifying procedures used to protect purchasers of farm products, and the standardization activities related to grain under the Agricultural Marketing Act of 1946, $37,299,000: *Provided,* That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

LIMITATION ON INSPECTION AND WEIGHING SERVICES EXPENSES

Not to exceed $42,463,000 (from fees collected) shall be obligated during the current fiscal year for inspection and weighing services: *Provided,* That if grain export activities require additional supervision and oversight, or other uncontrollable factors occur, this limitation may be exceeded by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

OFFICE OF THE UNDER SECRETARY FOR FOOD SAFETY

For necessary salaries and expenses of the Office of the Under Secretary for Food Safety to administer the laws enacted by the Congress for the Food Safety and Inspection Service, $595,000.

FOOD SAFETY AND INSPECTION SERVICE

For necessary expenses to carry out services authorized by the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, including not to exceed $50,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), $823,760,000, of which no less than $742,305,000 shall be available for Federal food safety inspection; and in addition, $1,000,000 may be credited to this account from fees collected for the cost of laboratory accreditation as authorized by section 1327 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 138f): *Provided,* That no fewer than 63 full time equivalent positions above the fiscal year 2002 level shall be employed during fiscal year 2005 for purposes dedicated solely to inspections and enforcement related to the Humane Methods of Slaughter Act: *Provided further,*

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That of the amount available under this heading, notwithstanding section 704 of this Act $3,000,000, available until September 30, 2006, shall be obligated to include the Humane Animal Tracking System as part of the Field Automation and Information Management System following notification to the Committees on Appropriations, which shall include a detailed explanation of the components of such system: *Provided further*, That of the total amount made available under this heading, no less than $20,653,000 shall be obligated for regulatory and scientific training: *Provided further*, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

OFFICE OF THE UNDER SECRETARY FOR FARM AND FOREIGN AGRICULTURAL SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Farm and Foreign Agricultural Services to administer the laws enacted by Congress for the Farm Service Agency, the Foreign Agricultural Service, the Risk Management Agency, and the Commodity Credit Corporation, $631,000.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs administered by the Farm Service Agency, $1,007,597,000: *Provided,* That the Secretary is authorized to use the services, facilities, and authorities (but not the funds) of the Commodity Credit Corporation to make program payments for all programs administered by the Agency: *Provided further,* That other funds made available to the Agency for authorized activities may be advanced to and merged with this account.

STATE MEDIATION GRANTS

For grants pursuant to section 502(b) of the Agricultural Credit Act of 1987, as amended (7 U.S.C. 5101–5106), $4,000,000.

DAIRY INDEMNITY PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses involved in making indemnity payments to dairy farmers and manufacturers of dairy products under a dairy indemnity program, $100,000, to remain available until expended: *Provided,* That such program is carried out by the Secretary in the same manner as the dairy indemnity program described in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106–387, 114 Stat. 1549A–12).

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AGRICULTURAL CREDIT INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed farm ownership (7 U.S.C. 1922 et seq.) and operating (7 U.S.C. 1941 et seq.) loans, Indian tribe land acquisition loans (25 U.S.C. 488), and boll weevil loans (7 U.S.C. 1989), to be available from funds in the Agricultural Credit Insurance Fund, as follows: farm ownership loans, $1,610,000,000, of which $1,400,000,000 shall be for guaranteed loans and $210,000,000 shall be for direct loans; operating loans, $2,035,000,000, of which $1,100,000,000 shall be for unsubsidized guaranteed loans, $285,000,000 shall be for subsidized guaranteed loans and $650,000,000 shall be for direct loans; Indian tribe land acquisition loans, $2,000,000; and for boll weevil eradication program loans, $100,000,000: *Provided,* That the Secretary shall deem the pink bollworm to be a boll weevil for the purpose of boll weevil eradication program loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, as follows: farm ownership loans, $18,655,000, of which $7,420,000 shall be for guaranteed loans, and $11,235,000 shall be for direct loans; operating loans, $139,049,000, of which $35,530,000 shall be for unsubsidized guaranteed loans, $37,934,000 shall be for subsidized guaranteed loans, and $65,585,000 shall be for direct loans; and Indian tribe land acquisition loans, $105,000.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $301,764,000, of which $293,764,000 shall be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".

Funds appropriated by this Act to the Agricultural Credit Insurance Program Account for farm ownership and operating direct loans and guaranteed loans may be transferred among these programs: *Provided,* That the Committees on Appropriations of both Houses of Congress are notified at least 15 days in advance of any transfer.

RISK MANAGEMENT AGENCY

For administrative and operating expenses, as authorized by section 226A of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6933), $72,044,000: *Provided,* That not to exceed $1,000 shall be available for official reception and representation expenses, as authorized by 7 U.S.C. 1506(i).

CORPORATIONS

The following corporations and agencies are hereby authorized to make expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided.

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FEDERAL CROP INSURANCE CORPORATION FUND

For payments as authorized by section 516 of the Federal Crop Insurance Act (7 U.S.C. 1516), such sums as may be necessary, to remain available until expended.

COMMODITY CREDIT CORPORATION FUND

REIMBURSEMENT FOR NET REALIZED LOSSES

For the current fiscal year, such sums as may be necessary to reimburse the Commodity Credit Corporation for net realized losses sustained, but not previously reimbursed, pursuant to section 2 of the Act of August 17, 1961 (15 U.S.C. 713a–11): *Provided,* That of the funds available to the Commodity Credit Corporation under section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C 714i) for the conduct of its business with the Foreign Agricultural Service, up to $5,000,000 may be transferred to and used by the Foreign Agricultural Service for information resource management activities of the Foreign Agricultural Service that are not related to Commodity Credit Corporation business.

HAZARDOUS WASTE MANAGEMENT

(LIMITATION ON EXPENSES)

For the current fiscal year, the Commodity Credit Corporation shall not expend more than $5,000,000 for site investigation and cleanup expenses, and operations and maintenance expenses to comply with the requirement of section 107(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607(g)), and section 6001 of the Resource Conservation and Recovery Act (42 U.S.C. 6961).

TITLE II

CONSERVATION PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT

For necessary salaries and expenses of the Office of the Under Secretary for Natural Resources and Environment to administer the laws enacted by the Congress for the Forest Service and the Natural Resources Conservation Service, $741,000.

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION OPERATIONS

For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutants); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests

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therein for use in the plant materials program by donation, exchange, or purchase at a nominal cost not to exceed $100 pursuant to the Act of August 3, 1956 (7 U.S.C. 428a); purchase and erection or alteration or improvement of permanent and temporary buildings; and operation and maintenance of aircraft, $837,360,000, to remain available until June 30, 2006, of which not less than $10,500,000 is for snow survey and water forecasting, and not less than $14,433,000 is for operation and establishment of the plant materials centers, and of which not less than $23,500,000 shall be for the grazing lands conservation initiative: *Provided,* That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for construction and improvement of buildings and public improvements at plant materials centers, except that the cost of alterations and improvements to other buildings and other public improvements shall not exceed $250,000: *Provided further,* That when buildings or other structures are erected on non-Federal land, that the right to use such land is obtained as provided in 7 U.S.C. 2250a: *Provided further,* That this appropriation shall be available for technical assistance and related expenses to carry out programs authorized by section 202(c) of title II of the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. 1592(c)): *Provided further,* That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: *Provided further,* That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED SURVEYS AND PLANNING

For necessary expenses to conduct research, investigation, and surveys of watersheds of rivers and other waterways, and for small watershed investigations and planning, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1009), $7,083,000: *Provided,* That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED AND FLOOD PREVENTION OPERATIONS

For necessary expenses to carry out preventive measures, including but not limited to research, engineering operations, methods of cultivation, the growing of vegetation, rehabilitation of existing works and changes in use of land, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1005 and 1007–1009), the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), and in accordance with the provisions of laws relating to the activities of the Department, $75,576,000, to remain available until expended; of which up to $10,000,000 may be available for the watersheds authorized under the Flood Control Act (33 U.S.C. 701 and 16 U.S.C. 1006a): *Provided,* That not to exceed $35,000,000 of this appropriation shall be available for technical assistance: *Provided further,* That not to exceed $1,000,000 of this appropriation is available to carry out the purposes of the Endangered Species Act of 1973 (Public Law 93–

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205), including cooperative efforts as contemplated by that Act to relocate endangered or threatened species to other suitable habitats as may be necessary to expedite project construction: *Provided further,* That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED REHABILITATION PROGRAM

For necessary expenses to carry out rehabilitation of structural measures, in accordance with section 14 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012), and in accordance with the provisions of laws relating to the activities of the Department, $27,500,000, to remain available until expended: *Provided,* That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

RESOURCE CONSERVATION AND DEVELOPMENT

For necessary expenses in planning and carrying out projects for resource conservation and development and for sound land use pursuant to the provisions of sections 31 and 32 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011; 76 Stat. 607); the Act of April 27, 1935 (16 U.S.C. 590a–f); and subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451–3461), $51,641,000, to remain available until expended: *Provided,* That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)): *Provided further*, That the Secretary shall enter into a cooperative or contribution agreement with a national association regarding a Resource Conservation and Development program and such agreement shall contain the same matching, contribution requirements, and funding level, set forth in a similar cooperative or contribution agreement with a national association in fiscal year 2002: *Provided further*, That not to exceed $3,504,300 shall be available for national headquarters activities.

TITLE III

RURAL DEVELOPMENT PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR RURAL DEVELOPMENT

For necessary salaries and expenses of the Office of the Under Secretary for Rural Development to administer programs under the laws enacted by the Congress for the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service of the Department of Agriculture, $632,000.

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RURAL COMMUNITY ADVANCEMENT PROGRAM

(INCLUDING TRANSFERS OF FUNDS)

For the cost of direct loans, loan guarantees, and grants, as authorized by 7 U.S.C. 1926, 1926a, 1926c, 1926d, and 1932, except for sections 381E–H and 381N of the Consolidated Farm and Rural Development Act, $716,049,000, to remain available until expended, of which $89,180,000 shall be for rural community programs described in section 381E(d)(1) of such Act; of which $552,689,000 shall be for the rural utilities programs described in sections 381E(d)(2), 306C(a)(2), and 306D of such Act, of which not to exceed $500,000 shall be available for the rural utilities program described in section 306(a)(2)(B) of such Act, and of which not to exceed $1,000,000 shall be available for the rural utilities program described in section 306E of such Act; and of which $74,180,000 shall be for the rural business and cooperative development programs described in sections 381E(d)(3) and 310B(f) of such Act: *Provided,* That of the total amount appropriated in this account, $25,000,000 shall be for loans and grants to benefit Federally Recognized Native American Tribes, including grants for drinking water and waste disposal systems pursuant to section 306C of such Act, of which $4,500,000 shall be available for community facilities grants to tribal colleges, as authorized by section 306(a)(19) of the Consolidated Farm and Rural Development Act, and of which $250,000 shall be available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development: *Provided further,* That of the amount appropriated for rural community programs, $6,350,000 shall be available for a Rural Community Development Initiative: *Provided further,* That such funds shall be used solely to develop the capacity and ability of private, nonprofit community-based housing and community development organizations, low-income rural communities, and Federally Recognized Native American Tribes to undertake projects to improve housing, community facilities, community and economic development projects in rural areas: *Provided further,* That such funds shall be made available to qualified private, nonprofit and public intermediary organizations proposing to carry out a program of financial and technical assistance: *Provided further,* That such intermediary organizations shall provide matching funds from other sources, including Federal funds for related activities, in an amount not less than funds provided: *Provided further,* That of the amount appropriated for the rural business and cooperative development programs, not to exceed $500,000 shall be made available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development; $1,000,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 1921 et seq.) for any purpose under this heading: *Provided further,* That of the amount appropriated for rural utilities programs, not to exceed $25,000,000 shall be for water and waste disposal systems to benefit the Colonias along the United States/Mexico border, including grants pursuant to section 306C of such Act; not to exceed $26,000,000 shall be for water and waste disposal systems for rural and native villages in Alaska pursuant to section 306D of such Act, with up to 2 percent available to administer the program and/or improve interagency coordination may be transferred to and merged with the appropriation for "Rural Development, Salaries

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and Expenses", of which $100,000 shall be provided to develop a regional system for centralized billing, operation, and management of rural water and sewer utilities through regional cooperatives, of which 25 percent shall be provided for water and sewer projects in regional hubs, and the State of Alaska shall provide a 25 percent cost share, and grantees may use up to 5 percent of grant funds, not to exceed $35,000 per community, for the completion of comprehensive community safe water plans; not to exceed $18,250,000 shall be for technical assistance grants for rural water and waste systems pursuant to section 306(a)(14) of such Act, of which $5,600,000 shall be for Rural Community Assistance Programs and not less than $800,000 shall be for a qualified national Native American organization to provide technical assistance for rural water systems for tribal communities; and not to exceed $13,500,000 shall be for contracting with qualified national organizations for a circuit rider program to provide technical assistance for rural water systems: *Provided further,* That of the total amount appropriated, not to exceed $22,166,000 shall be available through June 30, 2005, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones; of which $1,081,000 shall be for the rural community programs described in section 381E(d)(1) of such Act, of which $12,582,000 shall be for the rural utilities programs described in section 381E(d)(2) of such Act, and of which $8,503,000 shall be for the rural business and cooperative development programs described in section 381E(d)(3) of such Act: *Provided further,* That of the amount appropriated for rural community programs, not to exceed $21,000,000 shall be to provide grants for facilities in rural communities with extreme unemployment and severe economic depression (Public Law 106–387), with 5 percent for administration and capacity building in the State rural development offices: *Provided further,* That of the amount appropriated, $28,000,000 shall be transferred to and merged with the "Rural Utilities Service, High Energy Cost Grants Account" to provide grants authorized under section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 918a): *Provided further,* That any prior year balances for high cost energy grants authorized by section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 901(19)) shall be transferred to and merged with the "Rural Utilities Service, High Energy Costs Grants Account".

RURAL DEVELOPMENT SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs in the Rural Development mission area, including activities with institutions concerning the development and operation of agricultural cooperatives; and for cooperative agreements; $148,452,000: *Provided*, That of funds appropriated under this title for salaries and expenses, not less than $5,000,000 shall be used to complete the consolidation of Rural Development activities in St. Louis, to the Goodfellow facility also in St. Louis: *Provided further,* That notwithstanding any other provision of law, funds appropriated under this section may be used for advertising and promotional activities that support the Rural Development mission area: *Provided further,* That not more than $10,000 may

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be expended to provide modest nonmonetary awards to non-USDA employees: *Provided further,* That any balances available from prior years for the Rural Utilities Service, Rural Housing Service, and the Rural Business-Cooperative Service salaries and expenses accounts shall be transferred to and merged with this appropriation.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, as follows: $4,459,297,000 for loans to section 502 borrowers, as determined by the Secretary, of which $1,150,000,000 shall be for direct loans, and of which $3,309,297,000 shall be for unsubsidized guaranteed loans; $35,000,000 for section 504 housing repair loans; $100,000,000 for section 515 rental housing; $100,000,000 for section 538 guaranteed multi-family housing loans; $5,045,000 for section 524 site loans; $11,501,000 for credit sales of acquired property, of which up to $1,501,000 may be for multi-family credit sales; and $10,000,000 for section 523 self-help housing land development loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, as follows: section 502 loans, $166,778,000, of which $133,170,000 shall be for direct loans, and of which $33,608,000, to remain available until expended, shall be for unsubsidized guaranteed loans; section 504 housing repair loans, $10,171,000; section 515 rental housing, $47,090,000; section 538 multi-family housing guaranteed loans, $3,490,000; multi-family credit sales of acquired property, $727,000: *Provided,* That of the total amount appropriated in this paragraph, $7,100,000 shall be available through June 30, 2005, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones: *Provided further,* That any funds under this paragraph initially allocated by the Secretary for housing projects in the State of Alaska that are not obligated by September 30, 2005, shall be carried over until September 30, 2006, and made available for such housing projects only in the State of Alaska. In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $448,342,000, which shall be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses".

RENTAL ASSISTANCE PROGRAM

For rental assistance agreements entered into or renewed pursuant to the authority under section 521(a)(2) or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Housing Act of 1949, $592,000,000; and, in addition, such sums as may be necessary, as authorized by section 521(c) of the Act, to liquidate debt incurred prior to fiscal year 1992 to carry out the rental assistance program under section 521(a)(2) of the Act: *Provided,*

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That of this amount, $5,900,000 shall be available for debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Act, and not to exceed $20,000 per project for advances to nonprofit organizations or public agencies to cover direct costs (other than purchase price) incurred in purchasing projects pursuant to section 502(c)(5)(C) of the Act: *Provided further,* That agreements entered into or renewed during the current fiscal year shall be funded for a four-year period: *Provided further,* That any unexpended balances remaining at the end of such four-year agreements may be transferred and used for the purposes of any debt reduction; maintenance, repair, or rehabilitation of any existing projects; preservation; and rental assistance activities authorized under title V of the Act.

MUTUAL AND SELF-HELP HOUSING GRANTS

For grants and contracts pursuant to section 523(b)(1)(A) of the Housing Act of 1949 (42 U.S.C. 1490c), $34,000,000, to remain available until expended: *Provided,* That of the total amount appropriated, $1,000,000 shall be available through June 30, 2005, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

RURAL HOUSING ASSISTANCE GRANTS

For grants and contracts for very low-income housing repair, supervisory and technical assistance, compensation for construction defects, and rural housing preservation made by the Rural Housing Service, as authorized by 42 U.S.C. 1474, 1479(c), 1490e, and 1490m, $43,992,000, to remain available until expended: *Provided,* That $3,000,000 shall be made available for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation of low-income multi-family housing projects: *Provided further,* That loans under such demonstration program shall have an interest rate of not more than 1 percent direct loan to the recipient: *Provided further,* That the Secretary may defer the interest and principal payment to the Rural Housing Service for up to 3 years and the term of such loans shall not exceed 30 years: *Provided further,* That of the total amount appropriated, $1,800,000 shall be available through June 30, 2005, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

FARM LABOR PROGRAM ACCOUNT

For the cost of direct loans, grants, and contracts, as authorized by 42 U.S.C. 1484 and 1486, $34,118,000, to remain available until expended, for direct farm labor housing loans and domestic farm labor housing grants and contracts.

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RURAL BUSINESS—COOPERATIVE SERVICE

RURAL DEVELOPMENT LOAN FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the principal amount of direct loans, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), $34,213,000.

For the cost of direct loans, $15,868,000, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), of which $1,724,000 shall be available through June 30, 2005, for Federally Recognized Native American Tribes and of which $3,449,000 shall be available through June 30, 2005, for Mississippi Delta Region counties (as determined in accordance with Public Law 100–460): *Provided,* That of such amount made available, the Secretary may provide up to $1,500,000 for the Delta Regional Authority (7 U.S.C. 1921 et seq.): *Provided further,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That of the total amount appropriated, $2,447,000 shall be available through June 30, 2005, for the cost of direct loans for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

In addition, for administrative expenses to carry out the direct loan programs, $4,316,000 shall be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses".

RURAL ECONOMIC DEVELOPMENT LOANS PROGRAM ACCOUNT

(INCLUDING RESCISSION OF FUNDS)

For the principal amount of direct loans, as authorized under section 313 of the Rural Electrification Act, for the purpose of promoting rural economic development and job creation projects, $25,003,000.

For the cost of direct loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, $4,698,000, to remain available until expended.

Of the funds derived from interest on the cushion of credit payments in the current fiscal year, as authorized by section 313 of the Rural Electrification Act of 1936, $4,698,000 shall not be obligated and $4,698,000 are rescinded.

RURAL COOPERATIVE DEVELOPMENT GRANTS

For rural cooperative development grants authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932), $24,000,000, of which $2,500,000 shall be for cooperative agreements for the appropriate technology transfer for rural areas program: *Provided,* That not to exceed $1,500,000 shall be for cooperatives or associations of cooperatives whose primary focus is to provide assistance to small, minority producers and whose governing board and/or membership is comprised of at least 75 percent minority; and of which not to exceed $15,500,000, to remain available until expended, shall be for value-added agricultural product market development grants, as authorized by section 6401 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1621 note).

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RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES GRANTS

For grants in connection with second and third rounds of empowerment zones and enterprise communities, $12,500,000, to remain available until expended, for designated rural empowerment zones and rural enterprise communities, as authorized by the Taxpayer Relief Act of 1997 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277): *Provided,* That of the funds appropriated, $1,000,000 shall be made available to third round empowerment zones, as authorized by the Community Renewal Tax Relief Act (Public Law 106–554).

RENEWABLE ENERGY PROGRAM

For the cost of a program of direct loans, loan guarantees, and grants, under the same terms and conditions as authorized by section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106), $23,000,000 for direct and guaranteed renewable energy loans and grants: *Provided,* That the cost of direct loans and loan guarantees, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

RURAL UTILITIES SERVICE

RURAL ELECTRIFICATION AND TELECOMMUNICATIONS LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

Insured loans pursuant to the authority of section 305 of the Rural Electrification Act of 1936 (7 U.S.C. 935) shall be made as follows: 5 percent rural electrification loans, $120,000,000; municipal rate rural electric loans, $100,000,000; loans made pursuant to section 306 of that Act, rural electric, $2,100,000,000; Treasury rate direct electric loans, $1,000,000,000; guaranteed underwriting loans pursuant to section 313A, $1,000,000,000; 5 percent rural telecommunications loans, $145,000,000; cost of money rural telecommunications loans, $250,000,000; and for loans made pursuant to section 306 of that Act, rural telecommunications loans, $125,000,000.

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, including the cost of modifying loans, of direct and guaranteed loans authorized by sections 305 and 306 of the Rural Electrification Act of 1936 (7 U.S.C. 935 and 936), as follows: cost of rural electric loans, $5,058,000, and the cost of telecommunications loans, $100,000: *Provided,* That notwithstanding section 305(d)(2) of the Rural Electrification Act of 1936, borrower interest rates may exceed 7 percent per year.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $38,277,000 which shall be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses".

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RURAL TELEPHONE BANK PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

The Rural Telephone Bank is hereby authorized to make such expenditures, within the limits of funds available to such corporation in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out its authorized programs. During fiscal year 2005 and within the resources and authority available, gross obligations for the principal amount of direct loans shall be $175,000,000.

In addition, for administrative expenses, including audits, necessary to carry out the loan programs, $3,152,000, which shall be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses".

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

For the principal amount of direct distance learning and telemedicine loans, $50,000,000; and for the principal amount of direct broadband telecommunication loans, $550,000,000.

For the cost of direct loans and grants for telemedicine and distance learning services in rural areas, as authorized by 7 U.S.C. 950aaa et seq., $35,710,000, to remain available until expended, of which $710,000 shall be for direct loans: *Provided,* That the cost of direct loans shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That $10,000,000 shall be made available to convert analog to digital operation those noncommercial educational television broadcast stations that serve rural areas and are qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934, including associated translators and repeaters, regardless of the location of their main transmitter, studio-to-transmitter links, and equipment to allow local control over digital content and programming through the use of high-definition broadcast, multi-casting and datacasting technologies.

For the cost of broadband loans, as authorized by 7 U.S.C. 901 et seq., $11,715,000, to remain available until September 30, 2006: *Provided,* That the interest rate for such loans shall be the cost of borrowing to the Department of the Treasury for obligations of comparable maturity: *Provided further,* That the cost of direct loans shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, $9,000,000, to remain available until expended, for a grant program to finance broadband transmission in rural areas eligible for Distance Learning and Telemedicine Program benefits authorized by 7 U.S.C. 950aaa.

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TITLE IV

DOMESTIC FOOD PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR FOOD, NUTRITION AND CONSUMER SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Food, Nutrition and Consumer Services to administer the laws enacted by the Congress for the Food and Nutrition Service, $595,000.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21; $11,782,000,000, to remain available through September 30, 2006, of which $6,629,038,000 is hereby appropriated and $5,152,962,000 shall be derived by transfer from funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c): *Provided*, That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further*, That up to $5,235,000 shall be available for independent verification of school food service claims.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For necessary expenses to carry out the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), $5,277,250,000, to remain available through September 30, 2006, of which $125,000,000 shall be placed in reserve, to remain available until expended, to be allocated as the Secretary deems necessary, notwithstanding section 17(i) of such Act, to support participation should cost or participation exceed budget estimates: *Provided,* That of the total amount available, the Secretary shall obligate not less than $15,000,000 for a breastfeeding support initiative in addition to the activities specified in section 17(h)(3)(A): *Provided further,* That notwithstanding section 17(h)(10)(A) of such Act, $14,000,000 shall be available for the purposes specified in section 17(h)(10)(B): *Provided further,* That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further,* That none of the funds in this Act shall be available to pay administrative expenses of WIC clinics except those that have an announced policy of prohibiting smoking within the space used to carry out the program: *Provided further,* That none of the funds provided in this account shall be available for the purchase of infant formula except in accordance with the cost containment and competitive bidding requirements specified in section 17 of such Act: *Provided further,* That none of the funds provided shall be available for activities that are not fully reimbursed by other Federal Government departments or agencies unless authorized by section 17 of such Act.

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FOOD STAMP PROGRAM

For necessary expenses to carry out the Food Stamp Act (7 U.S.C. 2011 et seq.), $35,154,554,000, of which $3,000,000,000 to remain available through September 30, 2006, shall be placed in reserve for use only in such amounts and at such times as may become necessary to carry out program operations: *Provided,* That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further,* That of the funds made available under this heading and not already appropriated to the Food Distribution Program on Indian Reservations (FDPIR) established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)), not to exceed $4,000,000 shall be used to purchase bison meat for the FDPIR from Native American bison producers as well as from producer-owned cooperatives of bison ranchers: *Provided further,* That funds provided herein shall be expended in accordance with section 16 of the Food Stamp Act: *Provided further,* That this appropriation shall be subject to any work registration or workfare requirements as may be required by law: *Provided further,* That funds made available for Employment and Training under this heading shall remain available until expended, as authorized by section 16(h)(1) of the Food Stamp Act: *Provided further,* That notwithstanding section 5(d) of the Food Stamp Act of 1977, any additional payment received under chapter 5 of title 37, United States Code, by a member of the United States Armed Forces deployed to a designated combat zone shall be excluded from household income for the duration of the member's deployment if the additional pay is the result of deployment to or while serving in a combat zone, and it was not received immediately prior to serving in the combat zone.

COMMODITY ASSISTANCE PROGRAM

For necessary expenses to carry out disaster assistance and the commodity supplemental food program as authorized by section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); the Emergency Food Assistance Act of 1983; and special assistance (in a form determined by the Secretary of Agriculture) for the nuclear affected islands, as authorized by section 103(f)(2) of the Compact of Free Association Amendments Act of 2003 (Public Law 108–188); and the Farmers' Market Nutrition Program, as authorized by section 17(m) of the Child Nutrition Act of 1966, $178,797,000, to remain available through September 30, 2006: *Provided*, That none of these funds shall be available to reimburse the Commodity Credit Corporation for commodities donated to the program: *Provided further*, That notwithstanding any other provision of law, effective with funds made available in fiscal year 2005 to support the Senior Farmers' Market Nutrition Program, as authorized by section 4402 of Public Law 107–171, such funds shall remain available through September 30, 2006.

NUTRITION PROGRAMS ADMINISTRATION

For necessary administrative expenses of the domestic nutrition assistance programs funded under this Act, $139,937,000, of which $5,000,000 shall be available only for simplifying procedures, reducing overhead costs, tightening regulations, improving food

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stamp benefit delivery, and assisting in the prevention, identification, and prosecution of fraud and other violations of law.

TITLE V

FOREIGN ASSISTANCE AND RELATED PROGRAMS

FOREIGN AGRICULTURAL SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Foreign Agricultural Service, including carrying out title VI of the Agricultural Act of 1954 (7 U.S.C. 1761–1768), market development activities abroad, and for enabling the Secretary to coordinate and integrate activities of the Department in connection with foreign agricultural work, including not to exceed $158,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), $137,822,000: *Provided,* That the Service may utilize advances of funds, or reimburse this appropriation for expenditures made on behalf of Federal agencies, public and private organizations and institutions under agreements executed pursuant to the agricultural food production assistance programs (7 U.S.C. 1737) and the foreign assistance programs of the United States Agency for International Development.

PUBLIC LAW 480 TITLE I PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of agreements under the Agricultural Trade Development and Assistance Act of 1954, and the Food for Progress Act of 1985, including the cost of modifying credit arrangements under said Acts, $94,198,000, to remain available until expended: *Provided,* That the Secretary of Agriculture may implement a commodity monetization program under existing provisions of the Food for Progress Act of 1985 to provide no less than $5,000,000 in local-currency funding support for rural electrification development overseas.

In addition, for administrative expenses to carry out the credit program of title I, Public Law 83–480, and the Food for Progress Act of 1985, to the extent funds appropriated for Public Law 83–480 are utilized, $4,034,000, of which $1,097,000 may be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expenses", and of which $2,937,000 may be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".

PUBLIC LAW 480 TITLE I OCEAN FREIGHT DIFFERENTIAL GRANTS

(INCLUDING TRANSFER OF FUNDS)

For ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress

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Act of 1985, $22,723,000, to remain available until expended: *Provided,* That funds made available for the cost of agreements under title I of the Agricultural Trade Development and Assistance Act of 1954 and for title I ocean freight differential may be used interchangeably between the two accounts with prior notice to the Committees on Appropriations of both Houses of Congress.

PUBLIC LAW 480 TITLE II GRANTS

For expenses during the current fiscal year, not otherwise recoverable, and unrecovered prior years' costs, including interest thereon, under the Agricultural Trade Development and Assistance Act of 1954, for commodities supplied in connection with dispositions abroad under title II of said Act, $1,182,501,000, to remain available until expended.

COMMODITY CREDIT CORPORATION EXPORT LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For administrative expenses to carry out the Commodity Credit Corporation's export guarantee program, GSM 102 and GSM 103, $4,423,000; to cover common overhead expenses as permitted by section 11 of the Commodity Credit Corporation Charter Act and in conformity with the Federal Credit Reform Act of 1990, of which $3,421,000 may be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expenses", and of which $1,002,000 may be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".

MCGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM GRANTS

For necessary expenses to carry out the provisions of section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1), $87,500,000, to remain available until expended: *Provided,* That the Commodity Credit Corporation is authorized to provide the services, facilities, and authorities for the purpose of implementing such section, subject to reimbursement from amounts provided herein.

TITLE VI

RELATED AGENCIES AND FOOD AND DRUG ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Food and Drug Administration, including hire and purchase of passenger motor vehicles; for payment of space rental and related costs pursuant to Public Law 92–313 for programs and activities of the Food and Drug Administration which are included in this Act; for rental of special purpose space in the District of Columbia or elsewhere; for miscellaneous and emergency expenses of enforcement activities, authorized and

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approved by the Secretary and to be accounted for solely on the Secretary's certificate, not to exceed $25,000; and notwithstanding section 521 of Public Law 107–188; $1,788,478,000: *Provided,* That of the amount provided under this heading, $284,394,000 shall be derived from prescription drug user fees authorized by 21 U.S.C. 379h, and shall be credited to this account and remain available until expended; $33,938,000 shall be derived from medical device user fees authorized by 21 U.S.C. 379j, and shall be credited to this account and remain available until expended; and $8,354,000 shall be derived from animal drug user fees authorized by 21 U.S.C. 379j, and shall be credited to this account and remain available until expended: *Provided further,* That fees derived from prescription drug, medical device, and animal drug assessments received during fiscal year 2005, including any such fees assessed prior to the current fiscal year but credited during the current year, shall be subject to the fiscal year 2005 limitation: *Provided further,* That none of these funds shall be used to develop, establish, or operate any program of user fees authorized by 31 U.S.C. 9701: *Provided further,* That of the total amount appropriated: (1) $439,038,000 shall be for the Center for Food Safety and Applied Nutrition and related field activities in the Office of Regulatory Affairs; (2) $498,647,000 shall be for the Center for Drug Evaluation and Research and related field activities in the Office of Regulatory Affairs; (3) $172,714,000 shall be for the Center for Biologics Evaluation and Research and for related field activities in the Office of Regulatory Affairs; (4) $98,964,000 shall be for the Center for Veterinary Medicine and for related field activities in the Office of Regulatory Affairs; (5) $235,078,000 shall be for the Center for Devices and Radiological Health and for related field activities in the Office of Regulatory Affairs; (6) $40,530,000 shall be for the National Center for Toxicological Research; (7) $57,722,000 shall be for Rent and Related activities, other than the amounts paid to the General Services Administration for rent; (8) $129,815,000 shall be for payments to the General Services Administration for rent; and (9) $115,970,000 shall be for other activities, including the Office of the Commissioner; the Office of Management; the Office of External Relations; the Office of Policy and Planning; and central services for these offices: *Provided further,* That funds may be transferred from one specified activity to another with the prior approval of the Committees on Appropriations of both Houses of Congress.

In addition, mammography user fees authorized by 42 U.S.C. 263b may be credited to this account, to remain available until expended.

In addition, export certification user fees authorized by 21 U.S.C. 381 may be credited to this account, to remain available until expended.

INDEPENDENT AGENCIES

COMMODITY FUTURES TRADING COMMISSION

For necessary expenses to carry out the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), including the purchase and hire of passenger motor vehicles, and the rental of space (to

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include multiple year leases) in the District of Columbia and elsewhere, $94,327,000, including not to exceed $3,000 for official reception and representation expenses.

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed $42,350,000 (from assessments collected from farm credit institutions and from the Federal Agricultural Mortgage Corporation) shall be obligated during the current fiscal year for administrative expenses as authorized under 12 U.S.C. 2249: *Provided,* That this limitation shall not apply to expenses associated with receiverships.

TITLE VII—GENERAL PROVISIONS

SEC. 701. Within the unit limit of cost fixed by law, appropriations and authorizations made for the Department of Agriculture for the current fiscal year under this Act shall be available for the purchase, in addition to those specifically provided for, of not to exceed 388 passenger motor vehicles, of which 388 shall be for replacement only, and for the hire of such vehicles.

SEC. 702. Funds in this Act available to the Department of Agriculture shall be available for uniforms or allowances therefor as authorized by law (5 U.S.C. 5901–5902).

SEC. 703. Funds appropriated by this Act shall be available for employment pursuant to the second sentence of section 706(a) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2225) and 5 U.S.C. 3109.

SEC. 704. New obligational authority provided for the following appropriation items in this Act shall remain available until expended: Animal and Plant Health Inspection Service, the contingency fund to meet emergency conditions, information technology infrastructure, fruit fly program, emerging plant pests, boll weevil program, low pathogen avian influenza program, up to $33,197,000 in animal health monitoring and surveillance for the animal identification system, up to $3,000,000 in the emergency management systems program for the vaccine bank, up to $1,000,000 for wildlife services methods development, up to $1,000,000 of the wildlife services operations program for aviation safety, and up to 25 percent of the screwworm program; Food Safety and Inspection Service, field automation and information management project; Cooperative State Research, Education, and Extension Service, funds for competitive research grants (7 U.S.C. 450i(b)), funds for the Research, Education, and Economics Information System, and funds for the Native American Institutions Endowment Fund; Farm Service Agency, salaries and expenses funds made available to county committees; Foreign Agricultural Service, middle-income country training program, and up to $1,565,000 of the Foreign Agricultural Service appropriation solely for the purpose of offsetting fluctuations in international currency exchange rates, subject to documentation by the Foreign Agricultural Service.

SEC. 705. The Secretary of Agriculture may transfer unobligated balances of discretionary funds appropriated by this Act or other available unobligated discretionary balances of the Department of Agriculture to the Working Capital Fund for the acquisition of plant and capital equipment necessary for the delivery of financial,

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administrative, and information technology services of primary benefit to the agencies of the Department of Agriculture: *Provided,* That none of the funds made available by this Act or any other Act shall be transferred to the Working Capital Fund without the prior approval of the agency administrator: *Provided further,* That none of the funds transferred to the Working Capital Fund pursuant to this section shall be available for obligation without the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 706. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 707. Not to exceed $50,000 of the appropriations available to the Department of Agriculture in this Act shall be available to provide appropriate orientation and language training pursuant to section 606C of the Act of August 28, 1954 (7 U.S.C. 1766b).

SEC. 708. No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties. This does not preclude appropriate payment of indirect costs on grants and contracts with such institutions when such indirect costs are computed on a similar basis for all agencies for which appropriations are provided in this Act.

SEC. 709. None of the funds in this Act shall be available to restrict the authority of the Commodity Credit Corporation to lease space for its own use or to lease space on behalf of other agencies of the Department of Agriculture when such space will be jointly occupied.

SEC. 710. None of the funds in this Act shall be available to pay indirect costs charged against competitive agricultural research, education, or extension grant awards issued by the Cooperative State Research, Education, and Extension Service that exceed 20 percent of total Federal funds provided under each award: *Provided,* That notwithstanding section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310), funds provided by this Act for grants awarded competitively by the Cooperative State Research, Education, and Extension Service shall be available to pay full allowable indirect costs for each grant awarded under section 9 of the Small Business Act (15 U.S.C. 638).

SEC. 711. Notwithstanding any other provision of this Act, all loan levels provided in this Act shall be considered estimates, not limitations.

SEC. 712. Appropriations to the Department of Agriculture for the cost of direct and guaranteed loans made available in the current fiscal year shall remain available until expended to cover obligations made in the current fiscal year for the following accounts: the Rural Development Loan Fund program account, the Rural Telephone Bank program account, the Rural Electrification and Telecommunication Loans program account, and the Rural Housing Insurance Fund program account.

SEC. 713. None of the funds in this Act may be used to retire more than 5 percent of the Class A stock of the Rural Telephone Bank or to maintain any account or subaccount within the

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accounting records of the Rural Telephone Bank the creation of which has not specifically been authorized by statute: *Provided,* That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available in this Act may be used to transfer to the Treasury or to the Federal Financing Bank any unobligated balance of the Rural Telephone Bank telephone liquidating account which is in excess of current requirements and such balance shall receive interest as set forth for financial accounts in section 505(c) of the Federal Credit Reform Act of 1990.

SEC. 714. Of the funds made available by this Act, not more than $1,800,000 shall be used to cover necessary expenses of activities related to all advisory committees, panels, commissions, and task forces of the Department of Agriculture, except for panels used to comply with negotiated rule makings and panels used to evaluate competitively awarded grants.

SEC. 715. None of the funds appropriated by this Act may be used to carry out section 410 of the Federal Meat Inspection Act (21 U.S.C. 679a) or section 30 of the Poultry Products Inspection Act (21 U.S.C. 471).

SEC. 716. No employee of the Department of Agriculture may be detailed or assigned from an agency or office funded by this Act to any other agency or office of the Department for more than 30 days unless the individual's employing agency or office is fully reimbursed by the receiving agency or office for the salary and expenses of the employee for the period of assignment.

SEC. 717. None of the funds appropriated or otherwise made available to the Department of Agriculture shall be used to transmit or otherwise make available to any non-Department of Agriculture employee questions or responses to questions that are a result of information requested for the appropriations hearing process.

SEC. 718. None of the funds made available to the Department of Agriculture by this Act may be used to acquire new information technology systems or significant upgrades, as determined by the Office of the Chief Information Officer, without the approval of the Chief Information Officer and the concurrence of the Executive Information Technology Investment Review Board: *Provided,* That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available by this Act may be transferred to the Office of the Chief Information Officer without the prior approval of the Committees on Appropriations of both Houses of Congress: *Provided further,* That none of the funds available to the Department of Agriculture for information technology shall be obligated for projects over $25,000 prior to receipt of written approval by the Chief Information Officer.

SEC. 719. (a) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds which: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes offices, programs, or activities; or (6) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Committees

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on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of $500,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(c) The Secretary of Agriculture, the Secretary of Health and Human Services, or the Chairman of the Commodity Futures Trading Commission shall notify the Committees on Appropriations of both Houses of Congress before implementing a program or activity not carried out during the previous fiscal year unless the program or activity is funded by this Act or specifically funded by any other Act.

SEC. 720. With the exception of funds needed to administer and conduct oversight of grants awarded and obligations incurred in prior fiscal years, none of the funds appropriated or otherwise made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out the provisions of section 401 of Public Law 105–185, the Initiative for Future Agriculture and Food Systems (7 U.S.C. 7621).

SEC. 721. None of the funds appropriated by this or any other Act shall be used to pay the salaries and expenses of personnel who prepare or submit appropriations language as part of the President's Budget submission to the Congress of the United States for programs under the jurisdiction of the Appropriations Subcommittees on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies that assumes revenues or reflects a reduction from the previous year due to user fees proposals that have not been enacted into law prior to the submission of the Budget unless such Budget submission identifies which additional spending reductions should occur in the event the user fees proposals are not enacted prior to the date of the convening of a committee of conference for the fiscal year 2006 appropriations Act.

SEC. 722. None of the funds made available by this or any other Act may be used to close or relocate a State Rural Development office unless or until cost effectiveness and enhancement of program delivery have been determined.

SEC. 723. In addition to amounts otherwise appropriated or made available by this Act, $2,500,000 is appropriated for the purpose of providing Bill Emerson and Mickey Leland Hunger Fellowships, through the Congressional Hunger Center.

SEC. 724. Notwithstanding section 412 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736f), any

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balances available to carry out title III of such Act as of the date of enactment of this Act, and any recoveries and reimbursements that become available to carry out title III of such Act, may be used to carry out title II of such Act.

SEC. 725. Section 375(e)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j(e)(6)(B)) is amended by striking "$26,998,000" and inserting "$27,998,000".

SEC. 726. (a) None of the funds appropriated or otherwise made available by this Act shall be used to pay the salaries and expenses of personnel to collect from the lender at the time of issuance a guarantee fee of less than 2 percent of the principal obligation of guaranteed single-family housing loans administered by the Rural Housing Service: *Provided,* That this section shall not apply to loans made to refinance other single-family housing loans administered by the Rural Housing Service.

(b) Section 502(h)(6)(C) of the Housing Act of 1949 (42 U.S.C. 1472(h)(6)(C)) is amended by inserting ", plus the guarantee fee as authorized by subsection (h)(7)" after "whichever is less", in each of paragraphs (i) and (ii).

SEC. 727. Notwithstanding any other provision of law, and until receipt of the decennial Census in the year 2010, the Secretary of Agriculture shall consider—

(1) the City of Salinas, California; the City of Watsonville, California; and the City of Hollister, California, eligible for programs administered by the Rural Housing Service;

(2) the Town of Horseshoe Beach, Florida; the City of Wewahitchka, Florida; the City of Southport, Florida; the City of Resota Beach, Florida; the City of Creedmoor, North Carolina; the County of Lake, Florida; the City of St. Cloud, Florida; the City of Plantation, Florida; the Cleburne County Water Authority of Alabama; and the City of Coburg, Oregon, eligible for loans and grants funded through the rural utilities programs in the Rural Community Advancement Program account;

(3) the City of Casa Grande, Arizona, a rural area for purposes of eligibility for loans and grants provided through the Rural Housing Insurance Fund Program account, the Rural Housing Assistance Grants account and the rural utilities programs in the Rural Community Advancement Program account;

(4) the City of Coachella, California, eligible for loans and grants funded through the rural utilities programs and rural business and cooperative development programs in the Rural Community Advancement Program account and the Rural Housing Insurance Fund Program account;

(5) the City of Springfield, Ohio; the City of Lexington, Virginia; the City of Clarksdale, Mississippi; the City of Vicksburg, Mississippi; the City of Cache, Oklahoma; and the City of Elgin, Oklahoma, eligible for loans and grants funded through the rural community programs in the Rural Community Advancement Program account;

(6) the City of Carbondale, Illinois, a rural area for purposes of eligibility for loans and grants funded through the Rural Housing Insurance Fund Program account and the Rural Housing Assistance Grants account;

(7) the City of St. Joseph, Missouri, eligible for loans and grants funded through the rural business and cooperative development programs in the Rural Community Advancement Program account relating to an application submitted to the

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Department by a farmer-owned cooperative, a majority of whose members reside in a rural area, as determined by the Secretary, and for the purchase and operation of a facility beneficial to the purpose of the cooperative; and

(8) the fiber-to-premises broadband facilities in St. Lucie County, Florida, and the City of Port St. Lucie, Florida, collectively, to meet the eligibility requirements for loans and loan guarantees under section 601 of the Rural Electrification Act of 1936 (7 U.S.C. 950bb).

SEC. 728. Of any shipments of commodities made pursuant to section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), the Secretary of Agriculture shall, to the extent practicable, direct that tonnage equal in value to not more than $25,000,000 shall be made available to foreign countries to assist in mitigating the effects of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome on communities, including the provision of—

(1) agricultural commodities to—

(A) individuals with Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome in the communities; and

(B) households in the communities, particularly individuals caring for orphaned children; and

(2) agricultural commodities monetized to provide other assistance (including assistance under microcredit and microenterprise programs) to create or restore sustainable livelihoods among individuals in the communities, particularly individuals caring for orphaned children.

SEC. 729. Notwithstanding any other provision of law, the Natural Resources Conservation Service shall provide financial and technical assistance to the DuPage County, Illinois, Kress Creek Water Quality Enhancement Project, from funds available for the Watershed and Flood Prevention Operations program, not to exceed $1,000,000 and Rockhouse Creek Watershed, Leslie County, Kentucky, not to exceed $1,000,000.

SEC. 730. Notwithstanding any other provision of law, the Natural Resources Conservation Service may provide financial and technical assistance through the Watershed and Flood Prevention Operations program for the Kuhn Bayou project in Arkansas, the Matanuska River erosion control project in Alaska, the DuPage County watershed project in Illinois, and the Coal Creek project in Utah.

SEC. 731. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this or any other appropriation Act.

SEC. 732. Notwithstanding any other provision of law, of the funds made available in this Act for competitive research grants (7 U.S.C. 450i(b)), the Secretary may use up to 20 percent of the amount provided to carry out a competitive grants program under the same terms and conditions as those provided in section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7621).

SEC. 733. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and

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expenses of personnel to carry out section 14(h)(1) of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012(h)(1)).

SEC. 734. None of the funds made available to the Food and Drug Administration by this Act shall be used to close or relocate, or to plan to close or relocate, the Food and Drug Administration Division of Pharmaceutical Analysis in St. Louis, Missouri, outside the city or county limits of St. Louis, Missouri.

SEC. 735. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out subtitle I of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009dd through dd–7).

SEC. 736. Agencies and offices of the Department of Agriculture may utilize any unobligated salaries and expenses funds to reimburse the Office of the General Counsel for salaries and expenses of personnel, and for other related expenses, incurred in representing such agencies and offices in the resolution of complaints by employees or applicants for employment, and in cases and other matters pending before the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or the Merit Systems Protection Board with the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 737. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out section 6405 of Public Law 107–171 (7 U.S.C. 2655).

SEC. 738. The Agricultural Marketing Service and the Grain Inspection, Packers and Stockyards Administration, that have statutory authority to purchase interest bearing investments outside of the Treasury, are not required to establish obligations and outlays for those investments, provided those investments are insured by the Federal Deposit Insurance Corporation or are collateralized at the Federal Reserve with securities approved by the Federal Reserve, operating under the guidelines of the United States Department of the Treasury.

SEC. 739. Of the funds made available under section 27(a) of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), the Secretary may use up to $10,000,000 for costs associated with the distribution of commodities.

SEC. 740. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to enroll in excess of 154,500 acres in the calendar year 2005 wetlands reserve program as authorized by 16 U.S.C. 3837.

SEC. 741. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel who carry out an environmental quality incentives program authorized by chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) in excess of $1,017,000,000.

SEC. 742. Hereafter, the Secretary of Agriculture is authorized to permit employees of the United States Department of Agriculture to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties.

SEC. 743. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries

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and expenses of personnel to expend the $23,000,000 made available by section 9006(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106(f)).

SEC. 744. With the exception of funds provided in fiscal year 2003, none of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the $40,000,000 made available by section 601(j)(1)(A) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(j)(1)(A)).

SEC. 745. None of the funds made available in fiscal year 2005 or preceding fiscal years for programs authorized under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.) in excess of $20,000,000 shall be used to reimburse the Commodity Credit Corporation for the release of eligible commodities under section 302(f)(2)(A) of the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f–1): *Provided,* That any such funds made available to reimburse the Commodity Credit Corporation shall only be used pursuant to section 302(b)(2)(B)(i) of the Bill Emerson Humanitarian Trust Act.

SEC. 746. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the $80,000,000 made available by section 6401(a) of Public Law 107–171.

SEC. 747. Notwithstanding subsections (c) and (e)(2) of section 313A of the Rural Electrification Act (7 U.S.C. 940c(c) and (e)(2)) in implementing section 313A of that Act, the Secretary shall, with the consent of the lender, structure the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees under that section.

SEC. 748. Notwithstanding any other provision of law, the Natural Resources Conservation Service may provide from appropriated funds financial and technical assistance to the Dry Creek project, Utah.

SEC. 749. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out a Conservation Security Program authorized by 16 U.S.C. 3838 et seq., in excess of $202,411,000.

SEC. 750. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2502 of Public Law 107–171 in excess of $47,000,000.

SEC. 751. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2503 of Public Law 107–171 in excess of $112,000,000.

SEC. 752. The Secretary of Agriculture shall use $30,000,000 of the funds of the Commodity Credit Corporation, to remain available until expended, to compensate commercial citrus and lime growers in the State of Florida for tree replacement and for lost production with respect to trees removed to control citrus canker, and with respect to certified citrus nursery stocks within the citrus canker quarantine areas, as determined by the Secretary. For a grower to receive assistance for a tree under this section, the tree must have been removed after September 30, 2001.

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SEC. 753. Not more than $10,000,000 for fiscal year 2005 of the funds appropriated or otherwise made available by this or any other Act shall be used to carry out section 6029 of Public Law 107–171.

SEC. 754. None of the funds appropriated or otherwise made available in this Act shall be expended to violate Public Law 105–264.

SEC. 755. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out a ground and surface water conservation program authorized by section 2301 of Public Law 107–171 in excess of $51,000,000.

SEC. 756. None of the funds made available by this Act may be used to issue a final rule in furtherance of, or otherwise implement, the proposed rule on cost-sharing for animal and plant health emergency programs of the Animal and Plant Health Inspection Service published on July 8, 2003 (Docket No. 02–062–1; 68 Fed. Reg. 40541).

SEC. 757. None of the funds made available in this Act may be used to study, complete a study of, or enter into a contract with a private party to carry out, without specific authorization in a subsequent Act of Congress, a competitive sourcing activity of the Secretary of Agriculture, including support personnel of the Department of Agriculture, relating to rural development or farm loan programs.

SEC. 758. Notwithstanding any other provision of law, the Secretary of Agriculture may use appropriations available to the Secretary for activities authorized under sections 426–426c of title 7, United States Code, under this or any other Act, to enter into cooperative agreements, with a State, political subdivision, or agency thereof, a public or private agency, organization, or any other person, to lease aircraft if the Secretary determines that the objectives of the agreement will: (1) serve a mutual interest of the parties to the agreement in carrying out the programs administered by the Animal and Plant Health Inspection Service, Wildlife Services; and (2) all parties will contribute resources to the accomplishment of these objectives; award of a cooperative agreement authorized by the Secretary may be made for an initial term not to exceed 5 years.

SEC. 759. There is hereby appropriated $1,491,000, to remain available until September 30, 2006, to carry out section 6028 of Public Law 107–171: *Provided,* That notwithstanding section 383B(g)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb–1(g)(1)), the Federal share of the administrative expenses of the Northern Great Plains Regional Authority for fiscal year 2005 shall be 100 percent.

SEC. 760. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 9010 of Public Law 107–171 in excess of $100,000,000.

SEC. 761. (a) The matter under the heading "Rural Community Advancement Program" in division A—Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs Appropriations, 2004, title III—Rural Development Programs, in Public Law 108–199 is amended by striking "$1,750,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 1921 et seq.); and not less than $2,000,000 shall be available for grants

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in accordance with section 310B(f) of the Consolidated Farm and Rural Development Act" and inserting "and not less than $2,000,000 shall be available for grants in accordance with section 310B(f) of the Consolidated Farm and Rural Development Act: *Provided further,* That of the total amount appropriated in this account, $1,750,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 1921 et seq.) for any Rural Community Advancement Program purpose".

(b) Consistent with any legal commitments made by the Delta Regional Authority, at the request of the Authority and if the Secretary of Agriculture agrees, the Secretary may deobligate any unexpended Rural Community Advancement Program grant funds made to the Authority pursuant to division A of Public Law 108–7: *Provided,* That such reobligated funds are used by the Authority for projects that are consistent with the purposes of the Rural Housing Service Community Facilities Program.

SEC. 762. Of the unobligated balances available in the Rural Housing Assistance Grant Program account, $1,000,000 is hereby rescinded.

SEC. 763. Agencies and offices of the Department of Agriculture may utilize any available discretionary funds to cover the costs of preparing, or contracting for the preparation of, final agency decisions regarding complaints of discrimination in employment or program activities arising within such agencies and offices.

SEC. 764. Of the unobligated balances available in the Rural Housing Insurance Fund Program account, $3,000,000 is hereby rescinded.

SEC. 765. Notwithstanding any other provision of law, for any fiscal year and hereafter, in the case of a high cost isolated rural area in Alaska that is not connected to a road system, the maximum level for the single family housing assistance shall be 150 percent of the average income level in the metropolitan areas of the State and 115 percent of all other eligible areas of the State.

SEC. 766. Funds made available under section 1240I and section 1241(a) of the Food Security Act of 1985 in fiscal years 2002, 2003, 2004, and 2005 shall remain available until expended to cover obligations made in fiscal years 2002, 2003, 2004, and 2005, respectively, and are not available for new obligations.

SEC. 767. There is hereby appropriated $1,500,000, to remain available until expended, for the Denali Commission to address deficiencies in solid waste disposal sites which threaten to contaminate rural drinking water supplies.

SEC. 768. Notwithstanding any other provision of law—

(1)(A) the Alaska Department of Community and Economic Development shall be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is equal to not more than 75 percent of the total cost of providing water and sewer service to the proposed hospital in the Matanuska-Susitna Borough, Alaska; and

(B) the Alaska Department of Community and Economic Development shall be allowed to pass the grant funds through to the local government entity that will provide water and sewer service to the hospital;

(2) or any percentage of cost limitation in current law or regulations, the construction projects known as the Tri-Valley Community Center addition in Healy, Alaska; the Cold

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Climate Housing Research Center in Fairbanks, Alaska; and the University of Alaska-Fairbanks Allied Health Learning Center skill labs/classrooms shall be eligible to receive Community Facilities grants in amounts that are equal to not more than 75 percent of the total facility costs: *Provided*, That for the purposes of this paragraph, the Cold Climate Housing Research Center is designated an "essential community facility" for rural Alaska;

(3) the Secretary shall consider the City of Guymon, Oklahoma; the City of Shawnee, Oklahoma; the Village of New Miami, Ohio; the City of Vicksburg, Mississippi; and the City of Altus, Oklahoma, to be eligible for loans and grants provided through the Rural Housing Insurance Fund until receipt of the decennial Census in the year 2010;

(4) grants made under section 306(a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(19)) using funds made available under this Act for the cities of Ellisville and Waynesboro, Mississippi, shall be made without a non-Federal cost share requirement;

(5) the City of Great Falls, Montana, shall be considered a rural area for purposes of eligibility for business and industry guaranteed loans under section 310B(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(a)(1)) until receipt of the decennial Census in the year 2010;

(6) the Secretary may consider the Piedmont Municipal Power Agency of South Carolina eligible to participate in programs administered by the Rural Utilities Service until receipt of the decennial Census in the year 2010; and

(7) until receipt of the decennial Census for the year 2010, for all activities under programs of the Rural Development Mission Area within the County of Honolulu, Hawaii, the Secretary may designate any portion of the county as a rural area or eligible rural community that the Secretary determines is not urban in character: *Provided,* That the Secretary shall not include in any such rural area or eligible rural community any area included in the Honolulu Census Designated Place as determined by the Secretary of Commerce.

SEC. 769. Section 501 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1737) is amended—

(1) in subsection (b)(1), by inserting "and Doug Bereuter" after "John Ogonowski"; and

(2) in the heading, by inserting "**AND DOUG BEREUTER**" after "**JOHN OGONOWSKI**".

SEC. 770. Notwithstanding the provisions of the Consolidated Farm and Rural Development Act (including the associated regulations) governing the Community Facilities Program, the Secretary may allow all Community Facility Program facility borrowers and grantees to enter into contracts with not-for-profit third parties for services consistent with the requirements of the Program, grant, and/or loan: *Provided,* That the contracts protect the interests of the Government regarding cost, liability, maintenance, and administrative fees.

SEC. 771. Notwithstanding any other provision of law, the Secretary of Agriculture is authorized to make funding and other assistance available through the emergency watershed protection program under section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) to repair and prevent damage to non-Federal

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land in watersheds that have been impaired by fires initiated by the Federal Government and shall waive cost sharing requirements for the funding and assistance.

SEC. 772. None of the funds made available in this Act may be used to provide credits or credit guarantees for agricultural commodities provided for use in Iraq in violation of subsection (e) or (f) of section 202 of the Agricultural Trade Act of 1978 (7 U.S.C. 5622).

SEC. 773. None of the funds provided in this Act may be used for salaries and expenses to carry out any regulation or rule insofar as it would make ineligible for enrollment in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) land that is planted to hardwood trees as of the date of enactment of this Act and was enrolled in the conservation reserve program under a contract that expired prior to calendar year 2002.

SEC. 774. None of the funds made available in this Act may be used to restrict to prescription use a contraceptive that is determined to be safe and effective for use without the supervision of a practitioner licensed by law to administer prescription drugs under section 503(b) of the Federal Food, Drug, and Cosmetic Act.

SEC. 775. Of the unobligated balances in the Local Television Loan Guarantee Program account, $88,000,000 are hereby rescinded.

SEC. 776. PRIVACY PROTECTION OF CERTAIN SELLERS OF FARM PRODUCTS. Section 1324(c) of the Food Security Act of 1985 (7 U.S.C. 1631(c)) is amended—

(1) in subsection (c)—

(A) in paragraph (2)(C)(ii)(II), by inserting ", or other approved unique identifier," after both "social security number" and "identification number";

(B) in paragraph (4)(C)(iii), by inserting ", or other approved unique identifier," after both "social security number" and "identification number"; and

(C) by adding the following at the end:

"(5) The term 'approved unique identifier' means a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture.";

(2) in subsection (e)(1)(A)(ii)(III), by inserting ", or other approved unique identifier," after both "social security number" and "identification number"; and

(3) in subsection (g)(2)(A)(ii)(III), by inserting ", or other approved unique identifier," after both "social security number" and "identification number".

SEC. 777. Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note; Public Law 193–382) is amended—

(1) by redesignating paragraphs (23) through (32) as paragraphs (24) through (33), respectively; and

(2) by inserting after paragraph (22) the following: "(23) Tohono O'odham Community College.".

SEC. 778. Of the unobligated balances of funds in the Agricultural Conservation Program account, $3,500,000 are hereby rescinded.

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SEC. 779. Notwithstanding any other provision of law, the amounts made available to the Dakota Value Capture Cooperative under section 747 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Public Law 107–76; 115 Stat. 738) shall remain available until expended for a project conducted by the Dakota Value Capture Cooperative at South Dakota State University.

SEC. 780. None of the funds made available under this Act shall be available to pay the administrative expenses of a State agency that, after the date of enactment of this Act, authorizes any new for-profit vendor(s) to transact food instruments under the Special Supplemental Nutrition Program for Women, Infants, and Children if it is expected that more than 50 percent of the annual revenue of the vendor from the sale of food items will be derived from the sale of supplemental foods that are obtained with WIC food instruments, except that the Secretary may approve the authorization of such a vendor if the approval is necessary to assure participant access to program benefits.

SEC. 781. Of the unobligated balances under section 32 of the Act of August 24, 1935, $163,000,000 are hereby rescinded.

SEC. 782. Of the unobligated balances available to the Foreign Agricultural Service for the Public Law 480 Title I Program at the beginning of fiscal year 2005, $191,108,000 are hereby rescinded: *Provided*, That for purposes of determining the amount of funds available for transfer under section 412(b) of Public Law 83–480, as amended, the maximum amount of funds available for transfer shall be calculated based upon the total funds available prior to this rescission.

SEC. 783. The Secretary of Agriculture may use any unobligated carryover funds made available for any program administered by the Rural Utilities Service (not including funds made available under the heading "Rural Community Advancement Program" in any Act of appropriation) to carry out section 315 of the Rural Electrification Act of 1936 (7 U.S.C. 940e).

SEC. 784. None of the funds made available by this or any other Act may be used to reduce the mission, resources, staffing, facilities, or capabilities of the Wildlife Habitat Management Institute in Mississippi as in existence on December 17, 2003.

SEC. 785. LIVESTOCK ASSISTANCE. (a) IN GENERAL.—In carrying out a livestock assistance, compensation, or feed program, the Secretary of Agriculture shall include elk, reindeer, and bison within the definition of "livestock" covered by the program.

(b) CONFORMING AMENDMENTS.—

(1) Section 602(2) of the Agricultural Act of 1949 (7 U.S.C. 1471(2)) is amended by inserting "elk, reindeer, bison," after "cattle,".

(2) Section 10104 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1472) is amended—

(A) by redesignating subsections (a) through (d) as subsections (b) through (e), respectively; and

(B) by inserting before subsection (b) (as so redesignated) the following:

"(a) DEFINITION OF LIVESTOCK.—In this section, the term 'livestock' includes elk, reindeer, and bison.".

(3) Section 203(d) of the Agricultural Assistance Act of 2003 (Public Law 108–7; 117 Stat. 541) is amended—

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(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

"(2) LIVESTOCK.—The term 'livestock' includes elk, reindeer, and bison.".

SEC. 786. There is hereby appropriated $1,000,000, to remain available until expended, to carry out provisions of section 751 of division A of Public Law 108–7.

SEC. 787. There is hereby appropriated $500,000 for a grant to Alaska Village Initiatives for the purpose of administering a private lands wildlife management program in Alaska.

SEC. 788. TECHNICAL CORRECTIONS. (a) Section 104(b)(1) of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108–265) is amended by striking the closing quotation marks and the following period at the end of section 9(b)(5)(A)(iv) of the Richard B. Russell National School Lunch Act (as added by that section 104(b)(1) of Public Law 108–265).

(b) Section 13(a)(10) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)(10)) (as added by section 116(d) of Public Law 108–265) is amended—

(1) in subparagraph (C), by striking "2005" and inserting "2006"; and

(2) in subparagraph (D)—

(A) in clause (i), by striking "2007" and inserting "2008"; and

(B) in clause (ii), by striking "2008" and inserting "2009".

(c) Section 21(e)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(e)(2)(A)) (as amended by section 125(c)(2)(B) of Public Law 108–265) is amended by inserting "and" after "2005".

(d) Section 17(f)(1)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)(i) (as amended by section 203(e)(10)(B) of Public Law 108–265) is amended by striking the period after "subsection (h)(11)".

(e) Section 17(h)(8)(A)(vi) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)(vi) (as added by section 203(e)(5) of Public Law 108–265) is amended by striking "Each State" and inserting "Effective beginning October 1, 2004, each State".

(f) Section 502(b) of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108–265) is amended—

(1) in paragraph (2), by striking "203(e)(5),"; and

(2) in paragraph (4), by striking "104" and inserting "104 (other than section 104(a)(1))".

SEC. 789. Section 104 of chapter 1 of the Emergency Supplemental Appropriations for Hurricane Disasters Assistance Act, 2005, Public Law 108–324, is amended by adding "and tropical storms" after "hurricanes".

SEC. 790. There is hereby appropriated $1,000,000, to remain available until expended, for a grant to the Ohio Livestock Expo Center in Springfield, Ohio.

SEC. 791. There is hereby appropriated $1,000,000, to remain available until expended, for a grant to the Virginia Horse Center in Lexington, Virginia.

SEC. 792. Notwithstanding any other provision of law, unobligated funding balances in the Great Plains Conservation Program authorized under section 16(b) of the Soil Conservation and

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Domestic Allotment Act (16 U.S.C. 590p(b)); the Forestry Incentives Program authorized by section 4 and section 6 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103); The Water Bank Program authorized by The Water Bank Act of 1970 (Public Law 91–559); and funding for the John's Creek, TN Watershed and Flood Prevention Operations project are hereby rescinded.

SEC. 793. There is hereby appropriated $2,250,000, to remain available until expended, for a grant to the Wisconsin Federation of Cooperatives for pilot Wisconsin-Minnesota health care cooperative purchasing alliances.

SEC. 794. (a) Section 1240B of the Food Security Act of 1985, 16 U.S.C. 3839 aa–2, is amended at the end by adding the following:

"(h) FUNDING FOR FEDERALLY RECOGNIZED NATIVE AMERICAN INDIAN TRIBES AND ALASKA NATIVE CORPORATIONS.—The Secretary may enter into alternative funding arrangements with federally recognized Native American Indian Tribes and Alaska Native Corporations (including their affiliated membership organizations) if the Secretary determines that the goals and objectives of the program will be met by such arrangements, and that statutory limitations regarding contracts with individual producers as defined under this Subtitle will not be exceeded by any Tribal or Native Corporation member.".

(b) Section 1240G of the Food Security Act of 1985, 16 U.S.C. 3839aa–7, is amended by inserting after "2007," the following: "(excluding funding arrangements with federally recognized Native American Indian Tribes or Alaska Native Corporations under section 1240B(h))".

SEC. 795. There is hereby appropriated $6,000,000, to remain available until expended, for a grant to the Florida Department of Citrus.

SEC. 796 Notwithstanding any other provision of law, effective with funds made available in fiscal year 2004 to States administering the Child and Adult Care Food Program, for the purpose of conducting audits of participating institutions, funds identified by the Secretary as having been unused during the initial fiscal year of availability may be recovered and reallocated by the Secretary: *Provided*, That States may use the reallocated funds until expended for the purpose of conducting audits of participating institutions.

SEC. 797. Section 1238Q of the Food Security Act of 1985 is amended—

(1) in subsection (a), by striking "permit" and inserting "transfer title of ownership to an easement under this subchapter to"; and

(2) by striking subsection (d) and inserting the following new subsection:

"(d) TRANSFER OF TITLE OF OWNERSHIP OF EASEMENT.—Reversion—If a private organization or State agency holding an easement on land under this subchapter dissolves or fails to enforce the terms of the easement, the easement shall revert to the Secretary.".

This division may be cited as the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005".

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DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, $124,100,000, of which not to exceed $3,317,000 is for the Facilities Program 2000, to remain available until expended: *Provided,* That not to exceed 45 permanent positions and 46 full-time equivalent workyears and $11,078,000 shall be expended for the Department Leadership Program exclusive of augmentation that occurred in these offices in fiscal year 2004: *Provided further,* That not to exceed 26 permanent positions, 21 full-time equivalent workyears and $3,305,000 shall be expended for the Office of Legislative Affairs: *Provided further,* That not to exceed 17 permanent positions, 21 full-time equivalent workyears and $2,470,000 shall be expended for the Office of Public Affairs: *Provided further,* That the latter two aforementioned offices may utilize non-reimbursable details of career employees within the caps described in the preceding two provisos.

JOINT AUTOMATED BOOKING SYSTEM

For expenses necessary for the nationwide deployment of a Joint Automated Booking System including automated capability to transmit fingerprint and image data, $20,185,000, to remain available until September 30, 2006.

AUTOMATED BIOMETRIC IDENTIFICATION SYSTEM/INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

For necessary expenses for the planning, development, and deployment of an integrated fingerprint identification system, including automated capability to transmit fingerprint and image data, $5,054,000, to remain available until September 30, 2006.

LEGAL ACTIVITIES OFFICE AUTOMATION

For necessary expenses related to the design, development, engineering, acquisition, and implementation of office automation systems for the organizations funded under the headings "Salaries and Expenses, General Legal Activities", and "General Administration, Salaries and Expenses", and the United States Attorneys, the United States Marshals Service, the Antitrust Division, the United States Trustee Program, the Executive Office for Immigration Review, the Community Relations Service, the Bureau of Prisons, the Office of Justice Programs, and the United States Parole Commission, $40,510,000, to remain available until September 30, 2006.

NARROWBAND COMMUNICATIONS

For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile

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Radio legacy systems, $100,000,000, to remain available until September 30, 2006: *Provided,* That the Attorney General shall transfer to the "Narrowband Communications" account all funds made available to the Department of Justice for the purchase of portable and mobile radios: *Provided further,* That any transfer made under the preceding proviso shall be subject to section 605 of this Act.

ADMINISTRATIVE REVIEW AND APPEALS

For expenses necessary for the administration of pardon and clemency petitions and immigration-related activities, $203,965,000.

DETENTION TRUSTEE

For necessary expenses of the Federal Detention Trustee, $885,994,000, to remain available until expended: *Provided,* That the Trustee shall be responsible for managing the Justice Prisoner and Alien Transportation System and for overseeing housing related to such detention: *Provided further,* That any unobligated balances available in prior years from the funds appropriated under the heading "Federal Prisoner Detention" shall be transferred to and merged with the appropriation under the heading "Detention Trustee" and shall be available until expended. *Provided further,* That the Trustee, working in consultation with the Bureau of Prisons, shall submit a plan for collecting information related to evaluating the health and safety of Federal prisoners in non-Federal institutions no later than 180 days following the enactment of this Act.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, $63,813,000, including not to exceed $10,000 to meet unforeseen emergencies of a confidential character.

UNITED STATES PAROLE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the United States Parole Commission as authorized, $10,638,000.

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including not to exceed $20,000 for expenses of collecting evidence, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; and rent of private or Government-owned space in the District of Columbia, $634,193,000, of which not to exceed $10,000,000 for litigation support contracts shall remain available until expended: *Provided,* That of the total amount appropriated, not to exceed $1,000 shall be available to the United States National Central Bureau, INTERPOL, for official reception and representation expenses: *Provided further,* That notwithstanding any other provision of law, upon a determination by the Attorney General that emergent circumstances require additional

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funding for litigation activities of the Civil Division, the Attorney General may transfer such amounts to "Salaries and Expenses, General Legal Activities" from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: *Provided further,* That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

In addition, for reimbursement of expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed $6,333,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

SALARIES AND EXPENSES, ANTITRUST DIVISION

For expenses necessary for the enforcement of antitrust and kindred laws, $138,763,000, to remain available until expended: *Provided,* That, notwithstanding any other provision of law, not to exceed $101,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: *Provided further,* That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2005, so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than $37,763,000.

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For necessary expenses of the Offices of the United States Attorneys, including inter-governmental and cooperative agreements, $1,547,519,000; of which not to exceed $2,500,000 shall be available until September 30, 2006, for: (1) training personnel in debt collection; (2) locating debtors and their property; (3) paying the net costs of selling property; and (4) tracking debts owed to the United States Government: *Provided,* That of the total amount appropriated, not to exceed $8,000 shall be available for official reception and representation expenses: *Provided further,* That not to exceed $10,000,000 of those funds available for automated litigation support contracts shall remain available until expended: *Provided further,* That not to exceed $2,500,000 for the operation of the National Advocacy Center shall remain available until expended: *Provided further,* That, in addition to reimbursable full-time equivalent workyears available to the Offices of the United States Attorneys, not to exceed 10,212 positions and 10,273 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the United States Attorneys: *Provided further,* That of the funds made available under this heading, $1,500,000 shall only be available to continue "Operation Streetsweeper": *Provided further,* That of the total amount appropriated, $5,000,000 shall be for Project Seahawk and shall remain available until expended.

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UNITED STATES TRUSTEE SYSTEM FUND

For necessary expenses of the United States Trustee Program, as authorized, $173,602,000, to remain available until expended and to be derived from the United States Trustee System Fund: *Provided,* That, notwithstanding any other provision of law, deposits to the Fund shall be available in such amounts as may be necessary to pay refunds due depositors: *Provided further,* That, notwithstanding any other provision of law, $173,602,000 of offsetting collections pursuant to 28 U.S.C. 589a(b) shall be retained and used for necessary expenses in this appropriation and remain available until expended: *Provided further,* That the sum herein appropriated from the Fund shall be reduced as such offsetting collections are received during fiscal year 2005, so as to result in a final fiscal year 2005 appropriation from the Fund estimated at $0.

SALARIES AND EXPENSES, FOREIGN CLAIMS SETTLEMENT COMMISSION

For expenses necessary to carry out the activities of the Foreign Claims Settlement Commission, including services as authorized by 5 U.S.C. 3109, $1,220,000.

UNITED STATES MARSHALS SERVICE

SALARIES AND EXPENSES

For necessary expenses of the United States Marshals Service, $751,985,000; of which not to exceed $6,000 shall be available for official reception and representation expenses; and of which $4,000,000 for information technology systems shall remain available until expended; of which not less than $11,580,000 shall be available for the costs of courthouse security equipment, including furnishings, relocations, and telephone systems and cabling, and shall remain available until September 30, 2006: *Provided*, That, in addition to reimbursable full-time equivalent workyears available to the United States Marshals Service, not to exceed 4,543 positions and 4,387 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the United States Marshals Service.

CONSTRUCTION

For construction of United States Marshals Service prisoner-holding space in United States courthouses and Federal buildings, $5,734,000, to remain available until expended.

FEES AND EXPENSES OF WITNESSES

For fees and expenses of witnesses, for expenses of contracts for the procurement and supervision of expert witnesses, for private counsel expenses, including advances, $177,585,000, to remain available until expended; of which not to exceed $8,000,000 may be made available for construction of buildings for protected witness safesites; of which not to exceed $1,000,000 may be made available for the purchase and maintenance of armored vehicles for transportation of protected witnesses; and of which not to exceed $7,000,000 may be made available for the purchase, installation, maintenance and upgrade of secure telecommunications equipment and a secure

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automated information network to store and retrieve the identities and locations of protected witnesses.

SALARIES AND EXPENSES, COMMUNITY RELATIONS SERVICE

For necessary expenses of the Community Relations Service, $9,664,000: *Provided*, That notwithstanding any other provision of law, upon a determination by the Attorney General that emergent circumstances require additional funding for conflict resolution and violence prevention activities of the Community Relations Service, the Attorney General may transfer such amounts to the Community Relations Service, from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: *Provided further*, That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524(c)(1)(B), (F), and (G), $21,759,000, to be derived from the Department of Justice Assets Forfeiture Fund.

PAYMENT TO RADIATION EXPOSURE COMPENSATION TRUST FUND

In addition to amounts appropriated by subsection 3(e) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note), $27,800,000 for payment to the Radiation Exposure Compensation Trust Fund, to remain available until expended.

INTERAGENCY LAW ENFORCEMENT

INTERAGENCY CRIME AND DRUG ENFORCEMENT

For necessary expenses for the identification, investigation, and prosecution of individuals associated with the most significant drug trafficking and affiliated money laundering organizations not otherwise provided for, to include inter-governmental agreements with State and local law enforcement agencies engaged in the investigation and prosecution of individuals involved in organized crime drug trafficking, $561,033,000, of which $50,000,000 shall remain available until expended: *Provided,* That any amounts obligated from appropriations under this heading may be used under authorities available to the organizations reimbursed from this appropriation.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For necessary expenses of the Federal Bureau of Investigation for detection, investigation, and prosecution of crimes against the United States; including purchase for police-type use of not to exceed 2,988 passenger motor vehicles, of which 2,619 will be for replacement only; and not to exceed $70,000 to meet unforeseen emergencies of a confidential character pursuant to 28 U.S.C. 530C, $5,205,028,000; of which not to exceed $150,000,000 shall remain

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available until expended; of which $1,017,000,000 shall be for counterterrorism investigations, foreign counterintelligence, and other activities related to our national security; of which $56,349,000 shall be for the operations, equipment, and facilities of the Foreign Terrorist Tracking Task Force; and of which not to exceed $20,000,000 is authorized to be made available for making advances for expenses arising out of contractual or reimbursable agreements with State and local law enforcement agencies while engaged in cooperative activities related to violent crime, terrorism, organized crime, gang-related crime, cybercrime, and drug investigations: *Provided*, That not to exceed $200,000 shall be available for official reception and representation expenses: *Provided further*, That, in addition to reimbursable full-time equivalent workyears available to the Federal Bureau of Investigation, not to exceed 30,039 positions and 29,082 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the Federal Bureau of Investigation: *Provided further,* That up to $6,800,000 of prior year unobligated balances shall be available for the necessary expense of construction of an aviation hangar, to remain available until September 30, 2006.

CONSTRUCTION

For necessary expenses to construct or acquire buildings and sites by purchase, or as otherwise authorized by law (including equipment for such buildings); conversion and extension of Federally-owned buildings; and preliminary planning and design of projects; $10,242,000, to remain available until expended: *Provided,* That $9,000,000 shall be available to lease a records management facility, including equipment and relocation expenses, in Frederick County, Virginia.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Drug Enforcement Administration, including not to exceed $70,000 to meet unforeseen emergencies of a confidential character pursuant to 28 U.S.C. 530C; expenses for conducting drug education and training programs, including travel and related expenses for participants in such programs and the distribution of items of token value that promote the goals of such programs; and purchase of not to exceed 1,461 passenger motor vehicles, of which 1,346 will be for replacement only, for police-type use, $1,653,265,000; of which not to exceed $75,000,000 shall remain available until expended; and of which not to exceed $100,000 shall be available for official reception and representation expenses: *Provided*, That, in addition to reimbursable full-time equivalent workyears available to the Drug Enforcement Administration, not to exceed 8,361 positions and 8,250 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the Drug Enforcement Administration: *Provided further,* That not to exceed $8,100,000 from prior year unobligated balances shall be available for the design, construction and ownership of a clandestine laboratory training facility and shall remain available until expended.

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BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

SALARIES AND EXPENSES

For necessary expenses of the Bureau of Alcohol, Tobacco, Firearms and Explosives, including the purchase of not to exceed 822 vehicles for police-type use, of which 650 shall be for replacement only; not to exceed $25,000 for official reception and representation expenses; for training of State and local law enforcement agencies with or without reimbursement, including training in connection with the training and acquisition of canines for explosives and fire accelerants detection; and for provision of laboratory assistance to State and local law enforcement agencies, with or without reimbursement, $890,357,000, of which not to exceed $1,000,000 shall be available for the payment of attorneys' fees as provided by 18 U.S.C. 924(d)(2); and of which $10,000,000 shall remain available until expended: *Provided,* That no funds appropriated herein shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees: *Provided further,* That no funds appropriated herein shall be used to pay administrative expenses or the compensation of any officer or employee of the United States to implement an amendment or amendments to 27 CFR 178.118 or to change the definition of "Curios or relics" in 27 CFR 178.11 or remove any item from ATF Publication 5300.11 as it existed on January 1, 1994: *Provided further,* That none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c): *Provided further,* That such funds shall be available to investigate and act upon applications filed by corporations for relief from Federal firearms disabilities under section 925(c) of title 18, United States Code: *Provided further,* That no funds made available by this or any other Act may be used to transfer the functions, missions, or activities of the Bureau of Alcohol, Tobacco, Firearms and Explosives to other agencies or Departments in fiscal year 2005: *Provided further,* That no funds appropriated under this or any other Act with respect to any fiscal year may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms, and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), to anyone other than a Federal, State, or local law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure and not for use in any civil action or proceeding other than an action or proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or a review of such an action or proceeding, to enforce the provisions of chapter 44 of such title, and all such data shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding other than a proceeding commenced by the Bureau

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of Alcohol, Tobacco, Firearms, and Explosives to enforce the provisions of that chapter, or a review of such an action or proceeding; except that this proviso shall not be construed to prevent the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title): *Provided further,* That no funds made available by this or any other Act shall be expended to promulgate or implement any rule requiring a physical inventory of any business licensed under section 923 of title 18, United States Code: *Provided further,* That no funds under this Act may be used to electronically retrieve information gathered pursuant to 18 U.S.C. 923(g)(4) by name or any personal identification code: *Provided further,* That no funds authorized or made available under this or any other Act may be used to deny any application for a license under section 923 of title 18, United States Code, or renewal of such a license due to a lack of business activity, provided that the applicant is otherwise eligible to receive such a license, and is eligible to report business income or to claim an income tax deduction for business expenses under the Internal Revenue Code of 1986: *Provided further,* That of the total amount provided under this paragraph, $5,600,000 shall be for the construction and establishment of the Federal Firearms Licensing Center at the Bureau of Alcohol, Tobacco, Firearms and Explosives National Tracing Center Facility and shall remain available until expended.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For expenses necessary of the Federal Prison System for the administration, operation, and maintenance of Federal penal and correctional institutions, including purchase (not to exceed 780, of which 649 are for replacement only) and hire of law enforcement and passenger motor vehicles, and for the provision of technical assistance and advice on corrections related issues to foreign governments, $4,627,696,000: *Provided,* That the Attorney General may transfer to the Health Resources and Services Administration such amounts as may be necessary for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions: *Provided further,* That the Director of the Federal Prison System, where necessary, may enter into contracts with a fiscal agent/fiscal intermediary claims processor to determine the amounts payable to persons who, on behalf of the Federal Prison System, furnish health services to individuals committed to the custody of the Federal Prison System: *Provided further,* That not to exceed $6,000 shall be available for official reception and representation expenses: *Provided further,* That not to exceed $365,836,000 shall remain available for prison activations until September 30, 2006: *Provided further,* That, of the amounts provided for Contract Confinement, not to exceed $20,000,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements, and other expenses authorized by section 501(c) of the Refugee Education Assistance Act of 1980, for the care and security in the United States of Cuban and Haitian entrants: *Provided further,* That the Director of the Federal Prison System may accept donated property and services relating to the operation of the prison card program

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from a not-for-profit entity which has operated such program in the past notwithstanding the fact that such not-for-profit entity furnishes services under contracts to the Federal Prison System relating to the operation of pre-release services, halfway houses or other custodial facilities.

BUILDINGS AND FACILITIES

For planning, acquisition of sites and construction of new facilities; purchase and acquisition of facilities and remodeling, and equipping of such facilities for penal and correctional use, including all necessary expenses incident thereto, by contract or force account; and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account, $189,000,000, to remain available until expended, of which not to exceed $14,000,000 shall be available to construct areas for inmate work programs: *Provided,* That labor of United States prisoners may be used for work performed under this appropriation.

FEDERAL PRISON INDUSTRIES, INCORPORATED

The Federal Prison Industries, Incorporated, is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available, and in accord with the law, and to make such contracts and commitments, without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the program set forth in the budget for the current fiscal year for such corporation, including purchase (not to exceed five for replacement only) and hire of passenger motor vehicles.

LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED

Not to exceed $3,411,000 of the funds of the corporation shall be available for its administrative expenses, and for services as authorized by 5 U.S.C. 3109, to be computed on an accrual basis to be determined in accordance with the corporation's current prescribed accounting system, and such amounts shall be exclusive of depreciation, payment of claims, and expenditures which such accounting system requires to be capitalized or charged to cost of commodities acquired or produced, including selling and shipping expenses, and expenses in connection with acquisition, construction, operation, maintenance, improvement, protection, or disposition of facilities and other property belonging to the corporation or in which it has an interest.

OFFICE ON VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

For grants, contracts, cooperative agreements, and other assistance for the prevention and prosecution of violence against women as authorized by the Omnibus Crime Control and Safe Streets Act of 1968 ("the 1968 Act"); the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) ("the 1994 Act");

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the Victims of Child Abuse Act of 1990 ("the 1990 Act"); the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (Public Law 108–21); the Juvenile Justice and Delinquency Prevention Act of 1974 ("the 1974 Act"); and the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386); $387,275,000, including amounts for administrative costs, to remain available until expended: *Provided*, That all balances, unobligated and obligated, from grants and activities administered by the Office on Violence Against Women shall be transferred from the Office of Justice Programs to the Office on Violence Against Women within 60 days of enactment of this Act: *Provided further*, That of the amount provided—

(1) $11,897,000 for the court-appointed special advocate program, as authorized by section 217 of the 1990 Act;

(2) $1,925,000 for child abuse training programs for judicial personnel and practitioners, as authorized by section 222 of the 1990 Act;

(3) $983,000 for grants for televised testimony, as authorized by Part N of the 1968 Act;

(4) $187,086,000 for grants to combat violence against women, as authorized by part T of the 1968 Act, of which—

(A) $5,000,000 shall be for the National Institute of Justice for research and evaluation of violence against women;

(B) $10,000,000 shall be for the Office of Juvenile Justice and Delinquency Prevention for the Safe Start Program, as authorized by the 1974 Act; and

(C) $12,500,000 shall be for transitional housing assistance grants for victims of domestic violence, stalking or sexual assault as authorized by Public Law 108–21;

(5) $63,491,000 for grants to encourage arrest policies as authorized by part U of the 1968 Act;

(6) $39,685,000 for rural domestic violence and child abuse enforcement assistance grants, as authorized by section 40295(a) of the 1994 Act;

(7) $4,415,000 for training programs as authorized by section 40152 of the 1994 Act, and for related local demonstration projects;

(8) $2,950,000 for grants to improve the stalking and domestic violence databases, as authorized by section 40602 of the 1994 Act;

(9) $9,175,000 to reduce violent crimes against women on campus, as authorized by section 1108(a) of Public Law 106–386;

(10) $39,740,000 for legal assistance for victims, as authorized by section 1201(c) of Public Law 106–386;

(11) $4,600,000 for enhancing protection for older and disabled women from domestic violence and sexual assault, as authorized by section 40802 of the 1994 Act;

(12) $14,078,000 for the safe havens for children pilot program, as authorized by section 1301(a) of Public Law 106–386; and

(13) $7,250,000 for education and training to end violence against and abuse of women with disabilities, as authorized by section 1402(a) of Public Law 106–386.

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OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968, the Missing Children's Assistance Act, including salaries and expenses in connection therewith, the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Public Law 108–21), and the Victims of Crime Act of 1984, $227,900,000, to remain available until expended.

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) ("the 1994 Act"); the Omnibus Crime Control and Safe Streets Act of 1968 ("the 1968 Act"); the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386); and other programs; $1,295,510,000 (including amounts for administrative costs, which shall be transferred to and merged with the "Justice Assistance" account): *Provided,* That funding provided under this heading shall remain available until expended, as follows—

(1) $634,000,000 for the Edward Byrne Memorial Justice Assistance Grant program pursuant to the amendments made by section 201 of H.R. 3036 of the 108th Congress, as passed by the House of Representatives on March 30, 2004 (except that the special rules for Puerto Rico established pursuant to such amendments shall not apply for purposes of this Act), of which—

(A) $85,000,000 shall be for Boys and Girls Clubs in public housing facilities and other areas in cooperation with State and local law enforcement, as authorized by section 401 of Public Law 104–294 (42 U.S.C. 13751 note);

(B) $10,000,000 shall be available for the National Institute of Justice in assisting units of local government to identify, select, develop, modernize, and purchase new technologies for use by law enforcement; and

(C) $2,500,000 for USA Freedom Corps activities;

(2) $305,000,000 for the State Criminal Alien Assistance Program, as authorized by section 242(j) of the Immigration and Nationality Act;

(3) $30,000,000 is for the Southwest Border Prosecutor Initiative to reimburse State, county, parish, tribal, or municipal governments only for costs associated with the prosecution of criminal cases declined by local United States Attorneys offices;

(4) $18,000,000 for assistance to Indian tribes, of which—

(A) $5,000,000 shall be available for grants under section 20109(a)(2) of subtitle A of title II of the 1994 Act;

(B) $8,000,000 shall be available for the Tribal Courts Initiative; and

(C) $5,000,000 shall be available for demonstration projects on alcohol and crime in Indian Country;

(5) $170,027,000 for discretionary grants authorized by subpart 2 of part E, of title I of the 1968 Act, notwithstanding the provisions of section 511 of said Act;

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(6) $10,000,000 for victim services programs for victims of trafficking, as authorized by section 107(b)(2) of Public Law 106–386;

(7) $883,000 for the Missing Alzheimer's Disease Patient Alert Program, as authorized by section 240001(c) of the 1994 Act;

(8) $40,000,000 for Drug Courts, as authorized by Part EE of the 1968 Act;

(9) $2,000,000 for public awareness programs addressing marketing scams aimed at senior citizens, as authorized by section 250005(3) of the 1994 Act;

(10) $10,000,000 for a prescription drug monitoring program;

(11) $37,000,000 for prison rape prevention and prosecution programs as authorized by the Prison Rape Elimination Act of 2003 (Public Law 108–79), of which $1,000,000 shall be transferred to the National Prison Rape Elimination Commission for authorized activities;

(12) $25,000,000 for grants for residential substance abuse treatment for State prisoners, as authorized by part S of the 1968 Act;

(13) $10,500,000 for a program to improve State and local law enforcement intelligence capabilities including training to ensure that constitutional rights, civil liberties, civil rights, and privacy interests are protected throughout the intelligence process;

(14) $1,000,000 for a State and local law enforcement hate crimes training and technical assistance program;

(15) $2,000,000 for Law Enforcement Family Support Programs, as authorized by section 1001(a)(21) of the 1968 Act; and

(16) $100,000 for Motor Vehicle Theft Prevention Programs, as authorized by section 220002(h) of the 1994 Act:

Provided, That, if a unit of local government uses any of the funds made available under this title to increase the number of law enforcement officers, the unit of local government will achieve a net gain in the number of law enforcement officers who perform nonadministrative public safety service.

WEED AND SEED PROGRAM FUND

For necessary expenses, including salaries and related expenses of the Executive Office for Weed and Seed, to implement "Weed and Seed" program activities, $62,000,000, to remain available until September 30, 2006, for inter-governmental agreements, including grants, cooperative agreements, and contracts, with State and local law enforcement agencies, non-profit organizations, and agencies of local government engaged in the investigation and prosecution of violent and gang-related crimes and drug offenses in "Weed and Seed" designated communities, and for either reimbursements or transfers to appropriation accounts of the Department of Justice and other Federal agencies which shall be specified by the Attorney General to execute the "Weed and Seed" program strategy: *Provided,* That funds designated by Congress through language for other Department of Justice appropriation accounts for "Weed and Seed" program activities shall be managed and executed by the Attorney General through the Executive Office for Weed and Seed: *Provided further,* That the Attorney General may direct the use of other

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Department of Justice funds and personnel in support of "Weed and Seed" program activities only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act: *Provided further,* That of the funds appropriated for the Executive Office for Weed and Seed, $2,000,000 shall be directed for comprehensive community development training and technical assistance.

COMMUNITY ORIENTED POLICING SERVICES

For activities authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) (including administrative costs), $606,446,000, to remain available until expended: *Provided,* That funds that become available as a result of deobligations from prior year balances may not be obligated except in accordance with section 605 of this Act: *Provided further,* That of the funds under this heading, not to exceed $2,575,000 shall be available for the Office of Justice Programs for reimbursable services associated with programs administered by the Community Oriented Policing Services Office: *Provided further,* That section 1703(b) and (c) of the Omnibus Crime Control and Safe Streets Act of 1968 ("the 1968 Act") shall not apply to non-hiring grants made pursuant to part Q of title I thereof (42 U.S.C. 3796dd et seq.). Of the amounts provided—

(1) $10,000,000 is for the hiring of law enforcement officers, including $5,000,000 for school resource officers;

(2) $15,000,000 is for training and technical assistance;

(3) $20,000,000 is for improving tribal law enforcement including equipment and training;

(4) $100,000,000 is for the COPS Interoperable Communications Technology Program;

(5) $7,500,000 is for a police integrity program;

(6) $25,000,000 is for the matching grant program for law enforcement armor vests as authorized by section 2501 of part Y of the 1968 Act: *Provided,* That not to exceed 2 percent of such funds shall be available to the Office of Justice Programs for testing of and research relating to law enforcement armor vests;

(7) $52,556,000 is for policing initiatives to combat methamphetamine production and trafficking and to enhance policing initiatives in "drug hot spots";

(8) $15,000,000 is for Police Corps education and training: *Provided,* That the out-year program costs of new recruits shall be fully funded from funds currently available;

(9) $138,615,000 is for a law enforcement technology program;

(10) $25,000,000 is for grants to upgrade criminal records, as authorized under the Crime Identification Technology Act of 1998 (42 U.S.C. 14601);

(11) $28,450,000 is for grants, contracts and other assistance to States under section 102(b) of the Crime Identification Technology Act of 1998 (42 U.S.C. 14601);

(12) $110,000,000 is for a DNA analysis and capacity enhancement program;

(13) $15,000,000 is for Paul Coverdell Forensic Sciences Improvement Grants under part BB of title I of the 1968 Act (42 U.S.C. 3797j et seq.);

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(14) $10,000,000 is for an offender re-entry program, as authorized by Public Law 107–273;

(15) $4,325,000 is for the Safe Schools Initiative; and

(16) not to exceed $30,000,000 is for program management and administration.

JUVENILE JUSTICE PROGRAMS

For grants, contracts, cooperative agreements, and other assistance authorized by the Juvenile Justice and Delinquency Prevention Act of 1974 ("the Act"), and other juvenile justice programs, including salaries and expenses in connection therewith to be transferred to and merged with the appropriations for Justice Assistance, $384,177,000, to remain available until expended, as follows—

(1) $3,000,000 for concentration of Federal efforts, as authorized by section 204 of the Act;

(2) $84,000,000 for State and local programs authorized by section 221 of the Act, including training and technical assistance to assist small, non-profit organizations with the Federal grants process;

(3) $102,177,000 for demonstration projects, as authorized by sections 261 and 262 of the Act;

(4) $10,000,000 for research, evaluation, training and technical assistance, as authorized by sections 251 and 252 of the Act;

(5) $15,000,000 for juvenile mentoring programs;

(6) $80,000,000 for delinquency prevention, as authorized by section 505 of the Act, of which—

(A) $10,000,000 shall be for the Tribal Youth Program;

(B) $25,000,000 shall be for a gang resistance education and training program to be administered by the Bureau of Justice Assistance and to be coordinated with the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Office of Juvenile Justice and Delinquency Prevention; and

(C) $25,000,000 shall be for grants of $360,000 to each State and $6,640,000 shall be available for discretionary grants to States, for programs and activities to enforce State laws prohibiting the sale of alcoholic beverages to minors or the purchase or consumption of alcoholic beverages by minors, prevention and reduction of consumption of alcoholic beverages by minors, and for technical assistance and training;

(7) $5,000,000 for Project Childsafe;

(8) $15,000,000 for the Secure Our Schools Act as authorized by Public Law 106–386;

(9) $15,000,000 for programs authorized by the Victims of Child Abuse Act of 1990; and

(10) $55,000,000 for the Juvenile Accountability Block Grants program as authorized by Public Law 107–273 and Guam shall be considered a State:

Provided, That not more than 10 percent of each amount may be used for research, evaluation, and statistics activities designed to benefit the programs or activities authorized: *Provided further*, That not more than 2 percent of each amount may be used for training and technical assistance.

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PUBLIC SAFETY OFFICERS BENEFITS

To remain available until expended, for payments authorized by part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796), such sums as are necessary, as authorized by section 6093 of Public Law 100–690 (102 Stat. 4339–4340); and $3,615,000, to remain available until expended for payments as authorized by section 1201(b) of said Act; and $2,795,000 for educational assistance, as authorized by section 1212 of the 1968 Act.

GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

SEC. 101. In addition to amounts otherwise made available in this title for official reception and representation expenses, a total of not to exceed $60,000 from funds appropriated to the Department of Justice in this title shall be available to the Attorney General for official reception and representation expenses.

SEC. 102. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape: *Provided*, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.

SEC. 103. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of, any abortion.

SEC. 104. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: *Provided*, That nothing in this section in any way diminishes the effect of section 103 intended to address the philosophical beliefs of individual employees of the Bureau of Prisons.

SEC. 105. Authorities contained in the 21st Century Department of Justice Appropriations Authorization Act (Public Law 107–273) shall remain in effect until the effective date of a subsequent Department of Justice appropriations authorization Act.

SEC. 106. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided,* That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section: *Provided further,* That none of the funds appropriated to "Buildings and Facilities, Federal Prison System" in this or any other Act may be transferred to "Salaries and Expenses, Federal Prison System", or any other Department of Justice account, unless the President certifies that such a transfer is necessary to the national security interests of the United States, and such authority shall not be delegated, and shall be subject to section 605 of this Act.

SEC. 107. Section 114 of Public Law 107–77 shall remain in effect during fiscal year 2005.

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SEC. 108. In addition to the amounts provided under "Salaries and Expenses, United States Attorneys", $15,000,000 shall be for Project Seahawk and shall remain available until expended.

SEC. 109. The Attorney General is authorized to extend through September 30, 2006, the Personnel Management Demonstration Project transferred to the Attorney General pursuant to section 1115 of the Homeland Security Act of 2002, Public Law 107–296 (6 U.S.C. 533) without limitation on the number of employees or the positions covered.

SEC. 110. (a) None of the funds made available in this Act may be used by the Drug Enforcement Administration to establish a procurement quota following the approval of a new drug application or an abbreviated new drug application for a controlled substance.

(b) The limitation established in subsection (a) shall not apply until 180 days after enactment of this Act.

SEC. 111. The limitation established in the preceding section shall not apply to any new drug application or abbreviated new drug application for which the Drug Enforcement Administration has reviewed and provided public comments on labeling, promotion, risk management plans, and any other documents.

SEC. 112. (a) Section 8335(b) of title 5, United States Code, is amended—

(1) by striking "(b)" and inserting "(b)(1)"; and

(2) by adding at the end the following:

"(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2009.".

(b) Section 8425(b) of title 5, United States Code, is amended—

(1) by striking "(b)" and inserting "(b)(1)"; and

(2) by adding at the end the following:

"(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2009.".

SEC. 113. (a) Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end the following:

"§ 5759. Retention and relocation bonuses for the Federal Bureau of Investigation

"(a) AUTHORITY.—The Director of the Federal Bureau of Investigation, after consultation with the Director of the Office of Personnel Management, may pay, on a case-by-case basis, a bonus under this section to an employee of the Bureau if—

"(1)(A) the unusually high or unique qualifications of the employee or a special need of the Bureau for the employee's services makes it essential to retain the employee; and

"(B) the Director of the Federal Bureau of Investigation determines that, in the absence of such a bonus, the employee would be likely to leave—

"(i) the Federal service; or

"(ii) for a different position in the Federal service; or

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"(2) the individual is transferred to a different geographic area with a higher cost of living (as determined by the Director of the Federal Bureau of Investigation).

"(b) SERVICE AGREEMENT.—Payment of a bonus under this section is contingent upon the employee entering into a written service agreement with the Bureau to complete a period of service with the Bureau. Such agreement shall include—

"(1) the period of service the individual shall be required to complete in return for the bonus; and

"(2) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

"(c) LIMITATION ON AUTHORITY.—A bonus paid under this section may not exceed 50 percent of the employee's basic pay.

"(d) IMPACT ON BASIC PAY.—A retention bonus is not part of the basic pay of an employee for any purpose.

"(e) TERMINATION OF AUTHORITY.—The authority to grant bonuses under this section shall cease to be available after December 31, 2009.".

(b) The analysis for chapter 57 of title 5, United States Code, is amended by adding at the end the following:

"5759. Retention and relocation bonuses for the Federal Bureau of Investigation.".

SEC. 114. (a) Chapter 35 of title 5 of the United States Code, is amended by adding at the end the following:

"SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

"§ 3598. Federal Bureau of Investigation Reserve Service

"(a) ESTABLISHMENT.—The Director of the Federal Bureau of Investigation may provide for the establishment and training of a Federal Bureau of Investigation Reserve Service (hereinafter in this section referred to as the 'FBI Reserve Service') for temporary reemployment of employees in the Bureau during periods of emergency, as determined by the Director.

"(b) MEMBERSHIP.—Membership in the FBI Reserve Service shall be limited to individuals who previously served as full-time employees of the Bureau.

"(c) ANNUITANTS.—If an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby. An annuitant so reemployed shall not be considered an employee for the purposes of chapter 83 or 84.

"(d) NO IMPACT ON BUREAU PERSONNEL CEILING.—FBI Reserve Service members reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Bureau.

"(e) EXPENSES.—The Director may provide members of the FBI Reserve Service transportation and per diem in lieu of subsistence, in accordance with applicable provisions of this title, for the purpose of participating in any training that relates to service as a member of the FBI Reserve Service.

"(f) LIMITATION ON MEMBERSHIP.—Membership of the FBI Reserve Service is not to exceed 500 members at any given time.".

(b) The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

"3598. Federal Bureau of Investigation reserve service.".

SEC. 115. Section 5377(a)(2) of title 5, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(3) by inserting after subparagraph (F) the following:

"(G) a position at the Federal Bureau of Investigation, the primary duties and responsibilities of which relate to intelligence functions (as determined by the Director of the Federal Bureau of Investigation).".

SEC. 116. Notwithstanding any other provision of law, Public Law 102–395 section 102(b) shall extend to the Bureau of Alcohol, Tobacco, Firearms and Explosives in the conduct of undercover investigative operations and shall apply without fiscal year limitation with respect to any undercover investigative operation initiated by the Bureau of Alcohol, Tobacco, Firearms and Explosives that is necessary for the detection and prosecution of crimes against the United States.

SEC. 117. Section 1344 of title 31 of the United States Code, is amended in subsection (b) paragraph (6) by inserting after "Federal Bureau of Investigation," the words "Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives". This amendment shall take effect as if enacted on January 1, 2004.

SEC. 118. Within 45 days of enactment of this Act, the Bureau of Prisons will submit a comprehensive financial plan for the Federal Prison System to the Committees on Appropriations.

SEC. 119. The Bureau of Prisons shall implement a pilot program in the Southern District of Florida which would allow the Federal Public Defender to transfer computers to the local detention facility to review electronic discovery. These computers will be used according to schedules and protocols developed by the staff of the local facility in consultation with the Federal Defender and the District Court's Criminal Justice Act Selection Committee.

SEC. 120. None of the funds made available to the Department of Justice in this Act may be used for the purpose of transporting an individual who is a prisoner pursuant to conviction for crime under State or Federal law and is classified as a maximum or high security prisoner, other than to a prison or other facility certified by the Federal Bureau of Prisons as appropriately secure for housing such a prisoner.

SEC. 121. (a) None of the funds appropriated by this Act may be used by Federal prisons to purchase cable television services, to rent or purchase videocassettes, videocassette recorders, or other audiovisual or electronic equipment used primarily for recreational purposes.

(b) The preceding sentence does not preclude the renting, maintenance, or purchase of audiovisual or electronic equipment for inmate training, religious, or educational programs.

SEC. 122. Section 3(e) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended—

(1) in paragraph (1), by striking "through fiscal year 2011"; and

(2) in paragraph (2), by striking subparagraphs (E) through (J).

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SEC. 123. The Prison Rape Elimination Act of 2003 is amended—

(1) in section 7—

(A) in the heading by striking "**REDUCTION**" and inserting "**ELIMINATION**"; and

(B) in subsection (a) by striking "Reduction" and inserting "Elimination"; and

(2) in section 1(b), by striking "Reduction" in the item relating to section 7 and inserting "Elimination".

SEC. 124. (a) The President shall award and present a 9/11 Heroes Medal of Valor of appropriate design, with ribbons and appurtenances, to an appropriate representative of those individuals who were members of public safety agencies and were killed in the terrorist attacks in the United States on September 11, 2001, as certified by the Attorney General, on behalf of such individuals.

(b) The presentation of medals pursuant to subsection (a) shall be made as close as feasible to the 4th anniversary of the terrorist attacks described in that subsection.

(c)(1) To be eligible for the medal referred to in subsection (a), an individual shall have been a public safety officer (as defined in section 5 of the Public Safety Officer Medal of Valor Act of 2001) who—

(A) was present in New York, Virginia, or Pennsylvania on September 11, 2001;

(B) participated in the response that day to the terrorist attacks on the World Trade Center, the terrorist attack on the Pentagon, or the terrorist attack that resulted in the crash of the fourth airplane in Pennsylvania; and

(C) died as a result of such participation.

(2) An individual who was killed in one of the attacks referred to in paragraph (1)(B) shall be deemed, for purposes of the eligibility requirement of that paragraph, to have participated in the response.

(3) The certification of eligible recipients of the medal under subsection (a) shall be completed by the Attorney General by July 1, 2005.

(d)(1)(A) The design of the medal under this section shall be selected by the Attorney General after consultation with—

(i) the Commission of Fine Arts; and

(ii) the Institute of Heraldry within the Department of Defense, regarding the design and artistry of the 9/11 Heroes Medal of Valor.

(B) The Attorney General may also consider suggestions received by the Department of Justice regarding the design of the medal, including those made by persons not employed by the Department of Justice.

(2) After such consultation and selection of design, the Attorney General shall make necessary arrangements with the Secretary of the Treasury for the Secretary to prepare and strike, on a reimbursable basis, such number of medals as may be required to carry out this section.

(3) The medals struck under this section are national medals for purposes of chapter 51 of title 31, United States Code.

(e) The Attorney General shall establish such procedures and requirements as may be necessary to carry out this section.

(f) There are authorized to be appropriated to the Attorney General such sums as may be necessary to carry out this section.

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SEC. 125. (a) The Attorney General shall transfer, without reimbursement, to the Secretary of the Army a parcel of real property, including any improvements thereon, consisting of approximately 57.8 acres located on River Road in Prince George County, Virginia. The real property is currently under the administrative jurisdiction of the Bureau of Prisons. Upon transfer of the real property under this subsection, the Secretary of the Army shall assume administrative and jurisdictional accountability over property and include the property as part of Fort Lee, Virginia.

(b) The exact acreage and legal description of the real property to be transferred under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Army.

SEC. 126. The Department of Justice shall establish an Office of Justice for Victims of Overseas Terrorism.

This title may be cited as the "Department of Justice Appropriations Act, 2005".

TITLE II—DEPARTMENT OF COMMERCE AND RELATED AGENCIES

TRADE AND INFRASTRUCTURE DEVELOPMENT

RELATED AGENCIES

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SALARIES AND EXPENSES

For necessary expenses of the Office of the United States Trade Representative, including the hire of passenger motor vehicles and the employment of experts and consultants as authorized by 5 U.S.C. 3109, $41,552,000, of which $1,000,000 shall remain available until expended: *Provided,* That not to exceed $124,000 shall be available for official reception and representation expenses: *Provided further,* That not less than $2,000,000 provided under this heading shall be for expenses authorized by 19 U.S.C. 2451 and 1677b(c): *Provided further,* That negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties: *Provided further,* That there is established a position of Chief Negotiator for Intellectual Property Enforcement.

NATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATION COUNCIL

For necessary expenses of the National Intellectual Property Law Enforcement Coordination Council to coordinate domestic and international intellectual property protection and law enforcement relating to intellectual property among Federal and foreign entities, $2,000,000, to remain available until September 30, 2006: *Provided,* That there shall be at the head of the National Intellectual Property Law Enforcement Coordination Council a Coordinator for International Intellectual Property Enforcement: *Provided further,* That the Coordinator for International Intellectual Property Enforcement shall be appointed by the President: *Provided further,* That no person shall serve as the Coordinator for International Intellectual Property Enforcement while serving in any other position in the Federal Government: *Provided further,* That the co-chairs of the

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National Intellectual Property Law Enforcement Coordination Council, as designated by Public Law 106–58, shall report to the Coordinator for International Intellectual Property Enforcement on matters concerning the National Intellectual Property Law Enforcement Coordination Council: *Provided further,* That the National Intellectual Property Law Enforcement Coordination Council shall—

(1) establish policies, objectives, and priorities concerning international intellectual property protection and intellectual property law enforcement;

(2) promulgate a strategy for protecting American intellectual property overseas; and

(3) coordinate and oversee implementation by agencies with responsibilities for intellectual property protection and intellectual property law enforcement of the policies, objectives, and priorities established under paragraph (1) and the fulfillment of the responsibilities assigned to such agencies in the strategy described in paragraph (2):

Provided further, That the Coordinator for International Intellectual Property Enforcement shall develop for each fiscal year, with the advice of the members of the National Intellectual Property Law Enforcement Coordination Council and any other departments and agencies with responsibilities for intellectual property protection and intellectual property law enforcement, a budget proposal to implement the strategy described in paragraph (2) and for the operations of the National Intellectual Property Law Enforcement Coordination Council, and shall transmit such budget proposal to the President and to the Congress: *Provided further,* That the Coordinator for International Intellectual Property Enforcement may select, appoint, employ, and fix compensation of such officers and employees as may be necessary to carry out the functions of the National Intellectual Property Law Enforcement Coordination Council: *Provided further,* That the Coordinator for International Intellectual Property Enforcement may direct, with the concurrence of the Secretary of a department or head of an agency, the temporary reassignment within the Federal Government of personnel employed by such department or agency.

INTERNATIONAL TRADE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the International Trade Commission, including hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, and not to exceed $2,500 for official reception and representation expenses, $61,700,000, to remain available until expended.

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For necessary expenses for international trade activities of the Department of Commerce provided for by law, and for engaging in trade promotional activities abroad, including expenses of grants and cooperative agreements for the purpose of promoting exports

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of United States firms, without regard to 44 U.S.C. 3702 and 3703; full medical coverage for dependent members of immediate families of employees stationed overseas and employees temporarily posted overseas; travel and transportation of employees of the United States and Foreign Commercial Service between two points abroad, without regard to 49 U.S.C. 40118; employment of Americans and aliens by contract for services; rental of space abroad for periods not exceeding 10 years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed $327,000 for official representation expenses abroad; purchase of passenger motor vehicles for official use abroad, not to exceed $30,000 per vehicle; obtaining insurance on official motor vehicles; and rental of tie lines, $401,513,000, to remain available until expended, of which $8,000,000 is to be derived from fees to be retained and used by the International Trade Administration, notwithstanding 31 U.S.C. 3302: *Provided*, That $48,509,000 shall be for Manufacturing and Services; $40,087,000 shall be for Market Access and Compliance; $64,544,000 shall be for the Import Administration of which not less than $3,000,000 is for the Office of China Compliance; $222,365,000 shall be for the United States and Foreign Commercial Service of which $1,500,000 is for the Advocacy Center, $2,500,000 is for the Trade Information Center, and $2,100,000 is for a China and Middle East Business Center; and $26,008,000 shall be for Executive Direction and Administration: *Provided further*, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities without regard to section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912); and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 shall include payment for assessments for services provided as part of these activities: *Provided further,* That negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties: *Provided further,* That of the amount provided, $1,000,000 is for a grant to the United States Air and Trade Show Inc., to study the feasibility of the establishment and operation of a biennial United States international air trade show to promote international exports from the United States and for initial expenses of implementing the recommendations set forth in the study: *Provided further*, That for purposes of section 31.205(d)(2) of the Federal Acquisition Regulation, any international air and trade show conducted by the grantee shall be considered to be a trade show containing a significant effort to promote exports from the United States.

BUREAU OF INDUSTRY AND SECURITY

OPERATIONS AND ADMINISTRATION

For necessary expenses for export administration and national security activities of the Department of Commerce, including costs associated with the performance of export administration field activities both domestically and abroad; full medical coverage for

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dependent members of immediate families of employees stationed overseas; employment of Americans and aliens by contract for services abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed $15,000 for official representation expenses abroad; awards of compensation to informers under the Export Administration Act of 1979, and as authorized by 22 U.S.C. 401(b); and purchase of passenger motor vehicles for official use and motor vehicles for law enforcement use with special requirement vehicles eligible for purchase without regard to any price limitation otherwise established by law, $68,393,000, to remain available until expended, of which $7,200,000 shall be for inspections and other activities related to national security: *Provided,* That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities: *Provided further,* That payments and contributions collected and accepted for materials or services provided as part of such activities may be retained for use in covering the cost of such activities, and for providing information to the public with respect to the export administration and national security activities of the Department of Commerce and other export control programs of the United States and other governments.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For grants for economic development assistance as provided by the Public Works and Economic Development Act of 1965, and for trade adjustment assistance, $257,423,000, to remain available until expended.

SALARIES AND EXPENSES

For necessary expenses of administering the economic development assistance programs as provided for by law, $30,483,000: *Provided*, That these funds may be used to monitor projects approved pursuant to title I of the Public Works Employment Act of 1976, title II of the Trade Act of 1974, and the Community Emergency Drought Relief Act of 1977.

MINORITY BUSINESS DEVELOPMENT AGENCY

MINORITY BUSINESS DEVELOPMENT

For necessary expenses of the Department of Commerce in fostering, promoting, and developing minority business enterprise, including expenses of grants, contracts, and other agreements with public or private organizations, $29,899,000.

ECONOMIC AND INFORMATION INFRASTRUCTURE

ECONOMIC AND STATISTICAL ANALYSIS

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, of economic and statistical analysis programs of the Department of Commerce,

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$80,000,000, to remain available until September 30, 2006, of which $2,000,000 is for a grant to the National Academy of Public Administration to study impacts of off-shoring on the economy and workforce of the United States.

BUREAU OF THE CENSUS

SALARIES AND EXPENSES

For expenses necessary for collecting, compiling, analyzing, preparing, and publishing statistics, provided for by law, $198,765,000.

PERIODIC CENSUSES AND PROGRAMS

For necessary expenses related to the 2010 decennial census, $393,515,000, to remain available until September 30, 2006: *Provided*, That of the total amount available related to the 2010 decennial census, $165,196,000 is for the Re-engineered Design Process for the Short-Form Only Census, $146,009,000 is for the American Community Survey, and $82,310,000 is for the Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) system.

In addition, for expenses to collect and publish statistics for other periodic censuses and programs provided for by law, $162,601,000, to remain available until September 30, 2006, of which $73,473,000 is for economic statistics programs and $89,128,000 is for demographic statistics programs: *Provided*, That regarding construction of a facility at the Suitland Federal Center, quarterly reports regarding the expenditure of funds and project planning, design and cost decisions shall be provided by the Bureau, in cooperation with the General Services Administration, to the Committees on Appropriations of the Senate and the House of Representatives: *Provided further*, That none of the funds provided in this or any other Act under the heading "Bureau of the Census, Periodic Censuses and Programs" shall be used to fund the construction and tenant build-out costs of a facility at the Suitland Federal Center: *Provided further,* That none of the funds provided in this or any other Act for any fiscal year may be used for the collection of Census data on race identification that does not include "some other race" as a catagory.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses, as provided for by law, of the National Telecommunications and Information Administration (NTIA), $17,433,000, to remain available until September 30, 2006: *Provided*, That, notwithstanding 31 U.S.C. 1535(d), the Secretary of Commerce shall charge Federal agencies for costs incurred in spectrum management, analysis, and operations, and related services and such fees shall be retained and used as offsetting collections for costs of such spectrum services, to remain available until expended: *Provided further*, That the Secretary of Commerce is authorized to retain and use as offsetting collections all funds transferred, or previously transferred, from other Government agencies for all costs incurred in telecommunications research,

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engineering, and related activities by the Institute for Telecommunication Sciences of NTIA, in furtherance of its assigned functions under this paragraph, and such funds received from other Government agencies shall remain available until expended.

PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING AND CONSTRUCTION

For the administration of grants authorized by section 392 of the Communications Act of 1934, $21,769,000, to remain available until expended as authorized by section 391 of the Act: *Provided,* That not to exceed $2,000,000 shall be available for program administration as authorized by section 391 of the Act: *Provided further,* That, notwithstanding the provisions of section 391 of the Act, the prior year unobligated balances may be made available for grants for projects for which applications have been submitted and approved during any fiscal year.

INFORMATION INFRASTRUCTURE GRANTS

For the administration of prior year grants, recoveries and unobligated balances of funds previously appropriated for grants are available only for the administration of all open grants until their expiration.

UNITED STATES PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

For necessary expenses of the United States Patent and Trademark Office provided for by law, including defense of suits instituted against the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, $1,336,000,000, to remain available until expended, which shall be derived from offsetting collections assessed and collected pursuant to 15 U.S.C. 1113 and 35 U.S.C. 41 and 376, and shall be retained and used for necessary expenses: *Provided*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2005, so as to result in a fiscal year 2005 appropriation from the general fund estimated at $0: *Provided further*, That during fiscal year 2005, should the total amount of offsetting fee collections be less than $1,356,000,000, this amount shall be reduced accordingly: *Provided further*, That not less than 526 full-time equivalents, 530 positions and $72,899,000 shall be for the examination of trademark applications; and not less than 5,057 full-time equivalents, 5,139 positions and $759,021,000 shall be for the examination and searching of patent applications: *Provided further*, That not more than 244 full-time equivalents, 251 positions and $31,906,000 shall be for the Office of the General Counsel: *Provided further,* That of amounts made available under this heading, $20,000,000 shall only be available for initiatives to protect United States intellectual property overseas: *Provided further*, That from amounts provided herein, not to exceed $1,000 shall be made available in fiscal year 2005 for official reception and representation expenses: *Provided further*, That notwithstanding section 1353 of title 31, United States Code, no employee of the United States Patent and Trademark Office may accept payment or reimbursement from a non-Federal

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entity for travel, subsistence, or related expenses for the purpose of enabling an employee to attend and participate in a convention, conference, or meeting when the entity offering payment or reimbursement is a person or corporation subject to regulation by the Office, or represents a person or corporation subject to regulation by the Office, unless the person or corporation is an organization exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986.

In addition, fees authorized by title VIII of this Act may be collected and credited to this account as offsetting collections: *Provided,* That not to exceed $218,754,000 derived from such offsetting collections shall be available until expended for authorized purposes: *Provided further*, That not less than 58 full-time equivalents, 72 positions and $5,551,000 shall be for the examination of trademark applications; and not less than 378 full-time equivalents, 709 positions and $106,986,000 shall be for the examination and searching of patent applications: *Provided further*, That not more than 20 full-time equivalents, 20 positions and $4,955,000 shall be for the Office of the General Counsel: *Provided further*, That the total amount appropriated from fees collected in fiscal year 2005, including such increased fees, shall not exceed $1,574,754,000: *Provided further*, That in fiscal year 2005, from the amounts made available for "Salaries and Expenses" for the United States Patent and Trademark Office (PTO), the amounts necessary to pay: (1) the difference between the percentage of basic pay contributed by the PTO and employees under section 8334(a) of title 5, United States Code, and the normal cost percentage (as defined by section 8331(17) of that title) of basic pay, of employees subject to subchapter III of chapter 83 of that title; and (2) the present value of the otherwise unfunded accruing costs, as determined by the Office of Personnel Management, of post-retirement life insurance and post-retirement health benefits coverage for all PTO employees, shall be transferred to the Civil Service Retirement and Disability Fund, the Employees Life Insurance Fund, and the Employees Health Benefits Fund, as appropriate, and shall be available for the authorized purposes of those accounts.

SCIENCE AND TECHNOLOGY

TECHNOLOGY ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Under Secretary for Technology Office of Technology Policy, $6,547,000: *Provided*, That section 8(a) of the Technology Administration Act of 1998 (15 U.S.C. 1511e(a)) is amended by striking "Technology Administration of" after "within the": *Provided further*, That $200,000 is for the World Congress on Information Technology.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For necessary expenses of the National Institute of Standards and Technology, $383,892,000, to remain available until expended, of which not to exceed $2,900,000 may be transferred to the "Working Capital Fund".

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INDUSTRIAL TECHNOLOGY SERVICES

For necessary expenses of the Manufacturing Extension Partnership of the National Institute of Standards and Technology, $109,000,000, to remain available until expended: *Provided,* That the Secretary of Commerce shall not recompete any existing Manufacturing Extension Partnership Center prior to 2007: *Provided further,* That hereafter the Manufacturing Extension Partnership Program authorized under 15 U.S.C. 278k shall be renamed the Hollings Manufacturing Partnership Program and the centers established and receiving funding under 15 U.S.C. 278k paragraph (a) shall be named the Hollings Manufacturing Extension Centers.

In addition, for necessary expenses of the Advanced Technology Program of the National Institute of Standards and Technology, $142,300,000, to remain available until expended.

CONSTRUCTION OF RESEARCH FACILITIES

For construction of new research facilities, including architectural and engineering design, and for renovation and maintenance of existing facilities, not otherwise provided for the National Institute of Standards and Technology, as authorized by 15 U.S.C. 278c–278e, $73,500,000, to remain available until expended.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of activities authorized by law for the National Oceanic and Atmospheric Administration, including maintenance, operation, and hire of aircraft and vessels; grants, contracts, or other payments to nonprofit organizations for the purposes of conducting activities pursuant to cooperative agreements; and relocation of facilities, $2,804,065,000, to remain available until September 30, 2006, except for funds provided for cooperative enforcement which shall remain available until September 30, 2007: *Provided,* That fees and donations received by the National Ocean Service for the management of national marine sanctuaries may be retained and used for the salaries and expenses associated with those activities, notwithstanding 31 U.S.C. 3302: *Provided further,* That in addition, $3,000,000 shall be derived by transfer from the fund entitled "Coastal Zone Management" and in addition $65,000,000 shall be derived by transfer from the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries": *Provided further,* That of the $2,872,065,000 provided for in direct obligations under this heading $2,804,065,000 is appropriated from the General Fund: *Provided further,* That no general administrative charge shall be applied against an assigned activity included in this Act or the report accompanying this Act except for additional costs above the fiscal year 2004 level of $2,600,000 for automating and modernizing the NOAA grant processing systems up to a total of $5,000,000: *Provided further,* That the total amount available for the National Oceanic and Atmospheric Administration corporate services administrative support costs shall not exceed $171,530,000: *Provided further,* That

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payments of funds made available under this heading to the Department of Commerce Working Capital Fund including Department of Commerce General Counsel legal services shall not exceed $39,500,000: *Provided further,* That any deviation from the amounts designated for specific activities in the report accompanying this Act shall be subject to the procedures set forth in section 605 of this Act: *Provided further,* That grants to States pursuant to sections 306 and 306A of the Coastal Zone Management Act of 1972, as amended, shall not exceed $2,000,000, unless funds provided for "Coastal Zone Management Grants" exceed funds provided in the previous fiscal year: *Provided further,* That if funds provided for "Coastal Zone Management Grants" exceed funds provided in the previous fiscal year, then no State shall receive more than 5 percent or less than 1 percent of the additional funds: *Provided further,* That none of the funds under this heading are available to alter the existing structure, organization, function, and funding of the National Marine Fisheries Service Southwest Region and Fisheries Science Center and Northwest Region and Fisheries Science Center: *Provided further,* That notwithstanding any other provision of law, $600,000 shall be available only for the National Oceanic and Atmospheric Administration Office of Space Commercialization: *Provided further,* That the personnel management demonstration project established at the National Oceanic and Atmospheric Administration pursuant to 5 U.S.C. 4703 may be expanded by 3,500 full-time positions to include up to 6,925 full-time positions and may be extended indefinitely: *Provided further,* That the Administrator of the National Oceanic and Atmospheric Administration may engage in formal and informal education activities, including primary and secondary education, related to the agency's mission goals.

In addition, for necessary retired pay expenses under the Retired Serviceman's Family Protection and Survivor Benefits Plan, and for payments for the medical care of retired personnel and their dependents under the Dependents Medical Care Act (10 U.S.C. ch. 55), such sums as may be necessary.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For procurement, acquisition and construction of capital assets, including alteration and modification costs, of the National Oceanic and Atmospheric Administration, $1,053,436,000 to remain available until September 30, 2007, except funds provided for construction of facilities which shall remain available until September 30, 2009, and funds provided for the Honolulu Laboratory and the Marine Environmental Health Research Laboratory which shall remain available until expended: *Provided,* That of the amounts provided for the National Polar-orbiting Operational Environmental Satellite System, funds shall only be made available on a dollar for dollar matching basis with funds provided for the same purpose by the Department of Defense: *Provided further,* That except to the extent expressly prohibited by any other law, the Department of Defense may delegate procurement functions related to the National Polar-orbiting Operational Environmental Satellite System to officials of the Department of Commerce pursuant to section 2311 of title 10, United States Code: *Provided further,* That any deviation from the amounts designated for specific activities in the report accompanying this Act shall be subject to the procedures set forth in section 605 of this Act: *Provided further,* That none

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of the funds provided in this Act or any other Act under the heading "National Oceanic and Atmospheric Administration, Procurement, Acquisition and Construction" shall be used to fund the General Services Administration's standard construction and tenant build-out costs of a facility at the Suitland Federal Center: *Provided further,* That beginning in fiscal year 2006 and for each fiscal year thereafter, the Secretary of Commerce shall include in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31, 10 United States Code) an estimate for each National Oceanic and Atmospheric Administration procurement, acquisition and construction program having a total multiyear program cost of more than $5,000,000 and simultaneously the budget justification materials shall include an estimate of the budgetary requirements for each such program for each of the 5 subsequent fiscal years.

PACIFIC COASTAL SALMON RECOVERY

For necessary expenses associated with the restoration of Pacific salmon populations, $90,000,000: *Provided*, That section 628(2)(A) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (16 U.S.C. 3645) is amended—

(1) by striking "2000, 2001, 2002, and 2003" and inserting "2005", and

(2) by inserting "Idaho," after "Oregon,".

COASTAL ZONE MANAGEMENT FUND

Of amounts collected pursuant to section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a), not to exceed $3,000,000 shall be transferred to the "Operations, Research, and Facilities" account to offset the costs of implementing such Act.

FISHERMEN'S CONTINGENCY FUND

For carrying out the provisions of title IV of Public Law 95–372, not to exceed $499,000, to be derived from receipts collected pursuant to that Act, to remain available until expended.

FISHERIES FINANCE PROGRAM ACCOUNT

For the costs of direct loans, $287,000, as authorized by the Merchant Marine Act of 1936: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in the Federal Credit Reform Act of 1990: *Provided further,* That these funds are only available to subsidize gross obligations for the principal amount of direct loans not to exceed $5,000,000 for Individual Fishing Quota loans, and not to exceed $59,000,000 for traditional direct loans, of which $40,000,000 may be used for direct loans to the United States distant water tuna fleet, and of which $19,000,000 may be used for direct loans to the United States menhaden fishery: *Provided further*, That none of the funds made available under this heading may be used for direct loans for any new fishing vessel that will increase the harvesting capacity in any United States fishery.

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OTHER

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For expenses necessary for the departmental management of the Department of Commerce provided for by law, including not to exceed $5,000 for official entertainment, $48,109,000: *Provided*, That not to exceed 12 full-time equivalents and $1,621,000 shall be expended for the legislative affairs function of the Department.

UNITED STATES TRAVEL AND TOURISM PROMOTION

For necessary expenses of the United States Travel and Tourism Promotion Program, as authorized by section 210 of Public Law 108–7, for programs promoting travel to the United States including grants, contracts, cooperative agreements and related costs, $10,000,000, to remain available until September 30, 2006.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978 (5 U.S.C. App.), $21,660,000.

GENERAL PROVISIONS—DEPARTMENT OF COMMERCE

SEC. 201. During the current fiscal year, applicable appropriations and funds made available to the Department of Commerce by this Act shall be available for the activities specified in the Act of October 26, 1949 (15 U.S.C. 1514), to the extent and in the manner prescribed by the Act, and, notwithstanding 31 U.S.C. 3324, may be used for advanced payments not otherwise authorized only upon the certification of officials designated by the Secretary of Commerce that such payments are in the public interest.

SEC. 202. During the current fiscal year, appropriations made available to the Department of Commerce by this Act for salaries and expenses shall be available for hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; services as authorized by 5 U.S.C. 3109; and uniforms or allowances therefore, as authorized by law (5 U.S.C. 5901–5902).

SEC. 203. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section: *Provided further*, That the Secretary of Commerce shall notify the Committees on Appropriations at least 15 days in advance of the acquisition or disposal of any capital asset (including land, structures, and equipment) not specifically provided for in this or any other Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act.

SEC. 204. Any costs incurred by a department or agency funded under this title resulting from personnel actions taken in response to funding reductions included in this title or from actions taken

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for the care and protection of loan collateral or grant property shall be absorbed within the total budgetary resources available to such department or agency: *Provided*, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: *Provided further*, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 205. Hereafter, none of the funds made available by this or any other Act for the Department of Commerce shall be available to reimburse the Unemployment Trust Fund or any other fund or account of the Treasury to pay for any expenses authorized by section 8501 of title 5, United States Code, for services performed by individuals appointed to temporary positions within the Bureau of the Census for purposes relating to the decennial censuses of population.

SEC. 206. Of the amount available from the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries", $10,000,000 shall be provided to the Alaska Fisheries Marketing Board, $1,000,000 shall be available for the "Wild American Shrimp Initiative", and $1,000,000 shall be available for the Gulf Oyster Industry Education Program: *Provided*, That: (1) the Alaska Fisheries Marketing Board (hereinafter "the Board") shall be a nonprofit organization and not an agency or establishment of the United States; (2) the Secretary may appoint, assign, or otherwise designate as Executive Director an employee of the Department of Commerce, who may serve in an official capacity in such position, with or without reimbursement, and such appointment or assignment shall be without interruption or loss of civil service status or privilege; and (3) the Board may adopt bylaws consistent with the purposes of this section, and may undertake other acts necessary to carry out the provisions of this section.

SEC. 207. (a) Hereafter, the Secretary of Commerce is authorized to operate a marine laboratory in South Carolina in accordance with a memorandum of agreement, including any future amendments, among the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, the State of South Carolina, the Medical University of South Carolina, and the College of Charleston as a partnership for collaborative, interdisciplinary marine scientific research.

(b) To carry out subsection (a), the agencies that are partners in the Laboratory may accept, apply for, use, and spend Federal, State, private and grant funds as necessary to further the mission of the Laboratory without regard to the source or of the period of availability of these funds and may apply for and hold patents, as well as share personnel, facilities, and property. Any funds collected or accepted by any partner may be used to offset all or portions of its costs, including overhead, without regard to 31 U.S.C. 143302(b); to reimburse other participating agencies for all or portions of their costs; and to fund research and facilities expansion. Funds for management and operation of the Laboratory may be used to sustain basic laboratory operations for all participating entities. The Secretary of Commerce is authorized to charge fees and enter into contracts, grants, cooperative agreements and other

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arrangements with Federal, State, private entities, and other entities, domestic and foreign, to further the mission of the Laboratory. Any funds collected from such fees or arrangements shall be used to support cooperative research, basic operations, and facilities enhancement at the Laboratory.

SEC. 208. Funds made available for salaries and administrative expenses to administer the Emergency Steel Loan Guarantee Program in section 211(b) of Public Law 108–199 shall remain available until expended.

SEC. 209. A fishing capacity reduction program for the Southeast Alaska purse seine fishery is authorized to be financed through a capacity reduction loan of $50,000,000 pursuant to sections 1111 and 1112 of title XI of the Merchant Marine Act of 1936 (46 U.S.C. App. 1279f and 1279g) subject to the conditions of this section. In accordance with the Federal Credit Reform Act of 1990, 2 U.S.C. 661 et seq., $500,000 is made available from funds appropriated for "Pacific Coastal Salmon Recovery" in this Act for the cost of the loan authorized by this section. The loan shall have a term of 30 years, except that the amount to be repaid in any 1 year shall not exceed 2 percent of the total value of salmon landed in the fishery and such repayment shall begin with salmon landed after January 1, 2006.

SEC. 210. Section 653(a) of Public Law 106–58 is amended by inserting the following: "(7) The Coordinator for International Intellectual Property Enforcement." after "Under Secretary of Commerce for International Trade.".

SEC. 211. Notwithstanding any other provision of law, of the amounts made available elsewhere in this title to the "National Institute of Standards and Technology, Construction of Research Facilities", $20,000,000 is for a cooperative agreement with the Medical University of South Carolina; $10,000,000 is for the Cancer Research Center in Hawaii; $4,000,000 is for the Thayer School of Engineering, of which $1,000,000 is for a biomass energy research project, $2,000,000 is for a smart laser beam project, and $1,000,000 is for research relating to biomaterials; $1,000,000 is for civic education programs at the New Hampshire Institute of Politics; $1,500,000 is for the Franklin Pierce Community Center; $2,000,000 is for the Southern New Hampshire University School of Community Economic Development; and $5,000,000 is for the Boston Museum of Science.

SEC. 212. Section 3(f) of Public Law 104–91 is amended by striking "and 2005" and inserting "2005, 2006, and 2007".

SEC. 213. Hereafter, notwithstanding any other Federal law related to the conservation and management of marine mammals, the State of Hawaii may enforce any State law or regulation with respect to the operation in State waters of recreational and commercial vessels, for the purpose of conservation and management of humpback whales, to the extent that such law or regulation is no less restrictive than Federal law.

SEC. 214. ESTABLISHMENT OF THE ERNEST F. HOLLINGS SCHOLARSHIP PROGRAM. (a) ESTABLISHMENT.—The Administrator of the National Oceanic and Atmospheric Administration shall establish and administer the Ernest F. Hollings Scholarship Program. Under the program, the Administrator shall award scholarships in oceanic and atmospheric science, research, technology, and education to be known as Ernest F. Hollings Scholarships.

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(b) PURPOSES.—The purposes of the Ernest F. Hollings Scholarships Program are—

(1) to increase undergraduate training in oceanic and atmospheric science, research, technology, and education and foster multidisciplinary training opportunities;

(2) to increase public understanding and support for stewardship of the ocean and atmosphere and improve environmental literacy;

(3) to recruit and prepare students for public service careers with the National Oceanic and Atmospheric Administration and other natural resource and science agencies at the Federal, State and Local levels of government; and

(4) to recruit and prepare students for careers as teachers and educators in oceanic and atmospheric science and to improve scientific and environmental education in the United States.

(c) AWARD.—Each Ernest F. Hollings Scholarship—

(1) shall be used to support undergraduate studies in oceanic and atmospheric science, research, technology, and education that support the purposes of the programs and missions of the National Oceanic and Atmospheric Administration;

(2) shall recognize outstanding scholarship and ability;

(3) shall promote participation by groups underrepresented in oceanic and atmospheric science and technology; and

(4) shall be awarded competitively in accordance with guidelines issued by the Administrator and published in the Federal Register.

(d) ELIGIBILITY.—In order to be eligible to participate in the program, an individual must—

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965) in an academic field or discipline described in subsection (c);

(2) be a United States citizen;

(3) not have received a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver; and

(4) submit an application at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

(e) DISTRIBUTION OF FUNDS.—The amount of each Ernest F. Hollings Scholarship shall be provided directly to a recipient selected by the Administrator upon receipt of certification that the recipient will adhere to a specific and detailed plan of study and research approved by an institution of higher education.

(f) FUNDING.—Of the total amount appropriated for fiscal year 2005 and annually hereafter to the National Oceanic and Atmospheric Administration, the Administrator shall make available for the Ernest F. Hollings Scholarship program one-tenth of 1 percent of such appropriations.

(g) SCHOLARSHIP REPAYMENT REQUIREMENT.—The Administrator shall require an individual receiving a scholarship under this section to repay the full amount of the scholarship to the National Oceanic and Atmospheric Administration if the Administrator determines that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship. Such repayments shall

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be deposited in the NOAA Operations, Research, and Facilities Appropriations Account and treated as an offsetting collection and only be available for financing additional scholarships.

SEC. 215. Section 402(f) of Public Law 107–372 is amended—

(1) in paragraph (1), by striking "All right" and inserting "For the period ending April 3, 2008, all right"; and

(2) in paragraph (3), by inserting "for the period ending April 3, 2008" after "and annually thereafter".

SEC. 216. Of the amounts made available under this heading for the National Oceanic and Atmospheric Administration, the Secretary of Commerce shall pay by March 1, 2005, $5,000,000 to the National Marine Sanctuaries Foundation to capitalize a fund for ocean activities.

SEC. 217. Any funding provided under this title used to implement the Department of Commerce's E-Government Initiatives shall be subject to the procedures set forth in section 605 of this Act.

SEC. 218. A fishing capacity reduction program for the Federal Gulf of Mexico Reef Fish Fishery Management Plan principally intended for commercial long line vessels is authorized to be financed through a capacity reduction loan of $35,000,000 pursuant to sections 1111 and 1112 of title XI of the Merchant Marine Act of 1936 (46 U.S.C. App. 1279f and 1279g) subject to the conditions of this section. In accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), $350,000 is hereby appropriated for the subsidy cost of the loan authorized under this section and shall remain available until expended. The Secretary of Commerce, working in close coordination with active fishery participants, is hereby authorized to design and implement a comprehensive voluntary capacity reduction program using the loan authorized under this section. The Secretary shall set the loan term at 35 years and repayment shall begin within 1 year of final implementation of the program. In addition to the authority of the Gulf of Mexico Regional Fishery Management Council to develop and recommend conservation and management measures for the Gulf of Mexico reef fish fishery, the Secretary of Commerce is authorized to develop and implement a limited access program pursuant to the standards set forth in section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(b)(6)).

SEC. 219. (a) DEFINITIONS.—In this section:

(1) AFA TRAWL CATCHER PROCESSOR SUBSECTOR.—The term "AFA trawl catcher processor subsector" means the owners of each catcher/processor listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (16 U.S.C. 1851 note).

(2) BSAI.—The term "BSAI" has the meaning given the term "Bering Sea and Aleutian Islands Management Area" in section 679.2 of title 50, Code of Federal Regulations (or successor regulation).

(3) CATCHER PROCESSOR SUBSECTOR.—The term "catcher processor subsector" means, as appropriate, one of the following:

(A) The longline catcher processor subsector.

(B) The AFA trawl catcher processor subsector.

(C) The non-AFA trawl catcher processor subsector.

(D) The pot catcher processor subsector.

(4) COUNCIL.—The term "Council" means the North Pacific Fishery Management Council established in section 302(a)(1)(G)

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of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(G)).

(5) LLP LICENSE.—The term "LLP license" means a Federal License Limitation program groundfish license issued pursuant to section 679.4(k) of title 50, Code of Federal Regulations (or successor regulation).

(6) LONGLINE CATCHER PROCESSOR SUBSECTOR.—The term "longline catcher processor subsector" means the holders of an LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod, and hook and line gear.

(7) NON-AFA TRAWL CATCHER PROCESSOR SUBSECTOR.—The term "non-AFA trawl catcher processor subsector" means the owner of each trawl catcher processor—

(A) that is not an AFA trawl catcher processor;

(B) to whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and

(C) that the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons of non-pollock groundfish during the period January 1, 1997 through December 31, 2002.

(8) NON-POLLOCK GROUNDFISH FISHERY.—The term "non-pollock groundfish fishery" means target species of Atka mackerel, flathead sole, Pacific cod, Pacific Ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI.

(9) POT CATCHER PROCESSOR SUBSECTOR.—The term "pot catcher processor subsector" means the holders of an LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod, and pot gear.

(10) SECRETARY.—Except as otherwise provided in this Act, the term "Secretary" means the Secretary of Commerce.

(b) AUTHORITY FOR BSAI CATCHER PROCESSOR CAPACITY REDUCTION PROGRAM.—

(1) IN GENERAL.—A fishing capacity reduction program for the non-pollock groundfish fishery in the BSAI is authorized to be financed through a capacity reduction loan of not more than $75,000,000 under sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g).

(2) RELATIONSHIP TO MERCHANT MARINE ACT, 1936.—The fishing capacity reduction program authorized by paragraph (1) shall be a program for the purposes of subsection (e) of section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f), except, notwithstanding subsection (b)(4) of such section, the capacity reduction loan authorized by paragraph (1) may have a maturity not to exceed 30 years.

(c) AVAILABILITY OF CAPACITY REDUCTION FUNDS TO CATCHER PROCESSOR SUBSECTORS.—

(1) IN GENERAL.—The Secretary shall make available the amounts of the capacity reduction loan authorized by subsection (b)(1) to each catcher processor subsector as described in this subsection.

(2) INITIAL AVAILABILITY OF FUNDS.—The Secretary shall make available the amounts of the capacity reduction loan authorized by subsection (b)(1) as follows:

(A) Not more than $36,000,000 for the longline catcher processor subsector.

(B) Not more than $6,000,000 for the AFA trawl catcher processor subsector.

(C) Not more than $31,000,000 for the non-AFA trawl catcher processor subsector.

(D) Not more than $2,000,000 for the pot catcher processor subsector.

(3) OTHER AVAILABILITY OF FUNDS.—After January 1, 2009, the Secretary may make available for fishing capacity reduction to one or more of the catcher processor subsectors any amounts of the capacity reduction loan authorized by subsection (b)(1) that have not been expended by that date.

(d) BINDING REDUCTION CONTRACTS.—

(1) REQUIREMENT FOR CONTRACTS.—The Secretary may not provide funds to a person under the fishing capacity reduction program authorized by subsection (b) if such person does not enter into a binding reduction contract between the United States and such person, the performance of which may only be subject to the approval of an appropriate capacity reduction plan under subsection (e).

(2) REQUIREMENT TO REVOKE LICENSES.—The Secretary shall revoke all Federal fishery licenses, fishery permits, and area and species endorsements issued for a vessel, or any vessel named on an LLP license purchased through the fishing capacity reduction program authorized by subsection (b).

(e) DEVELOPMENT, APPROVAL, AND NOTIFICATION OF CAPACITY REDUCTION PLANS.—

(1) DEVELOPMENT.—Each catcher processor subsector may, after notice to the Council, submit to the Secretary a capacity reduction plan for the appropriate subsector to promote sustainable fisheries management through the removal of excess harvesting capacity from the non-pollock groundfish fishery.

(2) APPROVAL BY THE SECRETARY.—The Secretary is authorized to approve a capacity reduction plan submitted under paragraph (1) if such plan—

(A) is consistent with the requirements of section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)) except—

(i) the requirement that a Council or Governor of a State request such a program set out in paragraph (1) of such subsection; and

(ii) the requirements of paragraph (4) of such subsection;

(B) contains provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by a catcher processor subsector and that may provide for the assessment of such fees based on methods other than ex-vessel value of fish harvested;

(C) does not require a bidding or auction process;

(D) will result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and

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(E) permits vessels in the catcher processor subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

(3) APPROVAL BY REFERENDUM.—

(A) IN GENERAL.—Following approval by the Secretary under paragraph (2), the Secretary shall conduct a referendum for approval of a capacity reduction plan for the appropriate catcher processor subsector. The capacity reduction plan and fee system shall be approved if the referendum votes which are cast in favor of the proposed system by the appropriate catcher processor subsector are—

(i) 100 percent of the members of the AFA trawl catcher processor subsector; or

(ii) not less than ⅔ of the members of—

(I) the longline catcher processor subsector;

(II) the non-AFA trawl catcher processor subsector; or

(III) the pot catcher processor subsector.

(B) NOTIFICATION PRIOR TO REFERENDUM.—Prior to conducting a referendum under subparagraph (A) for a capacity reduction plan, the Secretary shall—

(i) identify, to the extent practicable, and notify the catcher processor subsector that will be affected by such plan; and

(ii) make available to such subsector information about any industry fee system contained in such plan, a description of the schedule, procedures, and eligibility requirements for the referendum, the proposed program, the estimated capacity reduction, the amount and duration, and any other terms and conditions of the fee system proposed in such plan.

(4) IMPLEMENTATION.—

(A) NOTICE OF IMPLEMENTATION.—Not later than 90 days after a capacity reduction plan is approved by a referendum under paragraph (3), the Secretary shall publish a notice in the Federal Register that includes the exact terms and conditions under which the Secretary shall implement the fishing capacity reduction program authorized by subsection (b).

(B) INAPPLICABILITY OF IMPLEMENTATION PROVISION OF MAGNUSON.—Section 312(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(e)) shall not apply to a capacity reduction plan approved under this subsection.

(5) AUTHORITY TO COLLECT FEES.—The Secretary is authorized to collect fees to fund a fishing capacity reduction program and to repay debt obligations incurred pursuant to a plan approved under paragraph (3)(A).

(f) ACTION BY OTHER ENTITIES.—Upon the request of the Secretary, the Secretary of the Department in which the National Vessel Documentation Center operates or the Secretary of the Department in which the Maritime Administration operates, as appropriate, shall, with respect to any vessel or any vessel named on an LLP license purchased through the fishing capacity reduction program authorized by subsection (b)—

(1)(A) permanently revoke any fishery endorsement issued to the vessel under section 12108 of title 46, United States Code;

(B) refuse to grant the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for the placement of the vessel under foreign registry or the operation of the vessel under the authority of a foreign country; and

(C) require that the vessel operate under United States flag and remain under Federal documentation; or

(2) require that the vessel be scrapped as a reduction vessel under section 600.1011(c) of title 50, Code of Federal Regulations.

(g) NON-POLLOCK GROUNDFISH FISHERY.—

(1) PARTICIPATION IN THE FISHERY.—Only a member of a catcher processor subsector may participate in—

(A) the catcher processor sector of the BSAI non-pollock groundfish fishery; or

(B) the fishing capacity reduction program authorized by subsection (b).

(2) PLANS FOR THE FISHERY.—It is the sense of Congress that—

(A) the Council should continue on its path toward rationalization of the BSAI non-pollock groundfish fisheries, complete its ongoing work with respect to developing management plans for the BSAI non-pollock groundfish fisheries in a timely manner, and take actions that promote stability of these fisheries consistent with the goals of this section and the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act; and

(B) such plans should not penalize members of any catcher processor subsector for achieving capacity reduction under this Act or any other provision of law.

(h) REPORTS.—

(1) REQUIREMENT.—The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives 5 reports on the fishing capacity reduction program authorized by subsection (b).

(2) CONTENT.—Each report shall contain the following:

(A) A description of the fishing capacity reduction program carried out under the authority in subsection (b).

(B) An evaluation of the cost and cost-effectiveness of such program.

(C) An evaluation of the effectiveness of such program in achieving the objective set out in section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)).

(3) SCHEDULE.—

(A) INITIAL REPORT.—The Secretary shall submit the first report under paragraph (1) not later than 90 days after the date that the first referendum referred to in subsection (e)(3) is held.

(B) SUBSEQUENT REPORTS.—During each of the 4 years after the year in which the report is submitted under subparagraph (A), the Secretary shall submit to Congress an annual report as described in this subsection.

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(i) CONFORMING AMENDMENT.—Section 214 of the Department of Commerce and Related Agencies Appropriations Act, 2004 (title II of division B of Public Law 108–199; 118 Stat. 75) is amended by striking "that—" and all that follows, and inserting "under the capacity reduction program authorized in section 219 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005.".

SEC. 220. None of the funds appropriated in this Act or any other Act may be used to disqualify any community which was a participant in the Bering Sea Community Development Quota program on January 1, 2004, from continuing to receive quota allocations under that program.

SEC. 221. In addition to amounts made available under section 214 of the Department of Commerce and Related Agencies Appropriations Act, 2004 (title II of division B of Public Law 108–199; 118 Stat. 75), of the funding provided in this Act under the heading "NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, OPERATIONS, RESEARCH, AND FACILITIES", $250,000, to remain available until expended, for the Federal Credit Reform Act cost of a reduction loan under sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g), not to exceed an additional $25,000,000 in principal, for the capacity reduction program authorized in section 219.

This title may be cited as the "Department of Commerce and Related Agencies Appropriations Act, 2005".

TITLE III—THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

SALARIES AND EXPENSES

For expenses necessary for the operation of the Supreme Court, as required by law, excluding care of the building and grounds, including purchase or hire, driving, maintenance, and operation of an automobile for the Chief Justice, not to exceed $10,000 for the purpose of transporting Associate Justices, and hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; not to exceed $10,000 for official reception and representation expenses; and for miscellaneous expenses, to be expended as the Chief Justice may approve, $58,122,000.

CARE OF THE BUILDING AND GROUNDS

For such expenditures as may be necessary to enable the Architect of the Capitol to carry out the duties imposed upon the Architect by the Act approved May 7, 1934 (40 U.S.C. 13a–13b), $9,979,000, which shall remain available until expended.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SALARIES AND EXPENSES

For salaries of the chief judge, judges, and other officers and employees, and for necessary expenses of the court, as authorized by law, $21,780,000.

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UNITED STATES COURT OF INTERNATIONAL TRADE

SALARIES AND EXPENSES

For salaries of the chief judge and eight judges, salaries of the officers and employees of the court, services, and necessary expenses of the court, as authorized by law, $14,888,000.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For the salaries of circuit and district judges (including judges of the territorial courts of the United States), justices and judges retired from office or from regular active service, judges of the United States Court of Federal Claims, bankruptcy judges, magistrate judges, and all other officers and employees of the Federal Judiciary not otherwise specifically provided for, and necessary expenses of the courts, as authorized by law, $4,177,244,000 (including the purchase of firearms and ammunition); of which not to exceed $27,817,000 shall remain available until expended for space alteration projects and for furniture and furnishings related to new space alteration and construction projects; of which not to exceed $2,800,000 shall be available for a national probation and pretrial services training program; of which $1,300,000 of the funds provided for the Judiciary Information Technology Fund will be for the Edwin L. Nelson Local Initiatives Program, within which $1,000,000 will be reserved for local court grants.

In addition, for expenses of the United States Court of Federal Claims associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed $3,298,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

DEFENDER SERVICES

For the operation of Federal Defender organizations; the compensation and reimbursement of expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964; the compensation and reimbursement of expenses of persons furnishing investigative, expert and other services under the Criminal Justice Act of 1964 (18 U.S.C. 3006A(e)); the compensation (in accordance with Criminal Justice Act maximums) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel; the compensation and reimbursement of travel expenses of guardians ad litem acting on behalf of financially eligible minor or incompetent offenders in connection with transfers from the United States to foreign countries with which the United States has a treaty for the execution of penal sentences; the compensation of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. 1875(d); and for necessary training and general administrative expenses, $676,385,000, to remain available until expended.

FEES OF JURORS AND COMMISSIONERS

For fees and expenses of jurors as authorized by 28 U.S.C. 1871 and 1876; compensation of jury commissioners as authorized

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by 28 U.S.C. 1863; and compensation of commissioners appointed in condemnation cases pursuant to rule 71A(h) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix Rule 71A(h)), $61,535,000, to remain available until expended: *Provided*, That the compensation of land commissioners shall not exceed the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code.

COURT SECURITY

For necessary expenses, not otherwise provided for, incident to providing protective guard services for United States courthouses and other facilities housing Federal court operations, and the procurement, installation, and maintenance of security equipment for United States courthouses and other facilities housing Federal court operations, including building ingress-egress control, inspection of mail and packages, directed security patrols, perimeter security, basic security services provided by the Department of Homeland Security, and other similar activities as authorized by section 1010 of the Judicial Improvement and Access to Justice Act (Public Law 100–702), $332,000,000, of which not to exceed $10,000,000 shall remain available until expended, to be expended directly or transferred to the United States Marshals Service, which shall be responsible for administering the Judicial Facility Security Program consistent with standards or guidelines agreed to by the Director of the Administrative Office of the United States Courts and the Attorney General.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

SALARIES AND EXPENSES

For necessary expenses of the Administrative Office of the United States Courts as authorized by law, including travel as authorized by 31 U.S.C. 1345, hire of a passenger motor vehicle as authorized by 31 U.S.C. 1343(b), advertising and rent in the District of Columbia and elsewhere, $68,200,000, of which not to exceed $8,500 is authorized for official reception and representation expenses.

FEDERAL JUDICIAL CENTER

SALARIES AND EXPENSES

For necessary expenses of the Federal Judicial Center, as authorized by Public Law 90–219, $21,737,000; of which $1,800,000 shall remain available through September 30, 2006, to provide education and training to Federal court personnel; and of which not to exceed $1,500 is authorized for official reception and representation expenses.

JUDICIAL RETIREMENT FUNDS

PAYMENT TO JUDICIARY TRUST FUNDS

For payment to the Judicial Officers' Retirement Fund, as authorized by 28 U.S.C. 377(o), $32,000,000; to the Judicial Survivors' Annuities Fund, as authorized by 28 U.S.C. 376(c), $2,000,000; and to the United States Court of Federal Claims

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Judges' Retirement Fund, as authorized by 28 U.S.C. 178(l), $2,700,000.

UNITED STATES SENTENCING COMMISSION

SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, $13,304,000, of which not to exceed $1,000 is authorized for official reception and representation expenses.

GENERAL PROVISIONS—THE JUDICIARY

SEC. 301. Appropriations and authorizations made in this title which are available for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

SEC. 302. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Judiciary in this Act may be transferred between such appropriations, but no such appropriation, except "Courts of Appeals, District Courts, and Other Judicial Services, Defender Services" and "Courts of Appeals, District Courts, and Other Judicial Services, Fees of Jurors and Commissioners", shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 303. Notwithstanding any other provision of law, the salaries and expenses appropriation for Courts of Appeals, District Courts, and Other Judicial Services shall be available for official reception and representation expenses of the Judicial Conference of the United States: *Provided,* That such available funds shall not exceed $11,000 and shall be administered by the Director of the Administrative Office of the United States Courts in the capacity as Secretary of the Judicial Conference.

SEC. 304. (a) Section 3006A(d)(2) of title 18, United States Code, is amended—

(1) by striking "5,200" and inserting "7,000";

(2) by striking "1,500" and inserting "2,000";

(3) by striking "3,700" and inserting "5,000";

(4) by striking "1,200" each place it appears and inserting "1,500"; and

(5) by striking "3,900" and inserting "5,000".

(b) Section 3006A(e) of title 18, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking "300" and inserting "500"; and

(B) in subparagraph (B), by striking "300" and inserting "500"; and

(2) in paragraph (3) in the first sentence by striking "1,000" and inserting "1,600".

SEC. 305. Within 90 days of enactment of this Act, the Administrative Office of the U.S. Courts shall submit to the Committees on Appropriations a comprehensive financial plan for the Judiciary allocating all sources of available funds including appropriations,

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fee collections, and carryover balances, to include a separate and detailed plan for the Judiciary Information Technology fund.

SEC. 306. Pursuant to section 140 of Public Law 97–92, and from funds appropriated in this Act, Justices and judges of the United States are authorized during fiscal year 2005, to receive a salary adjustment in accordance with 28 U.S.C. 461.

SEC. 307. (a) Section 1914(a) of title 28, United States Code, is amended by striking "$150" and inserting "$250".

(b) Section 1931(a) of title 28, United States Code, is amended—

(1) in subsection (a) by striking "$90" and inserting "$190"; and

(2) in subsection (b)—

(A) by striking "$150" and inserting "$250"; and

(B) by striking "$90" and inserting "$190".

(c) This section shall take effect 60 days after the date of the enactment of this Act.

SEC. 308. For fiscal year 2005 and hereafter, such fees as shall be collected for the processing of violations through the Central Violations Bureau cases as prescribed by the Judicial Conference of the United States shall be deposited to the "Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses" appropriation to be used for salaries and other expenses.

This title may be cited as the "Judiciary Appropriations Act, 2005".

TITLE IV—DEPARTMENT OF STATE AND RELATED AGENCY

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

For necessary expenses of the Department of State and the Foreign Service not otherwise provided for, including employment, without regard to civil service and classification laws, of persons on a temporary basis (not to exceed $700,000 of this appropriation), as authorized by section 801 of the United States Information and Educational Exchange Act of 1948; representation to certain international organizations in which the United States participates pursuant to treaties ratified pursuant to the advice and consent of the Senate or specific Acts of Congress; arms control, non-proliferation and disarmament activities as authorized; acquisition by exchange or purchase of passenger motor vehicles as authorized by law; and for expenses of general administration, $3,570,000,000: *Provided,* That not to exceed 71 permanent positions shall be for the Bureau of Legislative Affairs: *Provided further,* That none of the funds made available under this heading may be used to transfer any full-time equivalent employees into or out of the Bureau of Legislative Affairs: *Provided further*, That, of the amount made available under this heading, not to exceed $4,000,000 may be transferred to, and merged with, funds in the "Emergencies in the Diplomatic and Consular Service" appropriations account, to be available only for emergency evacuations and terrorism rewards: *Provided further*, That, of the amount made available under this heading, $319,994,000 shall be available only for public diplomacy international information programs: *Provided further,* That of the amount made available under this heading, $3,000,000

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shall be available only for the operations of the Office on Right-Sizing the United States Government Overseas Presence: *Provided further,* That funds available under this heading may be available for a United States Government interagency task force to examine, coordinate and oversee United States participation in the United Nations headquarters renovation project: *Provided further*, That no funds may be obligated or expended for processing licenses for the export of satellites of United States origin (including commercial satellites and satellite components) to the People's Republic of China unless, at least 15 days in advance, the Committees on Appropriations of the House of Representatives and the Senate are notified of such proposed action: *Provided further,* That of the amount made available under this heading, $185,128,000 is for Near Eastern Affairs, $80,234,000 is for South Asian Affairs, and $251,706,000 is for African Affairs: *Provided further,* That, of the amount made available under this heading, $2,000,000 shall be available for a grant to conduct an international conference on the human rights situation in North Korea: *Provided further,* That of the amount made available under this heading, $200,000 is for a grant to the Center for the Study of the Presidency and $1,900,000 is for a grant to Shared Hope International to combat international sex tourism: *Provided further,* That the Intellectual Property Division shall be elevated to office-level status and shall be renamed the Office of International Intellectual Property Enforcement within 60 days of enactment of this Act.

In addition, not to exceed $1,426,000 shall be derived from fees collected from other executive agencies for lease or use of facilities located at the International Center in accordance with section 4 of the International Center Act; in addition, as authorized by section 5 of such Act, $490,000, to be derived from the reserve authorized by that section, to be used for the purposes set out in that section; in addition, as authorized by section 810 of the United States Information and Educational Exchange Act, not to exceed $6,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from English teaching, library, motion pictures, and publication programs and from fees from educational advising and counseling and exchange visitor programs; and, in addition, not to exceed $15,000, which shall be derived from reimbursements, surcharges, and fees for use of Blair House facilities.

In addition, for the costs of worldwide security upgrades, $658,702,000, to remain available until expended: *Provided,* That of the amounts made available under this paragraph, $5,000,000 is for the Center for Antiterrorism and Security Training.

Beginning in fiscal year 2005 and thereafter, the Secretary of State is authorized to charge surcharges related to consular services in support of enhanced border security that are in addition to the passport and immigrant visa fees in effect on January 1, 2004: *Provided,* That funds collected pursuant to this authority shall be credited to this account, and shall be available until expended for the purposes of such account: *Provided further,* That such surcharges shall be $12 on passport fees, and $45 on immigrant visa fees.

CAPITAL INVESTMENT FUND

For necessary expenses of the Capital Investment Fund, $52,149,000, to remain available until expended, as authorized:

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Provided, That section 135(e) of Public Law 103–236 shall not apply to funds available under this heading.

CENTRALIZED INFORMATION TECHNOLOGY MODERNIZATION PROGRAM

For expenses relating to the modernization of the information technology systems and networks of the Department of State, $77,851,000, to remain available until expended.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, $30,435,000, notwithstanding section 209(a)(1) of the Foreign Service Act of 1980 (Public Law 96–465), as it relates to post inspections.

EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

For expenses of educational and cultural exchange programs, as authorized, $360,750,000, to remain available until expended: *Provided,* That not to exceed $2,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from or in connection with English teaching, educational advising and counseling programs, and exchange visitor programs as authorized.

REPRESENTATION ALLOWANCES

For representation allowances as authorized, $8,640,000.

PROTECTION OF FOREIGN MISSIONS AND OFFICIALS

For expenses, not otherwise provided, to enable the Secretary of State to provide for extraordinary protective services, as authorized, $9,894,000, to remain available until September 30, 2006.

EMBASSY SECURITY, CONSTRUCTION, AND MAINTENANCE

For necessary expenses for carrying out the Foreign Service Buildings Act of 1926 (22 U.S.C. 292–303), preserving, maintaining, repairing, and planning for buildings that are owned or directly leased by the Department of State, renovating, in addition to funds otherwise available, the Harry S Truman Building, and carrying out the Diplomatic Security Construction Program as authorized, $611,680,000, to remain available until expended as authorized, of which not to exceed $25,000 may be used for domestic and overseas representation as authorized: *Provided*, That none of the funds appropriated in this paragraph shall be available for acquisition of furniture, furnishings, or generators for other departments and agencies: *Provided further,* That the United States Embassy Annex building in Rome, Italy, previously known as the "INA Building", shall hereafter be known and designated as the "Mel Sembler Building".

In addition, for the costs of worldwide security upgrades, acquisition, and construction as authorized, $912,320,000, to remain available until expended: *Provided*, That funds appropriated to this account in Public Law 108–287 may also be used for non-interim facilities for the United States Mission in Iraq, including associated planning, site preparation and pre-construction activities.

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EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE

For expenses necessary to enable the Secretary of State to meet unforeseen emergencies arising in the Diplomatic and Consular Service, $1,000,000, to remain available until expended as authorized, of which such sums as necessary may be transferred to and merged with the Repatriation Loans Program Account, subject to the same terms and conditions: *Provided,* That funds previously appropriated under this heading for rewards for an indictee of the Special Court for Sierra Leone shall be transferred to the Special Court for Sierra Leone within 15 days of enactment of this Act: *Provided further,* That any transfer of funds provided under this heading shall be treated as a reprogramming of funds under section 605 of this Act.

REPATRIATION LOANS PROGRAM ACCOUNT

For the cost of direct loans, $612,000, as authorized: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974. In addition, for administrative expenses necessary to carry out the direct loan program, $607,000, which may be transferred to and merged with the Diplomatic and Consular Programs account under Administration of Foreign Affairs.

PAYMENT TO THE AMERICAN INSTITUTE IN TAIWAN

For necessary expenses to carry out the Taiwan Relations Act (Public Law 96–8), $19,482,000.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For payment to the Foreign Service Retirement and Disability Fund, as authorized by law, $132,600,000.

INTERNATIONAL ORGANIZATIONS

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

For expenses, not otherwise provided for, necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties ratified pursuant to the advice and consent of the Senate, conventions or specific Acts of Congress, $1,182,000,000, of which up to $6,000,000, to remain available until expended, may be used for the cost of a direct loan to the United Nations for the cost of renovating its headquarters in New York: *Provided,* That such costs, including the cost of modifying such loan, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That these funds are available to subsidize total loan principal of up to $1,200,000,000: *Provided further,* That the Secretary of State shall, at the time of the submission of the President's budget to Congress under section 1105(a) of title 31, United States Code, transmit to the Committees on Appropriations of the Senate and of the House of Representatives the most recent biennial budget prepared by the United Nations for the operations of the United Nations: *Provided further,* That the Secretary of State shall notify the Committees on Appropriations at least 15 days in advance (or in an emergency, as far in advance

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as is practicable) of any United Nations action to increase funding for any United Nations program without identifying an offsetting decrease elsewhere in the United Nations budget and cause the United Nations to exceed the adopted budget for the biennium 2004–2005 of $3,160,860,000: *Provided further,* That any payment of arrearages under this title shall be directed toward special activities that are mutually agreed upon by the United States and the respective international organization: *Provided further,* That none of the funds appropriated in this paragraph shall be available for a United States contribution to an international organization for the United States share of interest costs made known to the United States Government by such organization for loans incurred on or after October 1, 1984, through external borrowings, except that such restriction shall not apply to loans to the United Nations for renovation of its headquarters.

CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

For necessary expenses to pay assessed and other expenses of international peacekeeping activities directed to the maintenance or restoration of international peace and security, $490,000,000: *Provided,* That none of the funds made available under this Act shall be obligated or expended for any new or expanded United Nations peacekeeping mission unless, at least 15 days in advance of voting for the new or expanded mission in the United Nations Security Council (or in an emergency as far in advance as is practicable): (1) the Committees on Appropriations of the House of Representatives and the Senate and other appropriate committees of the Congress are notified of the estimated cost and length of the mission, the vital national interest that will be served, and the planned exit strategy; and (2) a reprogramming of funds pursuant to section 605 of this Act is submitted, and the procedures therein followed, setting forth the source of funds that will be used to pay for the cost of the new or expanded mission: *Provided further,* That funds shall be available for peacekeeping expenses only upon a certification by the Secretary of State to the appropriate committees of the Congress that American manufacturers and suppliers are being given opportunities to provide equipment, services, and material for United Nations peacekeeping activities equal to those being given to foreign manufacturers and suppliers: *Provided further,* That none of the funds made available under this heading are available to pay the United States share of the cost of court monitoring that is part of any United Nations peacekeeping mission.

INTERNATIONAL COMMISSIONS

For necessary expenses, not otherwise provided for, to meet obligations of the United States arising under treaties, or specific Acts of Congress, as follows:

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

For necessary expenses for the United States Section of the International Boundary and Water Commission, United States and Mexico, and to comply with laws applicable to the United States Section, including not to exceed $6,000 for representation; as follows:

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SALARIES AND EXPENSES

For salaries and expenses, not otherwise provided for, $27,244,000.

CONSTRUCTION

For detailed plan preparation and construction of authorized projects, $5,310,000, to remain available until expended, as authorized.

AMERICAN SECTIONS, INTERNATIONAL COMMISSIONS

For necessary expenses, not otherwise provided, for the International Joint Commission and the International Boundary Commission, United States and Canada, as authorized by treaties between the United States and Canada or Great Britain, and for the Border Environment Cooperation Commission as authorized by Public Law 103–182, $9,594,000, of which not to exceed $9,000 shall be available for representation expenses incurred by the International Joint Commission.

INTERNATIONAL FISHERIES COMMISSIONS

For necessary expenses for international fisheries commissions, not otherwise provided for, as authorized by law, $21,982,000: *Provided,* That the United States' share of such expenses may be advanced to the respective commissions pursuant to 31 U.S.C. 3324.

OTHER

PAYMENT TO THE ASIA FOUNDATION

For a grant to the Asia Foundation, as authorized by the Asia Foundation Act (22 U.S.C. 4402), $13,000,000, to remain available until expended, as authorized.

CENTER FOR MIDDLE EASTERN-WESTERN DIALOGUE

For a grant to the Center for Middle Eastern-Western Dialogue Trust Fund, $6,750,000, for operation of the Center for Middle Eastern-Western Dialogue in Istanbul, Turkey, to remain available until expended.

In addition, for the operations of the Steering Committee of the Center for Middle Eastern-Western Dialogue, $250,000, to remain available until expended.

In addition, for necessary expenses of the Center for Middle Eastern-Western Dialogue Trust Fund, the total amount of the interest and earnings accruing to such Fund before October 1, 2005, to remain available until expended.

EISENHOWER EXCHANGE FELLOWSHIP PROGRAM

For necessary expenses of Eisenhower Exchange Fellowships, Incorporated, as authorized by sections 4 and 5 of the Eisenhower Exchange Fellowship Act of 1990 (20 U.S.C. 5204–5205), all interest and earnings accruing to the Eisenhower Exchange Fellowship Program Trust Fund on or before September 30, 2005, to remain

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available until expended: *Provided*, That none of the funds appropriated herein shall be used to pay any salary or other compensation, or to enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376; or for purposes which are not in accordance with OMB Circulars A–110 (Uniform Administrative Requirements) and A–122 (Cost Principles for Nonprofit Organizations), including the restrictions on compensation for personal services.

ISRAELI ARAB SCHOLARSHIP PROGRAM

For necessary expenses of the Israeli Arab Scholarship Program as authorized by section 214 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (22 U.S.C. 2452), all interest and earnings accruing to the Israeli Arab Scholarship Fund on or before September 30, 2005, to remain available until expended.

EAST-WEST CENTER

To enable the Secretary of State to provide for carrying out the provisions of the Center for Cultural and Technical Interchange Between East and West Act of 1960, by grant to the Center for Cultural and Technical Interchange Between East and West in the State of Hawaii, $19,500,000: *Provided,* That none of the funds appropriated herein shall be used to pay any salary, or enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376.

NATIONAL ENDOWMENT FOR DEMOCRACY

For grants made by the Department of State to the National Endowment for Democracy as authorized by the National Endowment for Democracy Act, $60,000,000 to remain available until expended.

RELATED AGENCY

BROADCASTING BOARD OF GOVERNORS

INTERNATIONAL BROADCASTING OPERATIONS

For expenses necessary to enable the Broadcasting Board of Governors, as authorized, to carry out international communication activities, including the purchase, installation, rent, and improvement of facilities for radio and television transmission and reception to Cuba, and to make and supervise grants for radio and television broadcasting to the Middle East, $591,000,000, of which $27,629,000 is for Broadcasting to Cuba: *Provided,* That of the total amount in this heading, not to exceed $16,000 may be used for official receptions within the United States as authorized, not to exceed $35,000 may be used for representation abroad as authorized, and not to exceed $39,000 may be used for official reception and representation expenses of Radio Free Europe/Radio Liberty; and in addition, notwithstanding any other provision of law, not to exceed $2,000,000 in receipts from advertising and revenue from business ventures, not to exceed $500,000 in receipts from cooperating international organizations, and not to exceed $1,000,000 in receipts

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from privatization efforts of the Voice of America and the International Broadcasting Bureau, to remain available until expended for carrying out authorized purposes.

BROADCASTING CAPITAL IMPROVEMENTS

For the purchase, rent, construction, and improvement of facilities for radio transmission and reception, and purchase and installation of necessary equipment for radio and television transmission and reception as authorized, $8,560,000, to remain available until expended, as authorized.

GENERAL PROVISIONS—DEPARTMENT OF STATE AND RELATED AGENCY

SEC. 401. Funds appropriated under this title shall be available, except as otherwise provided, for allowances and differentials as authorized by subchapter 59 of title 5, United States Code; for services as authorized by 5 U.S.C. 3109; and for hire of passenger transportation pursuant to 31 U.S.C. 1343(b).

SEC. 402. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of State in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided*, That not to exceed 5 percent of any appropriation made available for the current fiscal year for the Broadcasting Board of Governors in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided further*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 403. None of the funds made available in this Act may be used by the Department of State or the Broadcasting Board of Governors to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

SEC. 404. (a) The Senior Policy Operating Group on Trafficking in Persons, established under section 406 of division B of Public Law 108–7 to coordinate agency activities regarding policies (including grants and grant policies) involving the international trafficking in persons, shall coordinate all such policies related to the activities of traffickers and victims of severe forms of trafficking.

(b) None of the funds provided in this or any other Act shall be expended to perform functions that duplicate coordinating responsibilities of the Operating Group.

(c) The Operating Group shall continue to report only to the authorities that appointed them pursuant to section 406 of division B of Public Law 108–7.

SEC. 405. (a) Subsection (b) of section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended—

(1) in paragraph (5) by striking "or" at the end;

(2) in paragraph (6) by striking the period and inserting "; or"; and

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

"(7) the disruption of financial mechanisms of a foreign terrorist organization, including the use by the organization of illicit narcotics production or international narcotics trafficking—

"(A) to finance acts of international terrorism; or

"(B) to sustain or support any terrorist organization.".

(b) Subsection (e)(1) of such section is amended—

(1) by striking "$5,000,000" and inserting "$25,000,000";

(2) by striking the second period at the end; and

(3) by adding at the end the following new sentence: "Without first making such determination, the Secretary may authorize a reward of up to twice the amount specified in this paragraph for the capture or information leading to the capture of a leader of a foreign terrorist organization.".

(c) Subsection (e) of such section is amended by adding at the end the following new paragraph:

"(6) FORMS OF REWARD PAYMENT.—The Secretary may make a reward under this section in the form of money, a nonmonetary item (including such items as automotive vehicles), or a combination thereof.".

(d) Such section is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (h) the following new subsection:

"(i) MEDIA SURVEYS AND ADVERTISEMENTS.—

"(1) SURVEYS CONDUCTED.—For the purpose of more effectively disseminating information about the rewards program, the Secretary may use the resources of the rewards program to conduct media surveys, including analyses of media markets, means of communication, and levels of literacy, in countries determined by the Secretary to be associated with acts of international terrorism.

"(2) CREATION AND PURCHASE OF ADVERTISEMENTS.—The Secretary may use the resources of the rewards program to create advertisements to disseminate information about the rewards program. The Secretary may base the content of such advertisements on the findings of the surveys conducted under paragraph (1). The Secretary may purchase radio or television time, newspaper space, or make use of any other means of advertisement, as appropriate.".

(e) Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall submit to the Committees on Appropriations of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a plan to maximize awareness of the reward available under section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708 et seq.) for the capture or information leading to the capture of a leader of a foreign terrorist organization who may be in Pakistan or Afghanistan. The Secretary may use the resources of the rewards program to prepare the plan.

SEC. 406. For the purposes of registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary of State shall, upon request of the citizen, record the place of birth as Israel.

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SEC. 407. The Secretary of State shall provide to a member of the Committee on Appropriations of the Senate or the Committee on Appropriations of the House of Representatives a copy of each cable sent to or by a Department of State employee that pertains to any topic specified by the requesting member, regardless of the level of classification of the cable, not later than 15 days after the date on which the member makes a written or verbal request for such copies.

SEC. 408. There is established within the Department of State the Office of the Coordinator for Reconstruction and Stabilization: *Provided,* That the head of the Office shall be the Coordinator for Reconstruction and Stabilization, who shall report directly to the Secretary of State: *Provided further,* That the functions of the Office of the Coordinator for Reconstruction and Stabilization shall include—

(1) cataloguing and monitoring the non-military resources and capabilities of Executive agencies (as that term is defined in section 105 of title 5, United States Code), State and local governments, and entities in the private and non-profit sectors that are available to address crises in countries or regions that are in, or are in transition from, conflict or civil strife;

(2) monitoring political and economic instability worldwide to anticipate the need for mobilizing United States and international assistance for countries or regions described in paragraph (1);

(3) assessing crises in countries or regions described in paragraph (1) and determining the appropriate non-military United States, including but not limited to demobilization, policing, human rights monitoring, and public information efforts;

(4) planning for response efforts under paragraph (3);

(5) coordinating with relevant Executive agencies the development of interagency contingency plans for such response efforts; and

(6) coordinating the training of civilian personnel to perform stabilization and reconstruction activities in response to crises in such countries or regions described in paragraph (1).

SEC. 409. (a) The Secretary of State shall require each chief of mission to review, not less than once every 5 years, every staff element under chief of mission authority, including staff from other departments or agencies of the United States, and recommend approval or disapproval of each staff element. Each such review shall be conducted pursuant to a process established by the President for determining appropriate staffing at diplomatic missions and overseas constituent posts (commonly referred to as the "NSDD–38 process").

(b) The Secretary of State, as part of the process established by the President referred to in subsection (a), shall take actions to carry out the recommendations made in each such review.

(c) Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of State shall submit a report on such reviews that occurred during the previous 12 months, together with the Secretary's recommendations regarding such reviews to the appropriate committees of Congress, the heads of all affected departments or agencies, and the Inspector General of the Department of State.

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SEC. 410. Funds appropriated by this Act for the Broadcasting Board of Governors and the Department of State may be obligated and expended notwithstanding section 15 of the State Department Basic Authorities Act of 1956, section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), and section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

SEC. 411. During fiscal year 2005, section 404(b)(2)(B) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 22 U.S.C. 287e note), shall be administered as though the matter following clause (iii) reads as follows:

"(v) For assessments made during calendar year 2005, 27.1 percent.".

SEC. 412. (a) Section 402(a) of the Foreign Service Act of 1980 (22 U.S.C. 3962(a)) is amended—

(1) in paragraph (1), by striking the second and third sentences and inserting the following new sentences: "The President shall also prescribe ranges of basic salary rates for each class. Except as provided in paragraph (3), basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, United States Code."; and

(2) by striking paragraph (2) and inserting the following new paragraphs:

"(2) The Secretary shall determine which basic salary rate within the ranges prescribed by the President under paragraph (1) shall be paid to each member of the Senior Foreign Service based on individual performance, contribution to the mission of the Department, or both, as determined under a rigorous performance management system. Except as provided in regulations prescribed by the Secretary and, to the extent possible, consistent with regulations governing the Senior Executive Service, the Secretary may adjust the basic salary rate of a member of the Senior Foreign Service not more than once during any 12-month period.

"(3) Upon a determination by the Secretary that the Senior Foreign Service performance appraisal system, as designed and applied, makes meaningful distinctions based on relative performance—

"(A) the maximum rate of basic pay payable for the Senior Foreign Service shall be level II of the Executive Schedule; and

"(B) the applicable aggregate pay cap shall be equivalent to the aggregate pay cap set forth in section 5307(d)(1) of title 5, United States Code, for members of the Senior Executive Service.".

(b) Section 405(b)(4) of such Act (22 U.S.C. 3965(b)(4)) is amended by inserting before the period the following: ", or the limitation under section 402(a)(3), whichever is higher".

(c) Section 401(a) of such Act (22 U.S.C. 3961(a)) is amended by striking "shall not exceed the annual rate of pay payable for level I of such Executive Schedule" and inserting "shall be subject to the limitation on certain payments under section 5307 of title 5, United States Code, or the limitation under section 402(a)(3), whichever is higher".

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SEC. 413. (a) Section 2 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669) is amended by adding at the end the following:

"(o) make administrative corrections or adjustments to an employee's pay, allowances, or differentials, resulting from mistakes or retroactive personnel actions, as well as provide back pay and other categories of payments under section 5596 of title 5, United States Code, as part of the settlement or compromise of administrative claims or grievances filed against the Department.".

(b) Such section is further amended—

(1) in subsection (k), by striking "and";

(2) by transferring subsection (m) within such section to appear after subsection (l);

(3) in subsections (l) and (m), by striking the period at the end of each subsection and inserting a semicolon; and

(4) in subsection (n), by striking the period at the end and inserting a semicolon and "and".

This title may be cited as the "Department of State and Related Agency Appropriations Act, 2005".

TITLE V—RELATED AGENCIES

ANTITRUST MODERNIZATION COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Antitrust Modernization Commission, as authorized by Public Law 107–273, $1,187,000, to remain available until expended.

COMMISSION FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD

SALARIES AND EXPENSES

For expenses for the Commission for the Preservation of America's Heritage Abroad, $499,000, as authorized by section 1303 of Public Law 99–83.

COMMISSION ON CIVIL RIGHTS

SALARIES AND EXPENSES

For necessary expenses of the Commission on Civil Rights, including hire of passenger motor vehicles, $9,096,000: *Provided*, That not to exceed $50,000 may be used to employ consultants: *Provided further*, That none of the funds appropriated in this paragraph shall be used to employ in excess of four full-time individuals under Schedule C of the Excepted Service exclusive of one special assistant for each Commissioner: *Provided further*, That none of the funds appropriated in this paragraph shall be used to reimburse Commissioners for more than 75 billable days, with the exception of the chairperson, who is permitted 125 billable days.

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COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

SALARIES AND EXPENSES

For necessary expenses for the United States Commission on International Religious Freedom, as authorized by title II of the International Religious Freedom Act of 1998 (Public Law 105–292), $3,000,000, to remain available until expended: *Provided,* That in fiscal year 2005, the Commission may procure temporary services for the purpose of conducting a study on conditions of the right to freedom of religion or belief in North Korea, notwithstanding section 208(c)(1) of Public Law 105–292 (22 U.S.C. 6435a(c)(1)).

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

SALARIES AND EXPENSES

For necessary expenses of the Commission on Security and Cooperation in Europe, as authorized by Public Law 94–304, $1,831,000, to remain available until expended as authorized by section 3 of Public Law 99–7.

CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE'S REPUBLIC OF CHINA

SALARIES AND EXPENSES

For necessary expenses of the Congressional-Executive Commission on the People's Republic of China, as authorized, $1,900,000, including not more than $3,000 for the purpose of official representation, to remain available until expended: *Provided,* That $100,000 shall be for the Political Prisoner Database.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Equal Employment Opportunity Commission as authorized by title VII of the Civil Rights Act of 1964 (29 U.S.C. 206(d) and 621–634), the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); non-monetary awards to private citizens; and not to exceed $33,000,000 for payments to State and local enforcement agencies for services to the Commission pursuant to title VII of the Civil Rights Act of 1964, sections 6 and 14 of the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, $331,228,000: *Provided*, That the Commission is authorized to make available for official reception and representation expenses not to exceed $2,500 from available funds: *Provided further,* That the Commission may take no action to implement any workforce repositioning, restructuring, or reorganization until such time as the Committees on Appropriations have been notified of such proposals, in accordance with the reprogramming provisions of section 605 of this Act: *Provided further,* That the Commission shall not have fewer field position in fiscal year 2005 than in fiscal year 2004.

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FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Communications Commission, as authorized by law, including uniforms and allowances therefor, as authorized by 5 U.S.C. 5901–5902; not to exceed $600,000 for land and structure; not to exceed $500,000 for improvement and care of grounds and repair to buildings; not to exceed $4,000 for official reception and representation expenses; purchase and hire of motor vehicles; special counsel fees; and services as authorized by 5 U.S.C. 3109, $281,098,000: *Provided,* That $280,098,000 of offsetting collections shall be assessed and collected pursuant to section 9 of title I of the Communications Act of 1934, shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced as such offsetting collections are received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation estimated at $1,000,000: *Provided further,* That any offsetting collections received in excess of $280,098,000 in fiscal year 2005 shall remain available until expended, but shall not be available for obligation until October 1, 2005: *Provided further,* That notwithstanding 47 U.S.C. 309(j)(8)(B), proceeds from the use of a competitive bidding system that may be retained and made available for obligation shall not exceed $85,000,000 for fiscal year 2005.

FEDERAL TRADE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed $2,000 for official reception and representation expenses, $205,430,000, to remain available until expended: *Provided,* That not to exceed $300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718: *Provided further,* That, notwithstanding any other provision of law, not to exceed $101,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: *Provided further,* That $21,901,000 in offsetting collections derived from fees sufficient to implement and enforce the Telemarketing Sales Rule, promulgated under the Telephone Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), shall be credited to this account, and be retained and used for necessary expenses in this appropriation: *Provided further,* That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2005, so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than $82,529,000: *Provided further,* That none of the funds made available to the Federal Trade Commission may be used to enforce subsection (e) of section 43 of the Federal Deposit Insurance Act (12 U.S.C.

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1831t) or section 151(b)(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1831t note).

HELP Commission

SALARIES AND EXPENSES

For necessary expenses of the HELP Commission, $1,000,000, to remain available until expended.

Legal Services Corporation

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, $335,282,000, of which $316,604,000 is for basic field programs and required independent audits; $2,573,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; $13,000,000 is for management and administration; $1,272,000 is for client self-help and information technology; and $1,833,000 is for grants to offset losses due to census adjustments: *Provided,* That not to exceed $1,000,000 from amounts previously appropriated under this heading may be used for a student loan repayment pilot program.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105–119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2004 and 2005, respectively, and except that section 501(a)(1) of Public Law 104–134 (110 Stat. 1321–51 et seq.) shall not apply to the use of the $1,833,000 to address loss of funding due to Census-based reallocations.

Marine Mammal Commission

SALARIES AND EXPENSES

For necessary expenses of the Marine Mammal Commission as authorized by title II of Public Law 92–522, $1,890,000.

National Veterans Business Development Corporation

For necessary expenses of the National Veterans Business Development Corporation as authorized under section 33(a) of the Small Business Act, $2,000,000, to remain available until expended.

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SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

For necessary expenses for the Securities and Exchange Commission, including services as authorized by 5 U.S.C. 3109, the rental of space (to include multiple year leases) in the District of Columbia and elsewhere, and not to exceed $3,000 for official reception and representation expenses, $913,000,000, to remain available until expended; of which not to exceed $10,000 may be used toward funding a permanent secretariat for the International Organization of Securities Commissions; and of which not to exceed $100,000 shall be available for expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to securities matters, development and implementation of cooperation agreements concerning securities matters and provision of technical assistance for the development of foreign securities markets, such expenses to include necessary logistic and administrative expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including: (1) such incidental expenses as meals taken in the course of such attendance; (2) any travel and transportation to or from such meetings; and (3) any other related lodging or subsistence: *Provided,* That fees and charges authorized by sections 6(b) of the Securities Exchange Act of 1933 (15 U.S.C. 77f(b)), and 13(e), 14(g) and 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e), 78n(g), and 78ee), shall be credited to this account as offsetting collections: *Provided further,* That not to exceed $856,000,000 of such offsetting collections shall be available until expended for necessary expenses of this account: *Provided further,* That $57,000,000 shall be derived from prior year unobligated balances from funds previously appropriated to the Securities and Exchange Commission: *Provided further,* That the total amount appropriated under this heading from the general fund for fiscal year 2005 shall be reduced as such offsetting fees are received so as to result in a final total fiscal year 2005 appropriation from the general fund estimated at not more than $0.

Not later than May 1, 2005, the Securities and Exchange Commission shall submit a report to the Committee on Appropriations of the Senate that provides a justification for final rules issued by the Commission on June 30, 2004 (amending title 17, Code of Federal Regulations, Parts 239, 240, and 274), requiring that the chair of the board of directors of a mutual fund be an independent director: *Provided,* That such report shall analyze whether mutual funds chaired by disinterested directors perform better, have lower expenses, or have better compliance records than mutual funds chaired by interested directors: *Provided further,* That the Securities and Exchange Commission shall act upon the recommendations of such report not later than January 1, 2006.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the Small Business Administration as authorized by Public Law 106–554,

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including hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344, and not to exceed $3,500 for official reception and representation expenses, $322,335,000: *Provided,* That the Administrator is authorized to charge fees to cover the cost of publications developed by the Small Business Administration, and certain loan servicing activities: *Provided further,* That, notwithstanding 31 U.S.C. 3302, revenues received from all such activities shall be credited to this account, to be available for carrying out these purposes without further appropriations: *Provided further,* That $89,000,000 shall be available to fund grants for performance in fiscal year 2005 or fiscal year 2006 as authorized: *Provided further,* That the Small Business Administration is authorized to award grants under the Women's Business Center Sustainability Pilot Program established by section 4(a) of Public Law 106–165 (15 U.S.C. 656(l)): *Provided further,* That, of the amounts provided for Women's Business Centers, not less than 48 percent shall be available to continue Women's Business Centers in sustainability status.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $13,014,000.

SURETY BOND GUARANTEES REVOLVING FUND

For additional capital for the Surety Bond Guarantees Revolving Fund, authorized by the Small Business Investment Act, as amended, $2,900,000, to remain available until expended.

BUSINESS LOANS PROGRAM ACCOUNT

For the cost of direct loans, $1,455,000, to remain available until expended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That subject to section 502 of the Congressional Budget Act of 1974, during fiscal year 2005 commitments to guarantee loans under section 503 of the Small Business Investment Act of 1958, shall not exceed $5,000,000,000: *Provided further,* That subsection 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)), as amended by section 2 of Public Law 108–217, is further amended by striking "October 1, 2004" and inserting "October 1, 2005": *Provided further,* That during fiscal year 2005 commitments for general business loans authorized under section 7(a) of the Small Business Act, shall not exceed $16,000,000,000: *Provided further,* That during fiscal year 2005 commitments to guarantee loans for debentures and participating securities under section 303(b) of the Small Business Investment Act of 1958, shall not exceed the levels established by section 20(i)(1)(C) of the Small Business Act: *Provided further,* That during fiscal year 2005 guarantees of trust certificates authorized by section 5(g) of the Small Business Act shall not exceed a principal amount of $10,000,000,000.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, $126,653,000, which may be transferred to and merged with the appropriations for Salaries and Expenses.

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DISASTER LOANS PROGRAM ACCOUNT

For administrative expenses to carry out the direct loan program authorized by section 7(b), of the Small Business Act, $113,159,000, which may be transferred to and merged with appropriations for Salaries and Expenses, of which $500,000 is for the Office of Inspector General of the Small Business Administration for audits and reviews of disaster loans and the disaster loan program and shall be transferred to and merged with appropriations for the Office of Inspector General; of which $104,409,000 is for direct administrative expenses of loan making and servicing to carry out the direct loan program, to remain available until expended; and of which $8,250,000 is for indirect administrative expenses: *Provided,* That any amount in excess of $8,250,000 to be transferred to and merged with appropriations for Salaries and Expenses for indirect administrative expenses shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

ADMINISTRATIVE PROVISION—SMALL BUSINESS ADMINISTRATION

Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Small Business Administration in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this paragraph shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

STATE JUSTICE INSTITUTE

SALARIES AND EXPENSES

For necessary expenses of the State Justice Institute, as authorized by the State Justice Institute Authorization Act of 1992 (Public Law 102–572), $2,613,000: *Provided,* That not to exceed $2,500 shall be available for official reception and representation expenses.

UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the United States-China Economic and Security Review Commission, $3,000,000, including not more than $5,000 for the purpose of official representation, to remain available until expended.

UNITED STATES INSTITUTE OF PEACE

OPERATING EXPENSES

For necessary expenses of the United States Institute of Peace as authorized in the United States Institute of Peace Act, $23,000,000: *Provided*, That $1,500,000 is for necessary expenses for the Task Force on the United Nations: *Provided further*, That

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the Task Force on the United Nations shall submit a report on its findings to the Committees on Appropriations of the House of Representatives and Senate not later than 180 days after the date of the enactment of this Act.

UNITED STATES SENATE-CHINA INTERPARLIAMENTARY GROUP

SALARIES AND EXPENSES

For necessary expenses of the United States Senate-China Interparliamentary Group, as authorized under section 153 of the Consolidated Appropriations Act, 2004 (22 U.S.C. 276n; Public Law 108–199; 118 Stat. 448), $100,000, to remain available until expended.

TITLE VI—GENERAL PROVISIONS

(INCLUDING RESCISSIONS)

SEC. 601. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 602. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 603. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 604. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of each provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 605. (a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes or renames offices; (6) reorganizes programs or activities; or (7) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or

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expenditure for activities, programs, or projects through a reprogramming of funds in excess of $750,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

SEC. 606. Hereafter, none of the funds made available in this Act may be used for the construction, repair (other than emergency repair), overhaul, conversion, or modernization of vessels for the National Oceanic and Atmospheric Administration in shipyards located outside of the United States.

SEC. 607. None of the funds made available in this Act may be used to implement, administer, or enforce any guidelines of the Equal Employment Opportunity Commission covering harassment based on religion, when it is made known to the Federal entity or official to which such funds are made available that such guidelines do not differ in any respect from the proposed guidelines published by the Commission on October 1, 1993 (58 Fed. Reg. 51266).

SEC. 608. If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

SEC. 609. None of the funds made available by this Act may be used for any United Nations undertaking when it is made known to the Federal official having authority to obligate or expend such funds that: (1) the United Nations undertaking is a peacekeeping mission; (2) such undertaking will involve United States Armed Forces under the command or operational control of a foreign national; and (3) the President's military advisors have not submitted to the President a recommendation that such involvement is in the national security interests of the United States and the President has not submitted to the Congress such a recommendation.

SEC. 610. The Departments of Commerce, Justice, and State, the Judiciary, the Federal Communications Commission, the Securities and Exchange Commission and the Small Business Administration shall provide to the Committees on Appropriations of the Senate and of the House of Representatives a quarterly accounting of the cumulative balances of any unobligated funds that were received by such agency during any previous fiscal year.

SEC. 611. (a) None of the funds appropriated or otherwise made available by this Act shall be expended for any purpose for which appropriations are prohibited by section 609 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999.

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(b) The requirements in subparagraphs (A) and (B) of section 609 of that Act shall continue to apply during fiscal year 2005.

SEC. 612. Any costs incurred by a department or agency funded under this Act resulting from personnel actions taken in response to funding reductions included in this Act shall be absorbed within the total budgetary resources available to such department or agency: *Provided*, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: *Provided further*, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 613. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

SEC. 614. (a) None of the funds appropriated or otherwise made available by this Act shall be expended for any purpose for which appropriations are prohibited by section 616 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999.

(b) The requirements in subsections (b) and (c) of section 616 of that Act shall continue to apply during fiscal year 2005.

SEC. 615. None of the funds appropriated pursuant to this Act or any other provision of law may be used for—

(1) the implementation of any tax or fee in connection with the implementation of subsection 922(t) of title 18, United States Code; and

(2) any system to implement subsection 922(t) of title 18, United States Code, that does not require and result in the destruction of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law.

SEC. 616. Notwithstanding any other provision of law, amounts deposited or available in the Fund established under 42 U.S.C. 10601 in any fiscal year in excess of $625,000,000 shall not be available for obligation until the following fiscal year.

SEC. 617. None of the funds made available to the Department of Justice in this Act may be used to discriminate against or denigrate the religious or moral beliefs of students who participate in programs for which financial assistance is provided from those funds, or of the parents or legal guardians of such students.

SEC. 618. None of the funds appropriated or otherwise made available to the Department of State shall be available for the purpose of granting either immigrant or nonimmigrant visas, or both, consistent with the determination of the Secretary of State under section 243(d) of the Immigration and Nationality Act, to citizens, subjects, nationals, or residents of countries that the Secretary of Homeland Security has determined deny or unreasonably

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delay accepting the return of citizens, subjects, nationals, or residents under that section.

SEC. 619. (a) For additional amounts under the heading "Small Business Administration, Salaries and Expenses", $500,000 shall be available for the Adelante Development Center, Inc.; $150,000 shall be available for the Advanced Polymer Processing Institute; $150,000 shall be available for the Alaska Procurement Technical Assistance Center; $250,000 shall be available for Business and Professional Women of Alaska; $75,000 shall be available for the Center for Applied Research and Economic Development at the University of Southern Indiana; $300,000 shall be available for the Center for Emerging Technologies; $225,000 shall be available for the Center for Entrepreneurship and Technology at the Nevada Commission for Economic Development; $100,000 shall be available for the Central Connecticut State University Institute of Technology and Business Development; $600,000 shall be available for the Des Moines Higher Education Pappajohn Center; $150,000 shall be available for the East Central Indiana Business Incubator at Ball State University; $100,000 shall be available for the Entrepreneurial Venture Assistance Demonstration Project at the Iowa Department of Economic Development; $75,000 shall be available for the Idaho Virtual Incubator at Lewis-Clark State College for an E-Commerce Certification program; $600,000 shall be available for the Industrial Outreach Service at Mississippi State University; $2,000,000 shall be available for the Innovation and Commercialization Center at the University of Southern Mississippi; $100,000 shall be available for the Kennebec Valley Council of Governments' Business Development Program; $100,000 shall be available for the Knoxville College Small Business Incubator Program; $250,000 shall be available for the Louisiana State University Law School's Latin American Commercial Law Program; $250,000 shall be available for the Minority Business Development Center at Alcorn State University; $600,000 shall be available for the Mississippi Technology Alliance; $200,000 shall be available for the Montana Department of Commerce for a State government information sharing initiative; $125,000 shall be available for the Myrtle Beach International Trade and Convention Center; $250,000 shall be available for the Nanotechnology Research Program at the Oregon Health and Science University; $550,000 shall be available for the New Product Development and Commercialization Center for Rural Manufacturers; $125,000 shall be available for the New Hampshire Women's Business Center; $500,000 shall be available for Operation Safe Commerce; $200,000 shall be available for the Southern University Foundation's Martin Luther King Initiative; $75,000 shall be available for Technology 2020; $1,000,000 shall be available for the Technology Venture Center/InvestNet Partnership for Alaska and Montana; $500,000 shall be available for the Textile Marking System; $300,000 shall be available for the Towson University International Business Incubator; $1,000,000 shall be available for the Tuck School of Business/MBDA Partnership; $325,000 shall be available for the University of Colorado Nanotechnology and Characterization Facility; $8,000,000 shall be available for the University of South Carolina Thomas Cooper Library; $100,000 shall be available for the Virginia Electronic Commerce Technology Center at Christopher Newport University; $125,000 shall be available for the Women's Business Development Center in Stamford, Connecticut; and $100,000 shall be available for the World Trade

Center of Greater Philadelphia; $50,000 shall be available for a grant to the Center for Excellence in Education; $100,000 shall be available for a grant to The Cedar Creek Battlefield Foundation; $100,000 shall be available for a grant to Belle Grove Plantation; $150,000 shall be available for a grant to the City of Manassas Park for economic development; $100,000 shall be available for a grant to the Shenandoah Valley Travel Association; $1,200,000 shall be available for a grant to Shenandoah University to develop a facility for a business program; $115,000 shall be available for a grant to Economic Alliance Houston Port Region; $20,000 shall be available for a grant to the Town of South Boston, Virginia, for small business development; $100,000 shall be available for a grant to Patrick Henry Community College for a workforce training program; $100,000 shall be available for a grant for Danville Community College for a workforce training program; $1,000,000 shall be available for a grant to the University of Illinois for the Information Trust Institute initiative; $500,000 shall be available for a grant to Wittenberg University for a technology initiative; $500,000 shall be available for a grant to the Dayton Development Coalition; $250,000 shall be available for a grant for REI Rural Business Resources Center in Seminole, Oklahoma; $50,000 shall be available for a grant to Experience Works to expand opportunities for older workers; $50,000 shall be available for a grant to Project Listo for workforce development and procurement opportunities; $100,000 shall be available for a grant to North Iowa Area Community College for a small business incubator; $450,000 shall be available for a grant to California State University, in San Bernardino, California, for development of the Center for the Commercialization of Advanced Technology; $50,000 shall be available for a grant to Rowan University for a workforce training program; $200,000 shall be available for a grant to the Freeport Downtown Development Foundation for a small business economic development initiative; $1,500,000 shall be available for a grant to the Rockford Area Convention and Visitors Bureau for a manufacturing program; $200,000 shall be available for a grant to Jefferson County Development Council; $200,000 shall be available for a grant to Clearfield County Economic Development Corporation; $500,000 shall be available for a grant to the Columbus College of Art and Design for facilities development to build partnerships with businesses; $115,000 shall be available for a grant to Ohio Business Connection; $1,000,000 shall be available for a grant to the Southern and Eastern Kentucky Tourism Development Association; $500,000 shall be available for a grant to the Bridgeport Regional Business Council for an economic integration initiative; $100,000 shall be available for a grant to Cedarbridge Development Corporation for a redevelopment initiative; $900,000 shall be available for a grant to Western Carolina University for a computer engineering program; $100,000 shall be available for a grant to Asheville-Buncombe Technical Community College for an economic development initiative; $100,000 shall be available for a grant to Jubilee Homes for the Southwest Economic Business Resource Center; $400,000 shall be available for a grant for the Connect the Valley initiative; $400,000 shall be available for a grant to the University of Tennessee Corridor Initiative; $500,000 shall be available for a grant to the Illinois Institute for Technology to examine and assess advancements in biotechnologies; $250,000 shall be available for a grant to the City of Largo, Florida, for business

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information; $250,000 shall be available for a grant to Pro Co Technology, Inc., in the Bronx, New York, for a computer training center; $50,000 shall be available for a grant for the Promesa Foundation in the Bronx, New York, to provide community growth funding; $200,000 shall be available for a grant to Bronx Shepherds for community programs; $150,000 shall be available for a grant to HOGAR, Inc., in the Bronx, New York; $200,000 shall be available for a grant to Promesa Enterprises to provide services and support to community based organizations in the Bronx, New York; $200,000 for the Arthur Avenue Retail Market in the Bronx, New York, for facility, improvement, and maintenance needs to meet the Market's business requirements; $200,000 shall be available for a grant to Pregones Theater in the Bronx, New York, for business infrastructure; $200,000 shall be available for a grant to Presbyterian Senior Services for their Grandparent Family Apartments project and programs in the Bronx, New York; $100,000 shall be available for a grant to Thorpe Family Residence, Inc., to continue its services and programs in the Bronx, New York; $100,000 shall be available for a grant to the Puerto Rican Traveling Theater in the Bronx, New York, for outreach and programs; $100,000 shall be available for Casita Maria's Career and College Placement Preparation to be implemented in coordination with business partners in New York City; $1,100,000 shall be available for a grant to the MountainMade Foundation to fulfill its charter purposes and to continue the initiative developed by the NTTC for outreach and promotion, business and sites development, the education of artists and craftspeople, and to promote small businesses, artisans and their products through market development, advertisement, commercial sale and other promotional means; $1,000,000 shall be available for a grant for Northwest Shoals Community College to complete the Center for Business and Industry; $1,000,000 shall be available for the Rhode Island School of Design in Providence, Rhode Island, for the continued modernization of the Mason Building; $1,000,000 shall be available for a grant to the Norwegian American Foundation to fulfill its charter purposes; $750,000 shall be available for a grant to St. Mary's College for a telecommunications initiative; $400,000 shall be available for a grant to the Economic Growth Council Procurement Assistance Program; $500,000 shall be available for a grant to Johnstown Area Regional Industries in Pennsylvania for an enhanced economic development initiative; $300,000 shall be available for a grant to the Good Old Lower East Side organization for a small business economic development initiative for the Lower East Side, New York; $200,000 shall be available for a grant for the Sunnyside Chamber of Commerce to conduct a redevelopment study for Sunnyside, Queens, New York, and to implement improvements.

(b) Section 621 of division B of Public Law 108–199 is amended—

(1) by striking "$1,000,000 shall be available for the Providence, Rhode Island Center for Women and Enterprise for infrastructure development;" and inserting "$100,000 shall be available for the Providence, Rhode Island Center for Women and Enterprise for small business development programs and infrastructure development; $900,000 shall be available for the Rhode Island School of Design in Providence, Rhode Island, for the continued modernization of the Mason Building;",

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(2) by inserting "for the purpose of conducting the program and providing financial assistance" after "the Economic Growth Connection Paperless Procurement Program", and

(3) by inserting "and to implement improvements" after "the Ridgewood Myrtle Avenue Business Improvement District to conduct a redevelopment study".

SEC. 620. All disaster loans issued in Alaska shall be administered by the Small Business Administration and shall not be sold during fiscal year 2005.

SEC. 621. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 622. The Departments of Commerce, Justice, State, the Judiciary, the Securities and Exchange Commission and the Small Business Administration shall, not later than two months after the date of the enactment of this Act, certify that telecommuting opportunities are made available to 100 percent of the eligible workforce: *Provided,* That, of the total amounts appropriated to the Departments of Commerce, Justice, State, the Judiciary, the Securities and Exchange Commission and the Small Business Administration, $5,000,000 shall be available only upon such certification: *Provided further,* That each Department or agency shall provide quarterly reports to the Committees on Appropriations on the status of telecommuting programs, including the number of Federal employees eligible for, and participating in, such programs: *Provided further,* That each Department or agency shall designate a "Telework Coordinator" to be responsible for overseeing the implementation and operations of telecommuting programs, and serve as a point of contact on such programs for the Committees on Appropriations.

SEC. 623. With the consent of the President, the Secretary of Commerce shall represent the United States Government in negotiating and monitoring international agreements regarding fisheries, marine mammals, or sea turtles: *Provided,* That the Secretary of Commerce shall be responsible for the development and interdepartmental coordination of the policies of the United States with respect to the international negotiations and agreements referred to in this section.

SEC. 624. (a) Tracing studies conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives are released without adequate disclaimers regarding the limitations of the data.

(b) The Bureau of Alcohol, Tobacco, Firearms and Explosives shall include in all such data releases, language similar to the following that would make clear that trace data cannot be used to draw broad conclusions about firearms-related crime:

(1) Firearm traces are designed to assist law enforcement authorities in conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request firearms traces for any reason, and those reasons are not necessarily reported to the Federal Government. Not all firearms used in crime are traced and not all firearms traced are used in crime.

(2) Firearms selected for tracing are not chosen for purposes of determining which types, makes or models of firearms are used for illicit purposes. The firearms selected do not constitute

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a random sample and should not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe. Firearms are normally traced to the first retail seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime.

SEC. 625. None of the funds made available in this Act may be used in violation of section 212(a)(10)(C) of the Immigration and Nationality Act.

SEC. 626. None of the funds appropriated or otherwise made available under this Act may be used to issue patents on claims directed to or encompassing a human organism.

SEC. 627. None of the funds made available in this Act may be used to pay expenses for any United States delegation to any specialized agency, body, or commission of the United Nations if such commission is chaired or presided over by a country, the government of which the Secretary of State has determined, for purposes of section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), has provided support for acts of international terrorism.

SEC. 628. (a) The Department of Justice, the Department of Homeland Security, and the Department of State shall jointly conduct a thorough study of all matters relating to the efficiency and effectiveness of the interagency process used to review applications for nonimmigrant visas issued under section 221(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1201(a)(1)(B)). The Department of Justice, the Department of Homeland Security, and the Department of State shall, in conducting this study, develop recommendations on—

(1) clearance procedures for nonimmigrant visas that should be eliminated;

(2) such procedures that should be continued;

(3) the appropriate Federal agencies or departments or entities that should participate in each such procedure; and

(4) legislation that could be enacted to increase the efficiency and effectiveness of such procedures.

(b) Not later than 1 year after the date of enactment of this Act, the Department of Justice, the Department of Homeland Security, and the Department of State shall jointly submit a report to the Committees on Appropriations of the Senate and House of Representatives which shall contain a detailed statement of the findings and conclusions of the study referred to in subsection (a), together with recommendations for such legislation and administrative actions as the Department of Justice, the Department of Homeland Security, and the Department of State consider appropriate. The report may be submitted in a classified and unclassified form.

SEC. 629. Section 604 of the Secure Embassy Construction and Counterterrorism Act of 1999 (title VI of division A of H.R. 3427, as enacted by section 1000(a)(7) of Public Law 106–113) is amended by adding the following new subsection at the end:

"(e) CAPITAL SECURITY COST SHARING.—

"(1) AUTHORITY.—Notwithstanding any other provision of law, all agencies with personnel overseas subject to chief of mission authority pursuant to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) shall participate and provide funding in advance for their share of costs of providing new,

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safe, secure United States diplomatic facilities, without offsets, on the basis of the total overseas presence of each agency as determined annually by the Secretary of State in consultation with such agency. Amounts advanced by such agencies to the Department of State shall be credited to the Embassy Security, Construction and Maintenance account, and remain available until expended.

"(2) IMPLEMENTATION.—Implementation of this subsection shall be carried out in a manner that encourages right-sizing of each agency's overseas presence.

"(3) EXCLUSION.—For purposes of this subsection 'agency' does not include the Marine Security Guard.".

SEC. 630. (a) Except as provided in subsection (b), a project to construct a diplomatic facility of the United States may not include office space or other accommodations for an employee of a Federal agency or department if the Secretary of State determines that such department or agency has not provided to the Department of State the full amount of funding required by subsection (e) of section 604 of the Secure Embassy Construction and Counterterrorism Act of 1999 (as enacted into law by section 1000(a)(7) of Public Law 106–113 and contained in appendix G of that Act; 113 Stat. 1501A–453), as added by section 629 of this Act.

(b) Notwithstanding the prohibition in subsection (a), a project to construct a diplomatic facility of the United States may include office space or other accommodations for members of the Marine Corps.

SEC. 631. It is the sense of the Congress that the Secretary of State, at the most immediate opportunity, should—

(1) make a determination as to whether recent events in the Darfur region of Sudan constitute genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide; and

(2) support the investigation and prosecution of war crimes and crimes against humanity committed in the Darfur region of Sudan.

SEC. 632. None of the funds made available in this Act shall be used in any way whatsoever to support or justify the use of torture by any official or contract employee of the United States Government.

SEC. 633. (a) Section 111(b) of Public Law 102–395 (21 U.S.C. 886a) is amended—

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), and indenting accordingly;

(2) in subparagraph (B), as redesignated, by striking "program." and inserting "program. Such reimbursements shall be made without distinguishing between expenses related to controlled substance activities and expenses related to chemical activities.";

(3) by striking "There is established" and inserting the following: "(1) IN GENERAL.—There is established"; and

(4) by adding at the end the following:

"(2) DEFINITIONS.—In this section:

"(A) DIVERSION CONTROL PROGRAM.—The term 'diversion control program' means the controlled substance and chemical diversion control activities of the Drug Enforcement Administration.

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"(B) CONTROLLED SUBSTANCE AND CHEMICAL DIVERSION CONTROL ACTIVITIES.—The term 'controlled substance and chemical diversion control activities' means those activities related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals.".

(b) Section 301 of the Controlled Substances Act (21 U.S.C. 821) is amended by striking "the registration and control of regulated" and all that follows through the period, and inserting "listed chemicals.".

(c) Section 1088(f) of the Controlled Substances Import and Export Act (21 U.S.C. 958(f)) is amended—

(1) by inserting "and control" after "the registration"; and

(2) by striking "list I chemicals under this section." and inserting "listed chemicals.".

SEC. 634. None of the funds appropriated by this Act may be used by the Federal Communications Commission to modify, amend, or change its rules or regulations for universal service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments.

SEC. 635. The unobligated balance of the amount appropriated by title V of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Public Law 107–77; 115 Stat. 798) for necessary expenses of the United States-Canada Alaska Rail Commission shall be transferred as a direct lump-sum payment to the University of Alaska.

SEC. 636. Section 33(a) of the Small Business Act (15 U.S.C. 657c(a)) is amended by adding at the end the following: "Notwithstanding any other provision of law, the Corporation is a private entity and is not an agency, instrumentality, authority, entity, or establishment of the United States Government.".

SEC. 637. Of the amounts made available in this Act, $160,186,300 from "Department of State"; $14,449,118 from "Department of Justice"; $3,095,206 from "Department of Commerce"; $213,154 from "United States Trade Representative"; and $302,985 from "Broadcasting Board of Governors" shall be available for the purposes of implementing the Capital Security Cost Sharing program, as provided in section 629 of the Act.

SEC. 638. Notwithstanding 40 U.S.C. 524, 571, and 572, the Federal Communications Commission may sell the monitoring facilities in Honolulu, Hawaii, and Livermore, California, including all real property: *Provided,* That any sale shall be made in accordance with section 605 of this Act.

SEC. 639. None of the funds made available in this Act may be used in contravention of the provisions of subsections (e) and (f) of section 301 of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108–25; 22 U.S.C. 7631(e) and (f)).

SEC. 640. (a) There is hereby rescinded an amount equal to 0.54 percent of the budget authority provided for in fiscal year 2005 for any discretionary account in this Act.

(b) Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in subsection (a); and

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(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

TITLE VII—RESCISSIONS

DEPARTMENT OF JUSTICE

General Administration

WORKING CAPITAL FUND

(RESCISSION)

Of the unobligated balances available under this heading, $60,000,000 are rescinded.

Legal Activities

ASSET FORFEITURE FUND

(RESCISSION)

Of the unobligated balances available under this heading, $61,800,000 are rescinded.

Office of Justice Programs

JUSTICE ASSISTANCE

(RESCISSION)

Of the unobligated balances available under this heading, $1,619,000 are rescinded.

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

(RESCISSION)

Of the unobligated balances available under this heading, $29,380,000 are rescinded.

COMMUNITY ORIENTED POLICING SERVICES

(RESCISSION)

Of the unobligated balances available under this heading, $99,000,000 are rescinded.

JUVENILE JUSTICE

(RESCISSION)

Of the unobligated balances available under this heading, $3,500,000 are rescinded.

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DEPARTMENT OF COMMERCE

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

INDUSTRIAL TECHNOLOGY SERVICES

(RESCISSION)

Of the unobligated balances available under this heading for the Advanced Technology Program, $3,900,000 are rescinded.

RELATED AGENCIES

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

(RESCISSION)

Of the unobligated balances available under this heading, $12,000,000 are rescinded.

TITLE VIII—PATENT AND TRADEMARK FEES

SEC. 801. FEES FOR PATENT SERVICES.

(a) GENERAL PATENT FEES.—During fiscal years 2005 and 2006, subsection (a) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

"(a) GENERAL FEES.—The Director shall charge the following fees:

"(1) FILING AND BASIC NATIONAL FEES.—

"(A) On filing each application for an original patent, except for design, plant, or provisional applications, $300.

"(B) On filing each application for an original design patent, $200.

"(C) On filing each application for an original plant patent, $200.

"(D) On filing each provisional application for an original patent, $200.

"(E) On filing each application for the reissue of a patent, $300.

"(F) The basic national fee for each international application filed under the treaty defined in section 351(a) of this title entering the national stage under section 371 of this title, $300.

"(G) In addition, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director, for any application the specification and drawings of which exceed 100 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium), $250 for each additional 50 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium) or fraction thereof.

"(2) EXCESS CLAIMS FEES.—In addition to the fee specified in paragraph (1)—

"(A) on filing or on presentation at any other time, $200 for each claim in independent form in excess of 3;

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"(B) on filing or on presentation at any other time, $50 for each claim (whether dependent or independent) in excess of 20; and

"(C) for each application containing a multiple dependent claim, $360.

For the purpose of computing fees under this paragraph, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any claim that is canceled before an examination on the merits, as prescribed by the Director, has been made of the application under section 131 of this title. Errors in payment of the additional fees under this paragraph may be rectified in accordance with regulations prescribed by the Director.

"(3) EXAMINATION FEES.—

"(A) For examination of each application for an original patent, except for design, plant, provisional, or international applications, $200.

"(B) For examination of each application for an original design patent, $130.

"(C) For examination of each application for an original plant patent, $160.

"(D) For examination of the national stage of each international application, $200.

"(E) For examination of each application for the reissue of a patent, $600.

The provisions of section 111(a) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

"(4) ISSUE FEES.—

"(A) For issuing each original patent, except for design or plant patents, $1,400.

"(B) For issuing each original design patent, $800.

"(C) For issuing each original plant patent, $1,100.

"(D) For issuing each reissue patent, $1,400.

"(5) DISCLAIMER FEE.—On filing each disclaimer, $130.

"(6) APPEAL FEES.—

"(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, $500.

"(B) In addition, on filing a brief in support of the appeal, $500, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, $1,000.

"(7) REVIVAL FEES.—On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in any reexamination proceeding, $1,500,

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unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be $500.

"(8) EXTENSION FEES.—For petitions for 1-month extensions of time to take actions required by the Director in an application—

"(A) on filing a first petition, $120;

"(B) on filing a second petition, $330; and

"(C) on filing a third or subsequent petition, $570.".

(b) PATENT MAINTENANCE FEES.—During fiscal years 2005 and 2006, subsection (b) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

"(b) MAINTENANCE FEES.—The Director shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

"(1) 3 years and 6 months after grant, $900.

"(2) 7 years and 6 months after grant, $2,300.

"(3) 11 years and 6 months after grant, $3,800.

Unless payment of the applicable maintenance fee is received in the United States Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.".

(c) PATENT SEARCH FEES.—During fiscal years 2005 and 2006, subsection (d) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

"(d) PATENT SEARCH AND OTHER FEES.—

"(1) PATENT SEARCH FEES.—

"(A) The Director shall charge a fee for the search of each application for a patent, except for provisional applications. The Director shall establish the fees charged under this paragraph to recover an amount not to exceed the estimated average cost to the Office of searching applications for patent either by acquiring a search report from a qualified search authority, or by causing a search by Office personnel to be made, of each application for patent. For the 3-year period beginning on the date of enactment of this Act, the fee for a search by a qualified search authority of a patent application described in clause (i), (iv), or (v) of subparagraph (B) may not exceed $500, of a patent application described in clause (ii) of subparagraph (B) may not exceed $100, and of a patent application described in clause (iii) of subparagraph (B) may not exceed $300. The Director may not increase any such fee by more than 20 percent in each of the next three 1-year periods, and the Director may not increase any such fee thereafter.

"(B) For purposes of determining the fees to be established under this paragraph, the cost to the Office of causing a search of an application to be made by Office personnel shall be deemed to be—

"(i) $500 for each application for an original patent, except for design, plant, provisional, or international applications;

"(ii) $100 for each application for an original design patent;

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"(iii) $300 for each application for an original plant patent;

"(iv) $500 for the national stage of each international application; and

"(v) $500 for each application for the reissue of a patent.

"(C) The provisions of section 111(a)(3) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

"(D) The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under section 131 of this title, and for any applicant who provides a search report that meets the conditions prescribed by the Director.

"(E) For purposes of subparagraph (A), a 'qualified search authority' may not include a commercial entity unless—

"(i) the Director conducts a pilot program of limited scope, conducted over a period of not more than 18 months, which demonstrates that searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications—

"(I) are accurate; and

"(II) meet or exceed the standards of searches conducted by and used by the Patent and Trademark Office during the patent examination process;

"(ii) the Director submits a report on the results of the pilot program to Congress and the Patent Public Advisory Committee that includes—

"(I) a description of the scope and duration of the pilot program;

"(II) the identity of each commercial entity participating in the pilot program;

"(III) an explanation of the methodology used to evaluate the accuracy and quality of the search reports; and

"(IV) an assessment of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on—

"(aa) patentability determinations;

"(bb) productivity of the Patent and Trademark Office;

"(cc) costs to the Patent and Trademark Office;

"(dd) costs to patent applicants; and

"(ee) other relevant factors;

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"(iii) the Patent Public Advisory Committee reviews and analyzes the Director's report under clause (ii) and the results of the pilot program and submits a separate report on its analysis to the Director and the Congress that includes—

"(I) an independent evaluation of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on the factors set forth in clause (ii)(IV); and

"(II) an analysis of the reasonableness, appropriateness, and effectiveness of the methods used in the pilot program to make the evaluations required under clause (ii)(IV); and

"(iv) Congress does not, during the 1-year period beginning on the date on which the Patent Public Advisory Committee submits its report to the Congress under clause (iii), enact a law prohibiting searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications.

"(F) The Director shall require that any search by a qualified search authority that is a commercial entity is conducted in the United States by persons that—

"(i) if individuals, are United States citizens; and

"(ii) if business concerns, are organized under the laws of the United States or any State and employ United States citizens to perform the searches.

"(G) A search of an application that is the subject of a secrecy order under section 181 or otherwise involves classified information may only be conducted by Office personnel.

"(H) A qualified search authority that is a commercial entity may not conduct a search of a patent application if the entity has any direct or indirect financial interest in any patent or in any pending or imminent application for patent filed or to be filed in the Patent and Trademark Office.

"(2) OTHER FEES.—The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

"(A) For recording a document affecting title, $40 per property.

"(B) For each photocopy, $.25 per page.

"(C) For each black and white copy of a patent, $3. The yearly fee for providing a library specified in section 12 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be $50.".

(d) ADJUSTMENTS.—During fiscal years 2005 and 2006, subsection (f) of section 41 of title 35, United States Code, shall apply to the fees established under this section.

(e) FEES FOR SMALL ENTITIES.—During fiscal years 2005 and 2006, subsection (h) of section 41 of title 35, United States Code, shall be administered as though that subsection is amended—

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(1) in paragraph (1), by striking "Fees charged under subsection (a) or (b)" and inserting "Subject to paragraph (3), fees charged under subsections (a), (b), and (d)(1)"; and

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

"(3) The fee charged under subsection (a)(1)(A) shall be reduced by 75 percent with respect to its application to any entity to which paragraph (1) applies, if the application is filed by electronic means as prescribed by the Director.".

SEC. 802. ADJUSTMENT OF TRADEMARK FEES.

(a) FEE FOR FILING APPLICATION.—During fiscal years 2005 and 2006, under such conditions as may be prescribed by the Director, the fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) for: (1) the filing of a paper application for the registration of a trademark shall be $375; (2) the filing of an electronic application shall be $325; and (3) the filing of an electronic application meeting certain additional requirements prescribed by the Director shall be $275. During fiscal years 2005 and 2006, the provisions of the second and third sentences of section 31(a) of the Trademark Act of 1946 shall apply to the fees established under this section.

(b) REFERENCE TO TRADEMARK ACT OF 1946.—For purposes of this section, the "Trademark Act of 1946" refers to the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.", approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 803. EFFECTIVE DATE, APPLICABILITY, AND TRANSITIONAL PROVISION.

(a) EFFECTIVE DATE.—Except as otherwise provided in this title (including this section), the provisions of this title shall take effect on the date of the enactment of this Act and shall apply only with respect to the remaining portion of fiscal year 2005 and fiscal year 2006.

(b) APPLICABILITY.—

(1)(A) Except as provided in subparagraphs (B) and (C), the provisions of section 801 shall apply to all patents, whenever granted, and to all patent applications pending on or filed after the effective date set forth in subsection (a) of this section.

(B)(i) Except as provided in clause (ii), subsections (a)(1) and (3) and (d)(1) of section 41 of title 35, United States Code, as administered as provided in this title, shall apply only to—

(I) applications for patents filed under section 111 of title 35, United States Code, on or after the effective date set forth in subsection (a) of this section, and

(II) international applications entering the national stage under section 371 of title 35, United States Code, for which the basic national fee specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

(ii) Section 41(a)(1)(D) of title 35, United States Code, as administered as provided in this title, shall apply only to applications for patent filed under section 111(b) of title 35, United States Code, before, on, or after the effective date set forth in subsection (a) of this section in which the filing fee

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specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

(B) Section 41(a)(2) of title 35, United States Code, as administered as provided in this title, shall apply only to the extent that the number of excess claims, after giving effect to any cancellation of claims, is in excess of the number of claims for which the excess claims fee specified in section 41 of title 35, United States Code, was paid before the effective date set forth in subsection (a) of this section.

(2) The provisions of section 802 shall apply to all applications for the registration of a trademark filed or amended on or after the effective date set forth in subsection (a) of this section.

(c) TRANSITIONAL PROVISIONS.—

(1) SEARCH FEES.—During fiscal years 2005 and 2006, the Director shall charge—

(A) for the search of each application for an original patent, except for design, plant, provisional, or international application, $500;

(B) for the search of each application for an original design patent, $100;

(C) for the search of each application for an original plant patent, $300;

(D) for the search of the national stage of each international application, $500; and

(E) for the search of each application for the reissue of a patent, $500.

(2) TIMING OF FEES.—The provisions of section 111(a)(3) of title 35, United States Code, relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in paragraph (1) with respect to an application filed under section 111(a) of title 35, United States Code. The provisions of section 371(d) of title 35, United States Code, relating to the payment of the national fee shall apply to the payment of the fee specified in paragraph (1) with respect to an international application.

SEC. 804. DEFINITION.

In this title, the term "Director" means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

TITLE IX—OCEANS AND HUMAN HEALTH ACT

SEC. 901. SHORT TITLE.

This title may be cited as the "Oceans and Human Health Act".

SEC. 902. INTERAGENCY OCEANS AND HUMAN HEALTH RESEARCH PROGRAM.

(a) COORDINATION.—The President, through the National Science and Technology Council, shall coordinate and support a national research program to improve understanding of the role of the oceans in human health.

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(b) IMPLEMENTATION PLAN.—Within 1 year after the date of enactment of this Act, the National Science and Technology Council, through the Director of the Office of Science and Technology Policy shall develop and submit to the Congress a plan for coordinated Federal activities under the program. Nothing in this subsection is intended to duplicate or supersede the activities of the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia established under section 603 of the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998 (16 U.S.C. 1451 note). In developing the plan, the Committee will consult with the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia. Such plan will build on and complement the ongoing activities of the National Oceanic and Atmospheric Administration, the National Science Foundation, and other departments and agencies and shall—

(1) establish, for the 10-year period beginning in the year it is submitted, the goals and priorities for Federal research which most effectively advance scientific understanding of the connections between the oceans and human health, provide usable information for the prediction of marine-related public health problems and use the biological potential of the oceans for development of new treatments of human diseases and a greater understanding of human biology;

(2) describe specific activities required to achieve such goals and priorities, including the funding of competitive research grants, ocean and coastal observations, training and support for scientists, and participation in international research efforts;

(3) identify and address, as appropriate, relevant programs and activities of the Federal agencies and departments that would contribute to the program;

(4) identify alternatives for preventive unnecessary duplication of effort among Federal agencies and departments with respect to the program;

(5) consider and use, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, the Ocean Research Advisory Panel, the Commission on Ocean Policy and other expert scientific bodies;

(6) make recommendations for the coordination of program activities with ocean and human health-related activities of other national and international organizations; and

(7) estimate Federal funding for research activities to be conducted under the program.

(c) PROGRAM SCOPE.—The program may include the following activities related to the role of oceans in human health:

(1) Interdisciplinary research among the ocean and medical sciences, and coordinated research and activities to improve understanding of processes within the ocean that may affect human health and to explore the potential contribution of marine organisms to medicine and research, including—

(A) vector- and water-borne diseases of humans and marine organisms, including marine mammals and fish;

(B) harmful algal blooms and hypoxia (through the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia);

(C) marine-derived pharmaceuticals;

(D) marine organisms as models for biomedical research and as indicators of marine environmental health;

(E) marine environmental microbiology;

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(F) bioaccumulative and endocrine-disrupting chemical contaminants; and

(G) predictive models based on indicators of marine environmental health or public health threats.

(2) Coordination with the National Ocean Research Leadership Council (10 U.S.C. 7902(a)) to ensure that any integrated ocean and coastal observing system provides information necessary to monitor and reduce marine public health problems including health-related data on biological populations and detection of contaminants in marine waters and seafood.

(3) Development through partnerships among Federal agencies, States, academic institutions, or non-profit research organizations of new technologies and approaches for detecting and reducing hazards to human health from ocean sources and to strengthen understanding of the value of marine biodiversity to biomedicine, including—

(A) genomics and proteomics to develop genetic and immunological detection approaches and predictive tools and to discover new biomedical resources;

(B) biomaterials and bioengineering;

(C) in situ and remote sensors used to detect, quantify, and predict the presence and spread of contaminants in marine waters and organisms and to identify new genetic resources for biomedical purposes;

(D) techniques for supplying marine resources, including chemical synthesis, culturing and aquaculturing marine organisms, new fermentation methods and recombinant techniques; and

(E) adaptation of equipment and technologies from human health fields.

(4) Support for scholars, trainees and education opportunities that encourage an interdisciplinary and international approach to exploring the diversity of life in the oceans.

(d) ANNUAL REPORT.—Beginning with the first year occurring more than 24 months after the date of enactment of this Act, the National Science and Technology Council, through the Director of the Office of Science and Technology Policy shall prepare and submit to the President and the Congress not later than January 31st of each year an annual report on the activities conducted pursuant to this title during the preceding fiscal year, including—

(1) a summary of the achievements of Federal oceans and human health research, including Federally supported external research, during the preceding fiscal year;

(2) an analysis of the progress made toward achieving the goals and objectives of the plan developed under subsection (b), including identification of trends and emerging trends;

(3) a copy or summary of the plan and any changes made in the plan;

(4) a summary of agency budgets for oceans and human health activities for that preceding fiscal year; and

(5) any recommendations regarding additional action or legislation that may be required to assist in achieving the purposes of this title.

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SEC. 903. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OCEANS AND HUMAN HEALTH INITIATIVE.

(a) ESTABLISHMENT.—As part of the interagency oceans and human health research program, the Secretary of Commerce is authorized to establish an Oceans and Human Health Initiative to coordinate and implement research and activities of the National Oceanic and Atmospheric Administration related to the role of the oceans, the coasts, and the Great Lakes in human health. In carrying out this section, the Secretary shall consult with other Federal agencies conducting integrated oceans and human health research and research in related areas, including the National Science Foundation. The Oceans and Human Health Initiative is authorized to provide support for—

(1) centralized program and research coordination;

(2) an advisory panel;

(3) one or more National Oceanic and Atmospheric Administration national centers of excellence;

(4) research grants; and

(5) distinguished scholars and traineeships.

(b) ADVISORY PANEL.—The Secretary is authorized to establish an oceans and human health advisory panel to assist in the development and implementation of the Oceans and Human Health Initiative. Membership of the advisory group shall provide for balanced representation of individuals with multi-disciplinary expertise in the marine and biomedical sciences. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oceans and human health advisory panel.

(c) NATIONAL CENTERS.—

(1) The Secretary is authorized to identify and provide financial support through a competitive process to develop, within the National Oceanic and Atmospheric Administration, for one or more centers of excellence that strengthen the capabilities of the National Oceanic and Atmospheric Administration to carry out its programs and activities related to the oceans' role in human health.

(2) The centers shall focus on areas related to agency missions, including use of marine organisms as indicators for marine environmental health, ocean pollutants, marine toxins and pathogens, harmful algal blooms, hypoxia, seafood testing, identification of potential marine products, and biology and pathobiology of marine mammals, and on disciplines including marine genomics, marine environmental microbiology, ecological chemistry and conservation medicine.

(3) In selecting centers for funding, the Secretary will give priority to proposals with strong interdisciplinary scientific merit that encourage educational opportunities and provide for effective partnerships among the Administration, other Federal entities, State, academic, non-profit research organizations, medical, and industry participants.

(d) EXTRAMURAL RESEARCH GRANTS.—

(1) The Secretary is authorized to provide grants of financial assistance to the scientific community for critical research and projects that explore the relationship between the oceans and human health and that complement or strengthen programs and activities of the National Oceanic and Atmospheric Administration related to the ocean's role in human health. Officers and employees of Federal agencies may collaborate

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with, and participate in, such research and projects to the extent requested by the grant recipient. The Secretary shall consult with the oceans and human health advisory panel established under subsection (b) and may work cooperatively with other agencies participating in the interagency program to establish joint criteria for such research and projects.

(2) Grants under this subsection shall be awarded through a competitive peer-reviewed, merit-based process that may be conducted jointly with other agencies participating in the interagency program.

(e) TRAINEESHIPS.—The Secretary of Commerce is authorized to establish a program to provide traineeships, training, and experience to pre-doctoral and post-doctoral students and to scientists at the beginning of their careers who are interested in the oceans in human health research conducted under the NOAA initiative.

SEC. 904. PUBLIC INFORMATION AND OUTREACH.

(a) IN GENERAL.—The Secretary of Commerce, in consultation with other Federal agencies, and in cooperation with the National Sea Grant program, shall design and implement a program to disseminate information developed under the NOAA Oceans and Human Health Initiative, including research, assessments, and findings regarding the relationship between oceans and human health, on both a regional and national scale. The information, particularly with respect to potential health risks, shall be made available in a timely manner to appropriate Federal or State agencies, involved industries, and other interested persons through a variety of means, including through the Internet.

(b) REPORT.—As part of this program, the Secretary shall submit to Congress an annual report reviewing the results of the research, assessments, and findings developed under the NOAA Oceans and Human Health Initiative, as well as recommendations for improving or expanding the program.

SEC. 905. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Commerce to carry out the National Oceanic and Atmospheric Administration Oceans and Human Health Initiative, $60,000,000 for fiscal years 2005 through 2008. Not less than 50 percent of the amounts appropriated to carry out the initiative shall be utilized in each fiscal year to support the extramural grant and traineeship programs of the Initiative.

This division may be cited as the "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005".

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DIVISION C—ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2005

TITLE I

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

The following appropriations shall be expended under the direction of the Secretary of the Army and the supervision of the Chief of Engineers for authorized civil functions of the Department of the Army pertaining to rivers and harbors, flood control, shore protection and storm damage reduction, aquatic ecosystem restoration, and related purposes.

GENERAL INVESTIGATIONS

For expenses necessary for the collection and study of basic information pertaining to river and harbor, flood control, shore protection and storm damage reduction, aquatic ecosystem restoration, and related projects, restudy of authorized projects, miscellaneous investigations, and, when authorized by law, surveys and detailed studies and plans and specifications of projects prior to construction, $144,500,000, to remain available until expended: *Provided,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to use $300,000 for the continued preconstruction, engineering, and design of Waikiki Beach, Oahu, Hawaii, the project to be designed and evaluated, as authorized and that any recommendations for a National Economic Development Plan shall be accepted notwithstanding the extent of recreation benefits supporting the project features, in view of the fact that recreation is extremely important in sustaining and increasing the economic well-being of the State of Hawaii and the nation: *Provided further,* That in conducting the Southwest Valley Flood Damage Reduction Study, Albuquerque, New Mexico, the Secretary of the Army, acting through the Chief of Engineers, shall include an evaluation of flood damage reduction measures that would otherwise be excluded from the feasibility analysis based on policies regarding the frequency of flooding, the drainage areas, and the amount of runoff: *Provided further,* That for the Ohio Riverfront, Cincinnati, Ohio, project, the cost of planning and design undertaken by non-Federal interests shall be credited toward the non-Federal share of project design costs.

CONSTRUCTION, GENERAL

For expenses necessary for the construction of river and harbor, flood control, shore protection and storm damage reduction, aquatic ecosystem restoration, and related projects authorized by law; for conducting detailed studies, and plans and specifications, of such projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such detailed studies, and plans and specifications, shall not constitute a commitment of the Government to construction);

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and for the benefit of federally listed species to address the effects of civil works projects owned or operated by the United States Army Corps of Engineers, $1,796,089,000, to remain available until expended, of which such sums as are necessary to cover the Federal share of construction costs for facilities under the Dredged Material Disposal Facilities program shall be derived from the Harbor Maintenance Trust Fund as authorized by Public Law 104–303; and of which such sums as are necessary pursuant to Public Law 99–662 shall be derived from the Inland Waterways Trust Fund, to cover one-half of the costs of construction and rehabilitation of inland waterways projects, (including the rehabilitation costs for Lock and Dam 11, Mississippi River, Iowa; Lock and Dam 19, Mississippi River, Iowa; Lock and Dam 24, Mississippi River, Illinois and Missouri; and Lock and Dam 3, Mississippi River, Minnesota) shall be derived from the Inland Waterways Trust Fund: *Provided,* That using $12,500,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue construction of the Dallas Floodway Extension, Texas, project, including the Cadillac Heights feature, generally in accordance with the Chief of Engineers report dated December 7, 1999: *Provided further,* That the Secretary of the Army is directed to accept advance funds, pursuant to section 11 of the River and Harbor Act of 1925, from the non-Federal sponsor of the Los Angeles Harbor, California, project authorized by section 101(b)(5) of Public Law 106–541: *Provided further,* That the Secretary of the Army is directed to accept advance funds, or any portion thereof, pursuant to section 11 of the River and Harbor Act of 1925, from the non-Federal sponsor of the Oakland Harbor, California, project authorized by section 101(a)(7) of Public Law 106–53: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to use $500,000 of the funds provided herein to continue construction of the Hawaii Water Management Project: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to use $3,000,000 of the funds appropriated herein to continue construction of the navigation project at Kaumalapau Harbor, Hawaii: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to use $3,000,000 of the funds provided herein for the Dam Safety and Seepage/Stability Correction Program to complete construction of seepage control features and repairs to the tainter gates at Waterbury Dam, Vermont: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to use $9,000,000 of the funds appropriated herein to proceed with planning, engineering, design or construction of the Grundy, Buchanan County, and Dickenson County, Virginia, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River Project: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to use $15,000,000 of the funds appropriated herein to continue with the planning, engineering, design or construction of the Lower Mingo County, Upper Mingo County, Wayne County, McDowell County, West Virginia, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River Project: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to continue the Dickenson County Detailed Project Report as generally defined in Plan 4 of the Huntington District

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Engineer's Draft Supplement to the section 202 General Plan for Flood Damage Reduction dated April 1997, including all Russell Fork tributary streams within the County and special considerations as may be appropriate to address the unique relocations and resettlement needs for the flood prone communities within the County: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to use $8,750,000 of the funds appropriated herein for the Clover Fork, City of Cumberland, Town of Martin, Pike County (including Levisa Fork and Tug Fork Tributaries), Bell County, Harlan County in accordance with the Draft Detailed Project Report dated January 2002, Floyd County, Martin County, Johnson County, and Knox County, Kentucky, detailed project report, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to continue with the construction of the Seward Harbor, Alaska, project, in accordance with the Report of the Chief of Engineers, dated June 8, 1999, and the economic justification contained therein: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to continue with the construction of the False Pass, Alaska, project, in accordance with the Report of the Chief of Engineers, dated December 29, 2000: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to proceed with construction of the Sand Point Harbor, Alaska project, in accordance with the Report of the Chief of Engineers, dated October 13, 1998, and the economic justification contained therein: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to design and construct modifications to the Federal navigation project at Thomsen Harbor, Sitka, Alaska, authorized by section 101 of the Water Resources Development Act of 1992: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, shall correct the design deficiency at Thomsen Harbor, Sitka, Alaska, by adding to, or extending, the existing breakwaters to reduce wave and swell motion within the harbor at an additional cost of $1,000,000 at full Federal expense: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed and authorized to continue the work to replace and upgrade the dam and all connections to the existing system at Kake, Alaska: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to continue with the construction of the Wrangell Harbor, Alaska, project in accordance with the Chief of Engineer's report dated December 23, 1999: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to proceed with the construction of the New York and New Jersey Harbor project, 50-foot deepening element, upon execution of the Project Cooperation Agreement: *Provided further,* That no funds made available under this Act or any other Act for any fiscal year may be used by the Secretary of the Army to carry out the construction of the Port Jersey element of the New York and New Jersey Harbor or reimbursement to the Local Sponsor for the construction of the Port Jersey element until commitments for construction of container handling facilities are obtained from the non-Federal sponsor for a second user along the Port Jersey element: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to

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use funds appropriated for the navigation project, Tampa Harbor, Florida, to carry out, as part of the project, construction of passing lanes in an area approximately 3.5 miles long, centered on Tampa Bay Cut B, if the Secretary determines that such construction is technically sound, environmentally acceptable, and cost effective: *Provided further,* That using $750,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to plan, design, and initiate reconstruction of the Cape Girardeau, Missouri, project, originally authorized by the Flood Control Act of 1950, at an estimated total cost of $9,000,000, with cost sharing on the same basis as cost sharing for the project as originally authorized, if the Secretary determines that the reconstruction is technically sound and environmentally acceptable: *Provided further,* That the planned reconstruction shall be based on the most cost-effective engineering solution and shall require no further economic justification: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to proceed without further delay with work on the permanent bridge to replace Folsom Bridge Dam Road, Folsom, California, as authorized by the Energy and Water Development Appropriations Act, 2004 (Public Law 108–137), and, of the $8,000,000 available for the American River Watershed (Folsom Dam Mini-Raise), California, project, up to $5,000,000 of those funds be directed for the permanent bridge, with all remaining devoted to the Mini-Raise: *Provided further,* That the Secretary of the Army is directed to use $1,365,000 of the funds appropriated herein to construct a project for flood control, Cass River, Spaulding Township, Michigan, pursuant to section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), notwithstanding that the benefits of the project may not exceed the estimated costs of the project: *Provided further,* That the non-Federal interest for the project shall receive credit towards its share of project costs in the amount of $345,000 for work carried out by the non-Federal interest on the project prior to entering into a project cooperation agreement: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to undertake and fund a demonstration project utilizing the Bidlocker system of escrowing contract bid documents: *Provided further*, That the system should provide a method of securing bidder documents prior to the award of the contracts, thus allowing the contractor to provide those documents to the Government in the case of disputes: *Provided further*, That the demonstration project should include use of the system on at least three contracts: *Provided further*, That a report on the results of the demonstration project shall be provided within 1 year of the date of enactment of this Act.

FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES, ARKANSAS, ILLINOIS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, AND TENNESSEE

For expenses necessary for the flood damage reduction program for the Mississippi River alluvial valley below Cape Girardeau, Missouri, as authorized by law, $324,500,000, to remain available until expended: *Provided,* That the Secretary of the Army, acting through the Chief of Engineers, using $12,000,000 of the funds provided herein, is directed to continue design and real estate activities and to initiate the pump supply contract for the Yazoo

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Basin, Yazoo Backwater Pumping Plant, Mississippi: *Provided further,* That the pump supply contract shall be performed by awarding continuing contracts in accordance with 33 U.S.C. 621: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers is directed, with $500,000 appropriated herein, to continue construction of water withdrawal features of the Grand Prairie, Arkansas, project.

OPERATION AND MAINTENANCE

For expenses necessary for the operation, maintenance, and care of existing river and harbor, flood and storm damage reduction, aquatic ecosystem restoration, and related projects authorized by law; for the benefit of federally listed species to address the effects of civil works projects owned or operated by the United States Army Corps of Engineers; for providing security for infrastructure owned and operated by, or on behalf of, the United States Army Corps of Engineers, including administrative buildings and facilities, laboratories, and the Washington Aqueduct; for the maintenance of harbor channels provided by a State, municipality, or other public agency that serve essential navigation needs of general commerce, where authorized by law; and for surveys and charting of northern and northwestern lakes and connecting waters, clearing and straightening channels, and removal of obstructions to navigation, $1,959,101,000, to remain available until expended, of which such sums as are necessary to cover the Federal share of operation and maintenance costs for coastal harbors and channels shall be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662 may be derived from that fund; of which such sums as become available from the special account for the United States Army Corps of Engineers established by the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460l–6a(i)), may be derived from that account for resource protection, research, interpretation, and maintenance activities related to resource protection in the areas at which outdoor recreation is available; and of which such sums as become available under section 217 of the Water Resources Development Act of 1996, Public Law 104–303, shall be used to cover the cost of operation and maintenance of the dredged material disposal facilities for which fees have been collected: *Provided,* That utilizing funds appropriated herein, for the Intracoastal Waterway, Delaware River to Chesapeake Bay, Delaware and Maryland, the Secretary of the Army, acting through the Chief of Engineers, is directed to reimburse the State of Delaware for normal operation and maintenance costs incurred by the State of Delaware for the SR1 Bridge from station 58∂00 to station 293∂00 between October 1, 2003, and September 30, 2004: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is directed to use funds appropriated herein to rehabilitate the existing dredged material disposal site for the project for navigation, Bodega Bay Harbor, California, and to continue maintenance dredging of the Federal channel: *Provided further,* That the Secretary shall make suitable material excavated from the Bodega Bay Harbor, California, disposal site as part of the rehabilitation effort available to the non-Federal sponsor, at no cost to the Federal Government, for use by the non-Federal sponsor in the development of public facilities: *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, is authorized to undertake, at full Federal expense, a detailed

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evaluation of the Albuquerque levees for purposes of determining structural integrity, impacts of vegetative growth, and performance under current hydrological conditions: *Provided further,* That using $175,000 provided herein, the Secretary of the Army, acting through the Chief of Engineers is authorized to remove the sunken vessel *State of Pennsylvania* from the Christina River in Delaware: *Provided further,* That the Corps of Engineers shall not allocate any funds to deposit dredged material along the Laguna Madre portion of the Gulf Intracoastal Waterway except at the placement areas specified in the Dredged Material Management Plan in section 2.11 of the Final Environmental Impact Statement for Maintenance Dredging of the Gulf Intracoastal Waterway, Laguna Madre, Texas, Nueces, Kleberg, Kenedy, Willacy, and Cameron Counties, Texas, prepared by the Corps of Engineers dated September 2003: *Provided further,* That nothing in the above proviso shall prevent the Corps of Engineers from performing necessary maintenance operations along the Gulf Intracoastal Waterway if the following conditions are met: if the Corps proposes to use any placement areas that are not currently specified in the Dredged Material Management Plan and failure to use such alternative placement areas will result in the closure of any segment of the Gulf Intracoastal Waterway, then such proposal shall be analyzed in an Environmental Impact Statement (EIS) and comply with all other applicable requirements of the National Environmental Policy Act, 42 U.S.C. 4321 et seq., and all other applicable State and Federal laws, including the Clean Water Act, 33 U.S.C. 1251 et seq., the Endangered Species Act, 16 U.S.C. 1531 et seq., and the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.: *Provided further,* That, of the funds made available, $7,000,000 is to be used to perform work authorized in section 136 of Public Law 108–357.

REGULATORY PROGRAM

For expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, $145,000,000, to remain available until expended.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

For expenses necessary to clean up contamination from sites in the United States resulting from work performed as part of the Nation's early atomic energy program, $165,000,000, to remain available until expended.

GENERAL EXPENSES

For expenses necessary for general administration and related civil works functions in the headquarters of the United States Army Corps of Engineers, the offices of the Division Engineers, the Humphreys Engineer Center Support Activity, the Institute for Water Resources, the United States Army Engineer Research and Development Center, and the United States Army Corps of Engineers Finance Center, $167,000,000, to remain available until expended: *Provided,* That no part of any other appropriation provided in title I of this Act shall be available to fund the civil works activities of the Office of the Chief of Engineers or the civil works executive direction and management activities of the division offices: *Provided further,* That none of these funds shall

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be available to support an office of congressional affairs within the executive office of the Chief of Engineers.

OFFICE OF ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

For expenses necessary for the Office of Assistant Secretary of the Army (Civil Works), as authorized by 10 U.S.C. 3016(b)(3), $4,000,000.

ADMINISTRATIVE PROVISION

Appropriations in this title shall be available for official reception and representation expenses (not to exceed $5,000); and during the current fiscal year the Revolving Fund, Corps of Engineers, shall be available for purchase (not to exceed 100 for replacement only) and hire of passenger motor vehicles.

GENERAL PROVISIONS

CORPS OF ENGINEERS—CIVIL

SEC. 101. Beginning in fiscal year 2005 and thereafter, agreements proposed for execution by the Assistant Secretary of the Army for Civil Works or the United States Army Corps of Engineers after the date of the enactment of this Act pursuant to section 4 of the Rivers and Harbor Act of 1915, Public Law 64–291; section 11 of the River and Harbor Act of 1925, Public Law 68–585; the Civil Functions Appropriations Act, 1936, Public Law 75–208; section 215 of the Flood Control, Act of 1968, as amended, Public Law 90–483; sections 104, 203, and 204 of the Water Resources Development Act of 1986, as amended, Public Law 99–662; section 206 of the Water Resources Development Act of 1992, as amended, Public Law 102–580; section 211 of the Water Resources Development Act of 1996, Public Law 104–303; and any other specific project authority, shall be limited to credits and reimbursements per project not to exceed $10,000,000 in each fiscal year, and total credits and reimbursements for all applicable projects not to exceed $50,000,000 in each fiscal year, except that for environmental infrastructure projects, the $10,000,000 limitation shall apply to each State wherein such projects are undertaken.

SEC. 102. None of the funds appropriated in this or any other Act may be used by the United States Army Corps of Engineers to support activities related to the proposed Ridge Landfill in Tuscarawas County, Ohio.

SEC. 103. None of the funds appropriated in this or any other Act shall be used to demonstrate or implement any plans divesting or transferring any Civil Works missions, functions, or responsibilities of the United States Army Corps of Engineers to other government agencies without specific direction in a subsequent Act of Congress.

SEC. 104. ALAMOGORDO, NEW MEXICO. The project for flood protection at Alamogordo, New Mexico, authorized by the Flood Control Act of 1962 (Public Law 87–874), is modified to authorize and direct the Secretary to construct a flood detention basin to protect the north side of the City of Alamogordo, New Mexico, from flooding. The flood detention basin shall be constructed to provide protection from a 100-year flood event. The project cost share for the flood detention basin shall be consistent with section

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103(a) of the Water Resources Development Act of 1986, notwithstanding section 202(a) of the Water Resources Development Act of 1996.

SEC. 105. None of the funds appropriated in this or any other Act may be used by the United States Army Corps of Engineers to support activities related to the proposed Indian Run Sanitary Landfill in Sandy Township, Stark County, Ohio.

SEC. 106. ST. GEORGES BRIDGE, DELAWARE. None of the funds made available in this Act may be used to carry out any activity relating to closure or removal of the St. Georges Bridge across the Intracoastal Waterway, Delaware River to Chesapeake Bay, Delaware and Maryland, including a hearing or any other activity relating to preparation of an environmental impact statement concerning the closure or removal.

SEC. 107. WATER REALLOCATION, LAKE CUMBERLAND, KENTUCKY. (a) IN GENERAL.—Subject to subsection (b), none of the funds made available by this Act may be used to carry out any water reallocation project or component under the Wolf Creek Project, Lake Cumberland, Kentucky, authorized under the Act of June 28, 1938 (52 Stat. 1215, chapter 795) and the Act of July 24, 1946 (60 Stat. 636, chapter 595).

(b) EXISTING REALLOCATIONS.—Subsection (a) shall not apply to any water reallocation for Lake Cumberland, Kentucky, that is carried out subject to an agreement or payment schedule in effect on the date of enactment of this Act.

SEC. 108. LAKE TAHOE BASIN RESTORATION, NEVADA AND CALIFORNIA. (a) DEFINITION.—In this section, the term "Lake Tahoe Basin" means the entire watershed drainage of Lake Tahoe including that portion of the Truckee River 1,000 feet downstream from the United States Bureau of Reclamation dam in Tahoe City, California.

(b) ESTABLISHMENT OF PROGRAM.—The Secretary may establish a program for providing environmental assistance to non-Federal interests in Lake Tahoe Basin.

(c) FORM OF ASSISTANCE.—Assistance under this section may be in the form of planning, design, and construction assistance for water-related environmental infrastructure and resource protection and development projects in Lake Tahoe Basin—

(1) urban stormwater conveyance, treatment and related facilities;

(2) watershed planning, science and research;

(3) environmental restoration; and

(4) surface water resource protection and development.

(d) PUBLIC OWNERSHIP REQUIREMENT.—The Secretary may provide assistance for a project under this section only if the project is publicly owned.

(e) LOCAL COOPERATION AGREEMENT.—

(1) IN GENERAL.—Before providing assistance under this section, the Secretary shall enter into a local cooperation agreement with a non-Federal interest to provide for design and construction of the project to be carried out with the assistance.

(2) REQUIREMENTS.—Each local cooperation agreement entered into under this subsection shall provide for the following:

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(A) PLAN.—Development by the Secretary, in consultation with appropriate Federal and State and Regional officials, of appropriate environmental documentation, engineering plans and specifications.

(B) LEGAL AND INSTITUTIONAL STRUCTURES.—Establishment of such legal and institutional structures as are necessary to ensure the effective long-term operation of the project by the non-Federal interest.

(3) COST SHARING.—

(A) IN GENERAL.—The Federal share of project costs under each local cooperation agreement entered into under this subsection shall be 75 percent. The Federal share may be in the form of grants or reimbursements of project costs.

(B) CREDIT FOR DESIGN WORK.—The non-Federal interest shall receive credit for the reasonable costs of planning and design work completed by the non-Federal interest before entering into a local cooperation agreement with the Secretary for a project.

(C) LAND, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS.—The non-Federal interest shall receive credit for land, easements, rights-of-way, and relocations provided by the non-Federal interest toward the non-Federal share of project costs (including all reasonable costs associated with obtaining permits necessary for the construction, operation, and maintenance of the project on publicly owned or controlled land), but not to exceed 25 percent of total project costs.

(D) OPERATION AND MAINTENANCE.—The non-Federal share of operation and maintenance costs for projects constructed with assistance provided under this section shall be 100 percent.

(f) APPLICABILITY OF OTHER FEDERAL AND STATE LAWS.—Nothing in this section waives, limits, or otherwise affects the applicability of any provision of Federal or State law that would otherwise apply to a project to be carried out with assistance provided under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section for the period beginning with fiscal year 2005, $25,000,000, to remain available until expended.

SEC. 109. WATERSHED MANAGEMENT AND DEVELOPMENT. Section 503 of the Water Resources Development Act of 1996 (110 Stat. 3756) is amended in subsection (c) by inserting the following: "The non-Federal share of the cost to provide assistance for the Lake Tahoe watershed, California and Nevada, and Walker River Basin, Nevada may be provided as work-in-kind.".

SEC. 110. The Assistant Secretary of the Army for Civil Works shall enter into an agreement with the Orange County Water District, Orange County, California for purposes of water conservation storage and operations to provide at a minimum a conservation level up to elevation 498 feet mean sea level during the flood season, and up to elevation 505 feet mean sea level during the non-flood season at Prado Dam, California. The Orange County Water District shall pay to the Government only the separable costs associated with implementation and operation and maintenance of Prado Dam for water conservation.

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SEC. 111. BLACK WARRIOR-TOMBIGBEE RIVERS, ALABAMA. (a) IN GENERAL.—The Secretary is authorized to construct a new project management office located in the city of Tuscaloosa, Alabama, at a location within the vicinity of the city, at full Federal expense.

(b) TRANSFER OF LAND AND STRUCTURES.—The Secretary is authorized to convey, or otherwise transfer to the City of Tuscaloosa, Alabama, at fair market value, the land and structures associated with the existing project management office, if the city agrees to assume full responsibility for demolition of the existing project management office.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (a) $32,000,000.

SEC. 112. Within 75 days of the date of the Chief of Engineers Report on a water resource matter, the Assistant Secretary of the Army (Civil Works) shall submit the report to the appropriate authorizing and appropriating committees of the Congress.

SEC. 113. Within 90 days of the date of enactment of this Act, the Assistant Secretary of the Army (Civil Works) shall transmit to Congress his report on any water resources matter on which the Chief of Engineers has reported.

SEC. 114. COASTAL WETLAND CONSERVATION PROJECT FUNDING. (a) FUNDING.—Section 306 of the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3955) is amended—

(1) in subsection (a), by striking ", not to exceed $70,000,000,";

(2) in subsection (b), by striking ", not to exceed $15,000,000"; and

(3) in subsection (c), by striking ", not to exceed $15,000,000,".

(b) PERIOD OF AUTHORIZATION.—Section 4(a) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)) is amended in the second sentence by striking "2009" and inserting "2019".

SEC. 115. The Secretary of the Army, acting through the Chief of Engineers, is directed to design and construct a marina and associated facilities project capable of remaining in operation through extended drought conditions at Federal expense at Lake Sakakawea, North Dakota.

SEC. 116. CENTRAL CITY, FORT WORTH, TEXAS. The project for flood control and other purposes on the Trinity River and Tributaries, Texas, authorized by the River and Harbor Act of 1965 (Public Law 89–298), as modified, is further modified to authorize the Secretary to undertake the Central City River Project, as generally described in the Trinity River Vision Master Plan, dated April 2003, as amended, at a total cost not to exceed $220,000,000, at a Federal cost of $110,000,000, and a non-Federal cost of $110,000,000, if the Secretary determines the work is technically sound and environmentally acceptable. The cost of work undertaken by the non-Federal interests before the date of execution of a project cooperation agreement shall be credited against the non-Federal share of project costs if the Secretary determines that the work is integral to the project.

SEC. 117. Notwithstanding any other provision of law, the Secretary of the Army is authorized to carry out, at full Federal expense, structural and non-structural projects for storm damage

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prevention and reduction, coastal erosion, and ice and glacial damage in Alaska, including relocation of affected communities and construction of replacement facilities.

SEC. 118. COOK INLET, ALASKA. (a) ANCHORAGE HARBOR.—

(1) HARBOR DEPTH.—The project for navigation improvements, Cook Inlet, Alaska (Anchorage Harbor, Alaska), authorized by section 101 of the River and Harbor Act of 1958 (72 Stat. 299) and modified by section 199 of the Water Resources Development Act of 1976 (90 Stat. 2944), is further modified to direct the Secretary of the Army to construct a harbor depth of minus 45 feet mean lower low water for a length of 10,860 feet at the modified Port of Anchorage intermodal marine facility at each phase of facility modification as such phases are completed and thereafter as the entire project is completed.

(2) COST-SHARING.—If the Secretary determines that the modified Port of Anchorage will be used by vessels operated by the Department of Defense that have a draft of greater than 35 feet, the modification referred to in paragraph (1) shall be at full Federal expense.

(3) TRANSITIONAL DREDGING.—Before completion of the project modification described in paragraph (1), the Secretary may conduct dredging to a depth of at least minus 35 feet mean lower low water in such locations as will allow maintenance of navigation and vessel access to the Port of Anchorage intermodal marine facility during modification of such facility. Such work shall be carried out by the Secretary in accordance with section 101 of the River and Harbor Act of 1958.

(4) FACILITATING FACILITY MODIFICATION.—Before establishing the harbor depth of minus 45 feet mean lower low water, the Secretary may undertake dredging in accordance with section 101 of the River and Harbor Act of 1958 within the design footprint of the modified intermodal marine facility referred to in paragraph (1) to facilitate modification. The Secretary may carry out such dredging as part of operation and maintenance of the project modified by paragraph (1).

(5) MAINTENANCE.—Federal maintenance shall continue for the existing project until the modified intermodal marine facility is completed. Federal maintenance of the modified project shall be in accordance with section 101 of the River and Harbor Act of 1958; except that the project shall be maintained at a depth of minus 45 feet mean lower low water for 10,860 feet referred to in paragraph (1).

(b) NAVIGATION CHANNEL.—The Secretary shall modify the channel in the exiting Cook Inlet Navigation Channel approach to Anchorage Harbor, Alaska, to run the entire length of Fire Island Range and Point Woronzof Range and shall modify the depth of that channel to minus 45 feet mean lower low water. The channel shall be maintained at a depth of minus 45 feet mean lower low water.

(c) HYDRODYNAMIC MODELING.—The Secretary shall carry out hydrodynamic modeling of the Knik Arm to identify causes of, and measures to address, shoaling at the Port of Anchorage, at a total cost of $3,000,000.

(d) ALTERNATIVES ANALYSIS.—No alternative other than the alternative authorized in this section shall be considered in any

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analysis of the modified project to be carried out by the Secretary in accordance with this section.

SEC. 119. NORTHERN WISCONSIN. Section 154(c) of title I of division B of the Miscellaneous Appropriations Act, 2001, enacted into law by the Consolidated Appropriations Act, 2001 (114 Stat. 2763A–252), is amended—

(1) by inserting after "design" the following: ", construction,"; and

(2) by inserting before "wastewater treatment" the following: "navigation and inland harbor improvement and expansion,".

SEC. 120. ST. CROIX FALLS ENVIRONMENTAL INFRASTRUCTURE, WISCONSIN. ADDITIONAL ASSISTANCE.—Section 219(f) of the Water Resources Development Act of 1992 (106 Stat. 4835; 110 Stat. 3757; 113 Stat. 335; 114 Stat. 2763A–220) is amended by adding at the end the following:

"(73) ST. CROIX FALLS, WISCONSIN.—$5,000,000 for waste water infrastructure, St. Croix Falls, Wisconsin.".

SEC. 121. BURNS HARBOR, INDIANA. The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to dredge sediments, at 100 percent Federal cost, in the vicinity of the Bailey (NIPSCO) intake structure that is approximately 5,000 feet east of and 2,300 feet north of the northern most point of the Burns Waterway Harbor Breakwater authorized by Public Law 89–298.

SEC. 122. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to transfer the unexpended balance of funds appropriated in fiscal years 2003 and 2004 for the Duck River Water Supply Infrastructure Project, Cullman, Alabama, to the Appalachian Regional Commission.

(b) Funds transferred pursuant to subsection (a) of this section may be used for planning, engineering, and construction activities on the Duck River Water Supply Infrastructure Project under the Memorandum of Agreement between the Appalachian Regional Commission and the Army Corps of Engineers and may be used to reimburse the City of Cullman, Alabama, for expenses incurred by the City for planning and environmental work associated with the Project.

SEC. 123. With the funds previously provided under the account heading "Flood Control and Coastal Emergencies", the Secretary of the Army, acting through the Chief of Engineers is directed to provide assistance to Yakutat, Alaska Dam.

SEC. 124. The Secretary of the Army, acting through the Chief of Engineers, shall not implement changes to existing shoreline protection policies that have not been specifically authorized by Congress.

TITLE II

DEPARTMENT OF THE INTERIOR

CENTRAL UTAH PROJECT

CENTRAL UTAH PROJECT COMPLETION ACCOUNT

For carrying out activities authorized by the Central Utah Project Completion Act, $46,275,000, to remain available until expended, of which $15,469,000 shall be deposited into the Utah

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Reclamation Mitigation and Conservation Account for use by the Utah Reclamation Mitigation and Conservation Commission.

In addition, for necessary expenses incurred in carrying out related responsibilities of the Secretary of the Interior, $1,734,000, to remain available until expended.

BUREAU OF RECLAMATION

The following appropriations shall be expended to execute authorized functions of the Bureau of Reclamation:

WATER AND RELATED RESOURCES

(INCLUDING TRANSFER OF FUNDS)

For management, development, and restoration of water and related natural resources and for related activities, including the operation, maintenance, and rehabilitation of reclamation and other facilities, participation in fulfilling related Federal responsibilities to Native Americans, and related grants to, and cooperative and other agreements with, State and local governments, Indian tribes, and others, $859,481,000, to remain available until expended, of which $53,299,000 shall be available for transfer to the Upper Colorado River Basin Fund and $33,794,000 shall be available for transfer to the Lower Colorado River Basin Development Fund; of which such amounts as may be necessary may be advanced to the Colorado River Dam Fund; of which not more than $500,000 is for high priority projects which shall be carried out by the Youth Conservation Corps, as authorized by 16 U.S.C. 1706: *Provided further,* That such transfers may be increased or decreased within the overall appropriation under this heading: *Provided further,* That of the total appropriated, the amount for program activities can be financed by the Reclamation Fund or the Bureau of Reclamation special fee account established by 16 U.S.C. 460l–6a(i) shall be derived from that Fund or account: *Provided further,* That funds contributed under 43 U.S.C. 395 are available until expended for the purposes for which contributed: *Provided further,* That $250,000 is provided under the Weber Basin project for the Park City, Utah feasibility study: *Provided further,* That funds advanced under 43 U.S.C. 397a shall be credited to this account and are available until expended for the same purposes as the sums appropriated under this heading: *Provided further,* That funds available for expenditure for the Departmental Irrigation Drainage Program may be expended by the Bureau of Reclamation for site remediation on a non-reimbursable basis.

CENTRAL VALLEY PROJECT RESTORATION FUND

For carrying out the programs, projects, plans, and habitat restoration, improvement, and acquisition provisions of the Central Valley Project Improvement Act, $54,695,000, to be derived from such sums as may be collected in the Central Valley Project Restoration Fund pursuant to sections 3407(d), 3404(c)(3), 3405(f), and 3406(c)(1) of Public Law 102–575, to remain available until expended: *Provided,* That the Bureau of Reclamation is directed to assess and collect the full amount of the additional mitigation and restoration payments authorized by section 3407(d) of Public

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Law 102–575: *Provided further,* That none of the funds made available under this heading may be used for the acquisition or leasing of water for in-stream purposes if the water is already committed to in-stream purposes by a court adopted decree or order.

POLICY AND ADMINISTRATION

For necessary expenses of policy, administration, and related functions in the office of the Commissioner, the Denver office, and offices in the five regions of the Bureau of Reclamation, to remain available until expended, $58,153,000 to be derived from the Reclamation Fund and be nonreimbursable as provided in 43 U.S.C. 377: *Provided,* That no part of any other appropriation in this Act shall be available for activities or functions budgeted as policy and administration expenses.

ADMINISTRATIVE PROVISIONS

Appropriations for the Bureau of Reclamation shall be available for purchase of not to exceed 14 passenger motor vehicles, of which 11 are for replacement only.

GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR

SEC. 201. (a) None of the funds appropriated or otherwise made available by this Act may be used to determine the final point of discharge for the interceptor drain for the San Luis Unit until development by the Secretary of the Interior and the State of California of a plan, which shall conform to the water quality standards of the State of California as approved by the Administrator of the Environmental Protection Agency, to minimize any detrimental effect of the San Luis drainage waters.

(b) The costs of the Kesterson Reservoir Cleanup Program and the costs of the San Joaquin Valley Drainage Program shall be classified by the Secretary of the Interior as reimbursable or nonreimbursable and collected until fully repaid pursuant to the "Cleanup Program-Alternative Repayment Plan" and the "SJVDP-Alternative Repayment Plan" described in the report entitled "Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995", prepared by the Department of the Interior, Bureau of Reclamation. Any future obligations of funds by the United States relating to, or providing for, drainage service or drainage studies for the San Luis Unit shall be fully reimbursable by San Luis Unit beneficiaries of such service or studies pursuant to Federal reclamation law.

SEC. 202. None of the funds appropriated or otherwise made available by this or any other Act may be used to pay the salaries and expenses of personnel to purchase or lease water in the Middle Rio Grande or the Carlsbad Projects in New Mexico unless said purchase or lease is in compliance with the purchase requirements of section 202 of Public Law 106–60.

SEC. 203. LOWER COLORADO RIVER BASIN DEVELOPMENT. (a) IN GENERAL.—Notwithstanding section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)), no amount from the Lower Colorado River Basin Development Fund shall be paid to the general fund of the Treasury until each provision of the revised Stipulation Regarding a Stay and for Ultimate Judgment Upon the Satisfaction of Conditions, filed in United States District Court on April 24,

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2003, in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB (EHC), No. CIV 95–1720–OHX–EHC (Consolidated Action)), and any amendment or revision thereof, is met.

(b) PAYMENT TO GENERAL FUND.—If any of the provisions of the stipulation referred to in subsection (a) are not met by the date that is 10 years after the date of enactment of this Act, payments to the general fund of the Treasury shall resume in accordance with section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)).

(c) AUTHORIZATION.—Amounts in the Lower Colorado River Basin Development Fund that but for this section would be returned to the general fund of the Treasury shall not be expended until further Act of Congress.

SEC. 204. Funds under this title for Drought Emergency Assistance shall be made available primarily for leasing of water for specified drought related purposes from willing lessors, in compliance with existing State laws and administered under State water priority allocation. Such leases may be entered into with an option to purchase: *Provided,* That such purchase is approved by the State in which the purchase takes place and the purchase does not cause economic harm within the State in which the purchase is made.

SEC. 205. (a) Notwithstanding any other provision of law and hereafter, the Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, may not obligate funds, and may not use discretion, if any, to restrict, reduce or reallocate any water stored in Heron Reservoir or delivered pursuant to San Juan-Chama Project contracts, including execution of said contracts facilitated by the Middle Rio Grande Project, to meet the requirements of the Endangered Species Act, unless such water is acquired or otherwise made available from a willing seller or lessor and the use is in compliance with the laws of the State of New Mexico, including but not limited to, permitting requirements.

(b) Complying with the reasonable and prudent alternatives and the incidental take limits defined in the Biological Opinion released by the United States Fish and Wildlife Service dated March 17, 2003 combined with efforts carried out pursuant to Public Law 106–377, Public Law 107–66, and Public Law 108–7 fully meet all requirements of the Endangered Species Act (16 U.S.C. 1531 et seq.) for the conservation of the Rio Grande Silvery Minnow (Hybognathus amarus) and the Southwestern Willow Flycatcher (Empidonax trailii extimus) on the Middle Rio Grande in New Mexico.

(c) This section applies only to those Federal agencies and non-Federal actions addressed in the March 17, 2003 Biological Opinion.

(d) Subsection (b) will remain in effect until March 16, 2013.

SEC. 206. The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, is authorized to enter into grants, cooperative agreements, and other agreements with irrigation or water districts and States to fund up to 50 percent of the cost of planning, designing, and constructing improvements that will conserve water, increase water use efficiency, or enhance water management through measurement or automation, at existing water supply projects within the States identified in the Act of June 17, 1902, as amended, and supplemented: *Provided,*

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That when such improvements are to federally owned facilities, such funds may be provided in advance on a non-reimbursable basis to an entity operating affected transferred works or may be deemed non-reimbursable for non-transferred works: *Provided further,* That the calculation of the non-Federal contribution shall provide for consideration of the value of any in-kind contributions, but shall not include funds received from other Federal agencies: *Provided further,* That the cost of operating and maintaining such improvements shall be the responsibility of the non-Federal entity: *Provided further*, That this section shall not supercede any existing project-specific funding authority: *Provided further*, That the Secretary is also authorized to enter into grants or cooperative agreements with universities or non-profit research institutions to fund water use efficiency research.

SEC. 207. ANIMAS-LA PLATA NON-INDIAN SPONSOR OBLIGATIONS.

In accordance with the nontribal repayment obligation specified in Subsection 6(a)(3)(B) of the Colorado Ute Indian Rights Settlement Act of 1988 (Public Law 100–585), as amended by the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106–554), the reimbursable cost upon which the cost allocation shall be based shall not exceed $43,000,000, plus interest during construction for those parties not utilizing the up front payment option, of the first $500,000,000 (January 2003 price level) of the total project costs. Consequently, the Secretary may forgive the obligation of the non-Indian sponsors relative to the $163,000,000 increase in estimated total project costs that occurred in 2003.

SEC. 208. MONTANA WATER CONTRACTS EXTENSION. (a) AUTHORITY TO EXTEND.—The Secretary of the Interior may extend each of the water contracts listed in subsection (b) until the earlier of—

(1) the expiration of the 2-year period beginning on the date on which the contract would expire but for this section; or

(2) the date on which a new long-term water contract is executed by the parties to the contract listed in subsection (b).

(b) EXTENDED CONTRACTS.—The water contracts referred to in subsection (a) are the following:

(1) Contract Number 14–06–600–2078, as amended, for purchase of water between the United States of America and the City of Helena, Montana.

(2) Contract Number 14–06–600–2079, as amended, between the United States of America and the Helena Valley Irrigation District for water service.

(3) Contract Number 14–06–600–8734, as amended, between the United States of America and the Toston Irrigation District for water service.

(4) Contract Number 14–06–600–3592, as amended, between the United States and the Clark Canyon Water Supply Company, Inc., for water service and for a supplemental supply.

(5) Contract Number 14–06–600–3593, as amended, between the United States and the East Bench Irrigation District for water service.

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TITLE III

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY SUPPLY

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for energy supply activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not to exceed 9 passenger motor vehicles for replacement only, and one ambulance, $946,272,000, to remain available until expended.

NON-DEFENSE SITE ACCELERATION COMPLETION

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for non-defense environmental management site acceleration completion activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, $151,850,000, to remain available until expended.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

For necessary expenses in carrying out uranium enrichment facility decontamination and decommissioning, remedial actions, and other activities of title II of the Atomic Energy Act of 1954, as amended, and title X, subtitle A, of the Energy Policy Act of 1992, $499,007,000, to be derived from the Fund, to remain available until expended, of which $80,000,000 shall be available in accordance with title X, subtitle A, of the Energy Policy Act of 1992.

NON-DEFENSE ENVIRONMENTAL SERVICES

For Department of Energy expenses necessary for non-defense environmental services activities that indirectly support the accelerated cleanup and closure mission at environmental management sites, including the purchase, construction, and acquisition of plant and capital equipment and other necessary expenses, $291,296,000, to remain available until expended.

SCIENCE

For Department of Energy expenses including the purchase, construction and acquisition of plant and capital equipment, and other expenses necessary for science activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any

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real property or facility or for plant or facility acquisition, construction, or expansion, and purchase of not to exceed four passenger motor vehicles for replacement only, including not to exceed one ambulance, $3,628,902,000, to remain available until expended.

NUCLEAR WASTE DISPOSAL

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, $346,000,000, to remain available until expended: *Provided*, That of the funds made available in this Act for Nuclear Waste Disposal, $2,000,000 shall be provided to the State of Nevada solely for expenditures, other than salaries and expenses of State employees, to conduct scientific oversight responsibilities and participate in licensing activities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97–425, as amended: *Provided further,* That $8,000,000 shall be provided to affected units of local governments, as defined in Public Law 97–425, to conduct scientific oversight responsibilities and participate in licensing activities pursuant to the Act: *Provided further,* That the distribution of the funds as determined by the units of local government shall be approved by the Department of Energy: *Provided further,* That the funds for the State of Nevada shall be made available solely to the Nevada Division of Emergency Management by direct payment and units of local government by direct payment: *Provided further,* That within 90 days of the completion of each Federal fiscal year, the Nevada Division of Emergency Management and the Governor of the State of Nevada and each local entity shall provide certification to the Department of Energy that all funds expended from such payments have been expended for activities authorized by Public Law 97–425 and this Act: *Provided further*, That failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further,* That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C. 1913; (2) used for litigation expenses; or (3) used to support multi-State efforts or other coalition building activities inconsistent with the restrictions contained in this Act: *Provided further,* That all proceeds and recoveries realized by the Secretary in carrying out activities authorized by the Nuclear Waste Policy Act of 1982, Public Law 97–425, as amended, including but not limited to, any proceeds from the sale of assets, shall be available without further appropriation and shall remain available until expended.

DEPARTMENTAL ADMINISTRATION

(INCLUDING TRANSFER OF FUNDS)

For salaries and expenses of the Department of Energy necessary for departmental administration in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the hire of passenger motor vehicles and official reception and representation expenses (not to exceed $35,000), $240,426,000, to remain available until expended, plus such additional amounts as necessary to cover increases in the estimated amount of cost of work for others notwithstanding the provisions

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of the Anti-Deficiency Act (31 U.S.C. 1511 et seq.): *Provided,* That such increases in cost of work are offset by revenue increases of the same or greater amount, to remain available until expended: *Provided further,* That moneys received by the Department for miscellaneous revenues estimated to total $122,000,000 in fiscal year 2005 may be retained and used for operating expenses within this account, and may remain available until expended, as authorized by section 201 of Public Law 95–238, notwithstanding the provisions of 31 U.S.C. 3302: *Provided further,* That the sum herein appropriated shall be reduced by the amount of miscellaneous revenues received during fiscal year 2005, and any related unappropriated receipt account balances remaining from prior years' miscellaneous revenues, so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than $118,426,000.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $41,508,000, to remain available until expended.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

WEAPONS ACTIVITIES

(INCLUDING TRANSFER OF FUNDS)

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for atomic energy defense weapons activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; and the purchase of not to exceed 19 passenger motor vehicles, for replacement only, including not to exceed two buses; $6,226,471,000, together with $300,000,000 to be derived by transfer from the Department of Defense, to remain available until expended: *Provided*, That the Secretary of Defense shall reduce proportionately each program, project, and activity funded by appropriations in titles I through VI of the Department of Defense Appropriations Act, 2005 (Public Law 108–287) to fund this transfer: *Provided further*, That $91,100,000 is authorized to be appropriated for Project 01–D–108, Microsystems and engineering sciences applications (MESA), Sandia National Laboratories, Albuquerque, New Mexico: *Provided further*, That $40,000,000 is authorized to be appropriated for Project 04–D–125, chemistry and metallurgy facility replacement project, Los Alamos Laboratory, Los Alamos, New Mexico: *Provided further,* That $1,500,000 is authorized to be appropriated for Project 04–D–103, Project engineering and design (PED), various locations: *Provided further,* That a plant or construction project for which amounts are made available under this heading but not exclusive to the Atomic Energy Defense Weapons Activities account, with a current estimated cost of less than $10,000,000 is considered for purposes of section 3622 of Public Law 107–314 as a plant project for which the approved

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total estimated cost does not exceed the minor construction threshold and for purposes of section 3623 of Public Law 107–314 as a construction project with a current estimated cost of less than the minor construction threshold.

DEFENSE NUCLEAR NONPROLIFERATION

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for atomic energy defense, defense nuclear nonproliferation activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, $1,420,397,000, to remain available until expended.

NAVAL REACTORS

For Department of Energy expenses necessary for naval reactors activities to carry out the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition (by purchase, condemnation, construction, or otherwise) of real property, plant, and capital equipment, facilities, and facility expansion, $807,900,000, to remain available until expended.

OFFICE OF THE ADMINISTRATOR

For necessary expenses of the Office of the Administrator in the National Nuclear Security Administration, including official reception and representation expenses (not to exceed $12,000), $356,200,000, to remain available until expended.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE SITE ACCELERATION COMPLETION

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense site acceleration completion activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, $6,096,429,000, to remain available until expended.

DEFENSE ENVIRONMENTAL SERVICES

For Department of Energy expenses necessary for defense-related environmental services activities that indirectly support the accelerated cleanup and closure mission at environmental management sites, including the purchase, construction, and acquisition of plant and capital equipment and other necessary expenses, and the purchase of not to exceed three ambulances for replacement only, $937,976,000, to remain available until expended.

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OTHER DEFENSE ACTIVITIES

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses, necessary for atomic energy defense, other defense activities, and classified activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, $692,691,000, to remain available until expended.

DEFENSE NUCLEAR WASTE DISPOSAL

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, $231,000,000, to remain available until expended.

POWER MARKETING ADMINISTRATIONS

BONNEVILLE POWER ADMINISTRATION FUND

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93–454, are approved for official reception and representation expenses in an amount not to exceed $1,500. During fiscal year 2005, no new direct loan obligations may be made.

OPERATION AND MAINTENANCE, SOUTHEASTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, including transmission wheeling and ancillary services, pursuant to the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southeastern power area, $5,200,000, to remain available until expended: *Provided*, That notwithstanding the provisions of 31 U.S.C. 3302, up to $34,000,000 collected by the Southeastern Power Administration pursuant to the Flood Control Act of 1944 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures.

OPERATION AND MAINTENANCE, SOUTHWESTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, for construction and acquisition of transmission lines, substations and appurtenant facilities, and for administrative expenses, including official reception and representation expenses in an amount not to exceed $1,500 in carrying out the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southwestern power area, $29,352,000, to remain

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available until expended: *Provided,* That, notwithstanding the provisions of 31 U.S.C. 3302, up to $2,900,000 collected by the Southwestern Power Administration pursuant to the Flood Control Act to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures; in addition, notwithstanding 31 U.S.C. 3302, beginning in fiscal year 2005 and thereafter, such funds as are received by the Southwestern Power Administration from any State, municipality, corporation, association, firm, district, or individual as advance payment for work that is associated with Southwestern's transmission facilities, consistent with that authorized in section 5 of the Flood Control Act, shall be credited to this account and be available until expended.

CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. 7152), and other related activities including conservation and renewable resources programs as authorized, including official reception and representation expenses in an amount not to exceed $1,500; $173,100,000, to remain available until expended, of which $167,236,000 shall be derived from the Department of the Interior Reclamation Fund: *Provided,* That of the amount herein appropriated, $10,000,000 shall be available until expended on a nonreimbursable basis to the Western Area Power Administration to design, construct, operate and maintain transmission facilities and services for the Animas-LaPlata Project as authorized by section 301(b)(10) of Public Law 106–554: *Provided further,* That of the amount herein appropriated, $6,200,000 is for deposit into the Utah Reclamation Mitigation and Conservation Account pursuant to title IV of the Reclamation Projects Authorization and Adjustment Act of 1992: *Provided further*, That of the amount herein appropriated, $6,000,000 shall be available until expended on a nonreimbursable basis to the Western Area Power Administration for Topock-Davis-Mead Transmission Line Upgrades: *Provided further,* That notwithstanding the provision of 31 U.S.C. 3302, up to $227,600,000 collected by the Western Area Power Administration pursuant to the Flood Control Act of 1944 and the Reclamation Project Act of 1939 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures.

FALCON AND AMISTAD OPERATING AND MAINTENANCE FUND

For operation, maintenance, and emergency costs for the hydroelectric facilities at the Falcon and Amistad Dams, $2,827,000, to remain available until expended, and to be derived from the Falcon and Amistad Operating and Maintenance Fund of the Western Area Power Administration, as provided in section 423 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

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FEDERAL ENERGY REGULATORY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Energy Regulatory Commission to carry out the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including services as authorized by 5 U.S.C. 3109, the hire of passenger motor vehicles, and official reception and representation expenses (not to exceed $3,000), $210,000,000, to remain available until expended: *Provided,* That notwithstanding any other provision of law, not to exceed $210,000,000 of revenues from fees and annual charges, and other services and collections in fiscal year 2005 shall be retained and used for necessary expenses in this account, and shall remain available until expended: *Provided further,* That the sum herein appropriated from the general fund shall be reduced as revenues are received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than $0.

GENERAL PROVISIONS

DEPARTMENT OF ENERGY

SEC. 301. (a)(1) None of the funds in this or any other appropriations Act for fiscal year 2005 or any previous fiscal year may be used to make payments for a noncompetitive management and operating contract unless the Secretary of Energy has published in the Federal Register and submitted to the Committees on Appropriations of the House of Representatives and the Senate a written notification, with respect to each such contract, of the Secretary's decision to use competitive procedures for the award of the contract, or to not renew the contract, when the term of the contract expires.

(2) Paragraph (1) does not apply to an extension for up to 2 years of a noncompetitive management and operating contract, if the extension is for purposes of allowing time to award competitively a new contract, to provide continuity of service between contracts, or to complete a contract that will not be renewed.

(b) In this section:

(1) The term "noncompetitive management and operating contract" means a contract that was awarded more than 50 years ago without competition for the management and operation of Ames Laboratory, Argonne National Laboratory, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Laboratory.

(2) The term "competitive procedures" has the meaning provided in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) and includes procedures described in section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) other than a procedure that solicits a proposal from only one source.

(c) For all management and operating contracts other than those listed in subsection (b)(1), none of the funds appropriated by this Act may be used to award a management and operating contract, or award a significant extension or expansion to an existing management and operating contract, unless such contract is awarded using competitive procedures or the Secretary of Energy

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grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver. At least 60 days before a contract award for which the Secretary intends to grant such a waiver, the Secretary shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report notifying the Committees of the waiver and setting forth, in specificity, the substantive reasons why the Secretary believes the requirement for competition should be waived for this particular award.

SEC. 302. None of the funds appropriated by this Act may be used to—

(1) develop or implement a workforce restructuring plan that covers employees of the Department of Energy; or

(2) provide enhanced severance payments or other benefits for employees of the Department of Energy, under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 42 U.S.C. 7274h).

SEC. 303. None of the funds appropriated by this Act may be used to augment the funds made available for obligation by this Act for severance payments and other benefits and community assistance grants under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 42 U.S.C. 7274h) unless the Department of Energy submits a reprogramming request subject to approval by the appropriate congressional committees.

SEC. 304. None of the funds appropriated by this Act may be used to prepare or initiate Requests For Proposals (RFPs) for a program if the program has not been funded by Congress.

(TRANSFERS OF UNEXPENDED BALANCES)

SEC. 305. The unexpended balances of prior appropriations provided for activities in this Act may be transferred to appropriation accounts for such activities established pursuant to this title. Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

SEC. 306. None of the funds in this or any other Act for the Administrator of the Bonneville Power Administration may be used to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies in advance that such services are not available from private sector businesses.

SEC. 307. When the Department of Energy makes a user facility available to universities or other potential users, or seeks input from universities or other potential users regarding significant characteristics or equipment in a user facility or a proposed user facility, the Department shall ensure broad public notice of such availability or such need for input to universities and other potential users. When the Department of Energy considers the participation of a university or other potential user as a formal partner in the establishment or operation of a user facility, the Department shall employ full and open competition in selecting such a partner. For purposes of this section, the term "user facility" includes, but is not limited to: (1) a user facility as described in section 2203(a)(2) of the Energy Policy Act of 1992 (42 U.S.C. 13503(a)(2)); (2) a

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National Nuclear Security Administration Defense Programs Technology Deployment Center/User Facility; and (3) any other Departmental facility designated by the Department as a user facility.

SEC. 308. The Administrator of the National Nuclear Security Administration may authorize the manager of a covered nuclear weapons research, development, testing or production facility to engage in research, development, and demonstration activities with respect to the engineering and manufacturing capabilities at such facility in order to maintain and enhance such capabilities at such facility: *Provided,* That of the amount allocated to a covered nuclear weapons facility each fiscal year from amounts available to the Department of Energy for such fiscal year for national security programs, not more than an amount equal to 2 percent of such amount may be used for these activities: *Provided further,* That for purposes of this section, the term "covered nuclear weapons facility" means the following:

(1) The Kansas City Plant, Kansas City, Missouri.
(2) The Y–12 Plant, Oak Ridge, Tennessee.
(3) The Pantex Plant, Amarillo, Texas.
(4) The Savannah River Plant, South Carolina.
(5) The Nevada Test Site.

SEC. 309. Funds appropriated by this or any other Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2005 until the enactment of the Intelligence Authorization Act for fiscal year 2005.

SEC. 310. (a) The Secretary of Energy was directed to file a permit modification to the Waste Analysis Plan (WAP) and associated provisions contained in the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP). For purposes of determining hereafter compliance of the modifications to the WAP with the hazardous waste analysis requirements of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or other applicable laws waste confirmation for all waste received for storage and disposal shall be limited to: (1) confirmation that the waste contains no ignitable, corrosive, or reactive waste through the use of either radiography or visual examination of a statistically representative subpopulation of the waste; and (2) review of the Waste Stream Profile Form to verify that the waste contains no ignitable, corrosive, or reactive waste and that assigned Environmental Protection Agency hazardous waste numbers are allowed for storage and disposal by the WIPP Hazardous Waste Facility Permit.

(b) Compliance with the disposal room performance standards of the WAP hereafter shall be demonstrated exclusively by monitoring airborne volatile organic compounds in underground disposal rooms in which waste has been emplaced until panel closure.

SEC. 311. Section 3113 of Public Law 102–486 (42 U.S.C. 2297h–11) is amended by adding a new paragraph (4) to subsection (a), as follows:

"(4) In the event that a licensee requests the Secretary to accept for disposal depleted uranium pursuant to this subsection, the Secretary shall be required to take title to and possession of such depleted uranium at an existing DUF6 storage facility.".

SEC. 312. The Department of Energy may use the funds appropriated by this Act to undertake any procurement action necessary

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to achieve its small business contracting goals set forth in subsection (g) of the Small Business Act, 15 U.S.C. 644(g): *Provided,* That, none of the funds appropriated by this Act may be used by the Department of Energy for procurement actions resulting from the break-out of requirements from current facility management and operating contracts unless, consistent with requirements of Subpart 19.4 of the Federal Acquisition Regulation, the Secretary of Energy or his duly authorized designee formally requests, considers, and renders an appropriate decision on the views of the Small Business Administration Breakout Procurement Center Representative or the Representative's duly authorized designee concerning cost effectiveness, mission performance, security, safety, small business participation, and other legitimate acquisition objectives of procurement actions at issue. No later than April 1, 2005, the Secretary of Energy shall submit a report to the Comptroller General and to Congress discussing the Secretary's plans required by section 15(h) of the Small Business Act, 15 U.S.C. 644(h), for meeting the Department's statutory small business contracting goals while taking into account other legitimate acquisition objectives. In preparing the report, the Secretary shall request and consider the views of the Administrator of the Small Business Administration and the Director of the Office of Small and Disadvantaged Business Utilization of the Department of Energy. The report shall discuss the Department's policies and activities concerning break-outs of procurement requirements from current management and operating contracts, consistent with requirements of this Act, section 15(h) of the Small Business Act, and Subpart 19.4 of the Federal Acquisition Regulations.

SEC. 313. None of the funds appropriated by this Act may be used by the Department of Energy to require its management and operating contractors to perform contract management, oversight, or administration functions prohibited by section 7.503 of the Federal Acquisition Regulation in connection with any small business prime contract awarded by the Department of Energy.

SEC. 314. None of the funds in this Act may be used to dispose of transuranic waste in the Waste Isolation Pilot Plant which contains concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category on the date of enactment of this Act, or is generated after such date. For the purpose of this section, the material categories of transuranic waste at the Rocky Flats Environmental Technology Site include: (1) ash residues; (2) salt residue; (3) wet residues; (4) direct repackage residues; and (5) scrub alloy as referenced in the "Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site".

TITLE IV

INDEPENDENT AGENCIES

APPALACHIAN REGIONAL COMMISSION

For expenses necessary to carry out the programs authorized by the Appalachian Regional Development Act of 1965, as amended, for necessary expenses for the Federal Co-Chairman and the alternate on the Appalachian Regional Commission, for payment of

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the Federal share of the administrative expenses of the Commission, including services as authorized by 5 U.S.C. 3109, and hire of passenger motor vehicles, $66,000,000, to remain available until expended.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the Defense Nuclear Facilities Safety Board in carrying out activities authorized by the Atomic Energy Act of 1954, as amended by Public Law 100–456, section 1441, $20,268,000, to remain available until expended.

DELTA REGIONAL AUTHORITY

SALARIES AND EXPENSES

For necessary expenses of the Delta Regional Authority and to carry out its activities, as authorized by the Delta Regional Authority Act of 2000, as amended, notwithstanding sections 382C(b)(2), 382F(d), and 382M(b) of said Act, $6,048,000, to remain available until expended.

DENALI COMMISSION

For expenses of the Denali Commission including the purchase, construction and acquisition of plant and capital equipment as necessary and other expenses, $67,000,000 nothwithstanding the limitations contained in section 306(g) of the Denali Commission Act of 1998, $2,500,000, to remain available until expended: *Provided,* That of the amounts provided to the Denali Commission, $5,000,000 is for community showers and washeteria in villages with homes with no running water; $13,000,000 is for the Juneau/Green's Creek/Hoonah Intertie project; $3,200,000 is for the Swan Lake/Tyee Intertie project; $5,000,000 is for multi-purpose community facilities including the Bering Straits Region, Dillingham, Moose Pass, Sterling, Funny River, Eclutna, and Anchor Point; $10,000,000 is for teacher housing in remote villages such as Savoogna, Allakakaet, Hughes, Huslia, Minto, Nulato, and Ruby where there is limited housing available for teachers; $10,000,000 is for facilities serving Native elders and senior citizens; and $5,000,000 is for: (1) the Rural Communications service to provide broadcast facilities in communities with no television or radio station; (2) the Public Broadcasting Digital Distribution Network to link rural broadcasting facilities together to improve economies of scale, share programming, and reduce operating costs; and (3) rural public broadcasting facilities and equipment upgrades.

NUCLEAR REGULATORY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), and purchase of promotional items for use in the recruitment of individuals for

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employment, $662,777,000, to remain available until expended: *Provided,* That of the amount appropriated herein, $69,050,000 shall be derived from the Nuclear Waste Fund: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $534,354,000 in fiscal year 2005 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation estimated at not more than $128,423,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $7,518,000, to remain available until expended: *Provided,* That revenues from licensing fees, inspection services, and other services and collections estimated at $6,766,200 in fiscal year 2005 shall be retained and be available until expended, for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation estimated at not more than $751,800.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

SALARIES AND EXPENSES

For necessary expenses of the Nuclear Waste Technical Review Board, as authorized by Public Law 100–203, section 5051, $3,177,000, to be derived from the Nuclear Waste Fund, and to remain available until expended.

TITLE V

GENERAL PROVISIONS

SEC. 501. None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.

SEC. 502. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 503. None of the funds made available in this Act may be used to deny requests for the public release of documents or evidence obtained through or in the Western Energy Markets: Enron Investigation (Docket No. PA02–2), the California Refund case (Docket No. EL00–95), the Anomalous Bidding Investigation (Docket No. IN03–10), or the Physical Withholding Investigation.

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SEC. 504. EXTENSION OF PROHIBITION OF OIL AND GAS DRILLING IN THE GREAT LAKES. Section 503 of the Energy and Water Development Appropriations Act, 2002 (115 Stat. 512), as amended, is amended by striking "2005" and inserting "2007".

SEC. 505. The Secretary of the Army is hereby authorized, without further appropriation, to transfer and advance funds to the Administrator of the Bonneville Power Administration for the purposes necessary to carry out joint activities in connection with section 2406 of the Energy Policy Act of 1992.

SEC. 506. VOTING METHOD FOR DELTA REGIONAL AUTHORITY. Section 382B(c)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa–1(c)(1)) is amended—

(1) in subparagraph (A), by striking "2004" and inserting "2008"; and

(2) in subparagraph (B), by striking "2005" and inserting "2009".

TITLE VI—REFORM OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY

SEC. 601. CHANGE IN COMPOSITION, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY.

The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended by striking section 2 and inserting the following:

"SEC. 2. MEMBERSHIP, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS.

"(a) MEMBERSHIP.—

"(1) APPOINTMENT.—The Board of Directors of the Corporation (referred to in this Act as the 'Board') shall be composed of 9 members appointed by the President by and with the advice and consent of the Senate, at least 7 of whom shall be a legal resident of the service area of the Corporation.

"(2) CHAIRMAN.—The members of the Board shall select 1 of the members to act as chairman of the Board.

"(b) QUALIFICATIONS.—To be eligible to be appointed as a member of the Board, an individual—

"(1) shall be a citizen of the United States;

"(2) shall have management expertise relative to a large for-profit or nonprofit corporate, government, or academic structure;

"(3) shall not be an employee of the Corporation;

"(4) shall make full disclosure to Congress of any investment or other financial interest that the individual holds in the energy industry; and

"(5) shall affirm support for the objectives and missions of the Corporation, including being a national leader in technological innovation, low-cost power, and environmental stewardship.

"(c) RECOMMENDATIONS.—In appointing members of the Board, the President shall—

"(1) consider recommendations from such public officials as—

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"(A) the Governors of States in the service area;

"(B) individual citizens;

"(C) business, industrial, labor, electric power distribution, environmental, civic, and service organizations; and

"(D) the congressional delegations of the States in the service area; and

"(2) seek qualified members from among persons who reflect the diversity, including the geographical diversity, and needs of the service area of the Corporation.

"(d) TERMS.—

"(1) IN GENERAL.—A member of the Board shall serve a term of 5 years. A member of the Board whose term has expired may continue to serve after the member's term has expired until the date on which a successor takes office, except that the member shall not serve beyond the end of the session of Congress in which the term of the member expires.

"(2) VACANCIES.—A member appointed to fill a vacancy on the Board occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of that term.

"(e) QUORUM.—

"(1) IN GENERAL.—Five of the members of the Board shall constitute a quorum for the transaction of business.

"(2) VACANCIES.—A vacancy on the Board shall not impair the power of the Board to act.

"(f) COMPENSATION.—

"(1) IN GENERAL.—A member of the Board shall be entitled to receive—

"(A) a stipend of—

"(i) $45,000 per year; or

"(ii)(I) in the case of the chairman of any committee of the Board created by the Board, $46,000 per year; or

"(II) in the case of the chairman of the Board, $50,000 per year; and

"(B) travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of title 5, United States Code.

"(2) ADJUSTMENTS IN STIPENDS.—The amount of the stipend under paragraph (1)(A)(i) shall be adjusted by the same percentage, at the same time and manner, and subject to the same limitations as are applicable to adjustments under section 5318 of title 5, United States Code.

"(g) DUTIES.—

"(1) IN GENERAL.—The Board shall—

"(A) establish the broad goals, objectives, and policies of the Corporation that are appropriate to carry out this Act;

"(B) develop long-range plans to guide the Corporation in achieving the goals, objectives, and policies of the Corporation and provide assistance to the chief executive officer to achieve those goals, objectives, and policies;

"(C) ensure that those goals, objectives, and policies are achieved;

"(D) approve an annual budget for the Corporation;

"(E) adopt and submit to Congress a conflict-of-interest policy applicable to members of the Board and employees of the Corporation;

"(F) establish a compensation plan for employees of the Corporation in accordance with subsection (i);

"(G) approve all compensation (including salary or any other pay, bonuses, benefits, incentives, and any other form of remuneration) of all managers and technical personnel that report directly to the chief executive officer (including any adjustment to compensation);

"(H) ensure that all activities of the Corporation are carried out in compliance with applicable law;

"(I) create an audit committee, composed solely of Board members independent of the management of the Corporation, which shall—

"(i) in consultation with the inspector general of the Corporation, recommend to the Board an external auditor;

"(ii) receive and review reports from the external auditor of the Corporation and inspector general of the Corporation; and

"(iii) make such recommendations to the Board as the audit committee considers necessary;

"(J) create such other committees of Board members as the Board considers to be appropriate;

"(K) conduct such public hearings as it deems appropriate on issues that could have a substantial effect on—

"(i) the electric ratepayers in the service area; or

"(ii) the economic, environmental, social, or physical well-being of the people of the service area;

"(L) establish the electricity rates charged by the Corporation; and

"(M) engage the services of an external auditor for the Corporation.

"(2) MEETINGS.—The Board shall meet at least 4 times each year.

"(h) CHIEF EXECUTIVE OFFICER.—

"(1) APPOINTMENT.—The Board shall appoint a person to serve as chief executive officer of the Corporation.

"(2) QUALIFICATIONS.—

"(A) IN GENERAL.—To serve as chief executive officer of the Corporation, a person—

"(i) shall have senior executive-level management experience in large, complex organizations;

"(ii) shall not be a current member of the Board or have served as a member of the Board within 2 years before being appointed chief executive officer; and

"(iii) shall comply with the conflict-of-interest policy adopted by the Board.

"(B) EXPERTISE.—In appointing a chief executive officer, the Board shall give particular consideration to appointing an individual with expertise in the electric industry and with strong financial skills.

"(3) TENURE.—The chief executive officer shall serve at the pleasure of the Board.

"(i) COMPENSATION PLAN.—

"(1) IN GENERAL.—The Board shall approve a compensation plan that specifies all compensation (including salary or any other pay, bonuses, benefits, incentives, and any other form of remuneration) for the chief executive officer and employees of the Corporation.

"(2) ANNUAL SURVEY.—The compensation plan shall be based on an annual survey of the prevailing compensation for similar positions in private industry, including engineering and electric utility companies, publicly owned electric utilities, and Federal, State, and local governments.

"(3) CONSIDERATIONS.—The compensation plan shall provide that education, experience, level of responsibility, geographic differences, and retention and recruitment needs will be taken into account in determining compensation of employees.

"(4) POSITIONS AT OR BELOW LEVEL IV.—The chief executive officer shall determine the salary and benefits of employees whose annual salary is not greater than the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(5) POSITIONS ABOVE LEVEL IV.—On the recommendation of the chief executive officer, the Board shall approve the salaries of employees whose annual salaries would be in excess of the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.".

SEC. 602. CHANGE IN MANNER OF APPOINTMENT OF STAFF.

Section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b) is amended—

(1) by striking the first undesignated paragraph and inserting the following:

"(a) APPOINTMENT BY THE CHIEF EXECUTIVE OFFICER.—The chief executive officer shall appoint, with the advice and consent of the Board, and without regard to the provisions of the civil service laws applicable to officers and employees of the United States, such managers, assistant managers, officers, employees, attorneys, and agents as are necessary for the transaction of the business of the Corporation."; and

(2) by striking "All contracts" and inserting the following:

"(b) WAGE RATES.—All contracts".

SEC. 603. CONFORMING AMENDMENTS.

(a) The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended—

(1) by striking "board of directors" each place it appears and inserting "Board of Directors"; and

(2) by striking "board" each place it appears and inserting "Board".

(b) Section 9 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h) is amended—

(1) by striking "The Comptroller General of the United States shall audit" and inserting the following:

"(c) AUDITS.—The Comptroller General of the United States shall audit"; and

(2) by striking "The Corporation shall determine" and inserting the following:

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"(d) ADMINISTRATIVE ACCOUNTS AND BUSINESS DOCUMENTS.—The Corporation shall determine".

(c) Title 5, United States Code, is amended—

(1) in section 5314, by striking "Chairman, Board of Directors of the Tennessee Valley Authority."; and

(2) in section 5315, by striking "Members, Board of Directors of the Tennessee Valley Authority.".

SEC. 604. APPOINTMENTS; EFFECTIVE DATE; TRANSITION.

(a) APPOINTMENTS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the President shall submit to the Senate nominations of six persons to serve as members of the Board of Directors of the Tennessee Valley Authority in addition to the members serving on the date of enactment of this Act.

(2) INITIAL TERMS.—Notwithstanding section 2(d) of the Tennessee Valley Authority Act of 1933 (as amended by this title), in making the appointments under paragraph (1), the President shall appoint—

(A) two members for a term to expire on May 18, 2007;

(B) two members for a term to expire on May 18, 2009; and

(C) two members for a term to expire on May 18, 2011.

(b) EFFECTIVE DATE.—The amendments made by this title take effect on the later of—

(1) the date on which at least three persons nominated under subsection (a) take office; or

(2) May 18, 2005.

(c) SELECTION OF CHAIRMAN.—The Board of Directors of the Tennessee Valley Authority shall select one of the members to act as chairman of the Board not later than 30 days after the effective date specified in subsection (b).

(d) CONFLICT-OF-INTEREST POLICY.—The Board of Directors of the Tennessee Valley Authority shall adopt and submit to Congress a conflict-of-interest policy, as required by section 2(g)(1)(E) of the Tennessee Valley Authority Act of 1933 (as amended by this title), as soon as practicable after the effective date specified in subsection (b).

(e) TRANSITION.—A person who is serving as a member of the board of directors of the Tennessee Valley Authority on the date of enactment of this Act—

(1) shall continue to serve until the end of the current term of the member; but

(2) after the effective date specified in subsection (b), shall serve under the terms of the Tennessee Valley Authority Act of 1933 (as amended by this title).

This division may be cited as the "Energy and Water Development Appropriations Act, 2005".

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DIVISION D—FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2005

TITLE I—EXPORT AND INVESTMENT ASSISTANCE

EXPORT-IMPORT BANK OF THE UNITED STATES

The Export-Import Bank of the United States is authorized to make such expenditures within the limits of funds and borrowing authority available to such corporation, and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations, as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out the program for the current fiscal year for such corporation: *Provided*, That none of the funds available during the current fiscal year may be used to make expenditures, contracts, or commitments for the export of nuclear equipment, fuel, or technology to any country, other than a nuclear-weapon state as defined in Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons eligible to receive economic or military assistance under this Act, that has detonated a nuclear explosive after the date of the enactment of this Act: *Provided further,* That notwithstanding section 1(c) of Public Law 103–428, as amended, sections 1(a) and (b) of Public Law 103–428 shall remain in effect through October 1, 2005.

SUBSIDY APPROPRIATION

For the cost of direct loans, loan guarantees, insurance, and tied-aid grants as authorized by section 10 of the Export-Import Bank Act of 1945, as amended, $59,800,000, to remain available until September 30, 2008: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That such sums shall remain available until September 30, 2023, for the disbursement of direct loans, loan guarantees, insurance and tied-aid grants obligated in fiscal years 2005, 2006, 2007, and 2008: *Provided further,* That none of the funds appropriated by this Act or any prior Act appropriating funds for foreign operations, export financing, and related programs for tied-aid credits or grants may be used for any other purpose except through the regular notification procedures of the Committees on Appropriations: *Provided further,* That funds appropriated by this paragraph are made available notwithstanding section 2(b)(2) of the Export-Import Bank Act of 1945, in connection with the purchase or lease of any product by any Eastern European country, any Baltic State or any agency or national thereof: *Provided further,* That not later than 30 days after the date of enactment of this Act, the Export-Import Bank shall submit a report to the Committees on Appropriations of the House of Representatives and the Senate, containing an analysis of the economic impact on United States producers of ethanol of the extension of credit and financial guarantees for the development of an ethanol dehydration plant in Trinidad and Tobago, including a determination of whether such extension will cause substantial injury to such producers, as defined in section 2(e)(4) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(e)(4)).

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ADMINISTRATIVE EXPENSES

For administrative expenses to carry out the direct and guaranteed loan and insurance programs, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109, and not to exceed $30,000 for official reception and representation expenses for members of the Board of Directors, $73,200,000: *Provided,* That the Export-Import Bank may accept, and use, payment or services provided by transaction participants for legal, financial, or technical services in connection with any transaction for which an application for a loan, guarantee or insurance commitment has been made: *Provided further,* That, notwithstanding subsection (b) of section 117 of the Export Enhancement Act of 1992, subsection (a) thereof shall remain in effect until October 1, 2005.

OVERSEAS PRIVATE INVESTMENT CORPORATION

NONCREDIT ACCOUNT

The Overseas Private Investment Corporation is authorized to make, without regard to fiscal year limitations, as provided by 31 U.S.C. 9104, such expenditures and commitments within the limits of funds available to it and in accordance with law as may be necessary: *Provided,* That the amount available for administrative expenses to carry out the credit and insurance programs (including an amount for official reception and representation expenses which shall not exceed $35,000) shall not exceed $42,885,000: *Provided further,* That project-specific transaction costs, including direct and indirect costs incurred in claims settlements, and other direct costs associated with services provided to specific investors or potential investors pursuant to section 234 of the Foreign Assistance Act of 1961, shall not be considered administrative expenses for the purposes of this heading.

PROGRAM ACCOUNT

For the cost of direct and guaranteed loans, $24,000,000, as authorized by section 234 of the Foreign Assistance Act of 1961, to be derived by transfer from the Overseas Private Investment Corporation Non-Credit Account: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That such sums shall be available for direct loan obligations and loan guaranty commitments incurred or made during fiscal years 2005 and 2006: *Provided further,* That such sums shall remain available through fiscal year 2013 for the disbursement of direct and guaranteed loans obligated in fiscal year 2005, and through fiscal year 2014 for the disbursement of direct and guaranteed loans obligated in fiscal year 2006: *Provided further,* That notwithstanding any other provision of law, the Overseas Private Investment Corporation is authorized to undertake any program authorized by title IV of the Foreign Assistance Act of 1961 in Iraq: *Provided further,* That funds made available pursuant to the authority of the previous proviso shall be subject to the regular notification procedures of the Committees on Appropriations.

In addition, such sums as may be necessary for administrative expenses to carry out the credit program may be derived from amounts available for administrative expenses to carry out the

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credit and insurance programs in the Overseas Private Investment Corporation Noncredit Account and merged with said account.

FUNDS APPROPRIATED TO THE PRESIDENT

TRADE AND DEVELOPMENT AGENCY

For necessary expenses to carry out the provisions of section 661 of the Foreign Assistance Act of 1961, $51,500,000, to remain available until September 30, 2006.

TITLE II—BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

For expenses necessary to enable the President to carry out the provisions of the Foreign Assistance Act of 1961, and for other purposes, to remain available until September 30, 2005, unless otherwise specified herein, as follows:

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

CHILD SURVIVAL AND HEALTH PROGRAMS FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the provisions of chapters 1 and 10 of part I of the Foreign Assistance Act of 1961, for child survival, health, and family planning/reproductive health activities, in addition to funds otherwise available for such purposes, $1,550,000,000, to remain available until September 30, 2006: *Provided,* That this amount shall be made available for such activities as: (1) immunization programs; (2) oral rehydration programs; (3) health, nutrition, water and sanitation programs which directly address the needs of mothers and children, and related education programs; (4) assistance for children displaced or orphaned by causes other than AIDS; (5) programs for the prevention, treatment, control of, and research on HIV/AIDS, tuberculosis, polio, malaria, and other infectious diseases, and for assistance to communities severely affected by HIV/AIDS, including children displaced or orphaned by AIDS; and (6) family planning/reproductive health: *Provided further,* That none of the funds appropriated under this heading may be made available for nonproject assistance, except that funds may be made available for such assistance for ongoing health activities: *Provided further,* That of the funds appropriated under this heading, not to exceed $250,000, in addition to funds otherwise available for such purposes, may be used to monitor and provide oversight of child survival, maternal and family planning/reproductive health, and infectious disease programs: *Provided further,* That the following amounts should be allocated as follows: $345,000,000 for child survival and maternal health; $30,000,000 for vulnerable children; $350,000,000 for HIV/AIDS including not less than $30,000,000 to support the development of microbicides as a means for combating HIV/AIDS; $200,000,000 for other infectious diseases; and $375,000,000 for family planning/reproductive health, including in areas where population growth threatens biodiversity or endangered species: *Provided further,* That of the funds appropriated under this heading, and in addition to funds allocated under the previous proviso, not less than $250,000,000 shall be

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made available, notwithstanding any other provision of law, except for the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (Public Law 108–25), for a United States contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria (the "Global Fund"), and shall be expended at the minimum rate necessary to make timely payment for projects and activities: *Provided further,* That of the funds appropriated under this heading in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, that were withheld from obligation to the Global Fund, not less than $87,800,000 shall be made available to the Global Fund, notwithstanding section 202(d)(4) of Public Law 108–25 which required such withholding from the Global Fund in fiscal year 2004: *Provided further,* That the funds made available in the previous proviso shall be subject to any withholding required by section 202(d)(4) of Public Law 108–25 for contributions made to the Global Fund in fiscal year 2005: *Provided further,* That up to 5 percent of the aggregate amount of funds made available to the Global Fund in fiscal year 2005 may be made available to the United States Agency for International Development for technical assistance related to the activities of the Global Fund: *Provided further,* That of the funds appropriated under this heading that are available for HIV/AIDS programs and activities, not less than $27,000,000 should be made available for the International AIDS Vaccine Initiative: *Provided further,* That of the funds appropriated under this heading, $65,000,000 should be made available for a United States contribution to The Vaccine Fund, and up to $6,000,000 may be transferred to and merged with funds appropriated by this Act under the heading "Operating Expenses of the United States Agency for International Development" for costs directly related to international health, but funds made available for such costs may not be derived from amounts made available for contribution under this and preceding provisos: *Provided further,* That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: *Provided further,* That none of the funds made available under this Act may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions: *Provided further,* That nothing in this paragraph shall be construed to alter any existing statutory prohibitions against abortion under section 104 of the Foreign Assistance Act of 1961: *Provided further*, That none of the funds made available under this Act may be used to lobby for or against abortion: *Provided further,* That in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services, and that any such voluntary family planning project shall meet the following requirements: (1) service providers or referral agents in the project shall not implement or be subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (this provision shall not be construed to include the use of quantitative estimates or indicators for budgeting and planning purposes); (2) the project shall not include

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payment of incentives, bribes, gratuities, or financial reward to: (A) an individual in exchange for becoming a family planning acceptor; or (B) program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning; (3) the project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual's decision not to accept family planning services; (4) the project shall provide family planning acceptors comprehensible information on the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method; and (5) the project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits; and, not less than 60 days after the date on which the Administrator of the United States Agency for International Development determines that there has been a violation of the requirements contained in paragraph (1), (2), (3), or (5) of this proviso, or a pattern or practice of violations of the requirements contained in paragraph (4) of this proviso, the Administrator shall submit to the Committees on Appropriations a report containing a description of such violation and the corrective action taken by the Agency: *Provided further,* That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and, additionally, all such applicants shall comply with the requirements of the previous proviso: *Provided further,* That for purposes of this or any other Act authorizing or appropriating funds for foreign operations, export financing, and related programs, the term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options: *Provided further,* That to the maximum extent feasible, taking into consideration cost, timely availability, and best health practices, funds appropriated in this Act or prior appropriations Acts that are made available for condom procurement shall be made available only for the procurement of condoms manufactured in the United States: *Provided further,* That information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated by this Act shall be medically accurate and shall include the public health benefits and failure rates of such use.

DEVELOPMENT ASSISTANCE

For necessary expenses of the United States Agency for International Development to carry out the provisions of sections 103, 105, 106, and 131, and chapter 10 of part I of the Foreign Assistance Act of 1961, $1,460,000,000, to remain available until September 30, 2006: *Provided*, That $194,000,000 should be allocated for trade capacity building: *Provided further*, That $300,000,000 should be allocated for basic education: *Provided further*, That of the funds appropriated under this heading and managed by the United States

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Agency for International Development Bureau of Democracy, Conflict, and Humanitarian Assistance, not less than $15,000,000 shall be made available only for programs to improve women's leadership capacity in recipient countries: *Provided further*, That such funds may not be made available for construction: *Provided further,* That of the aggregate amount of the funds appropriated by this Act that are made available for agriculture and rural development programs, $25,000,000 should be made available for plant biotechnology research and development: *Provided further,* That not less than $2,300,000 should be made available for core support for the International Fertilizer Development Center: *Provided further,* That of the funds appropriated under this heading, not less than $20,000,000 should be made available for the American Schools and Hospitals Abroad program: *Provided further*, That of the funds appropriated under this heading that are made available for assistance programs for displaced and orphaned children and victims of war, not to exceed $37,500, in addition to funds otherwise available for such purposes, may be used to monitor and provide oversight of such programs: *Provided further,* That funds appropriated under this heading should be made available for programs in sub-Saharan Africa to address sexual and gender-based violence: *Provided further,* That of the funds appropriated under this heading, $2,000,000 should be made available to develop clean water treatment activities in developing countries: *Provided further,* That of the funds appropriated by this Act, $100,000,000 shall be made available for drinking water supply projects and related activities.

INTERNATIONAL DISASTER AND FAMINE ASSISTANCE

For necessary expenses of the United States Agency for International Development to carry out the provisions of section 491 of the Foreign Assistance Act of 1961 for international disaster relief, rehabilitation, and reconstruction assistance, $335,500,000, to remain available until expended.

In addition, for necessary expenses for assistance for famine prevention and relief, including for mitigation of the effects of famine, $34,500,000, to remain available until expended: *Provided*, That such funds shall be made available utilizing the general authorities of section 491 of the Foreign Assistance Act of 1961, and shall be in addition to amounts otherwise available for such purposes: *Provided further*, That funds appropriated by this paragraph shall be available for obligation subject to prior consultation with the Committees on Appropriations.

TRANSITION INITIATIVES

For necessary expenses for international disaster rehabilitation and reconstruction assistance pursuant to section 491 of the Foreign Assistance Act of 1961, $49,000,000, to remain available until expended, to support transition to democracy and to long-term development of countries in crisis: *Provided,* That such support may include assistance to develop, strengthen, or preserve democratic institutions and processes, revitalize basic infrastructure, and foster the peaceful resolution of conflict: *Provided further,* That the United States Agency for International Development shall submit a report to the Committees on Appropriations at least 5 days prior to beginning a new program of assistance: *Provided further,* That if the President determines that is important to the

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national interests of the United States to provide transition assistance in excess of the amount appropriated under this heading, up to $15,000,000 of the funds appropriated by this Act to carry out the provisions of part I of the Foreign Assistance Act of 1961 may be used for purposes of this heading and under the authorities applicable to funds appropriated under this heading: *Provided further,* That funds made available pursuant to the previous proviso shall be made available subject to prior consultation with the Committees on Appropriations.

DEVELOPMENT CREDIT AUTHORITY

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans and loan guarantees provided by the United States Agency for International Development, as authorized by sections 108 and 635 of the Foreign Assistance Act of 1961, funds may be derived by transfer from funds appropriated by this Act to carry out part I of such Act and under the heading "Assistance for Eastern Europe and the Baltic States": *Provided*, That such funds shall not exceed $21,000,000, which shall be made available only for micro and small enterprise programs, urban programs, and other programs which further the purposes of part I of the Act: *Provided further*, That such costs, including the cost of modifying such direct and guaranteed loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That funds made available by this paragraph may be used for the cost of modifying any such guaranteed loans under this Act or prior Acts, and funds used for such costs shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further,* That the provisions of section 107A(d) (relating to general provisions applicable to the Development Credit Authority) of the Foreign Assistance Act of 1961, as contained in section 306 of H.R. 1486 as reported by the House Committee on International Relations on May 9, 1997, shall be applicable to direct loans and loan guarantees provided under this heading.

In addition, for administrative expenses to carry out credit programs administered by the United States Agency for International Development, $8,000,000, which may be transferred to and merged with the appropriation for Operating Expenses of the United States Agency for International Development: *Provided*, That funds made available under this heading shall remain available until September 30, 2007.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For payment to the "Foreign Service Retirement and Disability Fund", as authorized by the Foreign Service Act of 1980, $42,500,000.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

For necessary expenses to carry out the provisions of section 667 of the Foreign Assistance Act of 1961, $618,000,000, of which up to $25,000,000 may remain available until September 30, 2006: *Provided,* That none of the funds appropriated under this heading

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and under the heading "Capital Investment Fund" may be made available to finance the construction (including architect and engineering services), purchase, or long-term lease of offices for use by the United States Agency for International Development, unless the Administrator has identified such proposed construction (including architect and engineering services), purchase, or long-term lease of offices in a report submitted to the Committees on Appropriations at least 15 days prior to the obligation of these funds for such purposes: *Provided further,* That the previous proviso shall not apply where the total cost of construction (including architect and engineering services), purchase, or long-term lease of offices does not exceed $1,000,000: *Provided further,* That contracts or agreements entered into with funds appropriated under this heading may entail commitments for the expenditure of such funds through fiscal year 2006: *Provided further,* That none of the funds in this Act may be used to open a new overseas mission of the United States Agency for International Development without the prior written notification of the Committees on Appropriations: *Provided further,* That the authority of sections 610 and 109 of the Foreign Assistance Act of 1961 may be exercised by the Secretary of State to transfer funds appropriated to carry out chapter 1 of part I of such Act to "Operating Expenses of the United States Agency for International Development" in accordance with the provisions of those sections.

CAPITAL INVESTMENT FUND

For necessary expenses for overseas construction and related costs, and for the procurement and enhancement of information technology and related capital investments, pursuant to section 667 of the Foreign Assistance Act of 1961, $59,000,000, to remain available until expended: *Provided,* That this amount is in addition to funds otherwise available for such purposes: *Provided further*, That funds appropriated under this heading shall be available for obligation only pursuant to the regular notification procedures of the Committees on Appropriations: *Provided further*, That of the amounts appropriated under this heading, not to exceed $19,709,000 may be made available for the purposes of implementing the Capital Security Cost Sharing Program.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT OFFICE OF INSPECTOR GENERAL

For necessary expenses to carry out the provisions of section 667 of the Foreign Assistance Act of 1961, $35,000,000, to remain available until September 30, 2006, which sum shall be available for the Office of the Inspector General of the United States Agency for International Development.

OTHER BILATERAL ECONOMIC ASSISTANCE

ECONOMIC SUPPORT FUND

For necessary expenses to carry out the provisions of chapter 4 of part II, $2,482,500,000, to remain available until September 30, 2006: *Provided,* That of the funds appropriated under this heading, not less than $360,000,000 shall be available only for Israel, which sum shall be available on a grant basis as a cash

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transfer and shall be disbursed within 30 days of the enactment of this Act: *Provided further,* That not less than $535,000,000 shall be available only for Egypt, which sum shall be provided on a grant basis, and of which sum cash transfer assistance shall be provided with the understanding that Egypt will undertake significant economic reforms which are additional to those which were undertaken in previous fiscal years, and of which $200,000,000 should be provided as Commodity Import Program assistance: *Provided further,* That with respect to the provision of assistance for Egypt for democracy and governance activities, the organizations implementing such assistance and the specific nature of that assistance shall not be subject to the prior approval by the Government of Egypt: *Provided further,* That in exercising the authority to provide cash transfer assistance for Israel, the President shall ensure that the level of such assistance does not cause an adverse impact on the total level of nonmilitary exports from the United States to such country and that Israel enters into a side letter agreement in an amount proportional to the fiscal year 1999 agreement: *Provided further,* That of the funds appropriated under this heading, not less than $250,000,000 should be made available only for assistance for Jordan: *Provided further,* That $13,500,000 of the funds appropriated under this heading shall be made available for Cyprus to be used only for scholarships, administrative support of the scholarship program, bicommunal projects, and measures aimed at reunification of the island and designed to reduce tensions and promote peace and cooperation between the two communities on Cyprus: *Provided further,* That $35,000,000 of the funds appropriated under this heading shall be made available for assistance for Lebanon, of which not less than $4,000,000 should be made available for scholarships and direct support of American educational institutions in Lebanon: *Provided further,* That funds appropriated under this heading may be used, notwithstanding any other provision of law, to provide assistance to the National Democratic Alliance of Sudan to strengthen its ability to protect civilians from attacks, slave raids, and aerial bombardment by the Sudanese Government forces and its militia allies, and the provision of such funds shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further,* That in the previous proviso, the term "assistance" includes non-lethal, non-food aid such as blankets, medicine, fuel, mobile clinics, water drilling equipment, communications equipment to notify civilians of aerial bombardment, non-military vehicles, tents, and shoes: *Provided further,* That not to exceed $200,000,000 of the funds appropriated under this heading may be used for the costs, as defined in section 502 of the Congressional Budget Act of 1974, of modifying direct loans and guarantees for Pakistan: *Provided further,* That amounts that are made available under the previous proviso for the costs of modifying direct loans and guarantees shall not be considered "assistance" for the purposes of provisions of law limiting assistance to a country: *Provided further,* That of the funds appropriated under this heading, not less than $22,000,000 shall be made available for assistance for the Democratic Republic of Timor-Leste, of which up to $1,000,000 may be available for administrative expenses of the United States Agency for International Development: *Provided further,* That of the funds available under this heading for assistance for Indonesia, $3,000,000 should be made available to promote freedom of the

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media in Indonesia: *Provided further,* That of the funds appropriated under this heading, $5,000,000 shall be made available to continue to support the provision of wheelchairs for needy persons in developing countries: *Provided further,* That funds appropriated under this heading that are made available for a Middle East Financing Facility, Middle East Enterprise Fund, or any other similar entity in the Middle East shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further,* That with respect to funds appropriated under this heading in this Act or prior Acts making appropriations for foreign operations, export financing, and related programs, the responsibility for policy decisions and justifications for the use of such funds, including whether there will be a program for a country that uses those funds and the amount of each such program, shall be the responsibility of the Secretary of State and the Deputy Secretary of State and this responsibility shall not be delegated.

INTERNATIONAL FUND FOR IRELAND

For necessary expenses to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, $18,500,000, which shall be available for the United States contribution to the International Fund for Ireland and shall be made available in accordance with the provisions of the Anglo-Irish Agreement Support Act of 1986 (Public Law 99–415): *Provided*, That such amount shall be expended at the minimum rate necessary to make timely payment for projects and activities: *Provided further*, That funds made available under this heading shall remain available until September 30, 2006.

ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES

(a) For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 and the Support for East European Democracy (SEED) Act of 1989, $396,600,000, to remain available until September 30, 2006, which shall be available, notwithstanding any other provision of law, for assistance and for related programs for Eastern Europe and the Baltic States: *Provided,* That of the funds appropriated under this heading that are made available for assistance for Bulgaria, $2,000,000 should be made available to enhance safety at nuclear power plants.

(b) Funds appropriated under this heading shall be considered to be economic assistance under the Foreign Assistance Act of 1961 for purposes of making available the administrative authorities contained in that Act for the use of economic assistance.

(c) The provisions of section 529 of this Act shall apply to funds appropriated under this heading: *Provided,* That notwithstanding any provision of this or any other Act, including provisions in this subsection regarding the application of section 529 of this Act, local currencies generated by, or converted from, funds appropriated by this Act and by previous appropriations Acts and made available for the economic revitalization program in Bosnia may be used in Eastern Europe and the Baltic States to carry out the provisions of the Foreign Assistance Act of 1961 and the Support for East European Democracy (SEED) Act of 1989.

(d) The President is authorized to withhold funds appropriated under this heading made available for economic revitalization programs in Bosnia and Herzegovina, if he determines and certifies

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to the Committees on Appropriations that the Federation of Bosnia and Herzegovina has not complied with article III of annex 1–A of the General Framework Agreement for Peace in Bosnia and Herzegovina concerning the withdrawal of foreign forces, and that intelligence cooperation on training, investigations, and related activities between state sponsors of terrorism and terrorist organizations and Bosnian officials has not been terminated.

ASSISTANCE FOR THE INDEPENDENT STATES OF THE FORMER SOVIET UNION

(a) For necessary expenses to carry out the provisions of chapters 11 and 12 of part I of the Foreign Assistance Act of 1961 and the FREEDOM Support Act, for assistance for the Independent States of the former Soviet Union and for related programs, $560,000,000, to remain available until September 30, 2006: *Provided,* That the provisions of such chapters shall apply to funds appropriated by this paragraph: *Provided further,* That funds made available for the Southern Caucasus region may be used, notwithstanding any other provision of law, for confidence-building measures and other activities in furtherance of the peaceful resolution of the regional conflicts, especially those in the vicinity of Abkhazia and Nagorno-Karabagh: *Provided further,* That of the funds appropriated under this heading, $3,859,000 should be available only to meet the health and other assistance needs of victims of trafficking in persons: *Provided further,* That of the funds appropriated under this heading, $17,500,000 shall be made available solely for assistance for the Russian Far East: *Provided further,* That, notwithstanding any other provision of law, funds appropriated under this heading in this Act or prior Acts making appropriations for foreign operations, export financing, and related programs, that are made available pursuant to the provisions of section 807 of Public Law 102–511 shall be subject to a 6 percent ceiling on administrative expenses.

(b) Of the funds appropriated under this heading that are made available for assistance for Ukraine, not less than $5,000,000 should be made available for nuclear reactor safety initiatives, and not less than $1,500,000 shall be made available for coal mine safety programs.

(c) Of the funds appropriated under this heading, not less than $55,000,000 should be made available, in addition to funds otherwise available for such purposes, for assistance for child survival, environmental and reproductive health, and to combat HIV/AIDS, tuberculosis and other infectious diseases, and for related activities.

(d)(1) Of the funds appropriated under this heading that are allocated for assistance for the Government of the Russian Federation, 60 percent shall be withheld from obligation until the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation—

(A) has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs, or ballistic missile capability; and

(B) is providing full access to international non-government organizations providing humanitarian relief to refugees and internally displaced persons in Chechnya.

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(2) Paragraph (1) shall not apply to—

(A) assistance to combat infectious diseases, child survival activities, or assistance for victims of trafficking in persons; and

(B) activities authorized under title V (Nonproliferation and Disarmament Programs and Activities) of the FREEDOM Support Act.

(e) Section 907 of the FREEDOM Support Act shall not apply to—

(1) activities to support democracy or assistance under title V of the FREEDOM Support Act and section 1424 of Public Law 104–201 or non-proliferation assistance;

(2) any assistance provided by the Trade and Development Agency under section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421);

(3) any activity carried out by a member of the United States and Foreign Commercial Service while acting within his or her official capacity;

(4) any insurance, reinsurance, guarantee or other assistance provided by the Overseas Private Investment Corporation under title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2191 et seq.);

(5) any financing provided under the Export-Import Bank Act of 1945; or

(6) humanitarian assistance.

INDEPENDENT AGENCIES

INTER-AMERICAN FOUNDATION

For necessary expenses to carry out the functions of the Inter-American Foundation in accordance with the provisions of section 401 of the Foreign Assistance Act of 1969, $18,000,000, to remain available until September 30, 2006.

AFRICAN DEVELOPMENT FOUNDATION

For necessary expenses to carry out title V of the International Security and Development Cooperation Act of 1980, Public Law 96–533, $19,000,000, to remain available until September 30, 2006: *Provided,* That funds made available to grantees may be invested pending expenditure for project purposes when authorized by the board of directors of the Foundation: *Provided further,* That interest earned shall be used only for the purposes for which the grant was made: *Provided further,* That notwithstanding section 505(a)(2) of the African Development Foundation Act, in exceptional circumstances the board of directors of the Foundation may waive the $250,000 limitation contained in that section with respect to a project: *Provided further,* That the Foundation shall provide a report to the Committees on Appropriations after each time such waiver authority is exercised.

PEACE CORPS

For necessary expenses to carry out the provisions of the Peace Corps Act (75 Stat. 612), $320,000,000, including the purchase of not to exceed five passenger motor vehicles for administrative purposes for use outside of the United States: *Provided,* That none

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of the funds appropriated under this heading shall be used to pay for abortions: *Provided further,* That funds appropriated under this heading shall remain available until September 30, 2006.

MILLENNIUM CHALLENGE CORPORATION

For necessary expenses for the "Millennium Challenge Corporation", $1,500,000,000, to remain available until expended: *Provided,* That of the funds appropriated under this heading, up to $50,000,000 may be available for administrative expenses of the Millennium Challenge Corporation: *Provided further,* That none of the funds appropriated under this heading may be made available for the provision of assistance until the Chief Executive Officer of the Millennium Challenge Corporation provides a written budget justification to the Committees on Appropriations: *Provided further,* That up to 10 percent of the funds appropriated under this heading may be made available to carry out the purposes of section 616 of the Millennium Challenge Act of 2003: *Provided further,* That none of the funds available to carry out section 616 of such Act may be made available until the Chief Executive Officer of the Millennium Challenge Corporation provides a report to the Committees on Appropriations listing the candidate countries that will be receiving assistance under section 616 of such Act, the level of assistance proposed for each such country, a description of the proposed programs, projects and activities, and the implementing agency or agencies of the United States Government: *Provided further,* That section 605(e)(4) of the Millennium Challenge Act of 2003 shall apply to funds appropriated under this heading: *Provided further,* That funds appropriated under this heading, and funds appropriated under this heading in division D of Public Law 108–199, may be made available for a Millennium Challenge Compact entered into pursuant to section 609 of the Millennium Challenge Act of 2003 only if such Compact obligates, or contains a commitment to obligate subject to the availability of funds and the mutual agreement of the parties to the Compact to proceed, the entire amount of the United States Government funding anticipated for the duration of the Compact: *Provided further,* That the previous proviso shall be effective on the date of enactment of this Act.

DEPARTMENT OF STATE

GLOBAL HIV/AIDS INITIATIVE

For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 for the prevention, treatment, and control of, and research on, HIV/AIDS, $1,385,000,000, to remain available until expended: *Provided,* That of the funds appropriated under this heading, not more than $8,818,000 may be made available for administrative expenses of the Office of the Coordinator of United States Government Activities to Combat HIV/AIDS Globally of the Department of State: *Provided further,* That of the funds appropriated under this heading, not less than $27,000,000 should be made available for a United States contribution to UNAIDS.

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INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT

For necessary expenses to carry out section 481 of the Foreign Assistance Act of 1961, $328,820,000, to remain available until September 30, 2007: *Provided,* That during fiscal year 2005, the Department of State may also use the authority of section 608 of the Foreign Assistance Act of 1961, without regard to its restrictions, to receive excess property from an agency of the United States Government for the purpose of providing it to a foreign country under chapter 8 of part I of that Act subject to the regular notification procedures of the Committees on Appropriations: *Provided further,* That the Secretary of State shall provide to the Committees on Appropriations not later than 45 days after the date of the enactment of this Act and prior to the initial obligation of funds appropriated under this heading, a report on the proposed uses of all funds under this heading on a country-by-country basis for each proposed program, project, or activity: *Provided further,* That of the funds appropriated under this heading, not less than $11,900,000 should be made available for training programs and activities of the International Law Enforcement Academies: *Provided further,* That of the funds appropriated under this heading, not less than $4,000,000 should be made available for assistance for the Philippines for police training and other related activities: *Provided further,* That $10,000,000 of the funds appropriated under this heading shall be made available for demand reduction programs: *Provided further,* That $40,000,000 of the funds appropriated under this heading should be made available for assistance for Mexico: *Provided further,* That $10,500,000 of the funds appropriated under this heading should be made available for assistance for countries and programs in Africa: *Provided further,* That of the funds appropriated under this heading, $3,000,000 shall be made available for assistance for the Government of Malta for the purchase of helicopters to enhance its ability to control its borders and deter terrorists: *Provided further,* That of the funds appropriated under this heading, not more than $30,300,000 may be available for administrative expenses.

ANDEAN COUNTERDRUG INITIATIVE

For necessary expenses to carry out section 481 of the Foreign Assistance Act of 1961 to support counterdrug activities in the Andean region of South America, $731,000,000, to remain available until September 30, 2007: *Provided,* That in fiscal year 2005, funds available to the Department of State for assistance to the Government of Colombia shall be available to support a unified campaign against narcotics trafficking, against activities by organizations designated as terrorist organizations such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC), and to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations: *Provided further,* That this authority shall cease to be effective if the Secretary of State has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations: *Provided further,* That the President shall ensure that if any helicopter procured with funds under this heading is used to aid or abet the operations

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of any illegal self-defense group or illegal security cooperative, such helicopter shall be immediately returned to the United States: *Provided further,* That none of the funds appropriated by this Act may be made available to support a Peruvian air interdiction program until the Secretary of State and Director of Central Intelligence certify to the Congress, 30 days before any resumption of United States involvement in a Peruvian air interdiction program, that an air interdiction program that permits the ability of the Peruvian Air Force to shoot down aircraft will include enhanced safeguards and procedures to prevent the occurrence of any incident similar to the April 20, 2001 incident: *Provided further,* That the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall provide to the Committees on Appropriations not later than 45 days after the date of the enactment of this Act and prior to the initial obligation of funds appropriated under this heading, a report on the proposed uses of all funds under this heading on a country-by-country basis for each proposed program, project, or activity: *Provided further,* That of the funds appropriated under this heading, not less than $264,600,000 shall be made available for alternative development/institution building, of which $237,000,000 shall be apportioned directly to the United States Agency for International Development, including $125,700,000 for assistance for Colombia: *Provided further,* That with respect to funds apportioned to the United States Agency for International Development under the previous proviso, the responsibility for policy decisions for the use of such funds, including what activities will be funded and the amount of funds that will be provided for each of those activities, shall be the responsibility of the Administrator of the United States Agency for International Development in consultation with the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs: *Provided further,* That of the funds appropriated under this heading, not less than $6,000,000 should be made available for judicial reform programs in Colombia: *Provided further,* That of the funds appropriated under this heading, in addition to funds made available pursuant to the previous proviso, not less than $6,000,000 shall be made available to the United States Agency for International Development for organizations and programs to protect human rights: *Provided further,* That funds made available in this Act for demobilization/reintegration of members of foreign terrorist organizations in Colombia shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations: *Provided further,* That not more than 20 percent of the funds appropriated by this Act that are used for the procurement of chemicals for aerial coca and poppy fumigation programs may be made available for such programs unless the Secretary of State certifies to the Committees on Appropriations that: (1) the herbicide mixture is being used in accordance with EPA label requirements for comparable use in the United States and with Colombian laws; and (2) the herbicide mixture, in the manner it is being used, does not pose unreasonable risks or adverse effects to humans or the environment: *Provided further,* That such funds may not be made available unless the Secretary of State certifies to the Committees on Appropriations that complaints of harm to health or licit crops caused by such fumigation are evaluated and fair compensation is being paid for meritorious claims: *Provided further,* That such funds may not

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be made available for such purposes unless programs are being implemented by the United States Agency for International Development, the Government of Colombia, or other organizations, in consultation with local communities, to provide alternative sources of income in areas where security permits for small-acreage growers whose illicit crops are targeted for fumigation: *Provided further,* That of the funds appropriated under this heading, $2,000,000 should be made available through nongovernmental organizations for programs to protect biodiversity and indigenous reserves in Colombia: *Provided further,* That funds appropriated by this Act may be used for aerial fumigation in Colombia's national parks or reserves only if the Secretary of State determines that it is in accordance with Colombian laws and that there are no effective alternatives to reduce drug cultivation in these areas: *Provided further,* That section 482(b) of the Foreign Assistance Act of 1961 shall not apply to funds appropriated under this heading: *Provided further,* That assistance provided with funds appropriated under this heading that is made available notwithstanding section 482(b) of the Foreign Assistance Act of 1961 shall be made available subject to the regular notification procedures of the Committees on Appropriations: *Provided further,* That no United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available by this Act for Colombia: *Provided further,* That funds appropriated under this heading that are available for assistance for the Bolivian military and police may be made available for such purposes only if the Bolivian military and police are respecting human rights and cooperating with civilian judicial authorities, and the Bolivian Government is prosecuting and punishing those responsible for violations of human rights: *Provided further,* That of the funds appropriated under this heading, not more than $16,285,000 may be available for administrative expenses of the Department of State, and not more than $7,800,000 may be available, in addition to amounts otherwise available for such purposes, for administrative expenses of the United States Agency for International Development.

MIGRATION AND REFUGEE ASSISTANCE

For expenses, not otherwise provided for, necessary to enable the Secretary of State to provide, as authorized by law, a contribution to the International Committee of the Red Cross, assistance to refugees, including contributions to the International Organization for Migration and the United Nations High Commissioner for Refugees, and other activities to meet refugee and migration needs; salaries and expenses of personnel and dependents as authorized by the Foreign Service Act of 1980; allowances as authorized by sections 5921 through 5925 of title 5, United States Code; purchase and hire of passenger motor vehicles; and services as authorized by section 3109 of title 5, United States Code, $770,000,000, which shall remain available until expended: *Provided,* That not more than $22,000,000 may be available for administrative expenses: *Provided further,* That not less than $50,000,000 of the funds made available under this heading shall be made available for refugees from the former Soviet Union and Eastern Europe and other refugees resettling in Israel: *Provided further,* That funds appropriated under this heading may be made

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available for a headquarters contribution to the International Committee of the Red Cross only if the Secretary of State determines (and so reports to the appropriate committees of Congress) that the Magen David Adom Society of Israel is not being denied participation in the activities of the International Red Cross and Red Crescent Movement.

UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSISTANCE FUND

For necessary expenses to carry out the provisions of section 2(c) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)), $30,000,000, to remain available until expended: *Provided,* That funds made available under this heading are appropriated notwithstanding the provisions contained in section 2(c)(2) of such Act which would limit the amount of funds which could be appropriated for this purpose.

NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS

For necessary expenses for nonproliferation, anti-terrorism, demining and related programs and activities, $402,000,000, to carry out the provisions of chapter 8 of part II of the Foreign Assistance Act of 1961 for anti-terrorism assistance, chapter 9 of part II of the Foreign Assistance Act of 1961, section 504 of the FREEDOM Support Act, section 23 of the Arms Export Control Act or the Foreign Assistance Act of 1961 for demining activities, the clearance of unexploded ordnance, the destruction of small arms, and related activities, notwithstanding any other provision of law, including activities implemented through nongovernmental and international organizations, and section 301 of the Foreign Assistance Act of 1961 for a voluntary contribution to the International Atomic Energy Agency (IAEA), and for a United States contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission: *Provided,* That of this amount not to exceed $32,000,000, to remain available until expended, may be made available for the Nonproliferation and Disarmament Fund, notwithstanding any other provision of law, to promote bilateral and multilateral activities relating to nonproliferation and disarmament: *Provided further,* That such funds may also be used for such countries other than the Independent States of the former Soviet Union and international organizations when it is in the national security interest of the United States to do so: *Provided further,* That funds appropriated under this heading may be made available for the International Atomic Energy Agency only if the Secretary of State determines (and so reports to the Congress) that Israel is not being denied its right to participate in the activities of that Agency: *Provided further,* That funds available during fiscal year 2005 for a contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission and that are not necessary to make the United States contribution to the Commission in the amount assessed for fiscal year 2005 shall be made available for a voluntary contribution to the International Atomic Energy Agency and shall remain available until September 30, 2006: *Provided further,* That of the funds made available for demining and related activities, not to exceed $690,000, in addition to funds otherwise available for such purposes, may be used for administrative expenses related to the

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operation and management of the demining program: *Provided further,* That funds appropriated under this heading that are available for "Anti-terrorism Assistance" and "Export Control and Border Security" shall remain available until September 30, 2006.

DEPARTMENT OF THE TREASURY

INTERNATIONAL AFFAIRS TECHNICAL ASSISTANCE

For necessary expenses to carry out the provisions of section 129 of the Foreign Assistance Act of 1961, $19,000,000, to remain available until September 30, 2007, which shall be available notwithstanding any other provision of law.

DEBT RESTRUCTURING

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of modifying loans and loan guarantees, as the President may determine, for which funds have been appropriated or otherwise made available for programs within the International Affairs Budget Function 150, including the cost of selling, reducing, or canceling amounts owed to the United States as a result of concessional loans made to eligible countries, pursuant to parts IV and V of the Foreign Assistance Act of 1961, and of modifying concessional credit agreements with least developed countries, as authorized under section 411 of the Agricultural Trade Development and Assistance Act of 1954, as amended, and concessional loans, guarantees and credit agreements, as authorized under section 572 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461), and of canceling amounts owed, as a result of loans or guarantees made pursuant to the Export-Import Bank Act of 1945, by countries that are eligible for debt reduction pursuant to title V of H.R. 3425 as enacted into law by section 1000(a)(5) of Public Law 106–113, $100,000,000, to remain available until September 30, 2007: *Provided,* That not less than $20,000,000 of the funds appropriated under this heading shall be made available to carry out the provisions of part V of the Foreign Assistance Act of 1961: *Provided further,* That up to $75,000,000 of the funds appropriated under this heading may be used by the Secretary of the Treasury to pay to the Heavily Indebted Poor Countries (HIPC) Trust Fund administered by the International Bank for Reconstruction and Development amounts for the benefit of countries that are eligible for debt reduction pursuant to title V of H.R. 3425 as enacted into law by section 1000(a)(5) of Public Law 106–113: *Provided further,* That amounts paid to the HIPC Trust Fund may be used only to fund debt reduction under the enhanced HIPC initiative by—

(1) the Inter-American Development Bank;
(2) the African Development Fund;
(3) the African Development Bank; and
(4) the Central American Bank for Economic Integration:

Provided further, That funds may not be paid to the HIPC Trust Fund for the benefit of any country if the Secretary of State has credible evidence that the government of such country is engaged in a consistent pattern of gross violations of internationally recognized human rights or in military or civil conflict that undermines its ability to develop and implement measures to alleviate poverty

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and to devote adequate human and financial resources to that end: *Provided further,* That on the basis of final appropriations, the Secretary of the Treasury shall consult with the Committees on Appropriations concerning which countries and international financial institutions are expected to benefit from a United States contribution to the HIPC Trust Fund during the fiscal year: *Provided further,* That the Secretary of the Treasury shall inform the Committees on Appropriations not less than 15 days in advance of the signature of an agreement by the United States to make payments to the HIPC Trust Fund of amounts for such countries and institutions: *Provided further,* That the Secretary of the Treasury may disburse funds designated for debt reduction through the HIPC Trust Fund only for the benefit of countries that—

(1) have committed, for a period of 24 months, not to accept new market-rate loans from the international financial institution receiving debt repayment as a result of such disbursement, other than loans made by such institutions to export-oriented commercial projects that generate foreign exchange which are generally referred to as "enclave" loans; and

(2) have documented and demonstrated their commitment to redirect their budgetary resources from international debt repayments to programs to alleviate poverty and promote economic growth that are additional to or expand upon those previously available for such purposes:

Provided further, That any limitation of subsection (e) of section 411 of the Agricultural Trade Development and Assistance Act of 1954 shall not apply to funds appropriated under this heading: *Provided further*, That none of the funds made available under this heading in this or any other appropriations Act shall be made available for Sudan or Burma unless the Secretary of the Treasury determines and notifies the Committees on Appropriations that a democratically elected government has taken office: *Provided further*, That none of the funds appropriated under this heading may be paid to the HIPC Trust Fund for the benefit of any country that has accepted loans from an international financial institution between such country's decision point and completion point: *Provided further,* That the terms "decision point" and "completion point" shall have the same meaning as defined by the International Monetary Fund.

TITLE III—MILITARY ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL MILITARY EDUCATION AND TRAINING

For necessary expenses to carry out the provisions of section 541 of the Foreign Assistance Act of 1961, $89,730,000, of which up to $3,000,000 may remain available until expended: *Provided,* That the civilian personnel for whom military education and training may be provided under this heading may include civilians who are not members of a government whose participation would contribute to improved civil-military relations, civilian control of the military, or respect for human rights: *Provided further,* That funds appropriated under this heading for military education and training for Guatemala may only be available for expanded international military education and training, and funds made available

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for Haiti, the Democratic Republic of the Congo, and Nigeria may only be provided through the regular notification procedures of the Committees on Appropriations.

FOREIGN MILITARY FINANCING PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for grants to enable the President to carry out the provisions of section 23 of the Arms Export Control Act, $4,783,500,000: *Provided*, That of the funds appropriated under this heading, not less than $2,220,000,000 shall be available for grants only for Israel, and not less than $1,300,000,000 shall be made available for grants only for Egypt: *Provided further,* That the funds appropriated by this paragraph for Israel shall be disbursed within 30 days of the enactment of this Act: *Provided further,* That to the extent that the Government of Israel requests that funds be used for such purposes, grants made available for Israel by this paragraph shall, as agreed by Israel and the United States, be available for advanced weapons systems, of which not less than $580,000,000 shall be available for the procurement in Israel of defense articles and defense services, including research and development: *Provided further,* That of the funds appropriated by this paragraph, $206,000,000 should be made available for assistance for Jordan: *Provided further,* That in addition to the funds appropriated under this heading, up to $150,000,000 for assistance for Pakistan may be derived by transfer from unobligated balances of funds appropriated under the headings "Economic Support Fund" and "Foreign Military Financing Program" in prior appropriations Acts and not otherwise designated in those Acts for a specific country, use, or purpose: *Provided further,* That of the funds appropriated under this heading, not more than $2,000,000 may be made available for assistance for Uganda and only for non-lethal military equipment if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uganda has made significant progress in: (1) the protection of human rights, especially preventing acts of torture; (2) the protection of civilians in northern and eastern Uganda; and (3) the professionalization of the Ugandan armed forces: *Provided further,* That funds appropriated or otherwise made available by this paragraph shall be nonrepayable notwithstanding any requirement in section 23 of the Arms Export Control Act: *Provided further,* That funds made available under this paragraph shall be obligated upon apportionment in accordance with paragraph (5)(C) of title 31, United States Code, section 1501(a).

None of the funds made available under this heading shall be available to finance the procurement of defense articles, defense services, or design and construction services that are not sold by the United States Government under the Arms Export Control Act unless the foreign country proposing to make such procurements has first signed an agreement with the United States Government specifying the conditions under which such procurements may be financed with such funds: *Provided,* That all country and funding level increases in allocations shall be submitted through the regular notification procedures of section 515 of this Act: *Provided further,* That none of the funds appropriated under this heading shall be available for assistance for Sudan and Guatemala: *Provided further,* That none of the funds appropriated under this heading may be

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made available for assistance for Haiti except pursuant to the regular notification procedures of the Committees on Appropriations: *Provided further,* That funds made available under this heading may be used, notwithstanding any other provision of law, for demining, the clearance of unexploded ordnance, and related activities, and may include activities implemented through nongovernmental and international organizations: *Provided further,* That only those countries for which assistance was justified for the "Foreign Military Sales Financing Program" in the fiscal year 1989 congressional presentation for security assistance programs may utilize funds made available under this heading for procurement of defense articles, defense services or design and construction services that are not sold by the United States Government under the Arms Export Control Act: *Provided further,* That funds appropriated under this heading shall be expended at the minimum rate necessary to make timely payment for defense articles and services: *Provided further,* That not more than $40,000,000 of the funds appropriated under this heading may be obligated for necessary expenses, including the purchase of passenger motor vehicles for replacement only for use outside of the United States, for the general costs of administering military assistance and sales: *Provided further,* That not more than $367,000,000 of funds realized pursuant to section 21(e)(1)(A) of the Arms Export Control Act may be obligated for expenses incurred by the Department of Defense during fiscal year 2005 pursuant to section 43(b) of the Arms Export Control Act, except that this limitation may be exceeded only through the regular notification procedures of the Committees on Appropriations: *Provided further,* That foreign military financing program funds estimated to be outlayed for Egypt during fiscal year 2005 shall be transferred to an interest bearing account for Egypt in the Federal Reserve Bank of New York within 30 days of enactment of this Act.

PEACEKEEPING OPERATIONS

For necessary expenses to carry out the provisions of section 551 of the Foreign Assistance Act of 1961, $104,000,000: *Provided,* That none of the funds appropriated under this heading shall be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

TITLE IV—MULTILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL FINANCIAL INSTITUTIONS

GLOBAL ENVIRONMENT FACILITY

For the United States contribution for the Global Environment Facility, $107,500,000 to the International Bank for Reconstruction and Development as trustee for the Global Environment Facility, by the Secretary of the Treasury, to remain available until expended.

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CONTRIBUTION TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

For payment to the International Development Association by the Secretary of the Treasury, $850,000,000, to remain available until expended.

CONTRIBUTION TO THE ENTERPRISE FOR THE AMERICAS MULTILATERAL INVESTMENT FUND

For payment to the Enterprise for the Americas Multilateral Investment Fund by the Secretary of the Treasury, for the United States contribution to the fund, $11,000,000, to remain available until expended.

CONTRIBUTION TO THE ASIAN DEVELOPMENT FUND

For the United States contribution by the Secretary of the Treasury to the increase in resources of the Asian Development Fund, as authorized by the Asian Development Bank Act, as amended, $100,000,000, to remain available until expended.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT BANK

For payment to the African Development Bank by the Secretary of the Treasury, $4,100,000, for the United States paid-in share of the increase in capital stock, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the African Development Bank may subscribe without fiscal year limitation for the callable capital portion of the United States share of such capital stock in an amount not to exceed $79,532,933.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT FUND

For the United States contribution by the Secretary of the Treasury to the increase in resources of the African Development Fund, $106,000,000, to remain available until expended.

CONTRIBUTION TO THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

For payment to the European Bank for Reconstruction and Development by the Secretary of the Treasury, $35,431,111 for the United States share of the paid-in portion of the increase in capital stock, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the European Bank for Reconstruction and Development may subscribe without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed $121,996,662.

CONTRIBUTION TO THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

For the United States contribution by the Secretary of the Treasury to increase the resources of the International Fund for

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Agricultural Development, $15,000,000, to remain available until expended.

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

For necessary expenses to carry out the provisions of section 301 of the Foreign Assistance Act of 1961, and of section 2 of the United Nations Environment Program Participation Act of 1973, $328,394,000: *Provided*, That none of the funds appropriated under this heading may be made available to the International Atomic Energy Agency (IAEA).

TITLE V—GENERAL PROVISIONS

COMPENSATION FOR UNITED STATES EXECUTIVE DIRECTORS TO INTERNATIONAL FINANCIAL INSTITUTIONS

SEC. 501. (a) No funds appropriated by this Act may be made as payment to any international financial institution while the United States Executive Director to such institution is compensated by the institution at a rate which, together with whatever compensation such Director receives from the United States, is in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, or while any alternate United States Director to such institution is compensated by the institution at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) For purposes of this section "international financial institutions" are: the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the Asian Development Fund, the African Development Bank, the African Development Fund, the International Monetary Fund, the North American Development Bank, and the European Bank for Reconstruction and Development.

RESTRICTIONS ON VOLUNTARY CONTRIBUTIONS TO UNITED NATIONS AGENCIES

SEC. 502. None of the funds appropriated by this Act may be made available to pay any voluntary contribution of the United States to the United Nations (including the United Nations Development Program) if the United Nations implements or imposes any taxation on any United States persons.

LIMITATION ON RESIDENCE EXPENSES

SEC. 503. Of the funds appropriated or made available pursuant to this Act, not to exceed $100,500 shall be for official residence expenses of the United States Agency for International Development during the current fiscal year: *Provided,* That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

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LIMITATION ON EXPENSES

SEC. 504. Of the funds appropriated or made available pursuant to this Act, not to exceed $5,000 shall be for entertainment expenses of the United States Agency for International Development during the current fiscal year.

LIMITATION ON REPRESENTATIONAL ALLOWANCES

SEC. 505. Of the funds appropriated or made available pursuant to this Act, not to exceed $125,000 shall be available for representation allowances for the United States Agency for International Development during the current fiscal year: *Provided,* That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars: *Provided further,* That of the funds made available by this Act for general costs of administering military assistance and sales under the heading "Foreign Military Financing Program", not to exceed $4,000 shall be available for entertainment expenses and not to exceed $130,000 shall be available for representation allowances: *Provided further,* That of the funds made available by this Act under the heading "International Military Education and Training", not to exceed $55,000 shall be available for entertainment allowances: *Provided further,* That of the funds made available by this Act for the Inter-American Foundation, not to exceed $2,000 shall be available for entertainment and representation allowances: *Provided further,* That of the funds made available by this Act for the Peace Corps, not to exceed a total of $4,000 shall be available for entertainment expenses: *Provided further,* That of the funds made available by this Act under the heading "Trade and Development Agency", not to exceed $4,000 shall be available for representation and entertainment allowances: *Provided further,* That of the funds made available by this Act under the heading "Millennium Challenge Corporation", not to exceed $115,000 shall be available for representation and entertainment allowances.

PROHIBITION ON TAXATION OF UNITED STATES ASSISTANCE

SEC. 506. (a) PROHIBITION ON TAXATION.—None of the funds appropriated by this Act may be made available to provide assistance for a foreign country under a new bilateral agreement governing the terms and conditions under which such assistance is to be provided unless such agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government, and the Secretary of State shall expeditiously seek to negotiate amendments to existing bilateral agreements, as necessary, to conform with this requirement.

(b) REIMBURSEMENT OF FOREIGN TAXES.—An amount equivalent to 200 percent of the total taxes assessed during fiscal year 2005 on funds appropriated by this Act by a foreign government or entity against commodities financed under United States assistance programs for which funds are appropriated by this Act, either directly or through grantees, contractors and subcontractors shall be withheld from obligation from funds appropriated for assistance for fiscal year 2006 and allocated for the central government of such country and for the West Bank and Gaza Program to the extent that the Secretary of State certifies and reports in writing

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to the Committees on Appropriations that such taxes have not been reimbursed to the Government of the United States.

(c) DE MINIMIS EXCEPTION.—Foreign taxes of a de minimis nature shall not be subject to the provisions of subsection (b).

(d) REPROGRAMMING OF FUNDS.—Funds withheld from obligation for each country or entity pursuant to subsection (b) shall be reprogrammed for assistance to countries which do not assess taxes on United States assistance or which have an effective arrangement that is providing substantial reimbursement of such taxes.

(e) DETERMINATIONS.—

(1) The provisions of this section shall not apply to any country or entity the Secretary of State determines—

(A) does not assess taxes on United States assistance or which has an effective arrangement that is providing substantial reimbursement of such taxes; or

(B) the foreign policy interests of the United States outweigh the policy of this section to ensure that United States assistance is not subject to taxation.

(2) The Secretary of State shall consult with the Committees on Appropriations at least 15 days prior to exercising the authority of this subsection with regard to any country or entity.

(f) IMPLEMENTATION.—The Secretary of State shall issue rules, regulations, or policy guidance, as appropriate, to implement the prohibition against the taxation of assistance contained in this section.

(g) DEFINITIONS.—As used in this section—

(1) the terms "taxes" and "taxation" refer to value added taxes and customs duties imposed on commodities financed with United States assistance for programs for which funds are appropriated by this Act; and

(2) the term "bilateral agreement" refers to a framework bilateral agreement between the Government of the United States and the government of the country receiving assistance that describes the privileges and immunities applicable to United States foreign assistance for such country generally, or an individual agreement between the Government of the United States and such government that describes, among other things, the treatment for tax purposes that will be accorded the United States assistance provided under that agreement.

PROHIBITION AGAINST DIRECT FUNDING FOR CERTAIN COUNTRIES

SEC. 507. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance or reparations to Cuba, Libya, North Korea, Iran, or Syria: *Provided,* That for purposes of this section, the prohibition on obligations or expenditures shall include direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents.

MILITARY COUPS

SEC. 508. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by decree or

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military coup: *Provided,* That assistance may be resumed to such government if the President determines and certifies to the Committees on Appropriations that subsequent to the termination of assistance a democratically elected government has taken office: *Provided further,* That the provisions of this section shall not apply to assistance to promote democratic elections or public participation in democratic processes: *Provided further,* That funds made available pursuant to the previous provisos shall be subject to the regular notification procedures of the Committees on Appropriations.

TRANSFERS

SEC. 509. (a)(1) LIMITATION ON TRANSFERS BETWEEN AGENCIES.—None of the funds made available by this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

(2) Notwithstanding paragraph (1), in addition to transfers made by, or authorized elsewhere in, this Act, funds appropriated by this Act to carry out the purposes of the Foreign Assistance Act of 1961 may be allocated or transferred to agencies of the United States Government pursuant to the provisions of sections 109, 610, and 632 of the Foreign Assistance Act of 1961.

(b) TRANSFERS BETWEEN ACCOUNTS.—None of the funds made available by this Act may be obligated under an appropriation account to which they were not appropriated, except for transfers specifically provided for in this Act, unless the President, not less than 5 days prior to the exercise of any authority contained in the Foreign Assistance Act of 1961 to transfer funds, consults with and provides a written policy justification to the Committees on Appropriations of the House of Representatives and the Senate.

(c) AUDIT OF INTER-AGENCY TRANSFERS.—Any agreement for the transfer or allocation of funds appropriated by this Act, or prior Acts, entered into between the United States Agency for International Development and another agency of the United States Government under the authority of section 632(a) of the Foreign Assistance Act of 1961 or any comparable provision of law, shall expressly provide that the Office of the Inspector General for the agency receiving the transfer or allocation of such funds shall perform periodic program and financial audits of the use of such funds: *Provided,* That funds transferred under such authority may be made available for the cost of such audits.

COMMERCIAL LEASING OF DEFENSE ARTICLES

SEC. 510. Notwithstanding any other provision of law, and subject to the regular notification procedures of the Committees on Appropriations, the authority of section 23(a) of the Arms Export Control Act may be used to provide financing to Israel, Egypt and NATO and major non-NATO allies for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by

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commercial lease rather than by government-to-government sale under such Act.

AVAILABILITY OF FUNDS

SEC. 511. No part of any appropriation contained in this Act shall remain available for obligation after the expiration of the current fiscal year unless expressly so provided in this Act: *Provided,* That funds appropriated for the purposes of chapters 1, 8, 11, and 12 of part I, section 667, chapters 4, 6, 8, and 9 of part II of the Foreign Assistance Act of 1961, section 23 of the Arms Export Control Act, and funds provided under the heading "Assistance for Eastern Europe and the Baltic States", shall remain available for an additional 4 years from the date on which the availability of such funds would otherwise have expired, if such funds are initially obligated before the expiration of their respective periods of availability contained in this Act: *Provided further,* That, notwithstanding any other provision of this Act, any funds made available for the purposes of chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961 which are allocated or obligated for cash disbursements in order to address balance of payments or economic policy reform objectives, shall remain available until expended.

LIMITATION ON ASSISTANCE TO COUNTRIES IN DEFAULT

SEC. 512. No part of any appropriation contained in this Act shall be used to furnish assistance to the government of any country which is in default during a period in excess of 1 calendar year in payment to the United States of principal or interest on any loan made to the government of such country by the United States pursuant to a program for which funds are appropriated under this Act unless the President determines, following consultations with the Committees on Appropriations, that assistance to such country is in the national interest of the United States.

COMMERCE AND TRADE

SEC. 513. (a) None of the funds appropriated or made available pursuant to this Act for direct assistance and none of the funds otherwise made available pursuant to this Act to the Export-Import Bank and the Overseas Private Investment Corporation shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity: *Provided,* That such prohibition shall not apply to the Export-Import Bank if in the judgment of its Board of Directors the benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar, or competing commodity, and the Chairman of the Board so notifies the Committees on Appropriations.

(b) None of the funds appropriated by this or any other Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 shall be available for any testing or breeding feasibility

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study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States: *Provided,* That this subsection shall not prohibit—

(1) activities designed to increase food security in developing countries where such activities will not have a significant impact on the export of agricultural commodities of the United States; or

(2) research activities intended primarily to benefit American producers.

SURPLUS COMMODITIES

SEC. 514. The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the North American Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or made available pursuant to this Act, for the production or extraction of any commodity or mineral for export, if it is in surplus on world markets and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

NOTIFICATION REQUIREMENTS

SEC. 515. For the purposes of providing the executive branch with the necessary administrative flexibility, none of the funds made available under this Act for "Child Survival and Health Programs Fund", "Development Assistance", "International Organizations and Programs", "Trade and Development Agency", "International Narcotics Control and Law Enforcement", "Andean Counterdrug Initiative", "Assistance for Eastern Europe and the Baltic States", "Assistance for the Independent States of the Former Soviet Union", "Economic Support Fund", "Global HIV/AIDS Initiative", "Peacekeeping Operations", "Capital Investment Fund", "Operating Expenses of the United States Agency for International Development", "Operating Expenses of the United States Agency for International Development Office of Inspector General", "Nonproliferation, Anti-terrorism, Demining and Related Programs", "Millennium Challenge Corporation" (by country only), "Foreign Military Financing Program", "International Military Education and Training", "Peace Corps", and "Migration and Refugee Assistance", shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Committees on Appropriations for obligation under any of these specific headings unless the Committees on Appropriations of both Houses of Congress are previously notified 15 days in advance: *Provided*, That the President shall not enter into any commitment of funds appropriated for the purposes of section 23 of the Arms Export Control

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Act for the provision of major defense equipment, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress or 20 percent in excess of the quantities justified to Congress unless the Committees on Appropriations are notified 15 days in advance of such commitment: *Provided further*, That this section shall not apply to any reprogramming for an activity, program, or project for which funds are appropriated under title II of this Act of less than 10 percent of the amount previously justified to the Congress for obligation for such activity, program, or project for the current fiscal year: *Provided further*, That the requirements of this section or any similar provision of this Act or any other Act, including any prior Act requiring notification in accordance with the regular notification procedures of the Committees on Appropriations, may be waived if failure to do so would pose a substantial risk to human health or welfare: *Provided further*, That in case of any such waiver, notification to the Congress, or the appropriate congressional committees, shall be provided as early as practicable, but in no event later than 3 days after taking the action to which such notification requirement was applicable, in the context of the circumstances necessitating such waiver: *Provided further*, That any notification provided pursuant to such a waiver shall contain an explanation of the emergency circumstances.

LIMITATION ON AVAILABILITY OF FUNDS FOR INTERNATIONAL ORGANIZATIONS AND PROGRAMS

SEC. 516. Subject to the regular notification procedures of the Committees on Appropriations, funds appropriated under this Act or any previously enacted Act making appropriations for foreign operations, export financing, and related programs, which are returned or not made available for organizations and programs because of the implementation of section 307(a) of the Foreign Assistance Act of 1961, shall remain available for obligation until September 30, 2006.

INDEPENDENT STATES OF THE FORMER SOVIET UNION

SEC. 517. (a) None of the funds appropriated under the heading "Assistance for the Independent States of the Former Soviet Union" shall be made available for assistance for a government of an Independent State of the former Soviet Union if that government directs any action in violation of the territorial integrity or national sovereignty of any other Independent State of the former Soviet Union, such as those violations included in the Helsinki Final Act: *Provided,* That such funds may be made available without regard to the restriction in this subsection if the President determines that to do so is in the national security interest of the United States.

(b) None of the funds appropriated under the heading "Assistance for the Independent States of the Former Soviet Union" shall be made available for any state to enhance its military capability: *Provided,* That this restriction does not apply to demilitarization, demining or nonproliferation programs.

(c) Funds appropriated under the heading "Assistance for the Independent States of the Former Soviet Union" for the Russian Federation, Armenia, Georgia, and Ukraine shall be subject to

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the regular notification procedures of the Committees on Appropriations.

(d) Funds made available in this Act for assistance for the Independent States of the former Soviet Union shall be subject to the provisions of section 117 (relating to environment and natural resources) of the Foreign Assistance Act of 1961.

(e) In issuing new task orders, entering into contracts, or making grants, with funds appropriated in this Act or prior appropriations Acts under the heading "Assistance for the Independent States of the Former Soviet Union" and under comparable headings in prior appropriations Acts, for projects or activities that have as one of their primary purposes the fostering of private sector development, the Coordinator for United States Assistance to Europe and Eurasia and the implementing agency shall encourage the participation of and give significant weight to contractors and grantees who propose investing a significant amount of their own resources (including volunteer services and in-kind contributions) in such projects and activities.

PROHIBITION ON FUNDING FOR ABORTIONS AND INVOLUNTARY STERILIZATION

SEC. 518. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for any biomedical research which relates in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be obligated or expended for any country or organization if the President certifies that the use of these funds by any such country or organization would violate any of the above provisions related to abortions and involuntary sterilizations.

EXPORT FINANCING TRANSFER AUTHORITIES

SEC. 519. Not to exceed 5 percent of any appropriation other than for administrative expenses made available for fiscal year 2005, for programs under title I of this Act may be transferred between such appropriations for use for any of the purposes, programs, and activities for which the funds in such receiving account may be used, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 25 percent by any such transfer: *Provided,* That the exercise of such authority shall be subject to the regular notification procedures of the Committees on Appropriations.

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SPECIAL NOTIFICATION REQUIREMENTS

SEC. 520. None of the funds appropriated by this Act shall be obligated or expended for Liberia, Serbia, Sudan, Zimbabwe, Pakistan, or Cambodia except as provided through the regular notification procedures of the Committees on Appropriations.

DEFINITION OF PROGRAM, PROJECT, AND ACTIVITY

SEC. 521. For the purpose of this Act "program, project, and activity" shall be defined at the appropriations Act account level and shall include all appropriations and authorizations Acts earmarks, ceilings, and limitations with the exception that for the following accounts: Economic Support Fund and Foreign Military Financing Program "program, project, and activity" shall also be considered to include country, regional, and central program level funding within each such account; for the development assistance accounts of the United States Agency for International Development "program, project, and activity" shall also be considered to include central, country, regional, and program level funding, either as: (1) justified to the Congress; or (2) allocated by the executive branch in accordance with a report, to be provided to the Committees on Appropriations within 30 days of the enactment of this Act, as required by section 653(a) of the Foreign Assistance Act of 1961.

CHILD SURVIVAL AND HEALTH ACTIVITIES

SEC. 522. Up to $13,500,000 of the funds made available by this Act for assistance under the heading "Child Survival and Health Programs Fund", may be used to reimburse United States Government agencies, agencies of State governments, institutions of higher learning, and private and voluntary organizations for the full cost of individuals (including for the personal services of such individuals) detailed or assigned to, or contracted by, as the case may be, the United States Agency for International Development for the purpose of carrying out activities under that heading: *Provided,* That up to $3,500,000 of the funds made available by this Act for assistance under the heading "Development Assistance" may be used to reimburse such agencies, institutions, and organizations for such costs of such individuals carrying out other development assistance activities: *Provided further,* That funds appropriated by titles II and III of this Act that are made available for bilateral assistance for child survival activities or disease programs including activities relating to research on, and the prevention, treatment and control of, HIV/AIDS may be made available notwithstanding any other provision of law except for the provisions under the heading "Child Survival and Health Programs Fund" and the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (117 Stat. 711; 22 U.S.C. 7601 et seq.), as amended: *Provided further,* That of the funds appropriated under title II of this Act, not less than $441,000,000 shall be made available for family planning/reproductive health.

AFGHANISTAN

SEC. 523. Of the funds appropriated by titles II and III of this Act, not less than $980,000,000 should be made available for humanitarian, reconstruction, and related assistance for

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Afghanistan: *Provided,* That of the funds made available pursuant to this section, not less than $2,000,000 should be made available for reforestation activities: *Provided further,* That funds made available pursuant to the previous proviso should be matched, to the maximum extent possible, with contributions from American and Afghan businesses: *Provided further,* That of the funds made available pursuant to this section, not less than $2,000,000 should be made available for the Afghan Independent Human Rights Commission and for other Afghan human rights organizations: *Provided further,* That to the maximum extent practicable members of the Afghan National Army should be vetted for involvement in terrorism, human rights violations, and drug trafficking: *Provided further,* That of the funds allocated for assistance for Afghanistan from this Act and other Acts making appropriations for foreign operations, export financing, and related programs for fiscal year 2005, not less than $50,000,000 should be made available to support programs that directly address the needs of Afghan women and girls, of which not less than $7,500,000 shall be made available for small grants to support training and equipment to improve the capacity of women-led Afghan nongovernmental organizations and to support the activities of such organizations.

NOTIFICATION ON EXCESS DEFENSE EQUIPMENT

SEC. 524. Prior to providing excess Department of Defense articles in accordance with section 516(a) of the Foreign Assistance Act of 1961, the Department of Defense shall notify the Committees on Appropriations to the same extent and under the same conditions as are other committees pursuant to subsection (f) of that section: *Provided,* That before issuing a letter of offer to sell excess defense articles under the Arms Export Control Act, the Department of Defense shall notify the Committees on Appropriations in accordance with the regular notification procedures of such Committees if such defense articles are significant military equipment (as defined in section 47(9) of the Arms Export Control Act) or are valued (in terms of original acquisition cost) at $7,000,000 or more, or if notification is required elsewhere in this Act for the use of appropriated funds for specific countries that would receive such excess defense articles: *Provided further,* That such Committees shall also be informed of the original acquisition cost of such defense articles.

HIV/AIDS

SEC. 525. (a)(1) Notwithstanding any other provision of this Act, 25 percent of the funds that are appropriated by this Act for a contribution to support the Global Fund to Fight AIDS, Tuberculosis and Malaria (the "Global Fund") shall be withheld from obligation to the Global Fund until the Secretary of State certifies to the Committees on Appropriations that the Global Fund—

(A) is establishing a full time, professional, independent office which reports directly to the Global Fund Board regarding, among other things, the integrity of processes for consideration and approval of grant proposals, and the implementation, monitoring and evaluation of grants made by the Global Fund;

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(B) is strengthening domestic civil society participation, especially for people living with HIV/AIDS, in country coordinating mechanisms;

(C) is establishing procedures to assess the need for, and coordinate, technical assistance for Global Fund activities, in cooperation with bilateral and multilateral donors;

(D) has established clear progress indicators upon which to determine the release of incremental disbursements;

(E) is releasing such incremental disbursements only if positive results have been attained based on those indicators; and

(F) is providing support and oversight to country-level entities, such as country coordinating mechanisms, principal recipients, and local Fund agents, to enable them to fulfill their mandates.

(2) The Secretary of State may waive paragraph (1) of this subsection if he determines and reports to the Committees on Appropriations that such waiver is important to the national interest of the United States.

(b)(1) In furtherance of the purposes of section 104A of the Foreign Assistance Act of 1961, and to assist in providing a safe, secure, reliable, and sustainable supply chain of pharmaceuticals and other products needed to provide care and treatment of persons with HIV/AIDS and related infections, the Coordinator of the United States Government Activities to Combat HIV/AIDS Globally (the "Coordinator") is authorized to establish an HIV/AIDS Working Capital Fund (in this section referred to as the "HIV/AIDS Fund").

(2) Funds deposited during any fiscal year in the HIV/AIDS Fund shall be available without fiscal year limitation and used for pharmaceuticals and other products needed to provide care and treatment of persons with HIV/AIDS and related infections, including, but not limited to—

(A) anti-retroviral drugs;

(B) other pharmaceuticals and medical items needed to provide care and treatment to persons with HIV/AIDS and related infections;

(C) laboratory and other supplies for performing tests related to the provision of care and treatment to persons with HIV/AIDS and related infections;

(D) other medical supplies needed for the operation of HIV/AIDS treatment and care centers, including products needed in programs for the prevention of mother-to-child transmission;

(E) pharmaceuticals and health commodities needed for the provision of palliative care; and

(F) laboratory and clinical equipment, as well as equipment needed for the transportation and care of HIV/AIDS supplies, and other equipment needed to provide prevention, care and treatment of HIV/AIDS described above.

(3) There may be deposited during any fiscal year in the HIV/AIDS Fund payments for HIV/AIDS pharmaceuticals and products provided from the HIV/AIDS Fund received from applicable appropriations and funds of the United States Agency for International Development, the Department of Health and Human Services, the Department of Defense, or other Federal agencies and other sources at actual cost of the HIV/AIDS pharmaceuticals and other products, actual cost plus the additional costs of providing such HIV/AIDS

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pharmaceuticals and other products, or at any other price agreed to by the Coordinator or his designee.

(4) There may be deposited in the HIV/AIDS Fund payments for the loss of, or damage to, HIV/AIDS pharmaceuticals and products held in the HIV/AIDS Fund, rebates, reimbursements, refunds and other credits applicable to the operation of the HIV/AIDS Fund.

(5) At the close of each fiscal year the Coordinator may transfer out of the HIV/AIDS Fund to other HIV/AIDS programmatic areas such amounts as the Coordinator determines to be in excess of the needs of the HIV/AIDS Fund.

(6) At the close of each fiscal year the Coordinator shall submit a report to the Committees on Appropriations detailing the financial activities of the HIV/AIDS Fund, including sources of income and information regarding disbursements.

DEMOCRACY PROGRAMS

SEC. 526. (a) Notwithstanding any other provision of law, of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, not less than $19,000,000 shall be made available for assistance for activities to support democracy, human rights, and the rule of law in the People's Republic of China and Hong Kong: *Provided,* That funds appropriated under the heading "Economic Support Fund" should be made available for assistance for Taiwan for the purposes of furthering political and legal reforms: *Provided further,* That such funds shall only be made available to the extent that they are matched from sources other than the United States Government: *Provided further,* That funds made available pursuant to the authority of this subsection shall be subject to the regular notification procedures of the Committees on Appropriations.

(b)(1) In addition to the funds made available in subsection (a), of the funds appropriated by this Act under the heading "Economic Support Fund" not less than $15,000,000 shall be made available for programs and activities to foster democracy, human rights, civic education, women's development, press freedom, and the rule of law in countries with a significant Muslim population, and where such programs and activities would be important to United States efforts to respond to, deter, or prevent acts of international terrorism: *Provided,* That funds made available pursuant to the authority of this subsection should support new initiatives and activities in those countries: *Provided further,* That of the funds appropriated under this heading, $3,000,000 shall be made available for programs and activities that provide professional training for journalists: *Provided further*, That, notwithstanding any other provision of law, not less than $3,000,000 of such funds may be used for making grants to educational, humanitarian and nongovernmental organizations and individuals inside Iran to support the advancement of democracy and human rights in Iran: *Provided further*, That, notwithstanding any other provision of law, funds appropriated pursuant to the authority of this subsection may be made available for democracy, human rights, and rule of law programs for Syria: *Provided further,* That funds made available pursuant to this subsection shall be subject to the regular notification procedures of the Committees on Appropriations.

(2) In addition to funds made available under subsections (a) and (b)(1), of the funds appropriated by this Act under the heading

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"Economic Support Fund" not less than $4,500,000 shall be made available for programs and activities of the National Endowment for Democracy to foster democracy, human rights, civic education, women's development, press freedom, and the rule of law in countries in sub-Saharan Africa.

(c) Of the funds made available under subsection (a), not less than $15,000,000 shall be made available for the Human Rights and Democracy Fund of the Bureau of Democracy, Human Rights and Labor, Department of State, to support the activities described in subsection (a), and of the funds made available under subsection (b)(1), not less than $11,000,000 shall be made available for such Fund to support the activities described in subsection (b)(1): *Provided,* That up to $1,200,000 may be used for the Reagan/Fascell Democracy Fellows program: *Provided further,* That the total amount of funds made available by this Act under "Economic Support Fund" for activities of the Bureau of Democracy, Human Rights and Labor, Department of State, including funds available in this section, shall be not less than $37,000,000.

(d) Of the funds made available under subsection (a), not less than $4,000,000 shall be made available for the National Endowment for Democracy to support the activities described in subsection (a), and of the funds made available under subsection (b)(1), not less than $4,000,000 shall be made available for the National Endowment for Democracy to support the activities described in subsection (b)(1): *Provided,* That the Secretary of State shall provide a report to the Committees on Appropriations within 120 days of the date of enactment of this Act on the status of the allocation and obligation of such funds.

PROHIBITION ON BILATERAL ASSISTANCE TO TERRORIST COUNTRIES

SEC. 527. (a) Funds appropriated for bilateral assistance under any heading of this Act and funds appropriated under any such heading in a provision of law enacted prior to the enactment of this Act, shall not be made available to any country which the President determines—

(1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism; or

(2) otherwise supports international terrorism.

(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committees on Appropriations of the waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations.

DEBT-FOR-DEVELOPMENT

SEC. 528. In order to enhance the continued participation of nongovernmental organizations in debt-for-development and debt-for-nature exchanges, a nongovernmental organization which is a grantee or contractor of the United States Agency for International Development may place in interest bearing accounts local currencies which accrue to that organization as a result of economic assistance provided under title II of this Act and, subject to the regular

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notification procedures of the Committees on Appropriations, any interest earned on such investment shall be used for the purpose for which the assistance was provided to that organization.

SEPARATE ACCOUNTS

SEC. 529. (a) SEPARATE ACCOUNTS FOR LOCAL CURRENCIES.—(1) If assistance is furnished to the government of a foreign country under chapters 1 and 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961 under agreements which result in the generation of local currencies of that country, the Administrator of the United States Agency for International Development shall—

(A) require that local currencies be deposited in a separate account established by that government;

(B) enter into an agreement with that government which sets forth—

(i) the amount of the local currencies to be generated; and

(ii) the terms and conditions under which the currencies so deposited may be utilized, consistent with this section; and

(C) establish by agreement with that government the responsibilities of the United States Agency for International Development and that government to monitor and account for deposits into and disbursements from the separate account.

(2) USES OF LOCAL CURRENCIES.—As may be agreed upon with the foreign government, local currencies deposited in a separate account pursuant to subsection (a), or an equivalent amount of local currencies, shall be used only—

(A) to carry out chapter 1 or 10 of part I or chapter 4 of part II (as the case may be), for such purposes as—

(i) project and sector assistance activities; or

(ii) debt and deficit financing; or

(B) for the administrative requirements of the United States Government.

(3) PROGRAMMING ACCOUNTABILITY.—The United States Agency for International Development shall take all necessary steps to ensure that the equivalent of the local currencies disbursed pursuant to subsection (a)(2)(A) from the separate account established pursuant to subsection (a)(1) are used for the purposes agreed upon pursuant to subsection (a)(2).

(4) TERMINATION OF ASSISTANCE PROGRAMS.—Upon termination of assistance to a country under chapter 1 or 10 of part I or chapter 4 of part II (as the case may be), any unencumbered balances of funds which remain in a separate account established pursuant to subsection (a) shall be disposed of for such purposes as may be agreed to by the government of that country and the United States Government.

(5) REPORTING REQUIREMENT.—The Administrator of the United States Agency for International Development shall report on an annual basis as part of the justification documents submitted to the Committees on Appropriations on the use of local currencies for the administrative requirements of the United States Government as authorized in subsection (a)(2)(B), and such report shall include the amount of local currency (and United States dollar equivalent) used and/or to be used for such purpose in each applicable country.

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(b) SEPARATE ACCOUNTS FOR CASH TRANSFERS.—(1) If assistance is made available to the government of a foreign country, under chapter 1 or 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961, as cash transfer assistance or as nonproject sector assistance, that country shall be required to maintain such funds in a separate account and not commingle them with any other funds.

(2) APPLICABILITY OF OTHER PROVISIONS OF LAW.—Such funds may be obligated and expended notwithstanding provisions of law which are inconsistent with the nature of this assistance including provisions which are referenced in the Joint Explanatory Statement of the Committee of Conference accompanying House Joint Resolution 648 (House Report No. 98–1159).

(3) NOTIFICATION.—At least 15 days prior to obligating any such cash transfer or nonproject sector assistance, the President shall submit a notification through the regular notification procedures of the Committees on Appropriations, which shall include a detailed description of how the funds proposed to be made available will be used, with a discussion of the United States interests that will be served by the assistance (including, as appropriate, a description of the economic policy reforms that will be promoted by such assistance).

(4) EXEMPTION.—Nonproject sector assistance funds may be exempt from the requirements of subsection (b)(1) only through the notification procedures of the Committees on Appropriations.

ENTERPRISE FUND RESTRICTIONS

SEC. 530. (a) Prior to the distribution of any assets resulting from any liquidation, dissolution, or winding up of an Enterprise Fund, in whole or in part, the President shall submit to the Committees on Appropriations, in accordance with the regular notification procedures of the Committees on Appropriations, a plan for the distribution of the assets of the Enterprise Fund.

(b) Funds made available by this Act for Enterprise Funds shall be expended at the minimum rate necessary to make timely payment for projects and activities.

BURMA

SEC. 531. (a) The Secretary of the Treasury shall instruct the United States executive director to each appropriate international financial institution in which the United States participates, to oppose and vote against the extension by such institution of any loan or financial or technical assistance or any other utilization of funds of the respective bank to and for Burma.

(b) Of the funds appropriated under the heading "Economic Support Fund", not less than $8,000,000 shall be made available to support democracy activities in Burma, along the Burma-Thailand border, for activities of Burmese student groups and other organizations located outside Burma, and for the purpose of supporting the provision of humanitarian assistance to displaced Burmese along Burma's borders: *Provided,* That funds made available under this heading may be made available notwithstanding any other provision of law: *Provided further,* That in addition to assistance for Burmese refugees provided under the heading "Migration and Refugee Assistance" in this Act, not less than $4,000,000 shall

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be allocated to the United States Agency for International Development for humanitarian assistance for displaced Burmese and host communities in Thailand: *Provided further,* That funds made available under this section shall be subject to the regular notification procedures of the Committees on Appropriations.

(c) The President shall include amounts expended by the Global Fund to Fight AIDS, Tuberculosis and Malaria to the State Peace and Development Council in Burma, directly or through groups and organizations affiliated with the Global Fund, in making determinations regarding the amount to be withheld by the United States from its contribution to the Global Fund pursuant to section 202(d)(4)(A)(ii) of Public Law 108–25.

AUTHORITIES FOR THE PEACE CORPS, INTER-AMERICAN FOUNDATION AND AFRICAN DEVELOPMENT FOUNDATION

SEC. 532. Unless expressly provided to the contrary, provisions of this or any other Act, including provisions contained in prior Acts authorizing or making appropriations for foreign operations, export financing, and related programs, shall not be construed to prohibit activities authorized by or conducted under the Peace Corps Act, the Inter-American Foundation Act or the African Development Foundation Act. The agency shall promptly report to the Committees on Appropriations whenever it is conducting activities or is proposing to conduct activities in a country for which assistance is prohibited.

IMPACT ON JOBS IN THE UNITED STATES

SEC. 533. None of the funds appropriated by this Act may be obligated or expended to provide—

(1) any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States; or

(2) assistance for any program, project, or activity that contributes to the violation of internationally recognized workers rights, as defined in section 507(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country: *Provided,* That the application of section 507(4)(D) and (E) of such Act should be commensurate with the level of development of the recipient country and sector, and shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.

SPECIAL AUTHORITIES

SEC. 534. (a) AFGHANISTAN, PAKISTAN, LEBANON, MONTENEGRO, VICTIMS OF WAR, DISPLACED CHILDREN, AND DISPLACED BURMESE.—Funds appropriated by this Act that are made available for assistance for Afghanistan may be made available notwithstanding section 512 of this Act or any similar provision of law and section 660 of the Foreign Assistance Act of 1961, and funds appropriated in titles I and II of this Act that are made available for Lebanon,

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Montenegro, Pakistan, and for victims of war, displaced children, and displaced Burmese, and to assist victims of trafficking in persons and, subject to the regular notification procedures of the Committees on Appropriations, to combat such trafficking, may be made available notwithstanding any other provision of law.

(b) TROPICAL FORESTRY AND BIODIVERSITY CONSERVATION ACTIVITIES.—Funds appropriated by this Act to carry out the provisions of sections 103 through 106, and chapter 4 of part II, of the Foreign Assistance Act of 1961 may be used, notwithstanding any other provision of law, for the purpose of supporting tropical forestry and biodiversity conservation activities and energy programs aimed at reducing greenhouse gas emissions: *Provided,* That such assistance shall be subject to sections 116, 502B, and 620A of the Foreign Assistance Act of 1961.

(c) PERSONAL SERVICES CONTRACTORS.—Funds appropriated by this Act to carry out chapter 1 of part I, chapter 4 of part II, and section 667 of the Foreign Assistance Act of 1961, and title II of the Agricultural Trade Development and Assistance Act of 1954, may be used by the United States Agency for International Development to employ up to 25 personal services contractors in the United States, notwithstanding any other provision of law, for the purpose of providing direct, interim support for new or expanded overseas programs and activities managed by the agency until permanent direct hire personnel are hired and trained: *Provided,* That not more than 10 of such contractors shall be assigned to any bureau or office: *Provided further,* That such funds appropriated to carry out title II of the Agricultural Trade Development and Assistance Act of 1954, may be made available only for personal services contractors assigned to the Office of Food for Peace.

(d)(1) WAIVER.—The President may waive the provisions of section 1003 of Public Law 100–204 if the President determines and certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that it is important to the national security interests of the United States.

(2) PERIOD OF APPLICATION OF WAIVER.—Any waiver pursuant to paragraph (1) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

(e) SMALL BUSINESS.—In entering into multiple award indefinite-quantity contracts with funds appropriated by this Act, the United States Agency for International Development may provide an exception to the fair opportunity process for placing task orders under such contracts when the order is placed with any category of small or small disadvantaged business.

(f) CONTINGENCIES.—During fiscal year 2005, the President may use up to $45,000,000 under the authority of section 451 of the Foreign Assistance Act of 1961, notwithstanding the funding ceiling in section 451(a).

(g) RECONSTITUTING CIVILIAN POLICE AUTHORITY.—In providing assistance with funds appropriated by this Act under section 660(b)(6) of the Foreign Assistance Act of 1961, support for a nation emerging from instability may be deemed to mean support for regional, district, municipal, or other sub-national entity emerging from instability, as well as a nation emerging from instability.

(h) WORLD FOOD PROGRAM.—Of the funds managed by the Bureau for Democracy, Conflict, and Humanitarian Assistance of

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the United States Agency for International Development, from this or any other Act, not less than $6,000,000 shall be made available as a general contribution to the World Food Program, notwithstanding any other provision of law.

(i) NATIONAL ENDOWMENT FOR DEMOCRACY.—Funds appropriated by this Act that are provided to the National Endowment for Democracy may be provided notwithstanding any other provision of law or regulation.

(j) TECHNICAL AMENDMENT.—Section 201(a)(2) of the North Korean Human Rights Act of 2004 (Public Law 108–333) is amended by striking "paragraphs (1) through (4) of section 202(b)" and inserting "subparagraphs (A) through (D) of section 202(b)(1)".

(k) REPORT MODIFICATION.—Section 406(b)(4) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101–246; 22 U.S.C. 2414a(b)(4)) is amended by inserting after "United States" the following: ", including a separate listing of all plenary votes cast by member countries of the United Nations in the General Assembly on resolutions specifically related to Israel that are opposed by the United States".

(l) UNIVERSITY PROGRAMS.—Notwithstanding any other provision of law, funds made available in this Act under the heading "Development Assistance" may be made available to American educational institutions for programs and activities in the People's Republic of China relating to the environment, democracy, and the rule of law: *Provided,* That funds made available pursuant to this authority shall be subject to the regular notification procedures of the Committees on Appropriations.

(m) INDOCHINESE PAROLEES.—Section 586 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (8 U.S.C. 1255 note), as enacted into law by section 101(a) of Public Law 106–429, is amended—

(1) by striking "Attorney General" each place that term appears and inserting "Secretary of Homeland Security";

(2) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking "she" and inserting "the Secretary of Homeland Security"; and

(B) in paragraph (1), by striking "within three years after the date of promulgation by the Attorney General of regulations in connection with this title";

(3) in subsection (c), by striking "212(8)(A)" and inserting "212(a)(8)(A)";

(4) by striking subsection (d);

(5) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively;

(6) by adding at the end the following new subsection:

"(f) ADJUDICATION OF APPLICATIONS.—The Secretary of Homeland Security shall—

"(1) adjudicate applications for adjustment under this section, notwithstanding any limitation on the number of adjustments under this section or any deadline for such applications that previously existed in law or regulation; and

"(2) not charge a fee in addition to any fee that previously was submitted with such application."; and

(7) The amendments made by this subsection shall take effect as if enacted as part of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001.

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(n) EXTENSION OF AUTHORITY.—Public Law 107–57, as amended, is further amended—

(1) in section 1(b) by striking "2004" wherever appearing (including in the caption), and inserting "2005";

(2) in section 3(2), by striking "and 2004" and inserting "2004 and 2005"; and

(3) in section 6, by striking "2004" and inserting "2005".

(o) ENDOWMENTS.—

(1) Of the funds appropriated by this Act and prior Acts making appropriations for foreign operations, export financing, and related programs, that are available for assistance for Cambodia, the following amounts should be made available as follows:

(A) $2,000,000 for an endowment for a Cambodian nongovernmental organization to document genocide and crimes against humanity in Cambodia; and

(B) $3,750,000 for an endowment for an American nongovernmental organization to sustain rehabilitation programs in Cambodia for persons suffering from physical disabilities.

(2) Such organizations may place amounts made available under this subsection in interest bearing accounts and any interest earned on such investment shall be used for the purpose for which funds were made available under this subsection.

(p) EXTENSION OF AUTHORITY.—Chapter 5 of title I of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11), is amended under the heading "Loan Guarantees to Israel"—

(1) by striking "During the period beginning March 1, 2003, and ending September 30, 2005," and inserting "During the period beginning March 1, 2003, and ending September 30, 2007,"; and

(2) by striking "That if less than the full amount of guarantees authorized to be made available is issued prior to September 30, 2005," and inserting "That if less than the full amount of guarantees authorized to be made available is issued prior to September 30, 2007,".

(q) DEFINITION.—Section 603 of title VI of division D of the Consolidated Appropriations Act, 2004, Public Law 108–199, is amended by adding the following paragraph:

"(8) INVESTMENTS IN THE PEOPLE.—The term "investments in the people" means government policies or programs of an eligible country that promote the health, education, and other factors which contribute to the well-being and productivity of their people, such as decent, affordable housing for all.".

ARAB LEAGUE BOYCOTT OF ISRAEL

SEC. 535. It is the sense of the Congress that—

(1) the Arab League boycott of Israel, and the secondary boycott of American firms that have commercial ties with Israel, is an impediment to peace in the region and to United States investment and trade in the Middle East and North Africa;

(2) the Arab League boycott, which was regrettably reinstated in 1997, should be immediately and publicly terminated, and the Central Office for the Boycott of Israel immediately disbanded;

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(3) the three Arab League countries with diplomatic and trade relations with Israel should return their ambassadors to Israel, should refrain from downgrading their relations with Israel, and should play a constructive role in securing a peaceful resolution of the Israeli-Arab conflict;

(4) the remaining Arab League states should normalize relations with their neighbor Israel;

(5) the President and the Secretary of State should continue to vigorously oppose the Arab League boycott of Israel and find concrete steps to demonstrate that opposition by, for example, taking into consideration the participation of any recipient country in the boycott when determining to sell weapons to said country; and

(6) the President should report to Congress annually on specific steps being taken by the United States to encourage Arab League states to normalize their relations with Israel to bring about the termination of the Arab League boycott of Israel, including those to encourage allies and trading partners of the United States to enact laws prohibiting businesses from complying with the boycott and penalizing businesses that do comply.

ELIGIBILITY FOR ASSISTANCE

SEC. 536. (a) ASSISTANCE THROUGH NONGOVERNMENTAL ORGANIZATIONS.—Restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance in support of programs of nongovernmental organizations from funds appropriated by this Act to carry out the provisions of chapters 1, 10, 11, and 12 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, and from funds appropriated under the heading "Assistance for Eastern Europe and the Baltic States": *Provided,* That before using the authority of this subsection to furnish assistance in support of programs of nongovernmental organizations, the President shall notify the Committees on Appropriations under the regular notification procedures of those committees, including a description of the program to be assisted, the assistance to be provided, and the reasons for furnishing such assistance: *Provided further,* That nothing in this subsection shall be construed to alter any existing statutory prohibitions against abortion or involuntary sterilizations contained in this or any other Act.

(b) PUBLIC LAW 480.—During fiscal year 2005, restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance under the Agricultural Trade Development and Assistance Act of 1954: *Provided,* That none of the funds appropriated to carry out title I of such Act and made available pursuant to this subsection may be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

(c) EXCEPTION.—This section shall not apply—

(1) with respect to section 620A of the Foreign Assistance Act of 1961 or any comparable provision of law prohibiting assistance to countries that support international terrorism; or

(2) with respect to section 116 of the Foreign Assistance Act of 1961 or any comparable provision of law prohibiting

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assistance to the government of a country that violates internationally recognized human rights.

RESERVATIONS OF FUNDS

SEC. 537. (a) Funds appropriated by this Act which are earmarked may be reprogrammed for other programs within the same account notwithstanding the earmark if compliance with the earmark is made impossible by operation of any provision of this or any other Act: *Provided,* That any such reprogramming shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further,* That assistance that is reprogrammed pursuant to this subsection shall be made available under the same terms and conditions as originally provided.

(b) In addition to the authority contained in subsection (a), the original period of availability of funds appropriated by this Act and administered by the United States Agency for International Development that are earmarked for particular programs or activities by this or any other Act shall be extended for an additional fiscal year if the Administrator of such agency determines and reports promptly to the Committees on Appropriations that the termination of assistance to a country or a significant change in circumstances makes it unlikely that such earmarked funds can be obligated during the original period of availability: *Provided,* That such earmarked funds that are continued available for an additional fiscal year shall be obligated only for the purpose of such earmark.

CEILINGS AND EARMARKS

SEC. 538. Ceilings and earmarks contained in this Act shall not be applicable to funds or authorities appropriated or otherwise made available by any subsequent Act unless such Act specifically so directs. Earmarks or minimum funding requirements contained in any other Act shall not be applicable to funds appropriated by this Act.

PROHIBITION ON PUBLICITY OR PROPAGANDA

SEC. 539. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes within the United States not authorized before the date of the enactment of this Act by the Congress: *Provided,* That not to exceed $750,000 may be made available to carry out the provisions of section 316 of Public Law 96–533.

PROHIBITION OF PAYMENTS TO UNITED NATIONS MEMBERS

SEC. 540. None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, may be used to pay in whole or in part any assessments, arrearages, or dues of any member of the United Nations or, from funds appropriated by this Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, the costs for participation of another country's delegation at international conferences held under the auspices of multilateral or international organizations.

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NONGOVERNMENTAL ORGANIZATIONS—DOCUMENTATION

SEC. 541. None of the funds appropriated or made available pursuant to this Act shall be available to a nongovernmental organization which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

SEC. 542. (a) None of the funds appropriated or otherwise made available by this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 6(j) of the Export Administration Act. The prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997.

(b) Assistance restricted by subsection (a) or any other similar provision of law, may be furnished if the President determines that furnishing such assistance is important to the national interests of the United States.

(c) Whenever the waiver authority of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance. Any such report shall include a detailed explanation of the assistance to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests.

WITHHOLDING OF ASSISTANCE FOR PARKING FINES AND REAL PROPERTY TAXES OWED BY FOREIGN COUNTRIES

SEC. 543. (a) Subject to subsection (c), of the funds appropriated by this Act that are made available for assistance for a foreign country, an amount equal to 110 percent of the total amount of the unpaid fully adjudicated parking fines and penalties and unpaid property taxes owed by the central government of such country shall be withheld from obligation for assistance for the central government of such country until the Secretary of State submits a certification to the appropriate congressional committees stating that such parking fines and penalties and unpaid property taxes are fully paid.

(b) Funds withheld from obligation pursuant to subsection (a) may be made available for other programs or activities funded by this Act, after consultation with and subject to the regular notification procedures of the appropriate congressional committees, provided that no such funds shall be made available for assistance for the central government of a foreign country that has not paid the total amount of the fully adjudicated parking fines and penalties and unpaid property taxes owed by such country.

(c) Subsection (a) shall not include amounts that have been withheld under any other provision of law.

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(d)(1) The Secretary of State may waive the requirements set forth in subsection (a) with respect to parking fines and penalties no sooner than 60 days from the date of enactment of this Act, or at any time with respect to a particular country, if the Secretary determines that it is in the national interests of the United States to do so.

(2) The Secretary of State may waive the requirements set forth in subsection (a) with respect to the unpaid property taxes if the Secretary of State determines that it is in the national interests of the United States to do so.

(e) Not later than 6 months after the initial exercise of the waiver authority in subsection (d), the Secretary of State, after consultations with the City of New York, shall submit a report to the Committees on Appropriations describing a strategy, including a timetable and steps currently being taken, to collect the parking fines and penalties and unpaid property taxes and interest owed by nations receiving foreign assistance under this Act.

(f) In this section:

(1) The term "appropriate congressional committees" means the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives.

(2) The term "fully adjudicated" includes circumstances in which the person to whom the vehicle is registered—

(A)(i) has not responded to the parking violation summons; or

(ii) has not followed the appropriate adjudication procedure to challenge the summons; and

(B) the period of time for payment of or challenge to the summons has lapsed.

(3) The term "parking fines and penalties" means parking fines and penalties—

(A) owed to—

(i) the District of Columbia; or

(ii) New York, New York; and

(B) incurred during the period April 1, 1997, through September 30, 2004.

(4) The term "unpaid property taxes" means the amount of unpaid taxes and interest determined to be owed by a foreign country on real property in the District of Columbia or New York, New York in a court order or judgment entered against such country by a court of the United States or any State or subdivision thereof.

LIMITATION ON ASSISTANCE FOR THE PLO FOR THE WEST BANK AND GAZA

SEC. 544. None of the funds appropriated by this Act may be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza unless the President has exercised the authority under section 604(a) of the Middle East Peace Facilitation Act of 1995 (title VI of Public Law 104–107) or any other legislation to suspend or make inapplicable section 307 of the Foreign Assistance Act of 1961 and that suspension is still in effect: *Provided,* That if the President fails to make the certification under section 604(b)(2) of the Middle East Peace Facilitation Act of 1995

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or to suspend the prohibition under other legislation, funds appropriated by this Act may not be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza.

WAR CRIMES TRIBUNALS DRAWDOWN

SEC. 545. If the President determines that doing so will contribute to a just resolution of charges regarding genocide or other violations of international humanitarian law, the President may direct a drawdown pursuant to section 552(c) of the Foreign Assistance Act of 1961 of up to $30,000,000 of commodities and services for the United Nations War Crimes Tribunal established with regard to the former Yugoslavia by the United Nations Security Council or such other tribunals or commissions as the Council may establish or authorize to deal with such violations, without regard to the ceiling limitation contained in paragraph (2) thereof: *Provided,* That the determination required under this section shall be in lieu of any determinations otherwise required under section 552(c): *Provided further,* That the drawdown made under this section for any tribunal shall not be construed as an endorsement or precedent for the establishment of any standing or permanent international criminal tribunal or court: *Provided further,* That funds made available for tribunals other than Yugoslavia, Rwanda, or the Special Court for Sierra Leone shall be made available subject to the regular notification procedures of the Committees on Appropriations.

LANDMINES

SEC. 546. Notwithstanding any other provision of law, demining equipment available to the United States Agency for International Development and the Department of State and used in support of the clearance of landmines and unexploded ordnance for humanitarian purposes may be disposed of on a grant basis in foreign countries, subject to such terms and conditions as the President may prescribe.

RESTRICTIONS CONCERNING THE PALESTINIAN AUTHORITY

SEC. 547. None of the funds appropriated by this Act may be obligated or expended to create in any part of Jerusalem a new office of any department or agency of the United States Government for the purpose of conducting official United States Government business with the Palestinian Authority over Gaza and Jericho or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles: *Provided,* That this restriction shall not apply to the acquisition of additional space for the existing Consulate General in Jerusalem: *Provided further,* That meetings between officers and employees of the United States and officials of the Palestinian Authority, or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles, for the purpose of conducting official United States Government business with such authority should continue to take place in locations other than Jerusalem. As has been true in the past, officers and employees of the United States Government may continue to meet in Jerusalem on other subjects with Palestinians (including those who now occupy positions in the Palestinian Authority), have social contacts, and have incidental discussions.

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PROHIBITION OF PAYMENT OF CERTAIN EXPENSES

SEC. 548. None of the funds appropriated or otherwise made available by this Act under the heading "International Military Education and Training" or "Foreign Military Financing Program" for Informational Program activities or under the headings "Child Survival and Health Programs Fund", "Development Assistance", and "Economic Support Fund" may be obligated or expended to pay for—

(1) alcoholic beverages; or

(2) entertainment expenses for activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.

HAITI

SEC. 549. (a) Of the funds appropriated by this Act, not less than the following amounts shall be made available for assistance for Haiti—

(1) $20,000,000 from "Child Survival and Health Programs Fund";

(2) $25,000,000 from "Development Assistance", of which funds should be made available for poverty reduction, agriculture, environment, and basic education programs; and

(3) $40,000,000 from "Economic Support Fund", of which funds should be made available for judicial reform programs, police training, and activities in support of national elections.

(b) The Government of Haiti shall be eligible to purchase defense articles and services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), for the Coast Guard.

LIMITATION ON ASSISTANCE TO THE PALESTINIAN AUTHORITY

SEC. 550. (a) PROHIBITION OF FUNDS.—None of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 may be obligated or expended with respect to providing funds to the Palestinian Authority.

(b) WAIVER.—The prohibition included in subsection (a) shall not apply if the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that waiving such prohibition is important to the national security interests of the United States.

(c) PERIOD OF APPLICATION OF WAIVER.—Any waiver pursuant to subsection (b) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

(d) REPORT.—Whenever the waiver authority pursuant to subsection (b) is exercised, the President shall submit a report to the Committees on Appropriations detailing the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure. The report shall also include a description of how funds will be spent and the accounting procedures in place to ensure that they are properly disbursed.

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LIMITATION ON ASSISTANCE TO SECURITY FORCES

SEC. 551. None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice: *Provided,* That nothing in this section shall be construed to withhold funds made available by this Act from any unit of the security forces of a foreign country not credibly alleged to be involved in gross violations of human rights: *Provided further,* That in the event that funds are withheld from any unit pursuant to this section, the Secretary of State shall promptly inform the foreign government of the basis for such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice.

FOREIGN MILITARY TRAINING REPORT

SEC. 552. The annual foreign military training report required by section 656 of the Foreign Assistance Act of 1961 shall be submitted by the Secretary of Defense and the Secretary of State to the Committees on Appropriations of the House of Representatives and the Senate by the date specified in that section.

AUTHORIZATION REQUIREMENT

SEC. 553. Funds appropriated by this Act, except funds appropriated under the headings "Trade and Development Agency", "Millennium Challenge Corporation", "Overseas Private Investment Corporation", and "Global HIV/AIDS Initiative", may be obligated and expended notwithstanding section 10 of Public Law 91–672 and section 15 of the State Department Basic Authorities Act of 1956.

CAMBODIA

SEC. 554. (a) The Secretary of the Treasury should instruct the United States executive directors of the international financial institutions to use the voice and vote of the United States to oppose loans to the Central Government of Cambodia, except loans to meet basic human needs.

(b)(1) None of the funds appropriated by this Act may be made available for assistance for the Central Government of Cambodia.

(2) Paragraph (1) shall not apply to assistance for basic education, reproductive and maternal and child health, cultural and historic preservation, programs for the prevention, treatment, and control of, and research on, HIV/AIDS, tuberculosis, malaria, polio and other infectious diseases, development and implementation of legislation and implementation of procedures on inter-country adoptions consistent with international standards, rule of law programs, counternarcotics programs, programs to combat human trafficking that are provided through nongovernmental organizations, and for the Ministry of Women and Veterans Affairs to combat human trafficking.

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(c) Notwithstanding subsection (b), of the funds appropriated by this Act under the heading "Economic Support Fund", up to $4,000,000 may be made available for activities to support democracy, including assistance for democratic political parties.

(d) Funds appropriated by this Act to carry out provisions of section 541 of the Foreign Assistance Act of 1961 may be made available notwithstanding subsection (b) only if at least 15 days prior to the obligation of such funds, the Secretary of State provides to the Committees on Appropriations a list of those individuals who have been credibly alleged to have ordered or carried out extra-judicial and political killings that occurred during the March 1997 grenade attack against the Khmer Nation Party.

(e) None of the funds appropriated or otherwise made available by this Act may be used to provide assistance to any tribunal established by the Government of Cambodia unless the Secretary of State determines and reports to the Committees on Appropriations that: (1) Cambodia's judiciary is competent, independent, free from widespread corruption, and its decisions are free from interference by the executive branch; and (2) the proposed tribunal is capable of delivering justice, that meets internationally recognized standards, for crimes against humanity and genocide in an impartial and credible manner.

PALESTINIAN STATEHOOD

SEC. 555. (a) LIMITATION ON ASSISTANCE.—None of the funds appropriated by this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that—

(1) a new leadership of a Palestinian governing entity has been democratically elected through credible and competitive elections;

(2) the elected governing entity of a new Palestinian state—

(A) has demonstrated a firm commitment to peaceful co-existence with the State of Israel;

(B) is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures;

(C) is establishing a new Palestinian security entity that is cooperative with appropriate Israeli and other appropriate security organizations; and

(3) the Palestinian Authority (or the governing body of a new Palestinian state) is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships, which should include—

(A) termination of all claims or states of belligerency;

(B) respect for and acknowledgement of the sovereignty, territorial integrity, and political independence of every state in the area through measures including the establishment of demilitarized zones;

(C) their right to live in peace within secure and recognized boundaries free from threats or acts of force;

(D) freedom of navigation through international waterways in the area; and

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(E) a framework for achieving a just settlement of the refugee problem.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the newly-elected governing entity should enact a constitution assuring the rule of law, an independent judiciary, and respect for human rights for its citizens, and should enact other laws and regulations assuring transparent and accountable governance.

(c) WAIVER.—The President may waive subsection (a) if he determines that it is vital to the national security interests of the United States to do so.

(d) EXEMPTION.—The restriction in subsection (a) shall not apply to assistance intended to help reform the Palestinian Authority and affiliated institutions, or a newly-elected governing entity, in order to help meet the requirements of subsection (a), consistent with the provisions of section 550 of this Act ("Limitation on Assistance to the Palestinian Authority").

COLOMBIA

SEC. 556. (a) DETERMINATION AND CERTIFICATION REQUIRED.—Notwithstanding any other provision of law, funds appropriated by this Act that are available for assistance for the Colombian Armed Forces, may be made available as follows:

(1) Up to 75 percent of such funds may be obligated prior to a determination and certification by the Secretary of State pursuant to paragraph (2).

(2) Up to 12.5 percent of such funds may be obligated only after the Secretary of State certifies and reports to the appropriate congressional committees that:

(A) The Commander General of the Colombian Armed Forces is suspending from the Armed Forces those members, of whatever rank who, according to the Minister of Defense or the Procuraduria General de la Nacion, have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations.

(B) The Colombian Government is vigorously investigating and prosecuting those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations, and is promptly punishing those members of the Colombian Armed Forces found to have committed such violations of human rights or to have aided or abetted paramilitary organizations.

(C) The Colombian Armed Forces have made substantial progress in cooperating with civilian prosecutors and judicial authorities in such cases (including providing requested information, such as the identity of persons suspended from the Armed Forces and the nature and cause of the suspension, and access to witnesses, relevant military documents, and other requested information).

(D) The Colombian Armed Forces have made substantial progress in severing links (including denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation) at the command, battalion, and brigade levels, with

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paramilitary organizations, especially in regions where these organizations have a significant presence.

(E) The Colombian Government is dismantling paramilitary leadership and financial networks by arresting commanders and financial backers, especially in regions where these networks have a significant presence.

(3) The balance of such funds may be obligated after July 31, 2005, if the Secretary of State certifies and reports to the appropriate congressional committees, after such date, that the Colombian Armed Forces are continuing to meet the conditions contained in paragraph (2) and are conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(b) CONGRESSIONAL NOTIFICATION.—Funds made available by this Act for the Colombian Armed Forces shall be subject to the regular notification procedures of the Committees on Appropriations.

(c) CONSULTATIVE PROCESS.—Not later than 60 days after the date of enactment of this Act, and every 90 days thereafter until September 30, 2006, the Secretary of State shall consult with internationally recognized human rights organizations regarding progress in meeting the conditions contained in that subsection.

(d) DEFINITIONS.—In this section:

(1) AIDED OR ABETTED.—The term "aided or abetted" means to provide any support to paramilitary groups, including taking actions which allow, facilitate, or otherwise foster the activities of such groups.

(2) PARAMILITARY GROUPS.—The term "paramilitary groups" means illegal self-defense groups and illegal security cooperatives.

ILLEGAL ARMED GROUPS

SEC. 557. (a) DENIAL OF VISAS TO SUPPORTERS OF COLOMBIAN ILLEGAL ARMED GROUPS.—Subject to subsection (b), the Secretary of State shall not issue a visa to any alien who the Secretary determines, based on credible evidence—

(1) has willfully provided any support to the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), or the United Self-Defense Forces of Colombia (AUC), including taking actions or failing to take actions which allow, facilitate, or otherwise foster the activities of such groups; or

(2) has committed, ordered, incited, assisted, or otherwise participated in the commission of gross violations of human rights, including extra-judicial killings, in Colombia.

(b) WAIVER.—Subsection (a) shall not apply if the Secretary of State determines and certifies to the appropriate congressional committees, on a case-by-case basis, that the issuance of a visa to the alien is necessary to support the peace process in Colombia or for urgent humanitarian reasons.

PROHIBITION ON ASSISTANCE TO THE PALESTINIAN BROADCASTING CORPORATION

SEC. 558. None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical

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support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

WEST BANK AND GAZA PROGRAM

SEC. 559. (a) OVERSIGHT.—For fiscal year 2005, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the appropriate committees of Congress that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information in order to review the uses of United States assistance for the Program funded under the heading "Economic Support Fund" for the West Bank and Gaza.

(b) VETTING.—Prior to the obligation of funds appropriated by this Act under the heading "Economic Support Fund" for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity. The Secretary of State shall, as appropriate, establish procedures specifying the steps to be taken in carrying out this subsection and shall terminate assistance to any individual, entity, or educational institution which he has determined to be involved in or advocating terrorist activity.

(c) PROHIBITION.—None of the funds appropriated by this Act for assistance under the West Bank and Gaza program may be made available for the purpose of recognizing or otherwise honoring individuals who commit, or have committed, acts of terrorism.

(d) AUDITS.—

(1) The Administrator of the United States Agency for International Development shall ensure that Federal or non-Federal audits of all contractors and grantees, and significant subcontractors and subgrantees, under the West Bank and Gaza Program, are conducted at least on an annual basis to ensure, among other things, compliance with this section.

(2) Of the funds appropriated by this Act under the heading "Economic Support Fund" that are made available for assistance for the West Bank and Gaza, up to $1,000,000 may be used by the Office of the Inspector General of the United States Agency for International Development for audits, inspections, and other activities in furtherance of the requirements of this subsection. Such funds are in addition to funds otherwise available for such purposes.

CONTRIBUTIONS TO UNITED NATIONS POPULATION FUND

SEC. 560. (a) LIMITATIONS ON AMOUNT OF CONTRIBUTION.—Of the amounts made available under "International Organizations and Programs" and "Child Survival and Health Programs Fund" for fiscal year 2005, $34,000,000 shall be made available for the United Nations Population Fund (hereafter in this section referred to as the "UNFPA"): *Provided*, That of this amount, not less than $25,000,000 shall be derived from funds appropriated under the heading "International Organizations and Programs".

(b) AVAILABILITY OF FUNDS.—Funds appropriated under the heading "International Organizations and Programs" in this Act

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that are available for UNFPA, that are not made available for UNFPA because of the operation of any provision of law, shall be transferred to "Child Survival and Health Programs Fund" and shall be made available for family planning, maternal, and reproductive health activities, subject to the regular notification procedures of the Committees on Appropriations.

(c) REPROGRAMMING OF FUNDS.—Of the funds appropriated in Public Law 108–199 that were available for the UNFPA, $12,500,000 shall be made available for anti-trafficking programs: *Provided*, That of the funds appropriated in Public Law 108–199 that were available for the UNFPA, $12,500,000 shall be made available for the family planning, maternal, and reproductive health activities of the United States Agency for International Development in Albania, Azerbaijan, the Democratic Republic of the Congo, Ethiopia, Georgia, Haiti, Kazakhstan, Kenya, Nigeria, Romania, Russia, Rwanda, Tanzania, Uganda, and the Ukraine: *Provided further*, That such programs and activities shall be deemed to have been justified to Congress.

(d) PROHIBITION ON USE OF FUNDS IN CHINA.—None of the funds made available under "International Organizations and Programs" may be made available for the UNFPA for a country program in the People's Republic of China.

(e) CONDITIONS ON AVAILABILITY OF FUNDS.—Amounts made available under "International Organizations and Programs" for fiscal year 2005 for the UNFPA may not be made available to UNFPA unless—

(1) the UNFPA maintains amounts made available to the UNFPA under this section in an account separate from other accounts of the UNFPA;

(2) the UNFPA does not commingle amounts made available to the UNFPA under this section with other sums; and

(3) the UNFPA does not fund abortions.

WAR CRIMINALS

SEC. 561. (a)(1) None of the funds appropriated or otherwise made available pursuant to this Act may be made available for assistance, and the Secretary of the Treasury shall instruct the United States executive directors to the international financial institutions to vote against any new project involving the extension by such institutions of any financial or technical assistance, to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations to apprehend and transfer to the International Criminal Tribunal for the former Yugoslavia (the "Tribunal") all persons in their territory who have been indicted by the Tribunal and to otherwise cooperate with the Tribunal.

(2) The provisions of this subsection shall not apply to humanitarian assistance or assistance for democratization.

(b) The provisions of subsection (a) shall apply unless the Secretary of State determines and reports to the appropriate congressional committees that the competent authorities of such country, entity, or municipality are—

(1) cooperating with the Tribunal, including access for investigators to archives and witnesses, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension; and

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(2) are acting consistently with the Dayton Accords.

(c) Not less than 10 days before any vote in an international financial institution regarding the extension of any new project involving financial or technical assistance or grants to any country or entity described in subsection (a), the Secretary of the Treasury, in consultation with the Secretary of State, shall provide to the Committees on Appropriations a written justification for the proposed assistance, including an explanation of the United States position regarding any such vote, as well as a description of the location of the proposed assistance by municipality, its purpose, and its intended beneficiaries.

(d) In carrying out this section, the Secretary of State, the Administrator of the United States Agency for International Development, and the Secretary of the Treasury shall consult with representatives of human rights organizations and all government agencies with relevant information to help prevent indicted war criminals from benefiting from any financial or technical assistance or grants provided to any country or entity described in subsection (a).

(e) The Secretary of State may waive the application of subsection (a) with respect to projects within a country, entity, or municipality upon a written determination to the Committees on Appropriations that such assistance directly supports the implementation of the Dayton Accords.

(f) DEFINITIONS.—As used in this section:

(1) COUNTRY.—The term "country" means Bosnia and Herzegovina, Croatia and Serbia.

(2) ENTITY.—The term "entity" refers to the Federation of Bosnia and Herzegovina, Kosovo, Montenegro and the Republika Srpska.

(3) MUNICIPALITY.—The term "municipality" means a city, town or other subdivision within a country or entity as defined herein.

(4) DAYTON ACCORDS.—The term "Dayton Accords" means the General Framework Agreement for Peace in Bosnia and Herzegovina, together with annexes relating thereto, done at Dayton, November 10 through 16, 1995.

USER FEES

SEC. 562. The Secretary of the Treasury shall instruct the United States Executive Director at each international financial institution (as defined in section 1701(c)(2) of the International Financial Institutions Act) and the International Monetary Fund to oppose any loan, grant, strategy or policy of these institutions that would require user fees or service charges on poor people for primary education or primary healthcare, including prevention and treatment efforts for HIV/AIDS, malaria, tuberculosis, and infant, child, and maternal well-being, in connection with the institutions' financing programs.

FUNDING FOR SERBIA

SEC. 563. (a) Funds appropriated by this Act may be made available for assistance for the central Government of Serbia after May 31, 2005, if the President has made the determination and certification contained in subsection (c).

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(b) After May 31, 2005, the Secretary of the Treasury should instruct the United States executive directors to the international financial institutions to support loans and assistance to the Government of Serbia and Montenegro subject to the conditions in subsection (c): *Provided,* That section 576 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, as amended, shall not apply to the provision of loans and assistance to the Government of Serbia and Montenegro through international financial institutions.

(c) The determination and certification referred to in subsection (a) is a determination by the President and a certification to the Committees on Appropriations that the Government of Serbia and Montenegro is—

(1) cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension, including making all practicable efforts to apprehend and transfer Ratko Mladic;

(2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and

(3) taking steps to implement policies which reflect a respect for minority rights and the rule of law.

(d) This section shall not apply to Montenegro, Kosovo, humanitarian assistance or assistance to promote democracy.

COMMUNITY-BASED POLICE ASSISTANCE

SEC. 564. (a) AUTHORITY.—Funds made available by this Act to carry out the provisions of chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, may be used, notwithstanding section 660 of that Act, to enhance the effectiveness and accountability of civilian police authority through training and technical assistance in human rights, the rule of law, strategic planning, and through assistance to foster civilian police roles that support democratic governance including assistance for programs to prevent conflict, respond to disasters, address gender-based violence, and foster improved police relations with the communities they serve.

(b) NOTIFICATION.—Assistance provided under subsection (a) shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations.

SPECIAL DEBT RELIEF FOR THE POOREST

SEC. 565. (a) AUTHORITY TO REDUCE DEBT.—The President may reduce amounts owed to the United States (or any agency of the United States) by an eligible country as a result of—

(1) guarantees issued under sections 221 and 222 of the Foreign Assistance Act of 1961;

(2) credits extended or guarantees issued under the Arms Export Control Act; or

(3) any obligation or portion of such obligation, to pay for purchases of United States agricultural commodities guaranteed by the Commodity Credit Corporation under export credit guarantee programs authorized pursuant to section 5(f) of the

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Commodity Credit Corporation Charter Act of June 29, 1948, as amended, section 4(b) of the Food for Peace Act of 1966, as amended (Public Law 89–808), or section 202 of the Agricultural Trade Act of 1978, as amended (Public Law 95–501).

(b) LIMITATIONS.—

(1) The authority provided by subsection (a) may be exercised only to implement multilateral official debt relief and referendum agreements, commonly referred to as "Paris Club Agreed Minutes".

(2) The authority provided by subsection (a) may be exercised only in such amounts or to such extent as is provided in advance by appropriations Acts.

(3) The authority provided by subsection (a) may be exercised only with respect to countries with heavy debt burdens that are eligible to borrow from the International Development Association, but not from the International Bank for Reconstruction and Development, commonly referred to as "IDA-only" countries.

(c) CONDITIONS.—The authority provided by subsection (a) may be exercised only with respect to a country whose government—

(1) does not have an excessive level of military expenditures;

(2) has not repeatedly provided support for acts of international terrorism;

(3) is not failing to cooperate on international narcotics control matters;

(4) (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights; and

(5) is not ineligible for assistance because of the application of section 527 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

(d) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to the funds appropriated by this Act under the heading "Debt Restructuring".

(e) CERTAIN PROHIBITIONS INAPPLICABLE.—A reduction of debt pursuant to subsection (a) shall not be considered assistance for the purposes of any provision of law limiting assistance to a country. The authority provided by subsection (a) may be exercised notwithstanding section 620(r) of the Foreign Assistance Act of 1961 or section 321 of the International Development and Food Assistance Act of 1975.

AUTHORITY TO ENGAGE IN DEBT BUYBACKS OR SALES

SEC. 566. (a) LOANS ELIGIBLE FOR SALE, REDUCTION, OR CANCELLATION.—

(1) AUTHORITY TO SELL, REDUCE, OR CANCEL CERTAIN LOANS.—Notwithstanding any other provision of law, the President may, in accordance with this section, sell to any eligible purchaser any concessional loan or portion thereof made before January 1, 1995, pursuant to the Foreign Assistance Act of 1961, to the government of any eligible country as defined in section 702(6) of that Act or on receipt of payment from an eligible purchaser, reduce or cancel such loan or portion thereof, only for the purpose of facilitating—

(A) debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps; or

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(B) a debt buyback by an eligible country of its own qualified debt, only if the eligible country uses an additional amount of the local currency of the eligible country, equal to not less than 40 percent of the price paid for such debt by such eligible country, or the difference between the price paid for such debt and the face value of such debt, to support activities that link conservation and sustainable use of natural resources with local community development, and child survival and other child development, in a manner consistent with sections 707 through 710 of the Foreign Assistance Act of 1961, if the sale, reduction, or cancellation would not contravene any term or condition of any prior agreement relating to such loan.

(2) TERMS AND CONDITIONS.—Notwithstanding any other provision of law, the President shall, in accordance with this section, establish the terms and conditions under which loans may be sold, reduced, or canceled pursuant to this section.

(3) ADMINISTRATION.—The Facility, as defined in section 702(8) of the Foreign Assistance Act of 1961, shall notify the administrator of the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 of purchasers that the President has determined to be eligible, and shall direct such agency to carry out the sale, reduction, or cancellation of a loan pursuant to this section. Such agency shall make adjustment in its accounts to reflect the sale, reduction, or cancellation.

(4) LIMITATION.—The authorities of this subsection shall be available only to the extent that appropriations for the cost of the modification, as defined in section 502 of the Congressional Budget Act of 1974, are made in advance.

(b) DEPOSIT OF PROCEEDS.—The proceeds from the sale, reduction, or cancellation of any loan sold, reduced, or canceled pursuant to this section shall be deposited in the United States Government account or accounts established for the repayment of such loan.

(c) ELIGIBLE PURCHASERS.—A loan may be sold pursuant to subsection (a)(1)(A) only to a purchaser who presents plans satisfactory to the President for using the loan for the purpose of engaging in debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(d) DEBTOR CONSULTATIONS.—Before the sale to any eligible purchaser, or any reduction or cancellation pursuant to this section, of any loan made to an eligible country, the President should consult with the country concerning the amount of loans to be sold, reduced, or canceled and their uses for debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(e) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to funds appropriated by this Act under the heading "Debt Restructuring".

BASIC EDUCATION

SEC. 567. Of the funds appropriated by title II of this Act, not less than $400,000,000 shall be made available for basic education.

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RECONCILIATION PROGRAMS

SEC. 568. Of the funds appropriated under the heading "Economic Support Fund", not less than $12,000,000 shall be made available to support reconciliation programs and activities which bring together individuals of different ethnic, religious, and political backgrounds from areas of civil conflict and war.

SUDAN

SEC. 569. (a) AVAILABILITY OF FUNDS.—Of the funds appropriated by title II of this Act, not less than $311,000,000 should be made available for assistance for Sudan.

(b) LIMITATION ON ASSISTANCE.—Subject to subsection (c):

(1) Notwithstanding section 501(a) of the International Malaria Control Act of 2000 (Public Law 106–570) or any other provision of law, none of the funds appropriated by this Act may be made available for assistance for the Government of Sudan.

(2) None of the funds appropriated by this Act may be made available for the cost, as defined in section 502, of the Congressional Budget Act of 1974, of modifying loans and loan guarantees held by the Government of Sudan, including the cost of selling, reducing, or canceling amounts owed to the United States, and modifying concessional loans, guarantees, and credit agreements.

(c) Subsection (b) shall not apply if the Secretary of State determines and certifies to the Committees on Appropriations that—

(1) the Government of Sudan has taken significant steps to disarm and disband government-supported militia groups in the Darfur region;

(2) the Government of Sudan and all government-supported militia groups are honoring their commitments made in the cease-fire agreement of April 8, 2004; and

(3) the Government of Sudan is allowing unimpeded access to Darfur to humanitarian aid organizations, the human rights investigation and humanitarian teams of the United Nations, including protection officers, and an international monitoring team that is based in Darfur and that has the support of the United States.

(d) EXCEPTIONS.—The provisions of subsection (b) shall not apply to—

(1) humanitarian assistance; and

(2) assistance for Darfur and for areas outside the control of the Government of Sudan.

(e) NOTIFICATION.—Not more than $45,000,000 of the funds appropriated by this Act under the headings "International Disaster and Famine Assistance" and "Transition Initiatives" may be made available for assistance for Sudan outside of the Darfur region unless written notice has been provided to the Committees on Appropriations not less than 5 days prior to the obligation of such funds.

(f) DEFINITIONS.—For the purposes of this Act and section 501 of Public Law 106–570, the terms "Government of Sudan", "areas outside of control of the Government of Sudan", and "area in Sudan outside of control of the Government of Sudan" shall have the same meaning and application as was the case immediately prior to June 5, 2004, and, with regard to assistance in support of

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a viable peace agreement, Southern Kordofan/Nuba Mountains State, Blue Nile State and Abyei.

(g) APPROPRIATION.—In addition to amounts appropriated elsewhere in this Act, $75,000,000 is hereby appropriated for "Peacekeeping Operations" to support peace and humanitarian intervention operations for Sudan, and $18,000,000 is hereby appropriated for "International Disaster and Famine Assistance" for humanitarian assistance and related activities in Sudan: *Provided*, That the entire amount appropriated in this subsection is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287: *Provided further*, That the Secretary of State shall consult with the Committees on Appropriations regarding the proposed uses of these funds within 30 days of the date of enactment of this Act.

(h) TECHNICAL CHANGE.—Section 12 of the International Organizations Immunities Act (22 U.S.C. 288f–2) is amended by striking "Organization of African Unity" and inserting "African Union".

TRADE CAPACITY BUILDING

SEC. 570. Of the funds appropriated by this Act, under the headings "Trade and Development Agency", "Development Assistance", "Transition Initiatives", "Economic Support Fund", "International Affairs Technical Assistance", and "International Organizations and Programs", not less than $507,000,000 should be made available for trade capacity building assistance: *Provided,* That $20,000,000 of the funds appropriated in this Act under the heading "Economic Support Fund" shall be made available for labor and environmental capacity building activities relating to the free trade agreement with the countries of Central America and the Dominican Republic.

EXCESS DEFENSE ARTICLES FOR CENTRAL AND SOUTH EUROPEAN COUNTRIES AND CERTAIN OTHER COUNTRIES

SEC. 571. Notwithstanding section 516(e) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(e)), during fiscal year 2005, funds available to the Department of Defense may be expended for crating, packing, handling, and transportation of excess defense articles transferred under the authority of section 516 of such Act to Albania, Bulgaria, Croatia, Estonia, Former Yugoslavian Republic of Macedonia, Georgia, India, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Pakistan, Romania, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

INDONESIA

SEC. 572. (a) Funds appropriated by this Act under the heading "Foreign Military Financing Program" may be made available for assistance for Indonesia, and licenses may be issued for the export of lethal defense articles for the Indonesian Armed Forces, only if the Secretary of State certifies to the appropriate congressional committees that—

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(1) the Armed Forces are taking steps to counter international terrorism, consistent with democratic principles and the rule of law, and in cooperation with countries in the region;

(2) the Indonesian Government is prosecuting and punishing, in a manner proportional to the crime, members of the Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights or to have aided or abetted militia groups;

(3) at the direction of the President of Indonesia, the Armed Forces are cooperating with civilian judicial authorities and with international efforts to resolve cases of gross violations of human rights in East Timor and elsewhere; and

(4) at the direction of the President of Indonesia, the Armed Forces are implementing reforms to increase the transparency and accountability of their operations and financial management, including making publicly available audits of receipts and expenditures.

(b) Funds appropriated under the heading "International Military Education and Training" may be made available for assistance for Indonesia if the Secretary of State determines and reports to the Committees on Appropriations that the Indonesian Government and Armed Forces are cooperating with the Federal Bureau of Investigation's investigation into the August 31, 2002, murders of two American citizens and one Indonesian citizen in Timika, Indonesia: *Provided,* That this restriction shall not apply to expanded international military education and training, which may include English language training.

LIMITATION ON CONTRACTS

SEC. 573. None of the funds made available under this Act may be used to fund any contract in contravention of section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)).

LIMITATION ON ECONOMIC SUPPORT FUND ASSISTANCE FOR CERTAIN FOREIGN GOVERNMENTS THAT ARE PARTIES TO THE INTERNATIONAL CRIMINAL COURT

SEC. 574. (a) None of the funds made available in this Act in title II under the heading "Economic Support Fund" may be used to provide assistance to the government of a country that is a party to the International Criminal Court and has not entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such country.

(b) The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a North Atlantic Treaty Organization ("NATO") member country, a major non-NATO ally (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand), or Taiwan if he determines and reports to the appropriate congressional committees that it is important to the national security interests of the United States to waive such prohibition.

(c) The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he determines and reports to the appropriate congressional committees that such country has entered into an agreement with

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the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such country.

(d) The prohibition of this section shall not apply to countries otherwise eligible for assistance under the Millennium Challenge Act of 2003, notwithstanding section 606(a)(2)(B) of such Act.

PROHIBITION AGAINST DIRECT FUNDING FOR SAUDI ARABIA

SEC. 575. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance any assistance to Saudi Arabia: *Provided,* That the President may waive the prohibition of this section if he certifies to the Committees on Appropriations, 15 days prior to the obligation of funds for assistance for Saudi Arabia, that Saudi Arabia is cooperating with efforts to combat international terrorism and that the proposed assistance will help facilitate that effort.

ENVIRONMENT PROGRAMS

SEC. 576. (a) FUNDING.—Of the funds appropriated under the heading "Development Assistance", not less than $165,500,000 shall be made available for programs and activities which directly protect biodiversity, including forests, in developing countries, of which not less than $8,000,000 should be made available to implement a regional strategy for biodiversity conservation in the countries comprising the Amazon basin of South America, including to improve the capacity of indigenous communities and local law enforcement agencies to protect the biodiversity of indigenous reserves, which amount shall be in addition to the amounts requested for biodiversity activities in these countries in fiscal year 2005: *Provided*, That of the funds appropriated by this Act, not less than $180,000,000 shall be made available to support clean energy and other climate change policies and programs in developing countries, of which $100,000,000 should be made available to directly promote and deploy energy conservation, energy efficiency, and renewable and clean energy technologies, and of which the balance should be made available to directly: (1) measure, monitor, and reduce greenhouse gas emissions; (2) increase carbon sequestration activities; and (3) enhance climate change mitigation and adaptation programs.

(b) CLIMATE CHANGE REPORT.—Not later than 45 days after the date on which the President's fiscal year 2006 budget request is submitted to Congress, the President shall submit a report to the Committees on Appropriations describing in detail the following—

(1) all Federal agency obligations and expenditures, domestic and international, for climate change programs and activities in fiscal year 2005, including an accounting of expenditures by agency with each agency identifying climate change activities and associated costs by line item as presented in the President's Budget Appendix; and

(2) all fiscal year 2004 obligations and estimated expenditures, fiscal year 2005 estimated expenditures and estimated obligations, and fiscal year 2006 requested funds by the United States Agency for International Development, by country and central program, for each of the following: (i) to promote the transfer and deployment of a wide range of United States

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clean energy and energy efficiency technologies; (ii) to assist in the measurement, monitoring, reporting, verification, and reduction of greenhouse gas emissions; (iii) to promote carbon capture and sequestration measures; (iv) to help meet such countries' responsibilities under the Framework Convention on Climate Change; and (v) to develop assessments of the vulnerability to impacts of climate change and mitigation and adaptation response strategies.

(c) EXTRACTION OF NATURAL RESOURCES.—

(1) The Secretary of the Treasury shall inform the managements of the international financial institutions and the public that it is the policy of the United States that any assistance by such institutions (including but not limited to any loan, credit, grant, or guarantee) for the extraction and export of oil, gas, coal, timber, or other natural resource should not be provided unless the government of the country has in place or is taking the necessary steps to establish functioning systems for: (i) accurately accounting for revenues and expenditures in connection with the extraction and export of the type of natural resource to be extracted or exported; (ii) the independent auditing of such accounts and the widespread public dissemination of the audits; and (iii) verifying government receipts against company payments including widespread dissemination of such payment information in a manner that does not create competitive disadvantage or disclose proprietary information.

(2) Not later than 180 days after the enactment of this Act, the Secretary of the Treasury shall submit a report to the Committees on Appropriations describing, for each international financial institution, the amount and type of assistance provided, by country, for the extraction and export of oil, gas, coal, timber, or other national resource since September 30, 2004.

UZBEKISTAN

SEC. 577. Funds appropriated by this Act may be made available for assistance for the central Government of Uzbekistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uzbekistan is making substantial and continuing progress in meeting its commitments under the "Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America", including respect for human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media.

CENTRAL ASIA

SEC. 578. (a) Funds appropriated by this Act may be made available for assistance for the Government of Kazakhstan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Kazakhstan has made significant improvements in the protection of human rights during the preceding 6 month period.

(b) The Secretary of State may waive subsection (a) if he determines and reports to the Committees on Appropriations that

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such a waiver is in the national security interest of the United States.

(c) Not later than October 1, 2005, the Secretary of State shall submit a report to the Committees on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives describing the following:

(1) The defense articles, defense services, and financial assistance provided by the United States to the countries of Central Asia during the 6-month period ending 30 days prior to submission of such report.

(2) The use during such period of defense articles, defense services, and financial assistance provided by the United States by units of the armed forces, border guards, or other security forces of such countries.

(d) For purposes of this section, the term "countries of Central Asia" means Uzbekistan, Kazakhstan, Kyrgyz Republic, Tajikistan, and Turkmenistan.

DISABILITY PROGRAMS

SEC. 579. (a) Of the funds appropriated by this Act under the heading "Economic Support Fund", not less than $2,500,000 shall be made available for programs and activities to address the needs and protect the rights of people with disabilities in developing countries: *Provided,* That such funds shall be administered by the United States Agency for International Development ("USAID") and the Department of State, and shall be available for grants to nongovernmental organizations that work on behalf of people with disabilities in such countries.

(b) The Secretary of State and the USAID Administrator shall designate within their respective agencies an individual to serve as Disability "Advisor" or "Coordinator", whose function it shall be to ensure that disability rights are addressed, where appropriate, in United States policies and programs.

(c) Funds made available under subsection (a) may be made available for an international conference on the needs of people with disabilities, including disability rights, advocacy and access.

(d) The Secretary of State, the Secretary of the Treasury, and the USAID Administrator shall seek to ensure that the needs of people with disabilities are addressed, where appropriate, in democracy, human rights, and rule of law programs, projects and activities supported by the Department of State, Department of the Treasury, and USAID.

(e) The USAID Administrator shall seek to ensure that programs, projects and activities administered by USAID comply fully with USAID's "Policy Paper: Disability" issued on September 12, 1997: *Provided,* That not later than 90 days after enactment of this Act, USAID shall implement procedures to require that prospective grantees seeking funding from USAID specify, when relevant, how the proposed program, project or activity for which funding is being requested will include protecting the rights and addressing the needs of persons with disabilities.

ZIMBABWE

SEC. 580. The Secretary of the Treasury shall instruct the United States executive director to each international financial

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institution to vote against any extension by the respective institution of any loans to the Government of Zimbabwe, except to meet basic human needs or to promote democracy, unless the Secretary of State determines and certifies to the Committees on Appropriations that the rule of law has been restored in Zimbabwe, including respect for ownership and title to property, freedom of speech and association.

TIBET

SEC. 581. (a) The Secretary of the Treasury should instruct the United States executive director to each international financial institution to use the voice and vote of the United States to support projects in Tibet if such projects do not provide incentives for the migration and settlement of non-Tibetans into Tibet or facilitate the transfer of ownership of Tibetan land and natural resources to non-Tibetans; are based on a thorough needs-assessment; foster self-sufficiency of the Tibetan people and respect Tibetan culture and traditions; and are subject to effective monitoring.

(b) Notwithstanding any other provision of law, not less than $4,000,000 of the funds appropriated by this Act under the heading "Economic Support Fund" should be made available to nongovernmental organizations to support activities which preserve cultural traditions and promote sustainable development and environmental conservation in Tibetan communities in the Tibetan Autonomous Region and in other Tibetan communities in China, and not less than $250,000 should be made available to the National Endowment for Democracy for human rights and democracy programs relating to Tibet.

NIGERIA

SEC. 582. The President shall submit a report to the Committees on Appropriations describing the involvement of the Nigerian Armed Forces in the incident in Benue State, the measures that are being taken to bring such individuals to justice, and whether any Nigerian Armed Forces units involved with the incident in Benue State are receiving United States assistance.

DISCRIMINATION AGAINST MINORITY RELIGIOUS FAITHS IN THE RUSSIAN FEDERATION

SEC. 583. None of the funds appropriated under this Act may be made available for the Government of the Russian Federation, after 180 days from the date of the enactment of this Act, unless the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation has implemented no statute, Executive order, regulation or similar government action that would discriminate, or which has as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party.

CENTRAL AMERICA

SEC. 584. (a) Of the funds appropriated by this Act under the headings "Child Survival and Health Programs Fund" and

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"Development Assistance", not less than the amount of funds initially allocated pursuant to section 653(a) of the Foreign Assistance Act of 1961 for fiscal year 2004 should be made available for El Salvador, Guatemala, Nicaragua and Honduras.

(b) Not to exceed $3,227,000 in prior year "Military Assistance Program" funds that are available for Guatemala may be made available for non-lethal defense items for Guatemala if the Secretary of State certifies to the Committees on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that—

(1) the role of the Guatemalan military has been limited, in doctrine and in practice, to substantially those activities in defense of Guatemala's sovereignty and territorial integrity that are permitted by the 1996 Peace Accords, and the Government of Guatemala is taking steps to pass a new governing law of the Army (Ley Constitutiva del Ejército);

(2) the Guatemalan military is cooperating with civilian judicial authorities, including providing full cooperation on access to witnesses, documents and classified intelligence files, in investigations and prosecutions of military personnel who have been implicated in human rights violations and other criminal activity;

(3) the Government of Guatemala is working with the United Nations to resolve legal impediments to the establishment of the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (CICIACS), so that CICIACS can effectively accomplish its mission of investigating and bringing to justice illegal groups and members of clandestine security organizations;

(4) the Government of Guatemala is continuing its efforts to make the military budget process transparent and accessible to civilian authorities and to the public, for both present and past expenditures;

(5) the Government of Guatemala is working to facilitate the prompt establishment of an office in Guatemala of the United Nations High Commissioner for Human Rights with the unimpeded authority to investigate and report on human rights in Guatemala; and

(6) the Government of Guatemala is taking steps to increase its efforts to combat narcotics trafficking and organized crime.

(c) Section 527 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (22 U.S.C. 2370(a)) is amended by adding at the end the following new subsection:

"(i) CERTAIN CLAIMS FOR EXPROPRIATION BY THE GOVERNMENT OF NICARAGUA.—

"(1) Any action of the types set forth in subparagraphs (A), (B), and (C) of subsection (a)(1) that was taken by the Government of Nicaragua during the period beginning on January 1, 1956, and ending on January 9, 2002, shall not be considered in implementing the prohibition under subsection (a) unless the action has been presented in accordance with the procedure set forth in paragraph (2).

"(2) An action shall be deemed presented for purposes of paragraph (1) if it is—

"(A) in writing; and

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"(B) received by the United States Department of State on or before 120 days after the date specified in paragraph (3) at—

"(i) the headquarters of the United States Department of State in Washington, D.C.; or

"(ii) the Embassy of the United States of America to Nicaragua.

"(3) The date to which paragraph (2) refers is a date after enactment of this subsection that is specified by the Secretary of State, in the Secretary's discretion, in a notice published in the Federal Register.".

WAR CRIMES IN AFRICA

SEC. 585. (a) The Congress recognizes the important contribution that the democratically elected Government of Nigeria has played in fostering stability in West Africa.

(b) The Congress reaffirms its support for the efforts of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) to bring to justice individuals responsible for war crimes and crimes against humanity in a timely manner.

(c) Funds appropriated by this Act, including funds for debt restructuring, may be made available for assistance to the central government of a country in which individuals indicted by ICTR and SCSL are credibly alleged to be living, if the Secretary of State determines and reports to the Committees on Appropriations that such government is cooperating with ICTR and SCSL, including the surrender and transfer of indictees in a timely manner: *Provided,* That this subsection shall not apply to assistance provided under section 551 of the Foreign Assistance Act of 1961 or to project assistance under title II of this Act: *Provided further,* That the United States shall use its voice and vote in the United Nations Security Council to fully support efforts by ICTR and SCSL to bring to justice individuals indicted by such tribunals in a timely manner.

(d) The prohibition in subsection (c) may be waived on a country by country basis if the President determines that doing so is in the national security interest of the United States: *Provided,* That prior to exercising such waiver authority, the President shall submit a report to the Committees on Appropriations, in classified form if necessary, on: (1) the steps being taken to obtain the cooperation of the government in surrendering the indictee in question to SCSL or ICTR; (2) a strategy for bringing the indictee before ICTR or SCSL; and (3) the justification for exercising the waiver authority.

ADMISSION OF REFUGEES

SEC. 586. (a) The Secretary of State shall utilize private voluntary organizations with expertise in the protection needs of refugees in the processing of refugees overseas for admission and resettlement to the United States, and shall utilize such agencies in addition to the United Nations High Commissioner for Refugees in the identification and referral of refugees.

(b) The Secretary of State should maintain a system for accepting referrals of appropriate candidates for resettlement from local private, voluntary organizations and work to ensure that

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particularly vulnerable refugee groups receive special consideration for admission into the United States, including—

(1) long-stayers in countries of first asylum;

(2) unaccompanied refugee minors;

(3) refugees outside traditional camp settings; and

(4) refugees in woman-headed households.

(c) The Secretary of State shall give special consideration to—

(1) refugees of all nationalities who have close family ties to citizens and residents of the United States; and

(2) other groups of refugees who are of special concern to the United States.

CODE OF CONDUCT

SEC. 587. (a) None of the funds made available by title II under the heading "Migration and Refugee Assistance" or "Transition Initiatives" to provide assistance to refugees or internally displaced persons may be provided to an organization that has failed to adopt a code of conduct consistent with the Inter-Agency Standing Committee Task Force on Protection From Sexual Exploitation and Abuse in Humanitarian Crises six core principles for the protection of beneficiaries of humanitarian assistance.

(b) In administering the amounts made available for the accounts described in subsection (a), the Secretary of State and Administrator of the United States Agency for International Development shall incorporate specific policies and programs for the purpose of identifying specific needs of, and particular threats to, women and children at the various stages of humanitarian emergencies, especially at the onset of such emergency.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT HIRING AUTHORITY

SEC. 588. (a) AUTHORITY.—Up to $37,500,000 of the funds made available in this Act to carry out the provisions of part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading "Assistance for Eastern Europe and the Baltic States", may be used by the United States Agency for International Development (USAID) to hire and employ individuals in the United States and overseas on a limited appointment basis pursuant to the authority of sections 308 and 309 of the Foreign Service Act of 1980.

(b) RESTRICTIONS.—

(1) The number of individuals hired in any fiscal year pursuant to the authority contained in subsection (a) may not exceed 175, of which not more than 75 may be hired for employment in the United States.

(2) The authority to hire individuals contained in subsection (a) shall expire on September 30, 2007.

(c) CONDITIONS.—The authority of this section may only be used—

(1) to the extent that an equivalent number of positions that are filled by personal services contractors or other non-direct-hire employees of USAID, who are compensated with funds appropriated to carry out part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading "Assistance for Eastern Europe and the Baltic States", are eliminated; and

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(2) after consultations between the Committees on Appropriations and the USAID Administrator on the implementation of this section and USAID work force issues more generally.

(d) PRIORITY SECTORS.—In exercising the authority of this section, primary emphasis shall be placed on enabling USAID to meet personnel positions in technical skill areas currently encumbered by contractor or other nondirect-hire personnel.

(e) CONSULTATIONS.—After the initial consultations required by subsection (c)(2), the USAID Administrator shall consult with the Committees on Appropriations at least on a quarterly basis thereafter concerning the implementation of this section.

(f) PROGRAM ACCOUNT CHARGED.—The account charged for the cost of an individual hired and employed under the authority of this section shall be the account to which such individual's responsibilities primarily relate. Funds made available to carry out this section may be transferred to and merged and consolidated with funds appropriated for "Operating Expenses of the United States Agency for International Development".

(g) RELATION TO PRIOR LAW.—Upon completion of the consultations required by subsection (c)(2), the authority contained in this section shall supersede the authority contained in section 525 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004.

(h) DISASTER SURGE CAPACITY.—Funds appropriated by this Act to carry out part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading "Assistance for Eastern Europe and the Baltic States", may be used, in addition to funds otherwise available for such purposes, for the cost (including the support costs) of individuals detailed to or employed by the United States Agency for International Development whose primary responsibility is to carry out programs in response to natural disasters.

OVERSEAS PRIVATE INVESTMENT CORPORATION AND EXPORT-IMPORT BANK RESTRICTIONS

SEC. 589. (a) LIMITATION ON USE OF FUNDS BY OPIC.—None of the funds made available in this Act may be used by the Overseas Private Investment Corporation to insure, reinsure, guarantee, or finance any investment in connection with a project involving the mining, polishing or other processing, or sale of diamonds in a country that fails to meet the requirements of subsection (c).

(b) LIMITATION ON USE OF FUNDS BY THE EXPORT-IMPORT BANK.—None of the funds made available in this Act may be used by the Export-Import Bank of the United States to guarantee, insure, extend credit, or participate in an extension of credit in connection with the export of any goods to a country for use in an enterprise involving the mining, polishing or other processing, or sale of diamonds in a country that fails to meet the requirements of subsection (c).

(c) REQUIREMENTS.—The requirements referred to in subsections (a) and (b) are that the country concerned is implementing the recommendations, obligations and requirements developed by the Kimberley Process on conflict diamonds.

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SECURITY IN ASIA

SEC. 590. (a) INDONESIA.—Funds made available for assistance for Indonesia under the heading "Foreign Military Financing Program" may be made available for assistance for the Indonesian navy notwithstanding section 572 of this Act if the Secretary of State reports to the Committees on Appropriations that the Indonesian navy is not violating human rights and is cooperating with civilian judicial authorities on cases involving human rights violations: *Provided,* That such funds may only be made available for assistance for the Indonesian navy for the purposes of enhancing maritime security: *Provided further,* That such funds shall be made available subject to the regular notification procedures of the Committees on Appropriations.

(b) CAMBODIA.—Funds made available for assistance for Cambodia under the heading "Foreign Military Financing Program" may be made available notwithstanding section 554 of this Act: *Provided,* That such funds shall only be made available subject to the regular notification procedures of the Committees on Appropriations.

(c) NEPAL.—

(1) The Congress deplores and condemns the Maoist insurgency in Nepal which has engaged in widespread atrocities against civilians and Nepalese security forces, and calls on other nations to denounce these vicious acts.

(2) Funds appropriated under the heading "Foreign Military Financing Program" may be made available for assistance for Nepal if the Secretary of State reports to the Committees on Appropriations that the Government of Nepal:

(A) has determined the number of and is making substantial progress in complying with habeas corpus orders issued by the Supreme Court of Nepal, including all outstanding orders;

(B) is cooperating with the National Human Rights Commission of Nepal to identify and resolve all security related cases involving individuals in government custody;

(C) is granting the National Human Rights Commission of Nepal unimpeded access to all places of detention; and

(D) is taking effective steps to end torture by security forces and to prosecute members of such forces who are responsible for gross violations of human rights.

(3) The Secretary of State may waive the requirements of paragraph (2) if he determines and reports to the Committees on Appropriations that to do so is in the national security interests of the United States.

HIPC DEBT REDUCTION AND TRUST FUND

SEC. 591. (a) Section 801(b)(1) of Public Law 106–429 is amended—

(1) by inserting "(i)" after "appropriated"; and

(2) by inserting before the period "; and (ii) for fiscal years 2004–2006, not more than $150,000,000, for purposes of additional United States contributions to the HIPC Trust Fund administered by the Bank, which are authorized to remain available until expended".

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(b) Section 501(i) of Public Law 106–113 is amended by striking "2003–2004" and inserting "2000–2006".

COMPLIANCE WITH THE ALGIERS AGREEMENTS

SEC. 592. None of the funds appropriated by this Act may be made available for assistance for the central Governments of Ethiopia or Eritrea unless the Secretary of State certifies and reports to the Committees on Appropriations that such government is taking steps to comply with the terms of the Algiers Agreements: *Provided,* That this section shall not apply to democracy, rule of law, peacekeeping programs and activities, child survival and health, basic education, and agriculture programs: *Provided further,* That the Secretary may waive the requirements of this section if he determines that to do so is in the national security interests of the United States.

ADMINISTRATIVE PROVISIONS RELATED TO MULTILATERAL DEVELOPMENT BANKS

SEC. 593. (a) Section 1307 of the International Financial Institutions Act (22 U.S.C. 262m–7) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) ASSESSMENT REQUIRED BEFORE FAVORABLE VOTE ON PROPOSAL.—The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank not to vote in favor of any proposal (including but not limited to any loan, credit, grant, guarantee) which would result or be likely to result in significant impact on the environment, unless the Secretary, after consultation with the Secretary of State and the Administrators of the United States Agency for International Development and the Environmental Protection Agency, determines that for at least 120 days before the date of the vote—

"(1) an assessment analyzing the environmental impacts of the proposed action, including associated and cumulative impacts, and of alternatives to the proposed action, has been completed by the borrower or the bank and has been made available to the board of directors of the bank; and

"(2) such assessment or a comprehensive summary of the assessment (with proprietary information redacted) has been made available to affected groups, and local nongovernmental organizations and notice of its availability in the country and at the bank has been posted on the bank's website."; and

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

"(g) MULTILATERAL DEVELOPMENT BANK DEFINED.—In this title, the term 'multilateral development bank' means the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the African Development Bank, the African Development Fund, the Asian Development Bank, the Inter-American Development Bank, the Inter-American Investment Corporation, any other institution (other than the International Monetary Fund) specified in section 1701(c)(2), and any subsidiary of any such institution.".

(b) Section 1303(b) of the International Financial Institutions Act (22 U.S.C. 262m–2(b)) is amended—

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(1) by inserting "(1)" after "(b)" and replacing "International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank" with the phrase "multilateral development banks as defined in section 1307(g)"; and

(2) by inserting at the end of subsection (b) the following text:

"(2) The Secretary of the Treasury shall instruct such Executive Directors to work with other countries' Executive Directors and multilateral development bank management to—

"(A) improve the procedures of each multilateral development bank for providing its board of directors with a complete and accurate record regarding public consultation before they vote on proposed projects with significant environmental implications; and

"(B) revise bank procedures to consistently require public consultation on operational policy proposals or revisions that have significant environmental or social implications.

"(3) Progress under this subsection shall be incorporated into Treasury's required annual report to Congress on the environmental performance of the multilateral development banks.".

VIETNAMESE REFUGEES

SEC. 594. (a) ELIGIBILITY FOR IN-COUNTRY REFUGEE PROCESSING IN VIETNAM.—For purposes of eligibility for in-country refugee processing for nationals of Vietnam during fiscal years 2004 and 2005, an alien described in subsection (b) shall be considered to be a refugee of special humanitarian concern to the United States (within the meaning of section 207 of the Immigration and Nationality Act (8 U.S.C. 1157)) and shall be admitted to the United States for resettlement if the alien would be admissible as an immigrant under the Immigration and Nationality Act (except as provided in section 207(c)(3) of that Act).

(b) ALIENS COVERED.—An alien described in this subsection is an alien who—

(1) is the son or daughter of a qualified national;

(2) is 21 years of age or older; and

(3) was unmarried as of the date of acceptance of the alien's parent for resettlement under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City.

(c) QUALIFIED NATIONAL.—The term "qualified national" in subsection (b)(1) means a national of Vietnam who—

(1)(A) was formerly interned in a re-education camp in Vietnam by the Government of the Socialist Republic of Vietnam; or

(B) is the widow or widower of an individual described in subparagraph (A);

(2)(A) qualified for refugee processing under the Orderly Departure Program re-education subprogram; and

(B) is or was accepted under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City—

(i) for resettlement as a refugee; or

(ii) for admission to the United States as an immediate relative immigrant; and

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(3)(A) is presently maintaining a residence in the United States or whose surviving spouse is presently maintaining such a residence; or

(B) was approved for refugee resettlement or immigrant visa processing and is awaiting departure formalities from Vietnam or whose surviving spouse is awaiting such departure formalities.

JOINT EXPLANATORY STATEMENT

SEC. 595. (a) Funds provided in this Act for the following accounts shall be made available for programs and countries in the amounts contained in the respective tables included in the joint explanatory statement of managers accompanying this Act:

"Economic Support Fund".

"Assistance for Eastern Europe and the Baltic States".

"Assistance for the Independent States of the Former Soviet Union".

"Andean Counterdrug Initiative".

"Nonproliferation, Anti-Terrorism, Demining and Related Programs".

"Foreign Military Financing Program".

"International Organizations and Programs".

(b) Any proposed increases or decreases to the amounts contained in such tables in the joint explanatory statement of managers shall be subject to the regular notification procedures of the Committees on Appropriations and section 634A of the Foreign Assistance Act of 1961.

This division may be cited as the "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005".

DIVISION E—DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

TITLE I—DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For necessary expenses for protection, use, improvement, development, disposal, cadastral surveying, classification, acquisition of easements and other interests in lands, and performance of other functions, including maintenance of facilities, as authorized by law, in the management of lands and their resources under the jurisdiction of the Bureau of Land Management, including the general administration of the Bureau, and assessment of mineral potential of public lands pursuant to Public Law 96–487 (16 U.S.C. 3150(a)), $848,939,000, to remain available until expended, of which $1,000,000 is for high priority projects, to be carried out by the Youth Conservation Corps; $4,000,000 is for assessment of the mineral potential of public lands in Alaska pursuant to section 1010 of Public Law 96–487; (16 U.S.C. 3150); and of which not to exceed $1,000,000 shall be derived from the special receipt account established by the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460l–6a(i)); and of which $3,500,000 shall be available in fiscal year 2005 subject to a match by at least an equal amount by the National Fish and Wildlife Foundation

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for cost-shared projects supporting conservation of Bureau lands; and such funds shall be advanced to the Foundation as a lump sum grant without regard to when expenses are incurred.

In addition, $32,696,000 is for Mining Law Administration program operations, including the cost of administering the mining claim fee program; to remain available until expended, to be reduced by amounts collected by the Bureau and credited to this appropriation from annual mining claim fees so as to result in a final appropriation estimated at not more than $848,939,000, and $2,000,000, to remain available until expended, from communication site rental fees established by the Bureau for the cost of administering communication site activities.

WILDLAND FIRE MANAGEMENT

For necessary expenses for fire preparedness, suppression operations, fire science and research, emergency rehabilitation, hazardous fuels reduction, and rural fire assistance by the Department of the Interior, $743,099,000, to remain available until expended, of which not to exceed $12,374,000 shall be for the renovation or construction of fire facilities: *Provided*, That such funds are also available for repayment of advances to other appropriation accounts from which funds were previously transferred for such purposes: *Provided further*, That persons hired pursuant to 43 U.S.C. 1469 may be furnished subsistence and lodging without cost from funds available from this appropriation: *Provided further*, That notwithstanding 42 U.S.C. 1856d, sums received by a bureau or office of the Department of the Interior for fire protection rendered pursuant to 42 U.S.C. 1856 et seq., protection of United States property, may be credited to the appropriation from which funds were expended to provide that protection, and are available without fiscal year limitation: *Provided further*, That using the amounts designated under this title of this Act, the Secretary of the Interior may enter into procurement contracts, grants, or cooperative agreements, for hazardous fuels reduction activities, and for training and monitoring associated with such hazardous fuels reduction activities, on Federal land, or on adjacent non-Federal land for activities that benefit resources on Federal land: *Provided further*, That the costs of implementing any cooperative agreement between the Federal Government and any non-Federal entity may be shared, as mutually agreed on by the affected parties: *Provided further*, That notwithstanding requirements of the Competition in Contracting Act, the Secretary, for purposes of hazardous fuels reduction activities, may obtain maximum practicable competition among: (1) local private, nonprofit, or cooperative entities; (2) Youth Conservation Corps crews or related partnerships with State, local, or non-profit youth groups; (3) small or micro-businesses; or (4) other entities that will hire or train locally a significant percentage, defined as 50 percent or more, of the project workforce to complete such contracts: *Provided further*, That in implementing this section, the Secretary shall develop written guidance to field units to ensure accountability and consistent application of the authorities provided herein: *Provided further*, That funds appropriated under this head may be used to reimburse the United States Fish and Wildlife Service and the National Marine Fisheries Service for the costs of carrying out their responsibilities under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to consult and conference, as required by section 7 of such Act, in

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connection with wildland fire management activities: *Provided further*, That the Secretary of the Interior may use wildland fire appropriations to enter into non-competitive sole source leases of real property with local governments, at or below fair market value, to construct capitalized improvements for fire facilities on such leased properties, including but not limited to fire guard stations, retardant stations, and other initial attack and fire support facilities, and to make advance payments for any such lease or for construction activity associated with the lease: *Provided further*, That the Secretary of the Interior and the Secretary of Agriculture may authorize the transfer of funds appropriated for wildland fire management, in an aggregate amount not to exceed $12,000,000, between the Departments when such transfers would facilitate and expedite jointly funded wildland fire management programs and projects: *Provided further*, That funds provided for wildfire suppression shall be available for support of Federal emergency response actions.

CENTRAL HAZARDOUS MATERIALS FUND

For necessary expenses of the Department of the Interior and any of its component offices and bureaus for the remedial action, including associated activities, of hazardous waste substances, pollutants, or contaminants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.), $9,855,000, to remain available until expended: *Provided*, That, notwithstanding 31 U.S.C. 3302, sums recovered from or paid by a party in advance of or as reimbursement for remedial action or response activities conducted by the Department pursuant to section 107 or 113(f) of such Act, shall be credited to this account, to be available until expended without further appropriation: *Provided further*, That such sums recovered from or paid by any party are not limited to monetary payments and may include stocks, bonds or other personal or real property, which may be retained, liquidated, or otherwise disposed of by the Secretary and which shall be credited to this account.

CONSTRUCTION

For construction of buildings, recreation facilities, roads, trails, and appurtenant facilities, $11,500,000, to remain available until expended.

LAND ACQUISITION

For expenses necessary to carry out sections 205, 206, and 318(d) of Public Law 94–579, including administrative expenses and acquisition of lands or waters, or interests therein, $11,350,000, to be derived from the Land and Water Conservation Fund and to remain available until expended.

OREGON AND CALIFORNIA GRANT LANDS

For expenses necessary for management, protection, and development of resources and for construction, operation, and maintenance of access roads, reforestation, and other improvements on the revested Oregon and California Railroad grant lands, on other Federal lands in the Oregon and California land-grant counties of Oregon, and on adjacent rights-of-way; and acquisition of

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lands or interests therein, including existing connecting roads on or adjacent to such grant lands; $109,057,000, to remain available until expended: *Provided*, That 25 percent of the aggregate of all receipts during the current fiscal year from the revested Oregon and California Railroad grant lands is hereby made a charge against the Oregon and California land-grant fund and shall be transferred to the General Fund in the Treasury in accordance with the second paragraph of subsection (b) of title II of the Act of August 28, 1937 (50 Stat. 876).

FOREST ECOSYSTEM HEALTH AND RECOVERY FUND

(REVOLVING FUND, SPECIAL ACCOUNT)

In addition to the purposes authorized in Public Law 102–381, funds made available in the Forest Ecosystem Health and Recovery Fund can be used for the purpose of planning, preparing, implementing and monitoring salvage timber sales and forest ecosystem health and recovery activities, such as release from competing vegetation and density control treatments. The Federal share of receipts (defined as the portion of salvage timber receipts not paid to the counties under 43 U.S.C. 1181f and 43 U.S.C. 1181f–1 et seq., and Public Law 106–393) derived from treatments funded by this account shall be deposited into the Forest Ecosystem Health and Recovery Fund.

RANGE IMPROVEMENTS

For rehabilitation, protection, and acquisition of lands and interests therein, and improvement of Federal rangelands pursuant to section 401 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), notwithstanding any other Act, sums equal to 50 percent of all moneys received during the prior fiscal year under sections 3 and 15 of the Taylor Grazing Act (43 U.S.C. 315 et seq.) and the amount designated for range improvements from grazing fees and mineral leasing receipts from Bankhead-Jones lands transferred to the Department of the Interior pursuant to law, but not less than $10,000,000, to remain available until expended: *Provided*, That not to exceed $600,000 shall be available for administrative expenses.

SERVICE CHARGES, DEPOSITS, AND FORFEITURES

For administrative expenses and other costs related to processing application documents and other authorizations for use and disposal of public lands and resources, for costs of providing copies of official public land documents, for monitoring construction, operation, and termination of facilities in conjunction with use authorizations, and for rehabilitation of damaged property, such amounts as may be collected under Public Law 94–579, as amended, and Public Law 93–153, to remain available until expended: *Provided*, That, notwithstanding any provision to the contrary of section 305(a) of Public Law 94–579 (43 U.S.C. 1735(a)), any moneys that have been or will be received pursuant to that section, whether as a result of forfeiture, compromise, or settlement, if not appropriate for refund pursuant to section 305(c) of that Act (43 U.S.C. 1735(c)), shall be available and may be expended under the authority of this Act by the Secretary to improve, protect, or rehabilitate any public lands administered through the Bureau

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of Land Management which have been damaged by the action of a resource developer, purchaser, permittee, or any unauthorized person, without regard to whether all moneys collected from each such action are used on the exact lands damaged which led to the action: *Provided further*, That any such moneys that are in excess of amounts needed to repair damage to the exact land for which funds were collected may be used to repair other damaged public lands.

MISCELLANEOUS TRUST FUNDS

In addition to amounts authorized to be expended under existing laws, there is hereby appropriated such amounts as may be contributed under section 307 of the Act of October 21, 1976 (43 U.S.C. 1701), and such amounts as may be advanced for administrative costs, surveys, appraisals, and costs of making conveyances of omitted lands under section 211(b) of that Act, to remain available until expended.

ADMINISTRATIVE PROVISIONS

Appropriations for the Bureau of Land Management shall be available for purchase, erection, and dismantlement of temporary structures, and alteration and maintenance of necessary buildings and appurtenant facilities to which the United States has title; up to $100,000 for payments, at the discretion of the Secretary, for information or evidence concerning violations of laws administered by the Bureau; miscellaneous and emergency expenses of enforcement activities authorized or approved by the Secretary and to be accounted for solely on her certificate, not to exceed $10,000: *Provided*, That, notwithstanding 44 U.S.C. 501, the Bureau may, under cooperative cost-sharing and partnership arrangements authorized by law, procure printing services from cooperators in connection with jointly produced publications for which the cooperators share the cost of printing either in cash or in services, and the Bureau determines the cooperator is capable of meeting accepted quality standards.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

For necessary expenses of the United States Fish and Wildlife Service, as authorized by law, and for scientific and economic studies, maintenance of the herd of long-horned cattle on the Wichita Mountains Wildlife Refuge, general administration, and for the performance of other authorized functions related to such resources by direct expenditure, contracts, grants, cooperative agreements and reimbursable agreements with public and private entities, $977,205,000, to remain available until September 30, 2006, except as otherwise provided herein: *Provided*, That not less than $1,000,000 shall be provided to local governments in southern California for planning associated with the Natural Communities Conservation Planning (NCCP) program and shall remain available until expended: *Provided further*, That $2,000,000 is for high priority projects, which shall be carried out by the Youth Conservation Corps: *Provided further*, That, not to exceed $16,175,000, shall be used for implementing subsections (a), (b), (c), and (e) of section

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4 of the Endangered Species Act, as amended, for species that are indigenous to the United States (except for processing petitions, developing and issuing proposed and final regulations, and taking any other steps to implement actions described in subsection (c)(2)(A), (c)(2)(B)(i), or (c)(2)(B)(ii)), of which not to exceed $11,400,000 shall be used for any activity regarding the designation of critical habitat, pursuant to subsection (a)(3), excluding litigation support, for species listed pursuant to subsection (a)(1) prior to October 1, 2004: *Provided further*, That of the amount available for law enforcement, up to $400,000, to remain available until expended, may at the discretion of the Secretary be used for payment for information, rewards, or evidence concerning violations of laws administered by the Service, and miscellaneous and emergency expenses of enforcement activity, authorized or approved by the Secretary and to be accounted for solely on her certificate: *Provided further*, That of the amount provided for environmental contaminants, up to $1,000,000 may remain available until expended for contaminant sample analyses.

CONSTRUCTION

For construction, improvement, acquisition, or removal of buildings and other facilities required in the conservation, management, investigation, protection, and utilization of fishery and wildlife resources, and the acquisition of lands and interests therein; $53,400,000, to remain available until expended: *Provided*, That, notwithstanding any other provision of law, a single procurement for the construction project at the Clark R. Bavin Forensics Laboratory in Oregon may be issued which includes the full scope of the project: *Provided further,* That the solicitation and the contract shall contain the clause "availability of funds" found at 48 CFR 52.232.18.

LAND ACQUISITION

For expenses necessary to carry out the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–4 through 11), including administrative expenses, and for acquisition of land or waters, or interest therein, in accordance with statutory authority applicable to the United States Fish and Wildlife Service, $37,526,000, to be derived from the Land and Water Conservation Fund and to remain available until expended, of which $750,000 is for support of acquisition of lands for waterfowl habitat in the Yukon Flats National Wildlife Refuge, and the related conveyance of Federal lands and interests in lands to Doyon, Limited, an Alaska Native Corporation organized pursuant to the Alaska Native Claims Settlement Act: *Provided*, That the Secretary is authorized to, and shall, execute all necessary acquisitions and exchange agreement documents in furtherance of this acquisition and exchange as soon as possible: *Provided further*, That, notwithstanding any other law, all revenues, fees and royalties received by the Federal Government from oil and/or gas production from the lands, and interests in land, acquired by Doyon, Limited, pursuant to the exchange of lands located within Yukon Flats National Wildlife Refuge shall be deposited in a special account in the Treasury of the United States to be called the Alaska National Wildlife Refuge Land Acquisition and Facility Account ("Acquisition Account"): *Provided further,* That all amounts deposited in the

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acquisition account shall be available until expended without further act of appropriation to the Director of the United States Fish and Wildlife Service for only the following purposes: (1) to acquire lands from Doyon, Limited, located within Yukon Flats National Wildlife Refuge in accordance with the Exchange Agreement; (2) to acquire lands from other willing sellers in the Yukon Flats National Wildlife Refuge, or from other willing sellers in other units of the National Wildlife Refuge System located within the State of Alaska; and (3) to construct facilities and infrastructure for Alaska refuges: *Provided further,* That none of the funds appropriated for specific land acquisition projects, other than the appropriations for the Yukon Flats National Wildlife Refuge exchange and acquisition provided for under this heading, can be used to pay for any administrative overhead, planning or other management costs: *Provided further,* That none of the funds in this or any other Act may be used for the acquisition of land for inclusion in the Deep Fork National Wildlife Refuge.

LANDOWNER INCENTIVE PROGRAM

For expenses necessary to carry out the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–4 through 11), including administrative expenses, and for private conservation efforts to be carried out on private lands, $22,000,000, to be derived from the Land and Water Conservation Fund, and to remain available until expended: *Provided*, That the amount provided herein is for a Landowner Incentive Program established by the Secretary that provides matching, competitively awarded grants to States, the District of Columbia, federally recognized Indian tribes, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, and American Samoa, to establish or supplement existing landowner incentive programs that provide technical and financial assistance, including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, candidate, or other at-risk species on private lands.

PRIVATE STEWARDSHIP GRANTS

For expenses necessary to carry out the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–4 through 11), including administrative expenses, and for private conservation efforts to be carried out on private lands, $7,000,000, to be derived from the Land and Water Conservation Fund, and to remain available until expended: *Provided,* That the amount provided herein is for the Private Stewardship Grants Program established by the Secretary to provide grants and other assistance to individuals and groups engaged in private conservation efforts that benefit federally listed, proposed, candidate, or other at-risk species: *Provided further,* That balances from amounts previously appropriated under the heading "Stewardship Grants" shall be transferred to and merged with this appropriation and shall remain available until expended.

COOPERATIVE ENDANGERED SPECIES CONSERVATION FUND

For expenses necessary to carry out section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as amended,

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$81,596,000, of which $32,212,000 is to be derived from the Cooperative Endangered Species Conservation Fund and $49,384,000 is to be derived from the Land and Water Conservation Fund and to remain available until expended.

NATIONAL WILDLIFE REFUGE FUND

For expenses necessary to implement the Act of October 17, 1978 (16 U.S.C. 715s), $14,414,000.

NORTH AMERICAN WETLANDS CONSERVATION FUND

For expenses necessary to carry out the provisions of the North American Wetlands Conservation Act, Public Law 101–233, as amended, $38,000,000, to remain available until expended.

NEOTROPICAL MIGRATORY BIRD CONSERVATION

For financial assistance for projects to promote the conservation of neotropical migratory birds in accordance with the Neotropical Migratory Bird Conservation Act, Public Law 106–247 (16 U.S.C. 6101–6109), $4,000,000, to remain available until expended.

MULTINATIONAL SPECIES CONSERVATION FUND

For expenses necessary to carry out the African Elephant Conservation Act (16 U.S.C. 4201–4203, 4211–4213, 4221–4225, 4241–4245, and 1538), the Asian Elephant Conservation Act of 1997 (Public Law 105–96; 16 U.S.C. 4261–4266), the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5301–5306), the Great Ape Conservation Act of 2000 (16 U.S.C. 6301), and the Marine Turtle Conservation Act of 2004 (Public Law 108–266; 16 U.S.C. 6601), $5,800,000, to remain available until expended.

STATE AND TRIBAL WILDLIFE GRANTS

For wildlife conservation grants to States and to the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and federally recognized Indian tribes under the provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished, $70,000,000, to be derived from the Land and Water Conservation Fund, and to remain available until expended: *Provided*, That of the amount provided herein, $6,000,000 is for a competitive grant program for Indian tribes not subject to the remaining provisions of this appropriation: *Provided further*, That the Secretary shall, after deducting said $6,000,000 and administrative expenses, apportion the amount provided herein in the following manner: (1) to the District of Columbia and to the Commonwealth of Puerto Rico, each a sum equal to not more than one-half of 1 percent thereof; and (2) to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, each a sum equal to not more than one-fourth of 1 percent thereof: *Provided further*, That the Secretary shall apportion the remaining amount in the following manner: (1) one-third of which is based on the ratio to which the land area of such State bears to the total land area of all such States; and

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(2) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States: *Provided further*, That the amounts apportioned under this paragraph shall be adjusted equitably so that no State shall be apportioned a sum which is less than 1 percent of the amount available for apportionment under this paragraph for any fiscal year or more than 5 percent of such amount: *Provided further*, That the Federal share of planning grants shall not exceed 75 percent of the total costs of such projects and the Federal share of implementation grants shall not exceed 50 percent of the total costs of such projects: *Provided further*, That the non-Federal share of such projects may not be derived from Federal grant programs: *Provided further*, That no State, territory, or other jurisdiction shall receive a grant unless it has developed, or committed to develop by October 1, 2005, a comprehensive wildlife conservation plan, consistent with criteria established by the Secretary of the Interior, that considers the broad range of the State, territory, or other jurisdiction's wildlife and associated habitats, with appropriate priority placed on those species with the greatest conservation need and taking into consideration the relative level of funding available for the conservation of those species: *Provided further*, That any amount apportioned in 2005 to any State, territory, or other jurisdiction that remains unobligated as of September 30, 2006, shall be reapportioned, together with funds appropriated in 2007, in the manner provided herein: *Provided further*, That balances from amounts previously appropriated under the heading "State Wildlife Grants" shall be transferred to and merged with this appropriation and shall remain available until expended.

ADMINISTRATIVE PROVISIONS

Appropriations and funds available to the United States Fish and Wildlife Service shall be available for purchase of not to exceed 179 passenger motor vehicles, of which 161 are for replacement only (including 44 for police-type use); repair of damage to public roads within and adjacent to reservation areas caused by operations of the Service; options for the purchase of land at not to exceed $1 for each option; facilities incident to such public recreational uses on conservation areas as are consistent with their primary purpose; and the maintenance and improvement of aquaria, buildings, and other facilities under the jurisdiction of the Service and to which the United States has title, and which are used pursuant to law in connection with management, and investigation of fish and wildlife resources: *Provided*, That notwithstanding 44 U.S.C. 501, the Service may, under cooperative cost sharing and partnership arrangements authorized by law, procure printing services from cooperators in connection with jointly produced publications for which the cooperators share at least one-half the cost of printing either in cash or services and the Service determines the cooperator is capable of meeting accepted quality standards: *Provided further*, That, notwithstanding any other provision of law, the Service may use up to $2,000,000 from funds provided for contracts for employment-related legal services: *Provided further*, That the Service may accept donated aircraft as replacements for existing aircraft: *Provided further*, That, notwithstanding any other provision of law, the Secretary of the Interior may not spend any of the funds appropriated in this Act for the purchase of lands or interests in lands to be used in the establishment of any new

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unit of the National Wildlife Refuge System unless the purchase is approved in advance by the House and Senate Committees on Appropriations in compliance with the reprogramming procedures contained in House Report 108–330.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

For expenses necessary for the management, operation, and maintenance of areas and facilities administered by the National Park Service (including special road maintenance service to trucking permittees on a reimbursable basis), and for the general administration of the National Park Service, $1,707,282,000, of which $10,708,000 is for planning and interagency coordination in support of Everglades restoration and shall remain available until expended; of which $96,440,000 is for maintenance, repair or rehabilitation projects for constructed assets, operation of the National Park Service automated facility management software system, and comprehensive facility condition assessments; and of which $2,000,000 is for the Youth Conservation Corps for high priority projects: *Provided*, That the only funds in this account which may be made available to support United States Park Police are those funds approved for emergency law and order incidents pursuant to established National Park Service procedures, those funds needed to maintain and repair United States Park Police administrative facilities, and those funds necessary to reimburse the United States Park Police account for the unbudgeted overtime and travel costs associated with special events for an amount not to exceed $10,000 per event subject to the review and concurrence of the Washington headquarters office.

UNITED STATES PARK POLICE

For expenses necessary to carry out the programs of the United States Park Police, $81,204,000.

NATIONAL RECREATION AND PRESERVATION

For expenses necessary to carry out recreation programs, natural programs, cultural programs, heritage partnership programs, environmental compliance and review, international park affairs, statutory or contractual aid for other activities, and grant administration, not otherwise provided for, $61,832,000: *Provided,* That $700,000 from the Statutory and Contractual Aid Account shall be provided to the City of Tacoma, Washington for the purpose of conducting a feasibility study for the Train to the Mountain project: *Provided further,* That none of the funds in this Act for the River, Trails and Conservation Assistance program may be used for cash agreements, or for cooperative agreements that are inconsistent with the program's final strategic plan: *Provided further,* That notwithstanding section 8(b) of Public Law 102–543 (16 U.S.C. 410yy–8(b)), amounts made available under this heading to the Keweenaw National Historical Park shall be matched on not less than a 1-to-1 basis by non-Federal funds.

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HISTORIC PRESERVATION FUND

For expenses necessary in carrying out the Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104–333), $72,750,000, to be derived from the Historic Preservation Fund, to remain available until September 30, 2006, of which $30,000,000 shall be for Save America's Treasures for preservation of nationally significant sites, structures, and artifacts: *Provided*, That any individual Save America's Treasures grant shall be matched by non-Federal funds: *Provided further*, That individual projects shall only be eligible for one grant: *Provided further,* That all projects to be funded shall be approved by the Secretary of the Interior in consultation with the House and Senate Committees on Appropriations and the President's Committee on the Arts and Humanities prior to the commitment of Save America's Treasures grant funds: *Provided further*, That Save America's Treasures funds allocated for Federal projects, following approval, shall be available by transfer to appropriate accounts of individual agencies: *Provided further,* That hereinafter and notwithstanding 20 U.S.C. 951 et seq. the National Endowment for the Arts may award Save America's Treasures grants based upon the recommendations of the Save America's Treasures grant selection panel convened by the President's Committee on the Arts and the Humanities and the National Park Service.

CONSTRUCTION

For construction, improvements, repair or replacement of physical facilities, including the modifications authorized by section 104 of the Everglades National Park Protection and Expansion Act of 1989, $307,362,000, to remain available until expended, of which $500,000 for the L.Q.C. Lamar House National Historic Landmark shall be derived from the Historic Preservation Fund pursuant to 16 U.S.C. 470a: *Provided*, That none of the funds available to the National Park Service may be used to plan, design, or construct any partnership project with a total value in excess of $5,000,000, without advance approval of the House and Senate Committees on Appropriations: *Provided further*, That, notwithstanding any other provision of law, the National Park Service may not accept donations or services associated with the planning, design, or construction of such new facilities without advance approval of the House and Senate Committees on Appropriations: *Provided further,* That these restrictions do not apply to the Flight 93 Memorial: *Provided further,* That funds provided under this heading for implementation of modified water deliveries to Everglades National Park shall be expended consistent with the requirements of the fifth proviso under this heading in Public Law 108–108: *Provided further*, That none of the funds provided in this or any other Act may be used for planning, design, or construction of any underground security screening or visitor contact facility at the Washington Monument until such facility has been approved in writing by the House and Senate Committees on Appropriations: *Provided further,* That the National Park Service may use funds provided herein to construct a parking lot and connecting trail on leased, non-Federal land in order to accommodate visitor use of the Old Rag Mountain Trail at Shenandoah National Park, and may for the duration of such lease use any funds available

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to the Service for the maintenance of the parking lot and connecting trail.

LAND AND WATER CONSERVATION FUND

(RESCISSION)

The contract authority provided for fiscal year 2005 by 16 U.S.C. 460l–10a are rescinded.

LAND ACQUISITION AND STATE ASSISTANCE

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary to carry out the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460l–4 through 11), including administrative expenses, and for acquisition of lands or waters, or interest therein, in accordance with the statutory authority applicable to the National Park Service, $148,411,000, to be derived from the Land and Water Conservation Fund and to remain available until expended, of which $92,500,000 is for the State assistance program including $1,500,000 to administer this program: *Provided*, That none of the funds provided for the State assistance program may be used to establish a contingency fund: *Provided further,* That in lieu of State assistance program indirect costs (as described in OMB Circular A–87), not to exceed 5 percent of apportionments under the State assistance program may be used by States, the District of Columbia, and insular areas to support program administrative costs: *Provided further,* That $250,000 of the amount provided under this heading for civil war battlefield protection shall be available for transfer to the "National Recreation and Preservation" account.

ADMINISTRATIVE PROVISIONS

Appropriations for the National Park Service shall be available for the purchase of not to exceed 249 passenger motor vehicles, of which 202 shall be for replacement only, including not to exceed 193 for police-type use, 10 buses, and 8 ambulances: *Provided*, That none of the funds appropriated to the National Park Service may be used to process any grant or contract documents which do not include the text of 18 U.S.C. 1913: *Provided further*, That none of the funds appropriated to the National Park Service may be used to implement an agreement for the redevelopment of the southern end of Ellis Island until such agreement has been submitted to the Congress and shall not be implemented prior to the expiration of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) from the receipt by the Speaker of the House of Representatives and the President of the Senate of a full and comprehensive report on the development of the southern end of Ellis Island, including the facts and circumstances relied upon in support of the proposed project: *Provided further*, That appropriations available to the National Park Service may be used to maintain the following areas in Washington, District of Columbia: Jackson Place, Madison Place, and Pennsylvania Avenue between 15th and 17th Streets, Northwest.

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None of the funds in this Act may be spent by the National Park Service for activities taken in direct response to the United Nations Biodiversity Convention.

The National Park Service may distribute to operating units based on the safety record of each unit the costs of programs designed to improve workplace and employee safety, and to encourage employees receiving workers' compensation benefits pursuant to chapter 81 of title 5, United States Code, to return to appropriate positions for which they are medically able.

Notwithstanding any other provision of law, in fiscal year 2005, with respect to the administration of the National Park Service park pass program by the National Park Foundation, the Secretary may pay to the Foundation administrative funds expected to be received in that fiscal year before the revenues are collected, so long as total payments in the administrative account do not exceed total revenue collected and deposited in that account by the end of the fiscal year.

If the Secretary of the Interior considers the decision of any value determination proceeding conducted under a National Park Service concession contract issued prior to November 13, 1998, to misinterpret or misapply relevant contractual requirements or their underlying legal authority, the Secretary may seek, within 180 days of any such decision, the de novo review of the value determination by the United States Court of Federal Claims, and that court may make an order affirming, vacating, modifying or correcting the determination.

In addition to other uses set forth in section 407(d) of Public Law 105–391, franchise fees credited to a sub-account shall be available for expenditure by the Secretary, without further appropriation, for use at any unit within the National Park System to extinguish or reduce liability for Possessory Interest or leasehold surrender interest. Such funds may only be used for this purpose to the extent that the benefiting unit anticipated franchise fee receipts over the term of the contract at that unit exceed the amount of funds used to extinguish or reduce liability. Franchise fees at the benefiting unit shall be credited to the sub-account of the originating unit over a period not to exceed the term of a single contract at the benefiting unit, in the amount of funds so expended to extinguish or reduce liability.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For expenses necessary for the United States Geological Survey to perform surveys, investigations, and research covering topography, geology, hydrology, biology, and the mineral and water resources of the United States, its territories and possessions, and other areas as authorized by 43 U.S.C. 31, 1332, and 1340; classify lands as to their mineral and water resources; give engineering supervision to power permittees and Federal Energy Regulatory Commission licensees; administer the minerals exploration program (30 U.S.C. 641); and publish and disseminate data relative to the foregoing activities; and to conduct inquiries into the economic conditions affecting mining and materials processing industries (30 U.S.C. 3, 21a, and 1603; 50 U.S.C. 98g(1)) and related purposes as authorized by law and to publish and disseminate data; $948,921,000, of which $63,262,000 shall be available only for

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cooperation with States or municipalities for water resources investigations; and of which $7,901,000 shall remain available until expended for satellite operations; and of which $21,971,000 shall be available until September 30, 2006, for the operation and maintenance of facilities and deferred maintenance; and of which $1,600,000 shall be available until expended for deferred maintenance and capital improvement projects that exceed $100,000 in cost; and of which $174,219,000 shall be available until September 30, 2006, for the biological research activity and the operation of the Cooperative Research Units: *Provided*, That none of the funds provided for the biological research activity shall be used to conduct new surveys on private property, unless specifically authorized in writing by the property owner: *Provided further*, That no part of this appropriation shall be used to pay more than one-half the cost of topographic mapping or water resources data collection and investigations carried on in cooperation with States and municipalities.

ADMINISTRATIVE PROVISIONS

The amount appropriated for the United States Geological Survey shall be available for the purchase and replacement of passenger motor vehicles; reimbursement to the General Services Administration for security guard services; contracting for the furnishing of topographic maps and for the making of geophysical or other specialized surveys when it is administratively determined that such procedures are in the public interest; construction and maintenance of necessary buildings and appurtenant facilities; acquisition of lands for gauging stations and observation wells; expenses of the United States National Committee on Geology; and payment of compensation and expenses of persons on the rolls of the Survey duly appointed to represent the United States in the negotiation and administration of interstate compacts: *Provided*, That activities funded by appropriations herein made may be accomplished through the use of contracts, grants, or cooperative agreements as defined in 31 U.S.C. 6302 et seq.: *Provided further*, That the United States Geological Survey may enter into contracts or cooperative agreements directly with individuals or indirectly with institutions or nonprofit organizations, without regard to 41 U.S.C. 5, for the temporary or intermittent services of students or recent graduates, who shall be considered employees for the purpose of chapters 57 and 81 of title 5, United States Code, relating to compensation for travel and work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, but shall not be considered to be Federal employees for any other purposes.

MINERALS MANAGEMENT SERVICE

ROYALTY AND OFFSHORE MINERALS MANAGEMENT

For expenses necessary for minerals leasing and environmental studies, regulation of industry operations, and collection of royalties, as authorized by law; for enforcing laws and regulations applicable to oil, gas, and other minerals leases, permits, licenses and operating contracts; and for matching grants or cooperative agreements; including the purchase of not to exceed eight passenger motor vehicles for replacement only, $169,175,000, of which $76,106,000

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shall be available for royalty management activities; and an amount not to exceed $103,730,000, to be credited to this appropriation and to remain available until expended, from additions to receipts resulting from increases to rates in effect on August 5, 1993, from rate increases to fee collections for Outer Continental Shelf administrative activities performed by the Minerals Management Service (MMS) over and above the rates in effect on September 30, 1993, and from additional fees for Outer Continental Shelf administrative activities established after September 30, 1993: *Provided*, That to the extent $103,730,000 in additions to receipts are not realized from the sources of receipts stated above, the amount needed to reach $103,730,000 shall be credited to this appropriation from receipts resulting from rental rates for Outer Continental Shelf leases in effect before August 5, 1993: *Provided further*, That $3,000,000 for computer acquisitions shall remain available until September 30, 2006: *Provided further*, That funds appropriated under this Act shall be available for the payment of interest in accordance with 30 U.S.C. 1721(b) and (d): *Provided further*, That not to exceed $3,000 shall be available for reasonable expenses related to promoting volunteer beach and marine cleanup activities: *Provided further*, That notwithstanding any other provision of law, $15,000 under this heading shall be available for refunds of overpayments in connection with certain Indian leases in which the Director of MMS concurred with the claimed refund due, to pay amounts owed to Indian allottees or tribes, or to correct prior unrecoverable erroneous payments: *Provided further*, That MMS may under the royalty-in-kind program, or under its authority to transfer oil to the Strategic Petroleum Reserve, use a portion of the revenues from royalty-in-kind sales, without regard to fiscal year limitation, to pay for transportation to wholesale market centers or upstream pooling points, to process or otherwise dispose of royalty production taken in kind, and to recover MMS transportation costs, salaries, and other administrative costs directly related to the royalty-in-kind program: *Provided further*, That MMS shall analyze and document the expected return in advance of any royalty-in-kind sales to assure to the maximum extent practicable that royalty income under the pilot program is equal to or greater than royalty income recognized under a comparable royalty-in-value program: *Provided further,* That in fiscal year 2005 and thereafter, notwithstanding 30 U.S.C. 191(a) and 43 U.S.C. 1338, the Secretary shall pay amounts owed to States under the provision of 30 U.S.C. 1721(b) from amounts received as current receipts from bonuses, royalties, interest collected from lessees and designees, and rentals of the public lands and the outer continental shelf under provisions of the Mineral Leasing Act (30 U.S.C. 181 et seq.), and the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), which are not payable to a State or the Reclamation Fund.

OIL SPILL RESEARCH

For necessary expenses to carry out title I, section 1016, title IV, sections 4202 and 4303, title VII, and title VIII, section 8201 of the Oil Pollution Act of 1990, $7,105,000, which shall be derived from the Oil Spill Liability Trust Fund, to remain available until expended.

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OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

REGULATION AND TECHNOLOGY

For necessary expenses to carry out the provisions of the Surface Mining Control and Reclamation Act of 1977, Public Law 95–87, as amended, including the purchase of not to exceed 10 passenger motor vehicles, for replacement only; $109,805,000: *Provided*, That the Secretary of the Interior, pursuant to regulations, may use directly or through grants to States, moneys collected in fiscal year 2005 for civil penalties assessed under section 518 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268), to reclaim lands adversely affected by coal mining practices after August 3, 1977, to remain available until expended: *Provided further*, That appropriations for the Office of Surface Mining Reclamation and Enforcement may provide for the travel and per diem expenses of State and tribal personnel attending Office of Surface Mining Reclamation and Enforcement sponsored training.

ABANDONED MINE RECLAMATION FUND

For necessary expenses to carry out title IV of the Surface Mining Control and Reclamation Act of 1977, Public Law 95–87, as amended, including the purchase of not more than 10 passenger motor vehicles for replacement only, $190,863,000, to be derived from receipts of the Abandoned Mine Reclamation Fund and to remain available until expended; of which up to $10,000,000, to be derived from the Federal Expenses Share of the Fund, shall be for supplemental grants to States for the reclamation of abandoned sites with acid mine rock drainage from coal mines, and for associated activities, through the Appalachian Clean Streams Initiative: *Provided*, That grants to minimum program States will be $1,500,000 per State in fiscal year 2005: *Provided further*, That pursuant to Public Law 97–365, the Department of the Interior is authorized to use up to 20 percent from the recovery of the delinquent debt owed to the United States Government to pay for contracts to collect these debts: *Provided further*, That funds made available under title IV of Public Law 95–87 may be used for any required non-Federal share of the cost of projects funded by the Federal Government for the purpose of environmental restoration related to treatment or abatement of acid mine drainage from abandoned mines: *Provided further*, That such projects must be consistent with the purposes and priorities of the Surface Mining Control and Reclamation Act: *Provided further*, That the State of Maryland may set aside the greater of $1,000,000 or 10 percent of the total of the grants made available to the State under title IV of the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1231 et seq.), if the amount set aside is deposited in an acid mine drainage abatement and treatment fund established under a State law, pursuant to which law the amount (together with all interest earned on the amount) is expended by the State to undertake acid mine drainage abatement and treatment projects, except that before any amounts greater than 10 percent of its title IV grants are deposited in an acid

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mine drainage abatement and treatment fund, the State of Maryland must first complete all Surface Mining Control and Reclamation Act priority one projects: *Provided further*, That amounts provided under this heading may be used for the travel and per diem expenses of State and tribal personnel attending Office of Surface Mining Reclamation and Enforcement sponsored training.

ADMINISTRATIVE PROVISION

With funds available for the Technical Innovation and Professional Services program in this Act, the Secretary may transfer title for computer hardware, software and other technical equipment to State and Tribal regulatory and reclamation programs.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For expenses necessary for the operation of Indian programs, as authorized by law, including the Snyder Act of November 2, 1921 (25 U.S.C. 13), the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 et seq.), as amended, the Education Amendments of 1978 (25 U.S.C. 2001–2019), and the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.), as amended, $1,955,047,000, to remain available until September 30, 2006 except as otherwise provided herein, of which not to exceed $87,638,000 shall be for welfare assistance payments and notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, not to exceed $136,314,000 shall be available for payments to tribes and tribal organizations for contract support costs associated with ongoing contracts, grants, compacts, or annual funding agreements entered into with the Bureau prior to or during fiscal year 2005, as authorized by such Act, except that tribes and tribal organizations may use their tribal priority allocations for unmet indirect costs of ongoing contracts, grants, or compacts, or annual funding agreements and for unmet welfare assistance costs; and of which not to exceed $456,057,000 for school operations costs of Bureau-funded schools and other education programs shall become available on July 1, 2005, and shall remain available until September 30, 2006; and of which not to exceed $61,801,000 shall remain available until expended for housing improvement, road maintenance, attorney fees, litigation support, the Indian Self-Determination Fund, land records improvement, and the Navajo-Hopi Settlement Program: *Provided*, That notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, and 25 U.S.C. 2008, not to exceed $45,348,000 within and only from such amounts made available for school operations shall be available to tribes and tribal organizations for administrative cost grants associated with ongoing grants entered into with the Bureau prior to or during fiscal year 2004 for the operation of Bureau-funded schools, and up to $1,000,000 within and only from such amounts made available for school operations shall be available for the transitional costs of initial administrative cost grants to tribes and tribal organizations that enter into grants for the operation on or after July 1, 2004, of Bureau-operated schools: *Provided further*, That any forestry funds allocated to a tribe which remain unobligated as of September

30, 2006, may be transferred during fiscal year 2007 to an Indian forest land assistance account established for the benefit of such tribe within the tribe's trust fund account: *Provided further*, That any such unobligated balances not so transferred shall expire on September 30, 2007.

CONSTRUCTION

For construction, repair, improvement, and maintenance of irrigation and power systems, buildings, utilities, and other facilities, including architectural and engineering services by contract; acquisition of lands, and interests in lands; and preparation of lands for farming, and for construction of the Navajo Indian Irrigation Project pursuant to Public Law 87–483, $323,626,000, to remain available until expended: *Provided*, That such amounts as may be available for the construction of the Navajo Indian Irrigation Project may be transferred to the Bureau of Reclamation: *Provided further*, That not to exceed 6 percent of contract authority available to the Bureau of Indian Affairs from the Federal Highway Trust Fund may be used to cover the road program management costs of the Bureau: *Provided further*, That any funds provided for the Safety of Dams program pursuant to 25 U.S.C. 13 shall be made available on a nonreimbursable basis: *Provided further*, That for fiscal year 2005, in implementing new construction or facilities improvement and repair project grants in excess of $100,000 that are provided to tribally controlled grant schools under Public Law 100–297, as amended, the Secretary of the Interior shall use the Administrative and Audit Requirements and Cost Principles for Assistance Programs contained in 43 CFR part 12 as the regulatory requirements: *Provided further*, That such grants shall not be subject to section 12.61 of 43 CFR; the Secretary and the grantee shall negotiate and determine a schedule of payments for the work to be performed: *Provided further*, That in considering applications, the Secretary shall consider whether the Indian tribe or tribal organization would be deficient in assuring that the construction projects conform to applicable building standards and codes and Federal, tribal, or State health and safety standards as required by 25 U.S.C. 2005(b), with respect to organizational and financial management capabilities: *Provided further*, That if the Secretary declines an application, the Secretary shall follow the requirements contained in 25 U.S.C. 2504(f): *Provided further*, That any disputes between the Secretary and any grantee concerning a grant shall be subject to the disputes provision in 25 U.S.C. 2507(e): *Provided further,* That in order to ensure timely completion of replacement school construction projects, the Secretary may assume control of a project and all funds related to the project, if, within eighteen months of the date of enactment of this Act, any tribe or tribal organization receiving funds appropriated in this Act or in any prior Act, has not completed the planning and design phase of the project and commenced construction of the replacement school: *Provided further,* That, of the funds provided for the tribal school demonstration program, notwithstanding the provisions of paragraph (b)(1) of section 122 of division F of Public Law 108–7, as amended by section 136 of Public Law 108–108, $4,500,000 is for the Eastern Band of Cherokee education campus at the Ravensford tract, $4,000,000 is for the Sac and Fox Meskwaki Settlement school, and $4,000,000 is for the Twin Buttes elementary school on the Fort Berthold Reservation: *Provided further,* That

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this Appropriation may be reimbursed from the Office of the Special Trustee for American Indians Appropriation for the appropriate share of construction costs for space expansion needed in agency offices to meet trust reform implementation.

INDIAN LAND AND WATER CLAIM SETTLEMENTS AND MISCELLANEOUS PAYMENTS TO INDIANS

For miscellaneous payments to Indian tribes and individuals and for necessary administrative expenses, $44,771,000, to remain available until expended, for implementation of Indian land and water claim settlements pursuant to Public Laws 99–264, 100–580, 101–618, 106–554, 107–331, and 108–34, and for implementation of other land and water rights settlements, of which $10,032,000 shall be available for payment to the Quinault Indian Nation pursuant to the terms of the North Boundary Settlement Agreement dated July 14, 2000, providing for the acquisition of perpetual conservation easements from the Nation.

INDIAN GUARANTEED LOAN PROGRAM ACCOUNT

For the cost of guaranteed and insured loans, $6,421,000, of which $695,000 is for administrative expenses, as authorized by the Indian Financing Act of 1974, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $84,699,000.

ADMINISTRATIVE PROVISIONS

The Bureau of Indian Affairs may carry out the operation of Indian programs by direct expenditure, contracts, cooperative agreements, compacts and grants, either directly or in cooperation with States and other organizations.

Notwithstanding 25 U.S.C. 15, the Bureau of Indian Affairs may contract for services in support of the management, operation, and maintenance of the Power Division of the San Carlos Irrigation Project.

Appropriations for the Bureau of Indian Affairs (except the revolving fund for loans, the Indian loan guarantee and insurance fund, and the Indian Guaranteed Loan Program account) shall be available for expenses of exhibits, and purchase of not to exceed 229 passenger motor vehicles, of which not to exceed 187 shall be for replacement only.

Notwithstanding any other provision of law, no funds available to the Bureau of Indian Affairs for central office operations or pooled overhead general administration (except facilities operations and maintenance) shall be available for tribal contracts, grants, compacts, or cooperative agreements with the Bureau of Indian Affairs under the provisions of the Indian Self-Determination Act or the Tribal Self-Governance Act of 1994 (Public Law 103–413).

In the event any tribe returns appropriations made available by this Act to the Bureau of Indian Affairs for distribution to other tribes, this action shall not diminish the Federal Government's trust responsibility to that tribe, or the government-to-government

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relationship between the United States and that tribe, or that tribe's ability to access future appropriations.

Notwithstanding any other provision of law, no funds available to the Bureau, other than the amounts provided herein for assistance to public schools under 25 U.S.C. 452 et seq., shall be available to support the operation of any elementary or secondary school in the State of Alaska.

Appropriations made available in this or any other Act for schools funded by the Bureau shall be available only to the schools in the Bureau school system as of September 1, 1996. No funds available to the Bureau shall be used to support expanded grades for any school or dormitory beyond the grade structure in place or approved by the Secretary of the Interior at each school in the Bureau school system as of October 1, 1995. Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school (as that term is defined in section 1146 of the Education Amendments of 1978 (25 U.S.C. 2026)), except that a charter school that is in existence on the date of the enactment of this Act and that has operated at a Bureau-funded school before September 1, 1999, may continue to operate during that period, but only if the charter school pays to the Bureau a pro rata share of funds to reimburse the Bureau for the use of the real and personal property (including buses and vans), the funds of the charter school are kept separate and apart from Bureau funds, and the Bureau does not assume any obligation for charter school programs of the State in which the school is located if the charter school loses such funding. Employees of Bureau-funded schools sharing a campus with a charter school and performing functions related to the charter school's operation and employees of a charter school shall not be treated as Federal employees for purposes of chapter 171 of title 28, United States Code.

Notwithstanding any other provision of law, including section 113 of title I of appendix C of Public Law 106–113, if a tribe or tribal organization in fiscal year 2003 or 2004 received indirect and administrative costs pursuant to a distribution formula based on section 5(f) of Public Law 101–301, the Secretary shall continue to distribute indirect and administrative cost funds to such tribe or tribal organization using the section 5(f) distribution formula.

DEPARTMENTAL OFFICES

INSULAR AFFAIRS

ASSISTANCE TO TERRITORIES

For expenses necessary for assistance to territories under the jurisdiction of the Department of the Interior, $76,255,000, of which: (1) $69,682,000 shall be available until expended for technical assistance, including maintenance assistance, disaster assistance, insular management controls, coral reef initiative activities, and brown tree snake control and research; grants to the judiciary in American Samoa for compensation and expenses, as authorized by law (48 U.S.C. 1661(c)); grants to the Government of American Samoa, in addition to current local revenues, for construction and support of governmental functions; grants to the Government of the Virgin Islands as authorized by law; grants to the Government of Guam, as authorized by law; and grants to the Government

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of the Northern Mariana Islands as authorized by law (Public Law 94–241; 90 Stat. 272); and (2) $6,563,000 shall be available for salaries and expenses of the Office of Insular Affairs: *Provided*, That all financial transactions of the territorial and local governments herein provided for, including such transactions of all agencies or instrumentalities established or used by such governments, may be audited by the Government Accountability Office, at its discretion, in accordance with chapter 35 of title 31, United States Code: *Provided further*, That Northern Mariana Islands Covenant grant funding shall be provided according to those terms of the Agreement of the Special Representatives on Future United States Financial Assistance for the Northern Mariana Islands approved by Public Law 104–134: *Provided further*, That of the amounts provided for technical assistance, sufficient funds shall be made available for a grant to the Pacific Basin Development Council: *Provided further*, That of the amounts provided for technical assistance, sufficient funding shall be made available for a grant to the Close Up Foundation: *Provided further*, That the funds for the program of operations and maintenance improvement are appropriated to institutionalize routine operations and maintenance improvement of capital infrastructure with territorial participation and cost sharing to be determined by the Secretary based on the grantee's commitment to timely maintenance of its capital assets: *Provided further*, That any appropriation for disaster assistance under this heading in this Act or previous appropriations Acts may be used as non-Federal matching funds for the purpose of hazard mitigation grants provided pursuant to section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c).

COMPACT OF FREE ASSOCIATION

For grants and necessary expenses, $5,499,000, as provided for in sections 221(a)(2), 221(b), and 233 of the Compact of Free Association for the Republic of Palau as authorized by Public Law 99–658; Public Law 108–188; and section 221(a)(2) of the Compacts of Free Association and their related agreements between the Government of the United States and the Government of the Republic of the Marshall Islands, and the Government of the United States of the Federated States of Micronesia, respectively, as amended.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for management of the Department of the Interior, $90,855,000, of which not to exceed $8,500 may be for official reception and representation expenses, of which up to $1,000,000 shall be available for workers compensation payments and unemployment compensation payments associated with the orderly closure of the United States Bureau of Mines, and of which $14,250,000 shall remain available until expended for a departmental financial and business management system: *Provided,* That of the funds provided for a departmental financial and business management system, $13,500,000 shall be derived by transfer from

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unobligated balances in the "Central Hazardous Materials Fund": *Provided further*, That none of the funds in this or previous appropriations Acts may be used to establish any additional reserves in the Working Capital Fund account other than the two authorized reserves without prior approval of the House and Senate Committees on Appropriations: *Provided further*, That amounts otherwise appropriated by this Act for motor vehicle lease, purchase or service costs at the Department of the Interior are reduced by $3,000,000 and, not later than 30 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to this proviso.

PAYMENTS IN LIEU OF TAXES

For expenses necessary to implement the Act of October 20, 1976, as amended (31 U.S.C. 6901–6907), $230,000,000, of which not to exceed $400,000 shall be available for administrative expenses: *Provided*, That no payment shall be made to otherwise eligible units of local government if the computed amount of the payment is less than $100.

OFFICE OF THE SOLICITOR

SALARIES AND EXPENSES

For necessary expenses of the Office of the Solicitor, $52,384,000.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General, $37,800,000.

OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS

FEDERAL TRUST PROGRAMS

For the operation of trust programs for Indians by direct expenditure, contracts, cooperative agreements, compacts, and grants, $196,267,000, to remain available until expended, of which not to exceed $58,000,000 shall be available for historical accounting: *Provided*, That funds for trust management improvements and litigation support may, as needed, be transferred to or merged with the Bureau of Indian Affairs, "Operation of Indian Programs" account; the Office of the Solicitor, "Salaries and Expenses" account; and the Departmental Management, "Salaries and Expenses" account: *Provided further*, That funds made available to Tribes and Tribal organizations through contracts or grants obligated during fiscal year 2005, as authorized by the Indian Self-Determination Act of 1975 (25 U.S.C. 450 et seq.), shall remain available until expended by the contractor or grantee: *Provided further*, That, notwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim, including any claim in litigation pending on the date of the enactment of this Act, concerning losses to or mismanagement of trust

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funds, until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss: *Provided further*, That, notwithstanding any other provision of law, the Secretary shall not be required to provide a quarterly statement of performance for any Indian trust account that has not had activity for at least 18 months and has a balance of $1.00 or less: *Provided further*, That the Secretary shall issue an annual account statement and maintain a record of any such accounts and shall permit the balance in each such account to be withdrawn upon the express written request of the account holder: *Provided further*, That, not to exceed $50,000, is available for the Secretary to make payments to correct administrative errors of either disbursements from or deposits to Individual Indian Money or Tribal accounts after September 30, 2002: *Provided further,* That erroneous payments that are recovered shall be credited to and remain available in this account for this purpose.

INDIAN LAND CONSOLIDATION

For consolidation of fractional interests in Indian lands and expenses associated with redetermining and redistributing escheated interests in allotted lands, and for necessary expenses to carry out the Indian Land Consolidation Act of 1983, as amended, by direct expenditure or cooperative agreement, $35,000,000, to remain available until expended, and which may be transferred to the Bureau of Indian Affairs and Departmental Management accounts: *Provided*, That funds provided under this heading may be expended pursuant to the authorities contained in the provisos under the heading "Office of Special Trustee for American Indians, Indian Land Consolidation" of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106–291).

NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION

NATURAL RESOURCE DAMAGE ASSESSMENT FUND

To conduct natural resource damage assessment and restoration activities by the Department of the Interior necessary to carry out the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), the Oil Pollution Act of 1990 (Public Law 101–380) (33 U.S.C. 2701 et seq.), and Public Law 101–337, as amended (16 U.S.C. 19jj et seq.), $5,818,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

There is hereby authorized for acquisition from available resources within the Working Capital Fund, 15 aircraft, 10 of which shall be for replacement and which may be obtained by donation, purchase or through available excess surplus property: *Provided*, That existing aircraft being replaced may be sold, with proceeds derived or trade-in value used to offset the purchase price for the replacement aircraft: *Provided further*, That no programs funded with appropriated funds in the "Departmental Management", "Office of the Solicitor", and "Office of Inspector General" may

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be augmented through the Working Capital Fund: *Provided further*, That the annual budget justification for Departmental Management shall describe estimated Working Capital Fund charges to bureaus and offices, including the methodology on which charges are based: *Provided further*, That departures from the Working Capital Fund estimates contained in the Departmental Management budget justification shall be presented to the Committees on Appropriations for approval: *Provided further*, That the Secretary shall provide a semi-annual report to the Committees on Appropriations on reimbursable support agreements between the Office of the Secretary and the National Business Center and the bureaus and offices of the Department, including the amounts billed pursuant to such agreements.

GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR

SEC. 101. Appropriations made in this title shall be available for expenditure or transfer (within each bureau or office), with the approval of the Secretary, for the emergency reconstruction, replacement, or repair of aircraft, buildings, utilities, or other facilities or equipment damaged or destroyed by fire, flood, storm, or other unavoidable causes: *Provided*, That no funds shall be made available under this authority until funds specifically made available to the Department of the Interior for emergencies shall have been exhausted: *Provided further*, That all funds used pursuant to this section are hereby designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287, and must be replenished by a supplemental appropriation which must be requested as promptly as possible.

SEC. 102. The Secretary may authorize the expenditure or transfer of any no year appropriation in this title, in addition to the amounts included in the budget programs of the several agencies, for the suppression or emergency prevention of wildland fires on or threatening lands under the jurisdiction of the Department of the Interior; for the emergency rehabilitation of burned-over lands under its jurisdiction; for emergency actions related to potential or actual earthquakes, floods, volcanoes, storms, or other unavoidable causes; for contingency planning subsequent to actual oil spills; for response and natural resource damage assessment activities related to actual oil spills; for the prevention, suppression, and control of actual or potential grasshopper and Mormon cricket outbreaks on lands under the jurisdiction of the Secretary, pursuant to the authority in section 1773(b) of Public Law 99–198 (99 Stat. 1658); for emergency reclamation projects under section 410 of Public Law 95–87; and shall transfer, from any no year funds available to the Office of Surface Mining Reclamation and Enforcement, such funds as may be necessary to permit assumption of regulatory authority in the event a primacy State is not carrying out the regulatory provisions of the Surface Mining Act: *Provided*, That appropriations made in this title for wildland fire operations shall be available for the payment of obligations incurred during the preceding fiscal year, and for reimbursement to other Federal agencies for destruction of vehicles, aircraft, or other equipment in connection with their use for wildland fire operations, such reimbursement to be credited to appropriations

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currently available at the time of receipt thereof: *Provided further*, That for wildland fire operations, no funds shall be made available under this authority until the Secretary determines that funds appropriated for "wildland fire operations" shall be exhausted within 30 days: *Provided further*, That all funds used pursuant to this section are hereby designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287, and must be replenished by a supplemental appropriation which must be requested as promptly as possible: *Provided further*, That such replenishment funds shall be used to reimburse, on a pro rata basis, accounts from which emergency funds were transferred.

SEC. 103. Appropriations made to the Department of the Interior shall hereafter be available for operation of warehouses, garages, shops, and similar facilities, wherever consolidation of activities will contribute to efficiency or economy, and said appropriations shall be reimbursed for services rendered to any other activity in the same manner as authorized by sections 1535 and 1536 of title 31, United States Code: *Provided*, That reimbursements for costs and supplies, materials, equipment, and for services rendered may be credited to the appropriation current at the time such reimbursements are received.

SEC. 104. Appropriations made to the Department of the Interior in this title shall be available for services as authorized by 5 U.S.C. 3109, when authorized by the Secretary, in total amount not to exceed $500,000; hire, maintenance, and operation of aircraft; hire of passenger motor vehicles; purchase of reprints; payment for telephone service in private residences in the field, when authorized under regulations approved by the Secretary; and the payment of dues, when authorized by the Secretary, for library membership in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members.

SEC. 105. Appropriations available to the Department of the Interior for salaries and expenses shall hereafter be available for uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901–5902 and D.C. Code 4–204).

SEC. 106. Annual appropriations made to the Department of the Interior shall hereafter be available for obligation in connection with contracts issued for services or rentals for periods not in excess of 12 months beginning at any time during the fiscal year.

SEC. 107. No funds provided in this title may be expended by the Department of the Interior for the conduct of offshore preleasing, leasing and related activities placed under restriction in the President's moratorium statement of June 12, 1998, in the areas of northern, central, and southern California; the North Atlantic; Washington and Oregon; and the eastern Gulf of Mexico south of 26 degrees north latitude and east of 86 degrees west longitude.

SEC. 108. No funds provided in this title may be expended by the Department of the Interior to conduct offshore oil and natural gas preleasing, leasing and related activities in the eastern Gulf of Mexico planning area for any lands located outside Sale 181, as identified in the final Outer Continental Shelf 5-Year Oil and Gas Leasing Program, 1997–2002.

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SEC. 109. No funds provided in this title may be expended by the Department of the Interior to conduct oil and natural gas preleasing, leasing and related activities in the Mid-Atlantic and South Atlantic planning areas.

SEC. 110. Notwithstanding any other provisions of law, the National Park Service shall not develop or implement a reduced entrance fee program to accommodate non-local travel through a unit. The Secretary may provide for and regulate local non-recreational passage through units of the National Park System, allowing each unit to develop guidelines and permits for such activity appropriate to that unit.

SEC. 111. Advance payments made by the Department of the Interior to Indian tribes, tribal organizations, and tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) may hereafter be invested by the Indian tribe, tribal organization, or consortium before such funds are expended for the purposes of the grant, compact, or annual funding agreement so long as such funds are—

(1) invested by the Indian tribe, tribal organization, or consortium only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

SEC. 112. Appropriations made in this Act under the headings Bureau of Indian Affairs and Office of Special Trustee for American Indians and any unobligated balances from prior appropriations Acts made under the same headings shall be available for expenditure or transfer for Indian trust management and reform activities, except that total funding for historical accounting activities shall not exceed amounts specifically designated in this Act for such purpose.

SEC. 113. Notwithstanding any other provision of law, for the purpose of reducing the backlog of Indian probate cases in the Department of the Interior, the hearing requirements of chapter 10 of title 25, United States Code, are deemed satisfied by a proceeding conducted by an Indian probate judge, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing the appointments in the competitive service, for such period of time as the Secretary determines necessary: *Provided*, That the basic pay of an Indian probate judge so appointed may be fixed by the Secretary without regard to the provisions of chapter 51, and subchapter III of chapter 53 of title 5, United States Code, governing the classification and pay of General Schedule employees, except that no such Indian probate judge may be paid at a level which exceeds the maximum rate payable for the highest grade of the General Schedule, including locality pay.

SEC. 114. Notwithstanding any other provision of law, the Secretary of the Interior is authorized to redistribute any Tribal Priority Allocation funds, including tribal base funds, to alleviate tribal funding inequities by transferring funds to address identified,

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unmet needs, dual enrollment, overlapping service areas or inaccurate distribution methodologies. No tribe shall receive a reduction in Tribal Priority Allocation funds of more than 10 percent in fiscal year 2005. Under circumstances of dual enrollment, overlapping service areas or inaccurate distribution methodologies, the 10 percent limitation does not apply.

SEC. 115. Funds appropriated for the Bureau of Indian Affairs for postsecondary schools for fiscal year 2005 shall be allocated among the schools proportionate to the unmet need of the schools as determined by the Postsecondary Funding Formula adopted by the Office of Indian Education Programs.

SEC. 116. (a) The Secretary of the Interior shall hereafter take such action as may be necessary to ensure that the lands comprising the Huron Cemetery in Kansas City, Kansas (as described in section 123 of Public Law 106–291) are used only in accordance with this section.

(b) The lands of the Huron Cemetery shall be used only: (1) for religious and cultural uses that are compatible with the use of the lands as a cemetery; and (2) as a burial ground.

SEC. 117. Notwithstanding any other provision of law, in conveying the Twin Cities Research Center under the authority provided by Public Law 104–134, as amended by Public Law 104–208, the Secretary may accept and retain land and other forms of reimbursement: *Provided*, That the Secretary may retain and use any such reimbursement until expended and without further appropriation: (1) for the benefit of the National Wildlife Refuge System within the State of Minnesota; and (2) for all activities authorized by Public Law 100–696; 16 U.S.C. 460zz.

SEC. 118. Notwithstanding 31 U.S.C. 3302(b), sums received by the Bureau of Land Management for the sale of seeds or seedlings, may hereafter be credited to the appropriation from which funds were expended to acquire or grow the seeds or seedlings and are available without fiscal year limitation.

SEC. 119. The Secretary of the Interior may use or contract for the use of helicopters or motor vehicles on the Sheldon and Hart National Wildlife Refuges for the purpose of capturing and transporting horses and burros. The provisions of subsection (a) of the Act of September 8, 1959 (18 U.S.C. 47(a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary.

SEC. 120. (a) LIMITATION ON INCREASES IN CLAIMS MAINTENANCE AND LOCATION FEES.—The fees established in 30 U.S.C. 28f and 28g shall be equal to the fees in effect immediately prior to the rule of July 1, 2004 (69 Fed. Reg. 40,294) until the Department of the Interior has complied with the obligations established in subsections (b) and (c).

(b) ESTABLISHMENT OF PERMIT TRACKING SYSTEM.—The Department of the Interior shall establish a nationwide tracking system to determine and address the length of time from submission of a plan of operations to mine on public lands to final approval of such submission.

(c) REPORT.—Within 1 year of enactment, the Department shall file a detailed report with the House and Senate Committees on Appropriations and the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate providing detailed information on the length

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of time it takes the Department to approve proposed mining plans of operations and recommending steps to reduce current delays.

SEC. 121. Funds provided in this Act for Federal land acquisition by the National Park Service for Shenandoah Valley Battlefields National Historic District and Ice Age National Scenic Trail may be used for a grant to a State, a local government, or any other land management entity for the acquisition of lands without regard to any restriction on the use of Federal land acquisition funds provided through the Land and Water Conservation Fund Act of 1965 as amended.

SEC. 122. None of the funds made available by this Act may be obligated or expended by the National Park Service to enter into or implement a concession contract which permits or requires the removal of the underground lunchroom at the Carlsbad Caverns National Park.

SEC. 123. None of the funds made available in this Act may be used: (1) to demolish the bridge between Jersey City, New Jersey, and Ellis Island; or (2) to prevent pedestrian use of such bridge, when such pedestrian use is consistent with generally accepted safety standards.

SEC. 124. None of the funds in this or any other Act can be used to compensate the Special Master and the Special Master-Monitor, and all variations thereto, appointed by the United States District Court for the District of Columbia in the Cobell v. Norton litigation at an annual rate that exceeds 200 percent of the highest Senior Executive Service rate of pay for the Washington-Baltimore locality pay area.

SEC. 125. The Secretary of the Interior may use discretionary funds to pay private attorneys fees and costs for employees and former employees of the Department of the Interior reasonably incurred in connection with Cobell v. Norton to the extent that such fees and costs are not paid by the Department of Justice or by private insurance. In no case shall the Secretary make payments under this section that would result in payment of hourly fees in excess of the highest hourly rate approved by the District Court for the District of Columbia for counsel in Cobell v. Norton.

SEC. 126. The United States Fish and Wildlife Service shall, in carrying out its responsibilities to protect threatened and endangered species of salmon, implement a system of mass marking of salmonid stocks, intended for harvest, that are released from Federally operated or Federally financed hatcheries including but not limited to fish releases of coho, chinook, and steelhead species. Marked fish must have a visible mark that can be readily identified by commercial and recreational fishers.

SEC. 127. Such sums as may be necessary from "Departmental Management, Salaries and Expenses", may be transferred to "United States Fish and Wildlife Service, Resource Management" for operational needs at the Midway Atoll National Wildlife Refuge airport.

SEC. 128. (a) IN GENERAL.—Nothing in section 134 of the Department of the Interior and Related Agencies Appropriations Act, 2002 (115 Stat. 443) affects the decision of the United States Court of Appeals for the 10th Circuit in Sac and Fox Nation v. Norton, 240 F.3d 1250 (2001).

(b) USE OF CERTAIN INDIAN LAND.—Nothing in this section permits the conduct of gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) on land described in section 123

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of the Department of the Interior and Related Agencies Appropriations Act, 2001 (114 Stat. 944), or land that is contiguous to that land, regardless of whether the land or contiguous land has been taken into trust by the Secretary of the Interior.

SEC. 129. No funds appropriated for the Department of the Interior by this Act or any other Act shall be used to study or implement any plan to drain Lake Powell or to reduce the water level of the lake below the range of water levels required for the operation of the Glen Canyon Dam.

SEC. 130. Notwithstanding the limitation in subparagraph (2)(B) of section 18(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(a)), the total amount of all fees imposed by the National Indian Gaming Commission for fiscal year 2006 shall not exceed $12,000,000.

SEC. 131. Notwithstanding any implementation of the Department of the Interior's trust reorganization or reengineering plans, or the implementation of the "To Be" Model, funds appropriated for fiscal year 2005 shall be available to the tribes within the California Tribal Trust Reform Consortium and to the Salt River Pima-Maricopa Indian Community, the Confederated Salish and Kootenai Tribes of the Flathead Reservation and the Chippewa Cree Tribe of the Rocky Boys Reservation through the same methodology as funds were distributed in fiscal year 2003. This Demonstration Project shall continue to operate separate and apart from the Department of the Interior's trust reform and reorganization and the Department shall not impose its trust management infrastructure upon or alter the existing trust resource management systems of the above referenced tribes having a self-governance compact and operating in accordance with the Tribal Self-Governance Program set forth in 25 U.S.C. 458aa–458hh: *Provided*, That the California Trust Reform Consortium and any other participating tribe agree to carry out their responsibilities under the same written and implemented fiduciary standards as those being carried by the Secretary of the Interior: *Provided further,* That they demonstrate to the satisfaction of the Secretary that they have the capability to do so: *Provided further,* That the Department shall provide funds to the tribes in an amount equal to that required by 25 U.S.C. 458cc(g)(3), including funds specifically or functionally related to the provision of trust services to the tribes or their members.

SEC. 132. Notwithstanding any provision of law, including 42 U.S.C. 4321 et. seq., nonrenewable grazing permits authorized in the Jarbidge Field Office, Bureau of Land Management within the past 8 years, shall be renewed. The Animal Unit Months contained in the most recently expired nonrenewable grazing permit, authorized between March 1, 1997, and February 28, 2003, shall continue in effect under the renewed permit. Nothing in this section shall be deemed to extend the nonrenewable permits beyond the standard 1-year term.

SEC. 133. Pursuant to section 10101f(d)(3) of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28f(d)(3)), the following claims shall be given notice of defect and the opportunity to cure: AKFF061472, AKFF085155–AKFF085156, AKFF061632–AKFF061633, AKFF061636–AKFF061637, and AKFF084718.

SEC. 134. Section 702(b)(2) of Public Law 107–282 (116 Stat. 2013) is amended by striking "that if the land" and all that follows through "conveyed by the Foundation." and inserting the following:

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"that provides that (except in a case in which the proceeds of a lease are provided to the Foundation to carry out the purposes for which the Foundation was established), if the land described in paragraph (3) is sold, leased, or otherwise conveyed by the Foundation—".

SEC. 135. AMENDMENT OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977. (a) Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking "September 30, 2004" and inserting "June 30, 2005".

(b) Section 125 of Public Law 108–309 is hereby repealed.

SEC. 136. Notwithstanding any other provision of law, the Secretary of the Interior is authorized to acquire lands, waters, or interests therein including the use of all or part of any pier, dock, or landing within the State of New York and the State of New Jersey, for the purpose of operating and maintaining facilities in the support of transportation and accommodation of visitors to Ellis, Governors, and Liberty Islands, and of other program and administrative activities, by donation or with appropriated funds, including franchise fees (and other monetary consideration), or by exchange; and the Secretary is authorized to negotiate and enter into leases, subleases, concession contracts or other agreements for the use of such facilities on such terms and conditions as the Secretary may determine reasonable.

SEC. 137. ERNEST F. HOLLINGS ACE BASIN NATIONAL WILDLIFE REFUGE. (a) REDESIGNATION.—The ACE Basin National Wildlife Refuge in the State of South Carolina shall be known and designated as the "Ernest F. Hollings ACE Basin National Wildlife Refuge".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the refuge referred to in subsection (a) shall be deemed to be a reference to the "Ernest F. Hollings ACE Basin National Wildlife Refuge".

SEC. 138. FINANCIAL ASSISTANCE; FLOOD INSURANCE. The limitations on Federal expenditures or financial assistance in section 5 of the Coastal Barrier Resources Act (16 U.S.C. 3504) and the limitations on flood insurance coverage in section 1321(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4028(a)) shall not apply to lots 15, 16, 25, and 29 within the Jeremy Cay Subdivision on Edisto Island, South Carolina, depicted on the reference map entitled "John H. Chafee Coastal Barrier Resources System Edisto Complex M09/M09P" dated January 24, 2003.

SEC. 139. (a) There is hereby released, without consideration, all right, title, and interest of the United States in and to the surface portion of that portion of the existing building located at 615 North Burnett Road in Tipton, California, which encroaches upon land that, subject to a reversionary interest, was conveyed by the United States pursuant to the Act of July 27, 1866 (14 Stat. 292). The United States retains any subsurface mineral rights held by the United States as of the date of the enactment of this Act associated with that property. The Secretary of the Interior shall execute and file in the appropriate office a deed of release, amended deed, or other appropriate instrument effectuating the release of interests made by this subsection.

(b) Section 314 of the National Parks and Recreation Act of 1978 (Public Law 95–625; 92 Stat. 3480) is amended—

(1) in subsection (c)(2), by striking "Such rights of use and occupancy shall be for not more than twenty-five years

or for a term ending at the death of the owner or his or her spouse, whichever is later."; and

(2) in subsection (d)(2)(B), by inserting "and to their heirs, successors, and assigns" after "those persons who were lessees or permittees of record on the date of enactment of this Act".

(c)(1) The first section of Public Law 99–338 is amended by striking "one renewal" and inserting "3 renewals".

(2) Section 3 of Public Law 99–338 is amended to read as follows:

"SEC. 3. The permit shall contain the following provisions:

"(1) A prohibition on expansion of the Kaweah Project in Sequoia National Park.

"(2) A requirement that an independent safety assessment of the Kaweah Project be conducted, and that any deficiencies identified as a result of the assessment would be corrected.

"(3) A requirement that the Secretary prepare and submit to Congress an update of the July 1983 report on the impact of the operations of the Kaweah No. 3 facility on Sequoia National Park.

"(4) A requirement that the permittee pay the park compensation as determined by the Secretary in consultation with the permittee.

"(5) Any other reasonable terms and conditions that the Secretary of the Interior deems necessary and proper for the management and care of Sequoia National Park and the purposes for which it was established.".

(3) Public Law 99–338 is further amended by adding at the end the following new section:

"SEC. 4. The proceeds from any fees imposed pursuant to a permit issued under this Act shall be retained by Sequoia National Park and Kings Canyon National Park and shall be available, without further appropriation, for resources protection, maintenance, and other park operational needs.".

SEC. 140. (a) SHORT TITLE.—This section may be cited as the "Gaylord A. Nelson Apostle Islands National Lakeshore Wilderness Act".

(b) DEFINITIONS.—In this section:

(1) MAP.—The term "map" means the map entitled "Apostle Islands Lakeshore Wilderness", numbered 633/80,058 and dated September 17, 2004.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) HIGH-WATER MARK.—The term "high-water mark" means the point on the bank or shore up to which the water, by its presence and action or flow, leaves a distinct mark indicated by erosion, destruction of or change in vegetation or other easily recognizable characteristic.

(c) DESIGNATION OF APOSTLE ISLANDS NATIONAL LAKESHORE WILDERNESS.—

(1) DESIGNATION.—Certain lands comprising approximately 33,500 acres within the Apostle Islands National Lakeshore, as generally depicted on the map referred to in subsection (b), are hereby designated as wilderness in accordance with section 3(c) of the Wilderness Act (16 U.S.C. 1132), and therefore as components of the National Wilderness Preservation System.

(2) MAP AND DESCRIPTION.—

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(A) The map referred to in subsection (b) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(B) As soon as practical after enactment of this section, the Secretary shall submit a description of the boundary of the wilderness areas to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the United States House of Representatives.

(C) The map and description shall have the same force and effect as if included in this section, except that the Secretary may correct clerical and typographical errors in the description and maps.

(3) BOUNDARY OF THE WILDERNESS.—Any portion of wilderness designated in paragraph (c)(1) that is bordered by Lake Superior shall use as its boundary the high-water mark.

(4) NAMING.—The wilderness area designated by this section shall be known as the Gaylord A. Nelson National Wilderness.

(d) ADMINISTRATION.—

(1) MANAGEMENT.—Subject to valid existing rights, the lands designated as wilderness by this section shall be administered by the Secretary in accordance with the applicable provisions of the Wilderness Act (16 U.S.C. 1131), except that—

(A) any reference in that Act to the effective date shall be considered to be a reference to the date of enactment of this section; and

(B) where appropriate, any reference to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior with respect to lands administered by the Secretary.

(2) SAVINGS PROVISIONS.—Nothing in this section shall—

(A) modify, alter, or in any way affect any treaty rights;

(B) alter the management of the waters of Lake Superior within the boundary of the Apostle Islands National Lakeshore in existence on the date of enactment of this section; or

(C) be construed to modify, limit, or in any way affect the use of motors on the lake waters, including snowmobiles and the beaching of motorboats adjacent to wilderness areas below the high-water mark, and the maintenance and expansion of any docks existing at the time of the enactment of this section.

SEC. 141. Upon the request of the permittee for the Clark Mountain Allotment lands adjacent to the Mojave National Preserve, the Secretary shall also issue a special use permit for that portion of the grazing allotment located within the Preserve. The special use permit shall be issued with the same terms and conditions as the most recently-issued permit for that allotment and the Secretary shall consider the permit to be one transferred in accordance with section 325 of Public Law 108–108.

SEC. 142. SALE OF WILD FREE-ROAMING HORSES AND BURROS.

(a) IN GENERAL.—Section 3 of Public Law 92–195 (16 U.S.C. 1333) is amended—

(1) in subsection (d)(5), by striking "this section" and all that follows through the period at the end and inserting "this section."; and

(2) by adding at the end the following:

"(e) SALE OF EXCESS ANIMALS.—

"(1) IN GENERAL.—Any excess animal or the remains of an excess animal shall be sold if—

"(A) the excess animal is more than 10 years of age; or

"(B) the excess animal has been offered unsuccessfully for adoption at least 3 times.

"(2) METHOD OF SALE.—An excess animal that meets either of the criteria in paragraph (1) shall be made available for sale without limitation, including through auction to the highest bidder, at local sale yards or other convenient livestock selling facilities, until such time as—

"(A) all excess animals offered for sale are sold; or

"(B) the appropriate management level, as determined by the Secretary, is attained in all areas occupied by wild free-roaming horses and burros.

"(3) DISPOSITION OF FUNDS.—Funds generated from the sale of excess animals under this subsection shall be—

"(A) credited as an offsetting collection to the Management of Lands and Resources appropriation for the Bureau of Land Management; and

"(B) used for the costs relating to the adoption of wild free-roaming horses and burros, including the costs of marketing such adoption.

"(4) EFFECT OF SALE.—Any excess animal sold under this provision shall no longer be considered to be a wild free-roaming horse or burro for purposes of this Act.".

(b) CRIMINAL PROVISIONS.—Section 8(a)(4) of Public Law 92–195 (16 U.S.C. 1338(a)(4)) is amended by inserting "except as provided in section 3(e)," before "processes".

SEC. 143. (a) SHORT TITLE.—This section may be cited as the "Migratory Bird Treaty Reform Act of 2004".

(b) EXCLUSION OF NON-NATIVE SPECIES FROM APPLICATION OF CERTAIN PROHIBITIONS UNDER MIGRATORY BIRD TREATY ACT.—Section 2 of the Migratory Bird Treaty Act (16 U.S.C. 703) is amended—

(1) in the first sentence by striking "That unless and except as permitted" and inserting the following: "(a) IN GENERAL.—Unless and except as permitted"; and

(2) by adding at the end the following:

"(b) LIMITATION ON APPLICATION TO INTRODUCED SPECIES.—

"(1) IN GENERAL.—This Act applies only to migratory bird species that are native to the United States or its territories.

"(2) NATIVE TO THE UNITED STATES DEFINED.—

"(A) IN GENERAL.—Subject to subparagraph (B), in this subsection the term 'native to the United States or its territories' means occurring in the United States or its territories as the result of natural biological or ecological processes.

"(B) TREATMENT OF INTRODUCED SPECIES.—For purposes of paragraph (1), a migratory bird species that occurs in the United States or its territories solely as a result of intentional or unintentional human-assisted introduction shall not be considered native to the United States or its territories unless—

"(i) it was native to the United States or its territories and extant in 1918;

"(ii) it was extirpated after 1918 throughout its range in the United States and its territories; and

"(iii) after such extirpation, it was reintroduced in the United States or its territories as a part of a program carried out by a Federal agency.".

(c) PUBLICATION OF LIST.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Secretary of the Interior shall publish in the Federal Register a list of all nonnative, human-introduced bird species to which the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) does not apply. As necessary, the Secretary may update and publish the list of species exempted from protection of the Migratory Bird Treaty Act.

(2) PUBLIC COMMENT.—Before publishing the list under paragraph (1), the Secretary shall provide adequate time for public comment.

(3) EFFECT OF SECTION.—Nothing in this subsection shall delay implementation of other provisions of this section or amendments made by this section that exclude nonnative, human-introduced bird species from the application of the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

(d) RELATIONSHIP TO TREATIES.—It is the sense of Congress that the language of this section is consistent with the intent and language of the 4 bilateral treaties implemented by this section.

SEC. 144. (a) SHORT TITLE.—This section may be cited as the "Foundation for Nevada's Veterans Land Transfer Act of 2004".

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION, BUREAU OF LAND MANAGEMENT LAND, CLARK COUNTY, NEVADA.—

(1) IN GENERAL.—Administrative jurisdiction over the land described in paragraph (2) is transferred from the Secretary of the Interior to the Secretary of Veterans Affairs.

(2) DESCRIPTION OF LAND.—The parcel of land referred to in paragraph (1) is the approximately 150 acres of Bureau of Land Management land in Clark County, Nevada, as generally depicted on the map entitled "Veterans Administration Conveyance" and dated September 24, 2004.

(3) USE OF LAND.—The parcel of land described in paragraph (2) shall be used by the Secretary of Veterans Affairs for the construction and operation of medical and related facilities, as determined to be appropriate by the Secretary of Veterans Affairs.

SEC. 145. CUMBERLAND ISLAND WILDERNESS BOUNDARY ADJUSTMENT. (a) IN GENERAL.—Public Law 97–250 (96 Stat. 709) is amended by striking section 2 and inserting the following:

"SEC. 2. CUMBERLAND ISLAND WILDERNESS.

"(a) DEFINITIONS.—In this section:

"(1) MAP.—The term 'map' means the map entitled 'Cumberland Island Wilderness', numbered 640/20,038I, and dated September 2004.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(3) WILDERNESS.—The term 'Wilderness' means the Cumberland Island Wilderness established by subsection (b).

"(4) POTENTIAL WILDERNESS.—The term 'Potential Wilderness' means the 10,500 acres of potential wilderness described in subsection (c)(2), but does not include the area at the north

end of Cumberland Island known as the 'High Point Half-Moon Bluff Historic District'.

"(b) ESTABLISHMENT.—

"(1) IN GENERAL.—Approximately 9,886 acres of land in the Cumberland Island National Seashore depicted on the map as 'Wilderness' is designated as a component of the National Wilderness Preservation System and shall be known as the 'Cumberland Island Wilderness'.

"(2) EXCLUSIONS.—The 25-foot wide roadways depicted on the map as the 'Main Road', 'Plum Orchard', and the 'North Cut Road' shall not be included in the Wilderness and shall be maintained by the Secretary for continued vehicle use.

"(c) ADDITIONAL LAND.—In addition to the land designated under subsection (b), the Secretary shall—

"(1) on acquisition of the approximately 231 acres of land identified on the map as 'Areas Become Designated Wilderness upon Acquisition by the NPS'; and

"(2) on publication in the Federal Register of a notice that all uses of the approximately 10,500 acres of land depicted on the map as 'Potential Wilderness' that are prohibited under the Wilderness Act (16 U.S.C. 1131 et seq.) have ceased, adjust the boundary of the Wilderness to include the land.

"(d) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

"(e) ADMINISTRATION.—Subject to valid existing rights, the Wilderness shall be administered by the Secretary, in accordance with the applicable provisions of the Wilderness Act (16 U.S.C. 1131 et seq.) governing areas designated by that Act as wilderness areas, except that—

"(1) any reference in such provisions to the effective date of that Act shall be deemed to be a reference to the effective date of this Act; and

"(2) where appropriate, any reference in that Act to the Secretary of Agriculture shall be deemed to be a reference to the Secretary.

"(f) EFFECT.—Any person with a right to utility service on Cumberland Island on the date of enactment of this subsection shall continue to have the right to utility service in the Wilderness after the date of enactment of this subsection.

"(g) MANAGEMENT PLAN FOR ACCESS TO MAIN ROAD AND NORTH CUT ROAD.—Not later than 1 year after the date of the enactment of the Cumberland Island Wilderness Boundary Adjustment Act of 2004, the Secretary shall complete a management plan to ensure that not more than 8 and not less than 5 round trips are made available daily on the Main Road north of the Plum Orchard Spur and the North Cut Road by the National Park Service or a concessionaire for the purpose of transporting visitors to and from the historic sites located adjacent to Wilderness.".

(b) TOURS OF CUMBERLAND ISLAND NATIONAL SEASHORE.—Section 6 of Public Law 92–536 (86 Stat. 1066) is amended—

(1) in subsection (b), by inserting ", except as provided in subsection (c)," before "no development of the project"; and

(2) by adding at the end the following:

"(c) TOURS OF THE SEASHORE.—Notwithstanding subsection (b), the Secretary may enter into not more than 3 concession contracts,

as the Secretary determines appropriate, for the provision of tours for visitors to the seashore that are consistent with—

"(1) this Act;

"(2) the Wilderness Act (16 U.S.C. 1131 et seq.); and

"(3) Public Law 97–250 (96 Stat. 709).".

(c) SHORT TITLE.—This section may be cited as the "Cumberland Island Wilderness Boundary Adjustment Act of 2004".

SEC. 146. Notwithstanding any other provision of law, the National Park Service final winter use rules published in Part VII of the Federal Register for November 10, 2004, 69 Fed. Reg. 65348 et seq., shall be in force and effect for the winter use season of 2004–2005 that commences on or about December 15, 2004.

TITLE II—RELATED AGENCIES

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

FOREST AND RANGELAND RESEARCH

For necessary expenses of forest and rangeland research as authorized by law, $280,278,000, to remain available until expended: *Provided,* That of the funds provided, $56,714,000 is for the forest inventory and analysis program.

STATE AND PRIVATE FORESTRY

For necessary expenses of cooperating with and providing technical and financial assistance to States, territories, possessions, and others, and for forest health management, including treatments of pests, pathogens, and invasive or noxious plants and for restoring and rehabilitating forests damaged by pests or invasive plants, cooperative forestry, and education and land conservation activities and conducting an international program as authorized, $296,626,000, to remain available until expended, as authorized by law of which $57,939,000 is to be derived from the Land and Water Conservation Fund: *Provided,* That none of the funds provided under this heading for the acquisition of lands or interests in lands shall be available until the Forest Service notifies the House Committee on Appropriations and the Senate Committee on Appropriations, in writing, of specific contractual and grant details including the non-Federal cost share: *Provided further,* That notwithstanding any other provision of law, of the funds provided under this heading, $2,000,000 shall be made available to Kake Tribal Corporation as an advance direct lump sum payment to implement the Kake Tribal Corporation Land Transfer Act (Public Law 106–283), and $1,500,000 shall be made available to Canton, North Carolina, as an advance direct lump sum payment for wood products wastewater treatment repairs.

NATIONAL FOREST SYSTEM

For necessary expenses of the Forest Service, not otherwise provided for, for management, protection, improvement, and utilization of the National Forest System, $1,400,260,000, to remain available until expended, which shall include 50 percent of all moneys received during prior fiscal years as fees collected under the Land

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and Water Conservation Fund Act of 1965, as amended, in accordance with section 4 of the Act (16 U.S.C. 460l–6a(i)): *Provided,* That unobligated balances under this heading available at the start of fiscal year 2005 shall be displayed by budget line item in the fiscal year 2006 budget justification: *Provided further,* That, through fiscal year 2009, the Secretary may authorize the expenditure or transfer of such sums as necessary to the Department of the Interior, Bureau of Land Management, for removal, preparation, and adoption of excess wild horses and burros from National Forest System lands, and for the performance of cadastral surveys to designate the boundaries of such lands: *Provided further,* That of the funds provided under this heading for Forest Products, $5,000,000 shall be allocated to the Alaska Region, in addition to its normal allocation for the purposes of preparing additional timber for sale, to establish a 3-year timber supply and such funds may be transferred to other appropriations accounts as necessary to maximize accomplishment: *Provided further,* That within funds available for the purpose of implementing the Valles Caldera Preservation Act, notwithstanding the limitations of section 107(e)(2) of the Valles Caldera Preservation Act (Public Law 106–248), for fiscal year 2005, the Chair of the Board of Trustees of the Valles Caldera Trust may receive, upon request, compensation for each day (including travel time) that the Chair is engaged in the performance of the functions of the Board, except that compensation shall not exceed the daily equivalent of the annual rate in effect for members of the Senior Executive Service at the ES–1 level, and shall be in addition to any reimbursement for travel, subsistence and other necessary expenses incurred by the Chair in the performance of the Chair's duties.

WILDLAND FIRE MANAGEMENT

For necessary expenses for forest fire presuppression activities on National Forest System lands, for emergency fire suppression on or adjacent to such lands or other lands under fire protection agreement, hazardous fuels reduction on or adjacent to such lands, and for emergency rehabilitation of burned-over National Forest System lands and water, $1,727,008,000, to remain available until expended: *Provided,* That such funds including unobligated balances under this heading, are available for repayment of advances from other appropriations accounts previously transferred for such purposes: *Provided further,* That such funds shall be available to reimburse State and other cooperating entities for services provided in response to wildfire and other emergencies or disasters to the extent such reimbursements by the Forest Service for non-fire emergencies are fully repaid by the responsible emergency management agency: *Provided further,* That not less than 50 percent of any unobligated balances remaining (exclusive of amounts for hazardous fuels reduction) at the end of fiscal year 2004 shall be transferred, as repayment for past advances that have not been repaid, to the fund established pursuant to section 3 of Public Law 71–319 (16 U.S.C. 576 et seq.): *Provided further*, That, notwithstanding any other provision of law, $8,000,000 of funds appropriated under this appropriation shall be used for Fire Science Research in support of the Joint Fire Science Program: *Provided further,* That all authorities for the use of funds, including the use of contracts, grants, and cooperative agreements, available to execute the Forest

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and Rangeland Research appropriation, are also available in the utilization of these funds for Fire Science Research: *Provided further,* That funds provided shall be available for emergency rehabilitation and restoration, hazardous fuels reduction activities in the urban-wildland interface, support to Federal emergency response, and wildfire suppression activities of the Forest Service: *Provided further,* That of the funds provided, $266,238,000 is for hazardous fuels reduction activities, $13,000,000 is for rehabilitation and restoration, $22,025,000 is for research activities and to make competitive research grants pursuant to the Forest and Rangeland Renewable Resources Research Act, as amended (16 U.S.C. 1641 et seq.), $40,745,000 is for State fire assistance, $8,000,000 is for volunteer fire assistance, $15,000,000 is for forest health activities on Federal lands and $10,000,000 is for forest health activities on State and private lands: *Provided further,* That amounts in this paragraph may be transferred to the "State and Private Forestry", "National Forest System", and "Forest and Rangeland Research" accounts to fund State fire assistance, volunteer fire assistance, forest health management, forest and rangeland research, vegetation and watershed management, heritage site rehabilitation, and wildlife and fish habitat management and restoration: *Provided further,* That transfers of any amounts in excess of those authorized in this paragraph, shall require approval of the House and Senate Committees on Appropriations in compliance with reprogramming procedures contained in House Report 108–330: *Provided further,* That the costs of implementing any cooperative agreement between the Federal Government and any non-Federal entity may be shared, as mutually agreed on by the affected parties: *Provided further,* That in addition to funds provided for State Fire Assistance programs, and subject to all authorities available to the Forest Service under the State and Private Forestry Appropriations, up to $15,000,000 may be used on adjacent non-Federal lands for the purpose of protecting communities when hazard reduction activities are planned on national forest lands that have the potential to place such communities at risk: *Provided further,* That included in funding for hazardous fuel reduction is $5,000,000 for implementing the Community Forest Restoration Act, Public Law 106–393, title VI, and any portion of such funds shall be available for use on non-Federal lands in accordance with authorities available to the Forest Service under the State and Private Forestry Appropriation: *Provided further,* That the Secretary of the Interior and the Secretary of Agriculture may authorize the transfer of funds appropriated for wildland fire management, in an aggregate amount not to exceed $12,000,000, between the Departments when such transfers would facilitate and expedite jointly funded wildland fire management programs and projects: *Provided further,* That of the funds provided for hazardous fuels reduction, not to exceed $5,000,000, may be used to make grants, using any authorities available to the Forest Service under the State and Private Forestry appropriation, for the purpose of creating incentives for increased use of biomass from national forest lands.

CAPITAL IMPROVEMENT AND MAINTENANCE

For necessary expenses of the Forest Service, not otherwise provided for, $521,952,000, to remain available until expended for construction, reconstruction, maintenance and acquisition of buildings and other facilities, and for construction, reconstruction,

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repair, decommissioning, and maintenance of forest roads and trails by the Forest Service as authorized by 16 U.S.C. 532–538 and 23 U.S.C. 101 and 205: *Provided,* That up to $15,000,000 of the funds provided herein for road maintenance shall be available for the decommissioning of roads, including unauthorized roads not part of the transportation system, which are no longer needed: *Provided further,* That no funds shall be expended to decommission any system road until notice and an opportunity for public comment has been provided on each decommissioning project: *Provided further,* That subject to all the authorities available to the Forest Service under the State and Private Forestry appropriation, up to $1,000,000 may be used on non-Federal lands adjacent to the Chugach National Forest for the purpose of expanding recreational opportunities.

LAND ACQUISITION

For expenses necessary to carry out the provisions of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–4 through 11), including administrative expenses, and for acquisition of land or waters, or interest therein, in accordance with statutory authority applicable to the Forest Service, $61,866,000, to be derived from the Land and Water Conservation Fund and to remain available until expended.

ACQUISITION OF LANDS FOR NATIONAL FORESTS SPECIAL ACTS

For acquisition of lands within the exterior boundaries of the Cache, Uinta, and Wasatch National Forests, Utah; the Toiyabe National Forest, Nevada; and the Angeles, San Bernardino, Sequoia, and Cleveland National Forests, California, as authorized by law, $1,069,000, to be derived from forest receipts.

ACQUISITION OF LANDS TO COMPLETE LAND EXCHANGES

For acquisition of lands, such sums, to be derived from funds deposited by State, county, or municipal governments, public school districts, or other public school authorities, and for authorized expenditures from funds deposited by non-Federal parties pursuant to Land Sale and Exchange Acts, pursuant to the Act of December 4, 1967, as amended (16 U.S.C. 484a), to remain available until expended.

RANGE BETTERMENT FUND

For necessary expenses of range rehabilitation, protection, and improvement, 50 percent of all moneys received during the prior fiscal year, as fees for grazing domestic livestock on lands in National Forests in the 16 Western States, pursuant to section 401(b)(1) of Public Law 94–579, as amended, to remain available until expended, of which not to exceed 6 percent shall be available for administrative expenses associated with on-the-ground range rehabilitation, protection, and improvements.

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GIFTS, DONATIONS AND BEQUESTS FOR FOREST AND RANGELAND RESEARCH

For expenses authorized by 16 U.S.C. 1643(b), $65,000, to remain available until expended, to be derived from the fund established pursuant to the above Act.

MANAGEMENT OF NATIONAL FOREST LANDS FOR SUBSISTENCE USES

For necessary expenses of the Forest Service to manage Federal lands in Alaska for subsistence uses under title VIII of the Alaska National Interest Lands Conservation Act (Public Law 96–487), $5,962,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS, FOREST SERVICE

Appropriations to the Forest Service for the current fiscal year shall be available for: (1) purchase of not to exceed 124 passenger motor vehicles of which 21 will be used primarily for law enforcement purposes and of which 124 shall be for replacement; acquisition of 25 passenger motor vehicles from excess sources, and hire of such vehicles; purchase, lease, operation, maintenance, and acquisition of aircraft from excess sources to maintain the operable fleet at 195 aircraft for use in Forest Service wildland fire programs and other Forest Service programs; notwithstanding other provisions of law, existing aircraft being replaced may be sold, with proceeds derived or trade-in value used to offset the purchase price for the replacement aircraft; (2) services pursuant to 7 U.S.C. 2225, and not to exceed $100,000 for employment under 5 U.S.C. 3109; (3) purchase, erection, and alteration of buildings and other public improvements (7 U.S.C. 2250); (4) acquisition of land, waters, and interests therein pursuant to 7 U.S.C. 428a; (5) for expenses pursuant to the Volunteers in the National Forest Act of 1972 (16 U.S.C. 558a, 558d, and 558a note); (6) the cost of uniforms as authorized by 5 U.S.C. 5901–5902; and (7) for debt collection contracts in accordance with 31 U.S.C. 3718(c).

None of the funds made available under this Act shall be obligated or expended to abolish any region, to move or close any regional office for National Forest System administration of the Forest Service, Department of Agriculture without the consent of the House and Senate Committees on Appropriations.

Any appropriations or funds available to the Forest Service may be transferred to the Wildland Fire Management appropriation for forest firefighting, emergency rehabilitation of burned-over or damaged lands or waters under its jurisdiction, and fire preparedness due to severe burning conditions upon notification of the House and Senate Committees on Appropriations and if and only if all previously appropriated emergency contingent funds under the heading "Wildland Fire Management" have been released by the President and apportioned and all wildfire suppression funds under the heading "Wildland Fire Management" are obligated.

The first transfer of funds into the Wildland Fire Management account shall include unobligated funds, if available, from the Land Acquisition account and the Forest Legacy program within the State and Private Forestry account.

Funds appropriated to the Forest Service shall be available for assistance to or through the Agency for International Development and the Foreign Agricultural Service in connection with forest

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and rangeland research, technical information, and assistance in foreign countries, and shall be available to support forestry and related natural resource activities outside the United States and its territories and possessions, including technical assistance, education and training, and cooperation with United States and international organizations.

None of the funds made available to the Forest Service under this Act shall be subject to transfer under the provisions of section 702(b) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2257) or 7 U.S.C. 147b.

Not less than $20,000,000 of funds under section 8002 of the Farm Security and Rural Investment Act of 2002 is hereby canceled.

None of the funds available to the Forest Service may be reprogrammed without the advance approval of the House and Senate Committees on Appropriations in accordance with the reprogramming procedures contained in House Report 108–330.

Not more than $72,467,000 of the funds available to the Forest Service shall be transferred to the Working Capital Fund of the Department of Agriculture.

Funds available to the Forest Service shall be available to conduct a program of not less than $2,000,000 for high priority projects within the scope of the approved budget which shall be carried out by the Youth Conservation Corps.

Of the funds available to the Forest Service, $2,500 is available to the Chief of the Forest Service for official reception and representation expenses.

Pursuant to sections 405(b) and 410(b) of Public Law 101–593, of the funds available to the Forest Service, $3,300,000 may be advanced in a lump sum to the National Forest Foundation to aid conservation partnership projects in support of the Forest Service mission, without regard to when the Foundation incurs expenses, for administrative expenses or projects on or benefitting National Forest System lands or related to Forest Service programs: *Provided,* That of the Federal funds made available to the Foundation, $300,000 may be used for Forest Service Centennial activities and, of the total available to the Foundation, no more than $350,000 shall be available for administrative expenses: *Provided further,* That the Foundation shall obtain, by the end of the period of Federal financial assistance, private contributions to match on at least one-for-one basis funds made available by the Forest Service: *Provided further,* That the Foundation may transfer Federal funds to a non-Federal recipient for a project at the same rate that the recipient has obtained the non-Federal matching funds: *Provided further,* That authorized investments of Federal funds held by the Foundation may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

Pursuant to section 2(b)(2) of Public Law 98–244, $2,650,000 of the funds available to the Forest Service shall be available for matching funds to the National Fish and Wildlife Foundation, as authorized by 16 U.S.C. 3701–3709, and may be advanced in a lump sum to aid conservation partnership projects in support of the Forest Service mission, without regard to when expenses are incurred, for projects on or benefitting National Forest System lands or related to Forest Service programs: *Provided,* That the Foundation shall obtain, by the end of the period of Federal financial assistance, private contributions to match on at least one-for-one

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basis funds advanced by the Forest Service: *Provided further,* That the Foundation may transfer Federal funds to a non-Federal recipient for a project at the same rate that the recipient has obtained the non-Federal matching funds.

Funds appropriated to the Forest Service shall be available for interactions with and providing technical assistance to rural communities for sustainable rural development purposes.

Funds appropriated to the Forest Service shall be available for payments to counties within the Columbia River Gorge National Scenic Area, pursuant to sections 14(c)(1) and (2), and section 16(a)(2) of Public Law 99–663.

Notwithstanding any other provision of law, any appropriations or funds available to the Forest Service not to exceed $500,000 may be used to reimburse the Office of the General Counsel (OGC), Department of Agriculture, for travel and related expenses incurred as a result of OGC assistance or participation requested by the Forest Service at meetings, training sessions, management reviews, land purchase negotiations and similar non-litigation related matters. Future budget justifications for both the Forest Service and the Department of Agriculture should clearly display the sums previously transferred and the requested funding transfers.

Any appropriations or funds available to the Forest Service may be used for necessary expenses in the event of law enforcement emergencies as necessary to protect natural resources and public or employee safety: *Provided,* That such amounts shall not exceed $1,000,000.

For fiscal years 2005 and 2006, the Secretary of Agriculture may authorize the sale of excess buildings, facilities, and other properties owned by the Forest Service and located on the Green Mountain National Forest, the revenues of which shall be retained by the Forest Service and available to the Secretary without further appropriation and until expended for maintenance and rehabilitation activities on the Green Mountain National Forest.

For each fiscal year through 2009, the Secretary of Agriculture may transfer or reimburse funds available to the Forest Service, not to exceed $15,000,000, to the Secretary of the Interior or the Secretary of Commerce to expedite conferencing and consultations as required under section 7 of the Endangered Species Act, 16 U.S.C. 1536. The amount of the transfer or reimbursement shall be as mutually agreed by the Secretary of Agriculture and the Secretary of the Interior or Secretary of Commerce, as applicable, or their designees. The amount shall in no case exceed the actual costs of consultation and conferencing.

Beginning on June 30, 2001 and concluding on December 31, 2005, an eligible individual who is employed in any project funded under title V of the Older American Act of 1965 (42 U.S.C. 3056 et seq.) and administered by the Forest Service shall be considered to be a Federal employee for purposes of chapter 171 of title 28, United States Code.

Any funds appropriated to the Forest Service may be used to meet the non-Federal share requirement in section 502(c) of the Older American Act of 1965 (42 U.S.C. 3056(c)(2)).

Funds available to the Forest Service in this Act may be used for the purpose of expenses associated with primary and secondary schooling for dependents of agency personnel stationed in Puerto Rico prior to the date of enactment of this Act, who are subject to transfer and reassignment to other locations in the United States,

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at a cost not in excess of those authorized for the Department of Defense for the same area, when it is determined by the Chief of the Forest Service that public schools available in the locality are unable to provide adequately for the education of such dependents.

For fiscal years 2005 and 2006, the Secretary of Agriculture may authorize the sale of excess buildings, facilities, and other properties owned by the Forest Service and located on the Wasatch-Cache National Forest, the revenues of which shall be retained by the Forest Service and available to the Secretary without further appropriation and until expended for acquisition and construction of administrative sites on the Wasatch-Cache National Forest.

DEPARTMENT OF ENERGY

CLEAN COAL TECHNOLOGY

(DEFERRAL)

Of the funds made available under this heading for obligation in prior years, $257,000,000 shall not be available until October 1, 2005: *Provided,* That funds made available in previous appropriations Acts shall be available for any ongoing project regardless of the separate request for proposal under which the project was selected.

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

For necessary expenses in carrying out fossil energy research and development activities, under the authority of the Department of Energy Organization Act (Public Law 95–91), including the acquisition of interest, including defeasible and equitable interests in any real property or any facility or for plant or facility acquisition or expansion, and for conducting inquiries, technological investigations and research concerning the extraction, processing, use, and disposal of mineral substances without objectionable social and environmental costs (30 U.S.C. 3, 1602, and 1603), $579,911,000, to remain available until expended, of which $4,000,000 is to continue a multi-year project for construction, renovation, furnishing, and demolition or removal of buildings at National Energy Technology Laboratory facilities in Morgantown, West Virginia and Pittsburgh, Pennsylvania: *Provided,* That of the amounts provided, $18,000,000 is to continue a multi-year project coordinated with the private sector for FutureGen, without regard to the terms and conditions applicable to clean coal technology projects: *Provided further,* That the initial planning and research stages of the FutureGen project shall include a matching requirement from non-Federal sources of at least 20 percent of the costs: *Provided further,* That any demonstration component of such project shall require a matching requirement from non-Federal sources of at least 50 percent of the costs of the component: *Provided further,* That of the amounts provided, $50,000,000 is available, after coordination with the private sector, for a request for proposals for a Clean Coal Power Initiative providing for competitively-awarded research, development, and demonstration projects to reduce the barriers to continued and expanded coal use: *Provided further,* That no project may be selected for which sufficient funding is not available to provide for the total project: *Provided further,* That funds shall

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be expended in accordance with the provisions governing the use of funds contained under the heading "Clean Coal Technology" in 42 U.S.C. 5903d: *Provided further,* That the Department may include provisions for repayment of Government contributions to individual projects in an amount up to the Government contribution to the project on terms and conditions that are acceptable to the Department including repayments from sale and licensing of technologies from both domestic and foreign transactions: *Provided further,* That such repayments shall be retained by the Department for future coal-related research, development and demonstration projects: *Provided further,* That any technology selected under this program shall be considered a Clean Coal Technology, and any project selected under this program shall be considered a Clean Coal Technology Project, for the purposes of 42 U.S.C. 7651n, and chapters 51, 52, and 60 of title 40 of the Code of Federal Regulations: *Provided further,* That funds shall be expended in accordance with the provisions governing the use of funds contained under the heading "Clean Coal Technology" in prior appropriations: *Provided further,* That no part of the sum herein made available shall be used for the field testing of nuclear explosives in the recovery of oil and gas: *Provided further,* That up to 4 percent of program direction funds available to the National Energy Technology Laboratory may be used to support Department of Energy activities not included in this account.

NAVAL PETROLEUM AND OIL SHALE RESERVES

For expenses necessary to carry out naval petroleum and oil shale reserve activities, $18,000,000, to remain available until expended: *Provided,* That, notwithstanding any other provision of law, unobligated funds remaining from prior years shall be available for all naval petroleum and oil shale reserve activities.

ELK HILLS SCHOOL LANDS FUND

For necessary expenses in fulfilling installment payments under the Settlement Agreement entered into by the United States and the State of California on October 11, 1996, as authorized by section 3415 of Public Law 104–106, $36,000,000, to become available on October 1, 2005 for payment to the State of California for the State Teachers' Retirement Fund from the Elk Hills School Lands Fund.

ENERGY CONSERVATION

For necessary expenses in carrying out energy conservation activities, $649,092,000, to remain available until expended: *Provided*, That $44,798,000 is for State energy program grants pursuant to 42 U.S.C. 6323, notwithstanding section 3003(d)(2) of Public Law 99–509.

STRATEGIC PETROLEUM RESERVE

For necessary expenses for Strategic Petroleum Reserve facility development and operations and program management activities pursuant to the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6201 et seq.), $172,100,000, to remain available until expended.

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NORTHEAST HOME HEATING OIL RESERVE

For necessary expenses for Northeast Home Heating Oil Reserve storage, operations, and management activities pursuant to the Energy Policy and Conservation Act of 2000, $5,000,000, to remain available until expended.

ENERGY INFORMATION ADMINISTRATION

For necessary expenses in carrying out the activities of the Energy Information Administration, $85,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS, DEPARTMENT OF ENERGY

Appropriations under this Act for the current fiscal year shall be available for hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase, repair, and cleaning of uniforms; and reimbursement to the General Services Administration for security guard services.

From appropriations under this Act, transfers of sums may be made to other agencies of the Government for the performance of work for which the appropriation is made.

None of the funds made available to the Department of Energy under this Act shall be used to implement or finance authorized price support or loan guarantee programs unless specific provision is made for such programs in an appropriations Act.

The Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, private or foreign: *Provided,* That revenues and other moneys received by or for the account of the Department of Energy or otherwise generated by sale of products in connection with projects of the Department appropriated under this Act may be retained by the Secretary of Energy, to be available until expended, and used only for plant construction, operation, costs, and payments to cost-sharing entities as provided in appropriate cost-sharing contracts or agreements: *Provided further,* That the remainder of revenues after the making of such payments shall be covered, into the Treasury as miscellaneous receipts: *Provided further,* That any contract, agreement, or provision thereof entered into by the Secretary pursuant to this authority shall not be executed prior to the expiration of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) from the receipt by the Speaker of the House of Representatives and the President of the Senate of a full comprehensive report on such project, including the facts and circumstances relied upon in support of the proposed project.

No funds provided in this Act may be expended by the Department of Energy to prepare, issue, or process procurement documents for programs or projects for which appropriations have not been made.

In addition to other authorities set forth in this Act, the Secretary may accept fees and contributions from public and private sources, to be deposited in a contributed funds account, and prosecute projects using such fees and contributions in cooperation with other Federal, State or private agencies or concerns.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

For expenses necessary to carry out the Act of August 5, 1954 (68 Stat. 674), the Indian Self-Determination Act, the Indian Health Care Improvement Act, and titles II and III of the Public Health Service Act with respect to the Indian Health Service, $2,633,072,000, together with payments received during the fiscal year pursuant to 42 U.S.C. 238(b) for services furnished by the Indian Health Service: *Provided,* That funds made available to tribes and tribal organizations through contracts, grant agreements, or any other agreements or compacts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450), shall be deemed to be obligated at the time of the grant or contract award and thereafter shall remain available to the tribe or tribal organization without fiscal year limitation: *Provided further,* That up to $18,000,000 shall remain available until expended, for the Indian Catastrophic Health Emergency Fund: *Provided further,* That $487,085,000 for contract medical care shall remain available for obligation until September 30, 2006: *Provided further,* That of the funds provided, up to $27,000,000 to remain available until expended, shall be used to carry out the loan repayment program under section 108 of the Indian Health Care Improvement Act: *Provided further,* That funds provided in this Act may be used for one-year contracts and grants which are to be performed in two fiscal years, so long as the total obligation is recorded in the year for which the funds are appropriated: *Provided further,* That the amounts collected by the Secretary of Health and Human Services under the authority of title IV of the Indian Health Care Improvement Act shall remain available until expended for the purpose of achieving compliance with the applicable conditions and requirements of titles XVIII and XIX of the Social Security Act (exclusive of planning, design, or construction of new facilities): *Provided further,* That funding contained herein, and in any earlier appropriations Acts for scholarship programs under the Indian Health Care Improvement Act (25 U.S.C. 1613) shall remain available until expended: *Provided further,* That amounts received by tribes and tribal organizations under title IV of the Indian Health Care Improvement Act shall be reported and accounted for and available to the receiving tribes and tribal organizations until expended: *Provided further,* That, notwithstanding any other provision of law, of the amounts provided herein, not to exceed $267,398,000 shall be for payments to tribes and tribal organizations for contract or grant support costs associated with contracts, grants, self-governance compacts or annual funding agreements between the Indian Health Service and a tribe or tribal organization pursuant to the Indian Self-Determination Act of 1975, as amended, prior to or during fiscal year 2005, of which not to exceed $2,500,000 may be used for contract support costs associated with new or expanded self-determination contracts, grants, self-governance compacts or annual funding agreements: *Provided further,* That funds available for the Indian Health Care Improvement Fund may be used, as needed, to carry out activities typically funded under the Indian Health Facilities account: *Provided further,* That of the amounts provided to the Indian Health Service, $15,000,000

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is provided for alcohol control, enforcement, prevention, treatment, sobriety and wellness, and education in Alaska: *Provided further,* That none of the funds may be used for tribal courts or tribal ordinance programs or any program that is not directly related to alcohol control, enforcement, prevention, treatment, or sobriety: *Provided further,* That no more than 15 percent may be used by any entity receiving funding for administrative overhead including indirect costs.

INDIAN HEALTH FACILITIES

For construction, repair, maintenance, improvement, and equipment of health and related auxiliary facilities, including quarters for personnel; preparation of plans, specifications, and drawings; acquisition of sites, purchase and erection of modular buildings, and purchases of trailers; and for provision of domestic and community sanitation facilities for Indians, as authorized by section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the Indian Self-Determination Act, and the Indian Health Care Improvement Act, and for expenses necessary to carry out such Acts and titles II and III of the Public Health Service Act with respect to environmental health and facilities support activities of the Indian Health Service, $394,048,000, to remain available until expended: *Provided,* That notwithstanding any other provision of law, funds appropriated for the planning, design, construction or renovation of health facilities for the benefit of an Indian tribe or tribes may be used to purchase land for sites to construct, improve, or enlarge health or related facilities: *Provided further,* That not to exceed $500,000 shall be used by the Indian Health Service to purchase TRANSAM equipment from the Department of Defense for distribution to the Indian Health Service and tribal facilities: *Provided further,* That none of the funds appropriated to the Indian Health Service may be used for sanitation facilities construction for new homes funded with grants by the housing programs of the United States Department of Housing and Urban Development: *Provided further,* That not to exceed $1,000,000 from this account and the "Indian Health Services" account shall be used by the Indian Health Service to obtain ambulances for the Indian Health Service and tribal facilities in conjunction with an existing interagency agreement between the Indian Health Service and the General Services Administration: *Provided further,* That notwithstanding any other provision of law, funds appropriated for the planning, design, and construction of the replacement health care facility in Barrow, Alaska, may be used to purchase land up to approximately 8 hectares for a site upon which to construct the new health care facility: *Provided further,* That not to exceed $500,000 shall be placed in a Demolition Fund, available until expended, to be used by the Indian Health Service for demolition of Federal buildings: *Provided further*, That up to $2,700,000 from unobligated balances may be used for the purchase of land at two sites for the construction of the northern and southern California Youth Regional Treatment Centers subject to advance approval from the House and Senate Committees on Appropriations.

ADMINISTRATIVE PROVISIONS, INDIAN HEALTH SERVICE

Appropriations in this Act to the Indian Health Service shall be available for services as authorized by 5 U.S.C. 3109 but at

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rates not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376; hire of passenger motor vehicles and aircraft; purchase of medical equipment; purchase of reprints; purchase, renovation and erection of modular buildings and renovation of existing facilities; payments for telephone service in private residences in the field, when authorized under regulations approved by the Secretary; and for uniforms or allowances therefor as authorized by 5 U.S.C. 5901–5902; and for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of those functions or activities.

In accordance with the provisions of the Indian Health Care Improvement Act, non-Indian patients may be extended health care at all tribally administered or Indian Health Service facilities, subject to charges, and the proceeds along with funds recovered under the Federal Medical Care Recovery Act (42 U.S.C. 2651–2653) shall be credited to the account of the facility providing the service and shall be available without fiscal year limitation. Notwithstanding any other law or regulation, funds transferred from the Department of Housing and Urban Development to the Indian Health Service shall be administered under Public Law 86–121 (the Indian Sanitation Facilities Act) and Public Law 93–638, as amended.

Funds appropriated to the Indian Health Service in this Act, except those used for administrative and program direction purposes, shall not be subject to limitations directed at curtailing Federal travel and transportation.

None of the funds made available to the Indian Health Service in this Act shall be used for any assessments or charges by the Department of Health and Human Services unless identified in the budget justification and provided in this Act, or approved by the House and Senate Committees on Appropriations through the reprogramming process. Personnel ceilings may not be imposed on the Indian Health Service nor may any action be taken to reduce the full time equivalent level of the Indian Health Service below the level in fiscal year 2002 adjusted upward for the staffing of new and expanded facilities, funding provided for staffing at the Lawton, Oklahoma hospital in fiscal years 2003 and 2004, critical positions not filled in fiscal year 2002, and staffing necessary to carry out the intent of Congress with regard to program increases.

Notwithstanding any other provision of law, funds previously or herein made available to a tribe or tribal organization through a contract, grant, or agreement authorized by title I or title V of the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450), may be deobligated and reobligated to a self-determination contract under title I, or a self-governance agreement under title V of such Act and thereafter shall remain available to the tribe or tribal organization without fiscal year limitation.

None of the funds made available to the Indian Health Service in this Act shall be used to implement the final rule published in the Federal Register on September 16, 1987, by the Department of Health and Human Services, relating to the eligibility for the health care services of the Indian Health Service until the Indian Health Service has submitted a budget request reflecting the increased costs associated with the proposed final rule, and such

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request has been included in an appropriations Act and enacted into law.

With respect to functions transferred by the Indian Health Service to tribes or tribal organizations, the Indian Health Service is authorized to provide goods and services to those entities, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received therefrom, along with the funds received from those entities pursuant to the Indian Self-Determination Act, may be credited to the same or subsequent appropriation account which provided the funding. Such amounts shall remain available until expended.

Reimbursements for training, technical assistance, or services provided by the Indian Health Service will contain total costs, including direct, administrative, and overhead associated with the provision of goods, services, or technical assistance.

The Indian Health Service may purchase 8.5 acres of land for expansion of parking facilities at the W.W. Hastings hospital in Tahlequah, Oklahoma using third party collections subject to advance approval from the House and Senate Committees on Appropriations.

Notwithstanding any other provision of law, the Tulsa and Oklahoma City Clinic demonstration projects shall be permanent programs under the direct care program of the Indian Health Service; shall be treated as service units and operating units in the allocation of resources and coordination of care; shall continue to meet the requirements applicable to an Urban Indian organization under this title; and shall not be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

The appropriation structure for the Indian Health Service may not be altered without advance approval of the House and Senate Committees on Appropriations.

OTHER RELATED AGENCIES

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

SALARIES AND EXPENSES

For necessary expenses of the Office of Navajo and Hopi Indian Relocation as authorized by Public Law 93–531, $5,000,000, to remain available until expended: *Provided,* That funds provided in this or any other appropriations Act are to be used to relocate eligible individuals and groups including evictees from District 6, Hopi-partitioned lands residents, those in significantly substandard housing, and all others certified as eligible and not included in the preceding categories: *Provided further,* That none of the funds contained in this or any other Act may be used by the Office of Navajo and Hopi Indian Relocation to evict any single Navajo or Navajo family who, as of November 30, 1985, was physically domiciled on the lands partitioned to the Hopi Tribe unless a new or replacement home is provided for such household: *Provided further,* That no relocatee will be provided with more than one new or replacement home: *Provided further,* That the Office shall relocate any certified eligible relocatees who have selected and received an approved homesite on the Navajo reservation or selected a replacement residence off the Navajo reservation or on the land acquired pursuant to 25 U.S.C. 640d–10.

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INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

PAYMENT TO THE INSTITUTE

For payment to the Institute of American Indian and Alaska Native Culture and Arts Development, as authorized by title XV of Public Law 99–498, as amended (20 U.S.C. 56 part A), $6,000,000, of which up to $1,000,000 may remain available until expended to assist with the Institute's efforts to develop a Continuing Education Lifelong Learning Center.

SMITHSONIAN INSTITUTION

SALARIES AND EXPENSES

For necessary expenses of the Smithsonian Institution, as authorized by law, including research in the fields of art, science, and history; development, preservation, and documentation of the National Collections; presentation of public exhibits and performances; collection, preparation, dissemination, and exchange of information and publications; conduct of education, training, and museum assistance programs; maintenance, alteration, operation, lease (for terms not to exceed 30 years), and protection of buildings, facilities, and approaches; not to exceed $100,000 for services as authorized by 5 U.S.C. 3109; up to five replacement passenger vehicles; purchase, rental, repair, and cleaning of uniforms for employees, $495,925,000, of which not to exceed $10,108,000 for the instrumentation program, collections acquisition, exhibition reinstallation, the National Museum of African American History and Culture, and the repatriation of skeletal remains program shall remain available until expended; and of which $1,620,000 for fellowships and scholarly awards shall remain available until September 30, 2006; and including such funds as may be necessary to support American overseas research centers and a total of $125,000 for the Council of American Overseas Research Centers: *Provided,* That funds appropriated herein are available for advance payments to independent contractors performing research services or participating in official Smithsonian presentations: *Provided further,* That the Smithsonian Institution may expend Federal appropriations designated in this Act for lease or rent payments for long term and swing space, as rent payable to the Smithsonian Institution, and such rent payments may be deposited into the general trust funds of the Institution to the extent that federally supported activities are housed in the 900 H Street, N.W. building in the District of Columbia: *Provided further,* That this use of Federal appropriations shall not be construed as debt service, a Federal guarantee of, a transfer of risk to, or an obligation of, the Federal Government: *Provided further,* That no appropriated funds may be used to service debt which is incurred to finance the costs of acquiring the 900 H Street building or of planning, designing, and constructing improvements to such building.

FACILITIES CAPITAL

For necessary expenses of repair, revitalization, and alteration of facilities owned or occupied by the Smithsonian Institution, by contract or otherwise, as authorized by section 2 of the Act of

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August 22, 1949 (63 Stat. 623), and for construction, including necessary personnel, $127,900,000, to remain available until expended, of which not to exceed $10,000 is for services as authorized by 5 U.S.C. 3109: *Provided,* That contracts awarded for environmental systems, protection systems, and repair or restoration of facilities of the Smithsonian Institution may be negotiated with selected contractors and awarded on the basis of contractor qualifications as well as price.

ADMINISTRATIVE PROVISIONS, SMITHSONIAN INSTITUTION

None of the funds in this or any other Act may be used to make any changes to the existing Smithsonian science programs including closure of facilities, relocation of staff or redirection of functions and programs without the advance approval of the House and Senate Committees on Appropriations.

None of the funds in this or any other Act may be used to initiate the design for any proposed expansion of current space or new facility without consultation with the House and Senate Appropriations Committees.

None of the funds in this or any other Act may be used for the Holt House located at the National Zoological Park in Washington, D.C., unless identified as repairs to minimize water damage, monitor structure movement, or provide interim structural support.

None of the funds available to the Smithsonian may be reprogrammed without the advance written approval of the House and Senate Committees on Appropriations in accordance with the reprogramming procedures contained in the statement of the managers accompanying this Act.

None of the funds in this or any other Act may be used to purchase any additional buildings without prior consultation with the House and Senate Committees on Appropriations.

NATIONAL GALLERY OF ART

SALARIES AND EXPENSES

For the upkeep and operations of the National Gallery of Art, the protection and care of the works of art therein, and administrative expenses incident thereto, as authorized by the Act of March 24, 1937 (50 Stat. 51), as amended by the public resolution of April 13, 1939 (Public Resolution 9, Seventy-sixth Congress), including services as authorized by 5 U.S.C. 3109; payment in advance when authorized by the treasurer of the Gallery for membership in library, museum, and art associations or societies whose publications or services are available to members only, or to members at a price lower than to the general public; purchase, repair, and cleaning of uniforms for guards, and uniforms, or allowances therefor, for other employees as authorized by law (5 U.S.C. 5901–5902); purchase or rental of devices and services for protecting buildings and contents thereof, and maintenance, alteration, improvement, and repair of buildings, approaches, and grounds; and purchase of services for restoration and repair of works of art for the National Gallery of Art by contracts made, without advertising, with individuals, firms, or organizations at such rates or prices and under such terms and conditions as the Gallery may deem proper, $93,000,000, of which not to exceed $3,026,000

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for the special exhibition program shall remain available until expended.

REPAIR, RESTORATION AND RENOVATION OF BUILDINGS

For necessary expenses of repair, restoration and renovation of buildings, grounds and facilities owned or occupied by the National Gallery of Art, by contract or otherwise, as authorized, $11,100,000, to remain available until expended: *Provided,* That contracts awarded for environmental systems, protection systems, and exterior repair or renovation of buildings of the National Gallery of Art may be negotiated with selected contractors and awarded on the basis of contractor qualifications as well as price.

JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

OPERATIONS AND MAINTENANCE

For necessary expenses for the operation, maintenance and security of the John F. Kennedy Center for the Performing Arts, $17,152,000.

CONSTRUCTION

For necessary expenses for capital repair and restoration of the existing features of the building and site of the John F. Kennedy Center for the Performing Arts, $16,334,000, to remain available until expended.

WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

SALARIES AND EXPENSES

For expenses necessary in carrying out the provisions of the Woodrow Wilson Memorial Act of 1968 (82 Stat. 1356) including hire of passenger vehicles and services as authorized by 5 U.S.C. 3109, $8,987,000.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

NATIONAL ENDOWMENT FOR THE ARTS

GRANTS AND ADMINISTRATION

For necessary expenses to carry out the National Foundation on the Arts and the Humanities Act of 1965, as amended, $122,972,000, shall be available to the National Endowment for the Arts for the support of projects and productions in the arts through assistance to organizations and individuals pursuant to sections 5(c) and 5(g) of the Act, including $21,729,000 for support of arts education and public outreach activities through the Challenge America program, for program support, and for administering the functions of the Act, to remain available until expended: *Provided,* That funds previously appropriated to the National Endowment for the Arts "Matching Grants" account and "Challenge America" account may be transferred to and merged with this account.

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NATIONAL ENDOWMENT FOR THE HUMANITIES

GRANTS AND ADMINISTRATION

For necessary expenses to carry out the National Foundation on the Arts and the Humanities Act of 1965, as amended, $123,877,000, shall be available to the National Endowment for the Humanities for support of activities in the humanities, pursuant to section 7(c) of the Act, and for administering the functions of the Act, to remain available until expended.

MATCHING GRANTS

To carry out the provisions of section 10(a)(2) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, $16,122,000, to remain available until expended, of which $10,436,000 shall be available to the National Endowment for the Humanities for the purposes of section 7(h): *Provided,* That this appropriation shall be available for obligation only in such amounts as may be equal to the total amounts of gifts, bequests, and devises of money, and other property accepted by the chairman or by grantees of the Endowment under the provisions of subsections 11(a)(2)(B) and 11(a)(3)(B) during the current and preceding fiscal years for which equal amounts have not previously been appropriated.

ADMINISTRATIVE PROVISIONS

None of the funds appropriated to the National Foundation on the Arts and the Humanities may be used to process any grant or contract documents which do not include the text of 18 U.S.C. 1913: *Provided,* That none of the funds appropriated to the National Foundation on the Arts and the Humanities may be used for official reception and representation expenses: *Provided further,* That funds from nonappropriated sources may be used as necessary for official reception and representation expenses: *Provided further,* That the Chairperson of the National Endowment for the Arts may approve grants up to $10,000, if in the aggregate this amount does not exceed 5 percent of the sums appropriated for grant-making purposes per year: *Provided further,* That such small grant actions are taken pursuant to the terms of an expressed and direct delegation of authority from the National Council on the Arts to the Chairperson.

COMMISSION OF FINE ARTS

SALARIES AND EXPENSES

For expenses made necessary by the Act establishing a Commission of Fine Arts (40 U.S.C. 104), $1,793,000: *Provided,* That the Commission is authorized to charge fees to cover the full costs of its publications, and such fees shall be credited to this account as an offsetting collection, to remain available until expended without further appropriation.

NATIONAL CAPITAL ARTS AND CULTURAL AFFAIRS

For necessary expenses as authorized by Public Law 99–190 (20 U.S.C. 956(a)), as amended, $7,000,000.

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ADVISORY COUNCIL ON HISTORIC PRESERVATION

SALARIES AND EXPENSES

For necessary expenses of the Advisory Council on Historic Preservation (Public Law 89–665, as amended), $4,600,000: *Provided,* That none of these funds shall be available for compensation of level V of the Executive Schedule or higher positions.

NATIONAL CAPITAL PLANNING COMMISSION

SALARIES AND EXPENSES

For necessary expenses, as authorized by the National Capital Planning Act of 1952 (40 U.S.C. 71–71i), including services as authorized by 5 U.S.C. 3109, $8,000,000: *Provided,* That one-quarter of 1 percent of the funds provided under this heading may be used for official reception and representational expenses to host international visitors engaged in the planning and physical development of world capitals.

UNITED STATES HOLOCAUST MEMORIAL MUSEUM

HOLOCAUST MEMORIAL MUSEUM

For expenses of the Holocaust Memorial Museum, as authorized by Public Law 106–292 (36 U.S.C. 2301–2310), $41,433,000, of which $1,900,000 for the museum's repair and rehabilitation program and $1,264,000 for the museum's exhibitions program shall remain available until expended.

PRESIDIO TRUST

PRESIDIO TRUST FUND

For necessary expenses to carry out title I of the Omnibus Parks and Public Lands Management Act of 1996, $20,000,000 shall be available to the Presidio Trust, to remain available until expended.

TITLE III—GENERAL PROVISIONS

SEC. 301. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 302. No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete.

SEC. 303. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 304. None of the funds provided in this Act to any department or agency shall be obligated or expended to provide a personal

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cook, chauffeur, or other personal servants to any officer or employee of such department or agency except as otherwise provided by law.

SEC. 305. No assessments may be levied against any program, budget activity, subactivity, or project funded by this Act unless notice of such assessments and the basis therefor are presented to the Committees on Appropriations and are approved by such committees.

SEC. 306. None of the funds in this Act may be used to plan, prepare, or offer for sale timber from trees classified as giant sequoia (Sequoiadendron giganteum) which are located on National Forest System or Bureau of Land Management lands in a manner different than such sales were conducted in fiscal year 2004.

SEC. 307. (a) LIMITATION OF FUNDS.—None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to accept or process applications for a patent for any mining or mill site claim located under the general mining laws.

(b) EXCEPTIONS.—The provisions of subsection (a) shall not apply if the Secretary of the Interior determines that, for the claim concerned: (1) a patent application was filed with the Secretary on or before September 30, 1994; and (2) all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims and sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) for placer claims, and section 2337 of the Revised Statutes (30 U.S.C. 42) for mill site claims, as the case may be, were fully complied with by the applicant by that date.

(c) REPORT.—On September 30, 2005, the Secretary of the Interior shall file with the House and Senate Committees on Appropriations and the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on actions taken by the Department under the plan submitted pursuant to section 314(c) of the Department of the Interior and Related Agencies Appropriations Act, 1997 (Public Law 104–208).

(d) MINERAL EXAMINATIONS.—In order to process patent applications in a timely and responsible manner, upon the request of a patent applicant, the Secretary of the Interior shall allow the applicant to fund a qualified third-party contractor to be selected by the Bureau of Land Management to conduct a mineral examination of the mining claims or mill sites contained in a patent application as set forth in subsection (b). The Bureau of Land Management shall have the sole responsibility to choose and pay the third-party contractor in accordance with the standard procedures employed by the Bureau of Land Management in the retention of third-party contractors.

SEC. 308. Notwithstanding any other provision of law, amounts appropriated to or earmarked in committee reports for the Bureau of Indian Affairs and the Indian Health Service by Public Laws 103–138, 103–332, 104–134, 104–208, 105–83, 105–277, 106–113, 106–291, 107–63, 108–7, and 108–108 for payments to tribes and tribal organizations for contract support costs associated with self-determination or self-governance contracts, grants, compacts, or annual funding agreements with the Bureau of Indian Affairs or the Indian Health Service as funded by such Acts, are the total amounts available for fiscal years 1994 through 2004 for such

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purposes, except that, for the Bureau of Indian Affairs, tribes and tribal organizations may use their tribal priority allocations for unmet indirect costs of ongoing contracts, grants, self-governance compacts or annual funding agreements.

SEC. 309. Of the funds provided to the National Endowment for the Arts:

(1) The Chairperson shall only award a grant to an individual if such grant is awarded to such individual for a literature fellowship, National Heritage Fellowship, or American Jazz Masters Fellowship.

(2) The Chairperson shall establish procedures to ensure that no funding provided through a grant, except a grant made to a State or local arts agency, or regional group, may be used to make a grant to any other organization or individual to conduct activity independent of the direct grant recipient. Nothing in this subsection shall prohibit payments made in exchange for goods and services.

(3) No grant shall be used for seasonal support to a group, unless the application is specific to the contents of the season, including identified programs and/or projects.

SEC. 310. The National Endowment for the Arts and the National Endowment for the Humanities are authorized to solicit, accept, receive, and invest in the name of the United States, gifts, bequests, or devises of money and other property or services and to use such in furtherance of the functions of the National Endowment for the Arts and the National Endowment for the Humanities. Any proceeds from such gifts, bequests, or devises, after acceptance by the National Endowment for the Arts or the National Endowment for the Humanities, shall be paid by the donor or the representative of the donor to the Chairman. The Chairman shall enter the proceeds in a special interest-bearing account to the credit of the appropriate endowment for the purposes specified in each case.

SEC. 311. (a) In providing services or awarding financial assistance under the National Foundation on the Arts and the Humanities Act of 1965 from funds appropriated under this Act, the Chairperson of the National Endowment for the Arts shall ensure that priority is given to providing services or awarding financial assistance for projects, productions, workshops, or programs that serve underserved populations.

(b) In this section:

(1) The term "underserved population" means a population of individuals, including urban minorities, who have historically been outside the purview of arts and humanities programs due to factors such as a high incidence of income below the poverty line or to geographic isolation.

(2) The term "poverty line" means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

(c) In providing services and awarding financial assistance under the National Foundation on the Arts and Humanities Act of 1965 with funds appropriated by this Act, the Chairperson of the National Endowment for the Arts shall ensure that priority is given to providing services or awarding financial assistance for projects, productions, workshops, or programs that will encourage

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public knowledge, education, understanding, and appreciation of the arts.

(d) With funds appropriated by this Act to carry out section 5 of the National Foundation on the Arts and Humanities Act of 1965—

(1) the Chairperson shall establish a grant category for projects, productions, workshops, or programs that are of national impact or availability or are able to tour several States;

(2) the Chairperson shall not make grants exceeding 15 percent, in the aggregate, of such funds to any single State, excluding grants made under the authority of paragraph (1);

(3) the Chairperson shall report to the Congress annually and by State, on grants awarded by the Chairperson in each grant category under section 5 of such Act; and

(4) the Chairperson shall encourage the use of grants to improve and support community-based music performance and education.

SEC. 312. No part of any appropriation contained in this Act shall be expended or obligated to complete and issue the 5-year program under the Forest and Rangeland Renewable Resources Planning Act.

SEC. 313. None of the funds in this Act may be used to support Government-wide administrative functions unless such functions are justified in the budget process and funding is approved by the House and Senate Committees on Appropriations.

SEC. 314. Notwithstanding any other provision of law, for fiscal year 2005 the Secretaries of Agriculture and the Interior are authorized to limit competition for watershed restoration project contracts as part of the "Jobs in the Woods" Program established in Region 10 of the Forest Service to individuals and entities in historically timber-dependent areas in the States of Washington, Oregon, northern California, Idaho, Montana, and Alaska that have been affected by reduced timber harvesting on Federal lands. The Secretaries shall consider the benefits to the local economy in evaluating bids and designing procurements which create economic opportunities for local contractors.

SEC. 315. Amounts deposited during fiscal year 2004 in the roads and trails fund provided for in the 14th paragraph under the heading "FOREST SERVICE" of the Act of March 4, 1913 (37 Stat. 843; 16 U.S.C. 501), shall be used by the Secretary of Agriculture, without regard to the State in which the amounts were derived, to repair or reconstruct roads, bridges, and trails on National Forest System lands or to carry out and administer projects to improve forest health conditions, which may include the repair or reconstruction of roads, bridges, and trails on National Forest System lands in the wildland-community interface where there is an abnormally high risk of fire. The projects shall emphasize reducing risks to human safety and public health and property and enhancing ecological functions, long-term forest productivity, and biological integrity. The projects may be completed in a subsequent fiscal year. Funds shall not be expended under this section to replace funds which would otherwise appropriately be expended from the timber salvage sale fund. Nothing in this section shall be construed to exempt any project from any environmental law.

SEC. 316. Other than in emergency situations, none of the funds in this Act may be used to operate telephone answering machines during core business hours unless such answering

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machines include an option that enables callers to reach promptly an individual on-duty with the agency being contacted.

SEC. 317. No timber sale in Region 10 shall be advertised if the indicated rate is deficit when appraised using a residual value approach that assigns domestic Alaska values for western redcedar. Program accomplishments shall be based on volume sold. Should Region 10 sell, in the current fiscal year, the annual average portion of the decadal allowable sale quantity called for in the current Tongass Land Management Plan in sales which are not deficit when appraised using a residual value approach that assigns domestic Alaska values for western redcedar, all of the western redcedar timber from those sales which is surplus to the needs of domestic processors in Alaska, shall be made available to domestic processors in the contiguous 48 United States at prevailing domestic prices. Should Region 10 sell, in the current fiscal year, less than the annual average portion of the decadal allowable sale quantity called for in the Tongass Land Management Plan in sales which are not deficit when appraised using a residual value approach that assigns domestic Alaska values for western redcedar, the volume of western redcedar timber available to domestic processors at prevailing domestic prices in the contiguous 48 United States shall be that volume: (1) which is surplus to the needs of domestic processors in Alaska; and (2) is that percent of the surplus western redcedar volume determined by calculating the ratio of the total timber volume which has been sold on the Tongass to the annual average portion of the decadal allowable sale quantity called for in the current Tongass Land Management Plan. The percentage shall be calculated by Region 10 on a rolling basis as each sale is sold (for purposes of this amendment, a "rolling basis" shall mean that the determination of how much western redcedar is eligible for sale to various markets shall be made at the time each sale is awarded). Western redcedar shall be deemed "surplus to the needs of domestic processors in Alaska" when the timber sale holder has presented to the Forest Service documentation of the inability to sell western redcedar logs from a given sale to domestic Alaska processors at a price equal to or greater than the log selling value stated in the contract. All additional western redcedar volume not sold to Alaska or contiguous 48 United States domestic processors may be exported to foreign markets at the election of the timber sale holder. All Alaska yellow cedar may be sold at prevailing export prices at the election of the timber sale holder.

SEC. 318. Section 3 of the Act of June 9, 1930 (commonly known as the Knutson-Vandenberg Act; 16 U.S.C. 576b), is amended—

(1) by striking "The Secretary of Agriculture may, when in his" and inserting "(a) The Secretary of Agriculture may, when in his or her";

"(b) Amounts deposited under subsection (a)";

(2) by striking "may direct:" and all that follows through "That the Secretary of Agriculture" and inserting "may direct. The Secretary of Agriculture"; and

(3) by adding at the end the following new subsection:

"(c) Any portion of the balance at the end of a fiscal year in the special fund established pursuant to this section that the Secretary of Agriculture determines to be in excess of the cost of doing work described in subsection (a) (as well as any portion

of the balance in the special fund that the Secretary determined, before October 1, 2004, to be excess of the cost of doing work described in subsection (a), but which has not been transferred by that date) shall be transferred to miscellaneous receipts, National Forest Fund, as a National Forest receipt, but only if the Secretary also determines that—

"(1) the excess amounts will not be needed for emergency wildfire suppression during the fiscal year in which the transfer would be made; and

"(2) the amount to be transferred to miscellaneous receipts, National Forest Fund, exceeds the outstanding balance of unreimbursed funds transferred from the special fund in prior fiscal years for wildfire suppression.".

SEC. 319. A project undertaken by the Forest Service under the Recreation Fee Demonstration Program as authorized by section 315 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996, as amended, shall not result in—

(1) displacement of the holder of an authorization to provide commercial recreation services on Federal lands. Prior to initiating any project, the Secretary shall consult with potentially affected holders to determine what impacts the project may have on the holders. Any modifications to the authorization shall be made within the terms and conditions of the authorization and authorities of the impacted agency; and

(2) the return of a commercial recreation service to the Secretary for operation when such services have been provided in the past by a private sector provider, except when—

(A) the private sector provider fails to bid on such opportunities;

(B) the private sector provider terminates its relationship with the agency; or

(C) the agency revokes the permit for non-compliance with the terms and conditions of the authorization.

In such cases, the agency may use the Recreation Fee Demonstration Program to provide for operations until a subsequent operator can be found through the offering of a new prospectus.

SEC. 320. Prior to October 1, 2005, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1600 et seq.) or any other law: *Provided,* That if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise a plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis.

SEC. 321. No funds provided in this Act may be expended to conduct preleasing, leasing and related activities under either the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) within the boundaries of a National Monument established pursuant to the Act of June 8, 1906 (16 U.S.C. 431 et seq.) as such boundary existed on January 20, 2001, except where such activities are

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allowed under the Presidential proclamation establishing such monument.

SEC. 322. EXTENSION OF FOREST SERVICE CONVEYANCES PILOT PROGRAM.—Section 329 of the Department of the Interior and Related Agencies Appropriations Act, 2002 (16 U.S.C. 580d note; Public Law 107–63) is amended—

(1) in subsection (b), by striking "30" and inserting "40";

(2) in subsection (c) by striking "8" and inserting "13"; and

(3) in subsection (d), by striking "2007" and inserting "2008".

SEC. 323. Section 3(c) of the Harriet Tubman Special Resource Study Act (Public Law 106–516; 114 Stat. 2405) is amended by striking "section 8 of section 8" and inserting "section 8.".

SEC. 324. In entering into agreements with foreign countries pursuant to the Wildfire Suppression Assistance Act (42 U.S.C. 1856m) the Secretary of Agriculture and the Secretary of the Interior are authorized to enter into reciprocal agreements in which the individuals furnished under said agreements to provide wildfire services are considered, for purposes of tort liability, employees of the country receiving said services when the individuals are engaged in fire suppression: *Provided*, That the Secretary of Agriculture or the Secretary of the Interior shall not enter into any agreement under this provision unless the foreign country (either directly or through its fire organization) agrees to assume any and all liability for the acts or omissions of American firefighters engaged in firefighting in a foreign country: *Provided further*, That when an agreement is reached for furnishing fire fighting services, the only remedies for acts or omissions committed while fighting fires shall be those provided under the laws of the host country, and those remedies shall be the exclusive remedies for any claim arising out of fighting fires in a foreign country: *Provided further*, That neither the sending country nor any legal organization associated with the firefighter shall be subject to any legal action whatsoever pertaining to or arising out of the firefighter's role in fire suppression.

SEC. 325. Notwithstanding any other provision of law or regulation, to promote the more efficient use of the health care funding allocation for fiscal year 2005, the Eagle Butte Service Unit of the Indian Health Service, at the request of the Cheyenne River Sioux Tribe, may pay base salary rates to health professionals up to the highest grade and step available to a physician, pharmacist, or other health professional and may pay a recruitment or retention bonus of up to 25 percent above the base pay rate.

SEC. 326. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

SEC. 327. None of the funds in this Act may be used to prepare or issue a permit or lease for oil or gas drilling in the Finger Lakes National Forest, New York, during fiscal year 2005.

SEC. 328. In awarding a Federal contract with funds made available by this Act, the Secretary of Agriculture and the Secretary of the Interior (the "Secretaries") may, in evaluating bids and proposals, give consideration to local contractors who are from,

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and who provide employment and training for, dislocated and displaced workers in an economically disadvantaged rural community, including those historically timber-dependent areas that have been affected by reduced timber harvesting on Federal lands and other forest-dependent rural communities isolated from significant alternative employment opportunities: *Provided*, That notwithstanding Federal Government procurement and contracting laws the Secretaries may award contracts, grants or cooperative agreements to local non-profit entities, Youth Conservation Corps or related partnerships with State, local or non-profit youth groups, or small or disadvantaged business: *Provided further*, That the contract, grant, or cooperative agreement is for forest hazardous fuels reduction, watershed or water quality monitoring or restoration, wildlife or fish population monitoring, or habitat restoration or management: *Provided further*, That the terms "rural community" and "economically disadvantaged" shall have the same meanings as in section 2374 of Public Law 101–624: *Provided further*, That the Secretaries shall develop guidance to implement this section: *Provided further*, That nothing in this section shall be construed as relieving the Secretaries of any duty under applicable procurement laws, except as provided in this section.

SEC. 329. No funds appropriated in this Act for the acquisition of lands or interests in lands may be expended for the filing of declarations of taking or complaints in condemnation without the approval of the House and Senate Committees on Appropriations: *Provided*, That this provision shall not apply to funds appropriated to implement the Everglades National Park Protection and Expansion Act of 1989, or to funds appropriated for Federal assistance to the State of Florida to acquire lands for Everglades restoration purposes.

SEC. 330. Section 338 of Public Law 108–108 is amended by striking "2003" and inserting "2004".

SEC. 331. Section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 110 Stat. 1321–200; 16 U.S.C. 460l–6a note), is amended—

(1) in subsection (b), by inserting "subject to subsection (g) but" before "notwithstanding" in the matter preceding paragraph (1); and

(2) by adding at the end the following new subsection:

"(g) The Secretary of Agriculture may not charge or collect fees under this section for the following:

"(1) Admission to a unit of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

"(2) The use either singly or in any combination, of the following—

"(A) undesignated parking along roads;

"(B) overlook sites or scenic pullouts;

"(C) information offices and centers that only provide general area information and limited services or interpretive exhibits; and

"(D) dispersed areas for which expenditures in facilities or services are limited.".

SEC. 332. (a) LIMITATION ON COMPETITIVE SOURCING STUDIES.—

(1) Of the funds made available by this or any other Act to the Department of Energy or the Department of the Interior

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for fiscal year 2005, not more than the maximum amount specified in paragraph (2) may be used by the Secretary of Energy or the Secretary of the Interior to initiate or continue competitive sourcing studies in fiscal year 2005 for programs, projects, and activities for which funds are appropriated by this Act until such time as the Secretary concerned submits a reprogramming proposal to the Committees on Appropriations of the Senate and the House of Representatives, and such proposal has been processed consistent with the reprogramming guidelines in House Report 108–330.

(2) For the purposes of paragraph (1) the maximum amount—

(A) with respect to the Department of Energy is $500,000; and

(B) with respect to the Department of the Interior is $3,250,000.

(3) Of the funds appropriated by this Act, not more than $2,000,000 may be used in fiscal year 2005 for competitive sourcing studies and related activities by the Forest Service.

(b) COMPETITIVE SOURCING STUDY DEFINED.—In this section, the term "competitive sourcing study" means a study on subjecting work performed by Federal Government employees or private contractors to public-private competition or on converting the Federal Government employees or the work performed by such employees to private contractor performance under the Office of Management and Budget Circular A–76 or any other administrative regulation, directive, or policy.

(c) Section 340(b) of Public Law 108–108 is hereby repealed.

(d) COMPETITIVE SOURCING EXEMPTION FOR FOREST SERVICE STUDIES CONDUCTED PRIOR TO FISCAL YEAR 2005.—Notwithstanding requirements of Office of Management and Budget Circular A–76, Attachment B, the Forest Service is hereby exempted from implementing the Letter of Obligation and post-competition accountability guidelines where a competitive sourcing study involved 65 or fewer full-time equivalents, the performance decision was made in favor of the agency provider; no net savings was achieved by conducting the study, and the study was completed prior to the date of this Act.

(e) In preparing any reports to the Committees on Appropriations on competitive sourcing activities, agencies funded in this Act shall include the incremental cost directly attributable to conducting the competitive sourcing competitions, including costs attributable to paying outside consultants and contractors and, in accordance with full cost accounting principles, all costs attributable to developing, implementing, supporting, managing, monitoring, and reporting on competitive sourcing, including personnel, consultant, travel, and training costs associated with program management.

SEC. 333. Estimated overhead charges, deductions, reserves or holdbacks from programs, projects and activities to support governmentwide, departmental, agency or bureau administrative functions or headquarters, regional or central office operations shall be presented in annual budget justifications. Changes to such estimates shall be presented to the Committees on Appropriations for approval.

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SEC. 334. None of the funds in this Act or prior Acts making appropriations for the Department of the Interior and Related Agencies may be provided to the managing partners or their agents for the SAFECOM or Disaster Management projects.

SEC. 335. CONVEYANCE OF A SMALL PARCEL OF PUBLIC DOMAIN LAND IN THE SAN BERNARDINO NATIONAL FOREST IN THE STATE OF CALIFORNIA. (a) FINDINGS.—The Congress finds that—

(1) a select area of the San Bernardino National Forest in California is heavily developed with recreation residences and is immediately adjacent to comparably developed private property;

(2) it is in the public interest to convey the above referenced area to the owners of the recreation residences; and

(3) the Secretary of Agriculture should use the proceeds of such conveyance for critical San Bernardino National Forest infrastructure improvements or to acquire additional lands within the boundaries of the San Bernardino National Forest.

(b) CONVEYANCE REQUIRED.—Subject to valid existing rights and such terms, conditions, and restrictions as the Secretary deems necessary or desirable in the public interest, the Secretary of Agriculture shall convey to the Mill Creek Homeowners Association (hereinafter Association) all right, title, and interest of the United States in and to the Mill Creek parcel of real estate described in subsection (c)(1). In the event the Secretary and the Association for any reason do not complete the sale within 2 years from the date of enactment of this Act, this authority shall expire.

(c) LEGAL DESCRIPTION AND CORRECTION AUTHORITY.—

(1) DESCRIPTION.—The Mill Creek parcel, approximately 35 acres, as shown on a map "The Mill Creek Conveyance Parcel—San Bernardino National Forest, dated June 1, 2004" generally located in the northeast quarter of Section 8, T.1S., R.1W., San Bernardino Meridian, of the United States Public Lands Survey System, California. The map shall be on file and available for inspection in the office of the Chief, Forest Service, Washington, DC and in the office of the Forest Supervisor, San Bernardino National Forest until such time as the lands are conveyed.

(2) CORRECTIONS.—The Secretary is authorized to make minor corrections to this map and may modify the description to correct errors or to reconfigure the property in order to facilitate conveyance. In the event of a conflict between the map description and the USPLSS description of the land in paragraph (1), the map will be considered the definitive description of the land.

(d) CONSIDERATION.—Consideration for the conveyance under subsection (b) shall be equal to the appraised fair market value of the parcel of real property to be conveyed. Such appraisal shall be prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisition.

(e) ACCESS REQUIREMENTS.—Notwithstanding section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)) or any other law, the Secretary is not required to provide access over National Forest System lands to the parcel of real estate to be conveyed under subsection (b).

(f) ADMINISTRATIVE COSTS.—All costs incurred by the Secretary of Agriculture and any costs associated with the creation of a subdivided parcel, conducting and recordation of a survey, zoning,

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planning approval, and similar expenses with respect to the conveyance under subsection (b), shall be borne by the Association.

(g) ASSUMPTION OF LIABILITY.—By acceptance of the conveyance of the parcel of real property referred to in subsection (b), the Association and its successors and assigns will indemnify and hold harmless the United States for any and all liability to any party that is associated with the parcel.

(h) TREATMENT OF RECEIPTS.—All funds received pursuant to the conveyance of the parcel of real property referred to in subsection (b) shall be deposited in the fund established under Public Law 90–171 (16 U.S.C. 484a; commonly known as the Sisk Act), and the funds shall remain available to the Secretary, until expended, for critical San Bernardino National Forest infrastructure improvements or the acquisition of lands, waters, and interests in land for inclusion in the San Bernardino National Forest.

SEC. 336. Section 331 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106–291; 114 Stat. 996), is amended—

(1) in subsection (a), by striking "Until September 30, 2004, the" and inserting "The"; and

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

"(d) INCLUSION OF COLORADO BLM LANDS.—The authority provided by this section shall also be available to the Secretary of the Interior with respect to public lands in the State of Colorado administered by the Secretary through the Bureau of Land Management.

"(e) EXPIRATION OF AUTHORITY.—The authority of the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements and contracts under this section expires September 30, 2009, and the term of any cooperative agreement or contract entered into under this section shall not extend beyond that date.".

SEC. 337. FEDERAL AND STATE COOPERATIVE FOREST, RANGELAND, AND WATERSHED RESTORATION IN UTAH. (a) AUTHORITY.—Until September 30, 2006, the Secretary of Agriculture, via cooperative agreement or contract (including sole source contract) as appropriate, may permit the State Forester of the State of Utah to perform forest, rangeland, and watershed restoration services on National Forest System lands in the State of Utah. Restoration services provided are to be on a project to project basis as planned or made ready for implementation under existing authorities of the Forest Service. The types of restoration services that may be contracted under this authority include treatment of insect infected trees, reduction of hazardous fuels, and other activities to restore or improve forest, rangeland, and watershed health including fish and wildlife habitat.

(b) STATE AS AGENT.—Except as provided in subsection (c), a cooperative agreement or contract under subsection (a) may authorize the State Forester of the State of Utah to serve as agent for the Forest Service in providing services necessary to facilitate the performance and treatment of insect infested trees, reduction of hazardous fuels, and to restore or improve forest, rangeland, and watershed health including fish and wildlife habitat under subsection (a). The services to be performed by the State Forester of Utah may be conducted with subcontracts utilizing State of Utah contract procedures. Subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C.

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472a) shall not apply to services performed under a cooperative agreement or contract under subsection (a).

(c) RETENTION OF NEPA RESPONSIBILITIES.—With respect to any treatment activity to restore and improve forest, rangeland, and watershed health including fish and wildlife habitat services on National Forest System lands programmed for treatment by the State Forester of the State of Utah under subsection (a), any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4821 et seq.) may not be delegated to any officer or employee of the State of Utah.

SEC. 338. (a) IN GENERAL.—An entity that enters into a contract with the United States to operate the National Recreation Reservation Service (as solicited by the solicitation numbered WO–04–06vm) shall not carry out any duties under the contract using:

(1) a contact center located outside the United States; or

(2) a reservation agent who does not live in the United States.

(b) NO WAIVER.—The Secretary of Agriculture may not waive the requirements of subsection (a).

(c) TELECOMMUTING.—A reservation agent who is carrying out duties under the contract described in subsection (a) may not telecommute from a location outside the United States.

(d) LIMITATIONS.—Nothing in this Act shall be construed to apply to any employee of the entity who is not a reservation agent carrying out the duties under the contract described in subsection (a) or who provides managerial or support services.

SEC. 339. For fiscal years 2005 through 2007, a decision made by the Secretary of Agriculture to authorize grazing on an allotment shall be categorically excluded from documentation in an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if: (1) the decision continues current grazing management of the allotment; (2) monitoring indicates that current grazing management is meeting, or satisfactorily moving toward, objectives in the land and resource management plan, as determined by the Secretary; and (3) the decision is consistent with agency policy concerning extraordinary circumstances. The total number of allotments that may be categorically excluded under this section may not exceed 900.

SEC. 340. SALMON RIVER COMMERCIAL OUTFITTER HUNTING CAMPS. Section 3(a)(24) of Public Law 90–542 (16 U.S.C. 1274) is amended to add the following after paragraph (C) and redesignate subsequent paragraphs accordingly:

"(D) The established use and occupancy as of June 6, 2003, of lands and maintenance or replacement of facilities and structures for commercial recreation services at Stub Creek located in section 28, T24N, R14E, Boise Principal Meridian, at Arctic Creek located in section 21, T25N, R12E, Boise Principal Meridian and at Smith Gulch located in section 27, T25N, R12E, Boise Principal Meridian shall continue to be authorized, subject to such reasonable regulation as the Secretary deems appropriate, including rules that would provide for termination for non-compliance, and if terminated, reoffering the site through a competitive process.".

SEC. 341. (a) IN GENERAL.—

(1) The Secretary of Agriculture and the Secretary of the Interior are authorized to make grants to the Eastern Nevada Landscape Coalition for the study and restoration of rangeland and other lands in Nevada's Great Basin in order to help assure the reduction of hazardous fuels and for related purposes.

(2) Notwithstanding 31 U.S.C. 6301–6308, the Director of the Bureau of Land Management shall enter into a cooperative agreement with the Eastern Nevada Landscape Coalition for the Great Basin Restoration Project, including hazardous fuels and mechanical treatments and related work.

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

SEC. 342. (a) FINDINGS.—

(1) In 1953, Public Land Order 899 (PLO 899) eliminated approximately 80 acres from the Tongass National Forest, for the Community of Elfin Cove, Alaska. From 1953 until 2001, the USDA Forest Service believed two small islets within the Elfin Cove Harbor (Lots 1 and 2 of U.S. Survey 13150, approximately 0.29 acres) were included as part of PLO 899. However, due to a Bureau of Land Management rule in effect when PLO 899 was issued, ownership of unsurveyed, unmapped islets remained with the original landowner, in this case the United States.

(2) These two islets are needed by the Community of Elfin Cove to resolve public health and safety problems.

(3) The two islets serve no national forest purposes, but the Forest Service has no authority to transfer ownership of them to the Community of Elfin Cove, without receiving fair market value for the land interests.

(4) Neither the Bureau of Land Management nor the Forest Service intended to retain Federal ownership of these two islets, and they remained in ownership of the United States only through an inadvertent error.

(5) Conveyance of these two islets from the United States to the Community of Elfin Cove, Alaska, without consideration, is in the public interest.

(b) Based on the findings in subsection (a) and notwithstanding any other provision of law, Congress hereby authorizes and directs the Secretary of Agriculture to convey in fee simple without compensation, Lots 1 and 2 of U.S. Survey 13150, comprising approximately 0.29 acres, to the Community of Elfin Cove, Alaska.

SEC. 343. (a) Notwithstanding any other provision of law, and until October 1, 2007, the Indian Health Service may not disburse funds for the provision of health care services pursuant to Public Law 93–638 (25 U.S.C. 450 et seq.) to any Alaska Native village or Alaska Native village corporation that is located within the area served by an Alaska Native regional health entity.

(b) Nothing in this section shall be construed to prohibit the disbursal of funds to any Alaska Native village or Alaska Native village corporation under any contract or compact entered into prior to May 1, 2004, or to prohibit the renewal of any such agreement.

(c) For the purpose of this section, Eastern Aleutian Tribes, Inc., shall be treated as an Alaska Native regional health entity to whom funds may be disbursed under this section.

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SEC. 344. Notwithstanding any other provision of law and using funds previously appropriated for such purpose under Public Law 106–291 ($1,630,000) and Public Law 108–199 ($2,300,000), the National Park Service shall (1) not later than 60 days after enactment of this section purchase the seven parcels of real property in Seward, Alaska identified by Kenai Peninsula tax identification numbers 14910001, 14910002, 14911033, 14913005, 14913020, 14913007, and 14913008 that have been selected for the administrative complex, visitor facility, plaza and related parking for the Kenai Fjords National Park and Chugach National Forest which shall hereafter be known as the Mary Lowell Center; and (2) transfer to the City of Seward any remaining balance of previously appropriated funds not necessary for property acquisition and design upon the vacation by the City of Seward of Washington Street between 4th Avenue and 5th Avenue and transfer of title of the appropriate portions thereof to the Federal Government, provided that the City of Seward uses any such funds for the related waterfront planning, pavilions, boardwalks, trails, or related purposes that compliment the new Federal facility.

SEC. 345. Section 331, of Public Law 106–113, is amended—

(1) in part (a) by striking "2004" and inserting "2005"; and

(2) in part (b) by striking "2004" and inserting "2005".

SEC. 346. FEDERAL BUILDING, SANDPOINT, IDAHO. (a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of General Services.

(2) MAP.—The term "map" means the map that is—

(A) entitled "Sandpoint Federal Building";

(B) dated September 12, 2002; and

(C) on file in—

(i) the Office of the Chief of the Forest Service; and

(ii) the Office of the Supervisor, Idaho National Forests, Coeur d'Alene, Idaho.

(3) PROPERTY.—The term "property" means the Sandpoint Federal Building and approximately 3.17 acres of land in Sandpoint, Idaho, as depicted on the map.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(b) CONVEYANCE OF PROPERTY.—

(1) IN GENERAL.—Notwithstanding subtitle I of title 40, United States Code, the Administrator may convey to the Secretary, all right, title, and interest of the United States in and to the property.

(2) CONDITIONS.—The conveyance of the property under paragraph (1) shall be on a noncompetitive basis, for consideration, and subject to any other terms and conditions to which the Administrator and the Secretary may agree, including a purchase period with multiple payments over multiple fiscal years.

(3) SOURCE OF FUNDS.—The Secretary may use amounts made available to the Forest Service for any of fiscal years 2005 through 2010 to acquire the property under paragraph (1).

(c) SALE OR EXCHANGE OF PROPERTY.—

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(1) IN GENERAL.—Subject to paragraph (2), the Secretary may use, maintain, lease, sublease, sell, or exchange all or part of the property.

(2) TERMS.—The sale or exchange of the property under paragraph (1) shall be for market value and subject to such terms as the Secretary determines to be in the public interest.

(3) METHOD OF SALE OR EXCHANGE.—The sale or exchange of the property under paragraph (1) may be on a competitive or noncompetitive basis.

(4) CONSIDERATION.—Consideration for the sale or exchange of the property may be in the form of cash, land, or improvements (including improvements to be constructed after the date of the sale or exchange).

(3) DISPOSITION AND USE OF PROCEEDS.—

(A) DISPOSITION OF PROCEEDS.—The Secretary shall deposit the proceeds derived from any lease, sublease, sale, exchange, or any other use or disposition of the property in the fund established by Public Law 90–171 (commonly known as the "Sisk Act") (16 U.S.C. 484a).

(B) USE OF PROCEEDS.—Amounts deposited under subparagraph (A) shall be available to the Secretary, without further appropriation, until expended, for the construction and maintenance of Forest Service offices and related facilities on National Forest System land in the vicinity of Sandpoint, Idaho.

SEC. 347. (a) SHORT TITLE.—This section may be cited as the "Chris Zajicek Memorial Land Exchange Act of 2004".

(b) NATIONAL FOREST SYSTEM LAND EXCHANGE IN THE STATE OF FLORIDA.—

(1) IN GENERAL.—Notwithstanding the effect of the wildfire known as the "Impassable 1 Fire" on the value of the land to be exchanged, the Secretary of Agriculture (acting through the Chief of the Forest Service) may carry out the exchange agreement entered into by the Forest Service and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and dated March 5, 2004.

(2) VALUATION.—For purposes of determining the value of the land to be exchanged under paragraph (1), the value of the land shall be considered to be the value of the land determined by the appraisal conducted on August 21, 2003.

SEC. 348. (a) SHORT TITLE.—This section may be cited as the "Grey Towers National Historic Site Act of 2004".

(b) FINDINGS; PURPOSES; DEFINITIONS.—

(1) FINDINGS.—Congress finds the following:

(A) James and Mary Pinchot constructed a home and estate that is known as Grey Towers in Milford, Pennsylvania.

(B) James and Mary Pinchot were also the progenitors of a family of notable accomplishment in the history of the Commonwealth of Pennsylvania and the Nation, in particular, their son, Gifford Pinchot.

(C) Gifford Pinchot was the first Chief of the Forest Service, a major influence in formulating and implementing forest conservation policies in the early 20th Century, and twice Governor of Pennsylvania.

(D) During the early 20th century, James and Gifford Pinchot used Grey Towers and the environs to establish

scientific forestry, to develop conservation leaders, and to formulate conservation principles, thus making this site one of the primary birthplaces of the American conservation movement.

(E) In 1963, Gifford Bryce Pinchot, the son of Gifford and Cornelia Pinchot, donated Grey Towers and 102 acres to the Nation.

(F) In 1963, President John F. Kennedy dedicated the Pinchot Institute for Conservation for the greater knowledge of land and its uses at Grey Towers National Historic Landmark, thereby establishing a partnership between the public and private sectors.

(G) Grey Towers today is a place of historical significance where leaders in natural resource conservation meet, study, and share ideas, analyses, values, and philosophies, and is also a place where the public can learn and appreciate our conservation heritage.

(H) As established by President Kennedy, the Pinchot Institute for Conservation, and the Forest Service at Grey Towers operate through an established partnership in developing and delivering programs that carry on Gifford Pinchot's conservation legacy.

(I) Grey Towers and associated structures in and around Milford, Pennsylvania, can serve to enhance regional recreational and educational opportunities.

(2) PURPOSES.—The purposes of this section are as follows:

(A) To honor and perpetuate the memory of Gifford Pinchot.

(B) To promote the recreational and educational resources of Milford, Pennsylvania, and its environs.

(C) To authorize the Secretary of Agriculture—

(i) to further the scientific, policy analysis, educational, and cultural programs in natural resource conservation at Grey Towers;

(ii) to manage the property and environs more efficiently and effectively; and

(iii) to further collaborative ties with the Pinchot Institute for Conservation, and other Federal, State, and local agencies with shared interests.

(3) DEFINITIONS.—For the purposes of this section:

(A) ASSOCIATED PROPERTIES.—The term "Associated Properties" means lands and improvements outside of the Grey Towers National Historic Landmark within Pike County, Pennsylvania, and which were associated with James and Mary Pinchot, the Yale School of Forestry, or the Forest Service.

(B) GREY TOWERS.—The term "Grey Towers" means the buildings and surrounding area of approximately 303 acres, including the 102 acres donated in 1963 to the United States and so designated that year.

(C) HISTORIC SITE.—The term "Historic Site" means the Grey Towers National Historic Site, as so designated by this Act.

(D) PINCHOT INSTITUTE.—The term "Pinchot Institute" means the Pinchot Institute for Conservation, a nonprofit corporation established under the laws of the District of Columbia.

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(E) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(c) DESIGNATION OF NATIONAL HISTORIC SITE.—Subject to valid existing rights, all lands and improvements formerly encompassed within the Grey Towers National Historic Landmark are designated as the "Grey Towers National Historic Site".

(d) ADMINISTRATION.—

(1) PURPOSES.—The Historic Site shall be administered for the following purposes:

(A) Education, public demonstration projects, and research related to natural resource conservation, protection, management, and use.

(B) Leadership development within the natural resource professions and the Federal civil service.

(C) Continuing Gifford Pinchot's legacy through pursuit of new ideas, strategies, and solutions to natural resource issues that include economic, ecological, and social values.

(D) Preservation, use, and maintenance of the buildings, grounds, facilities, and archives associated with Gifford Pinchot.

(E) Study and interpretation of the life and works of Gifford Pinchot.

(F) Public recreation and enjoyment.

(G) Protection and enjoyment of the scenic and natural environs.

(2) APPLICABLE LAWS.—The Secretary shall administer federally owned lands and interests in lands at the Historic Site and Associated Properties as components of the National Forest System in accordance with this Act, 16 U.S.C. 461 et seq. and other laws generally applicable to the administration of national historic sites, and the laws, rules, and regulations applicable to the National Forest System, except that the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.) shall not apply.

(3) LAND ACQUISITION.—The Secretary is authorized to acquire, on a willing seller basis, by purchase, donation, exchange, or otherwise, privately owned lands and interests in lands, including improvements, within the Historic Site and the Associated Properties, using donated or appropriated funds.

(4) GIFTS.—

(A) ACCEPTED BY ENTITIES OTHER THAN THE SECRETARY.—Subject to such terms and conditions as the Secretary may prescribe, any public or private agency, organization, institution, or individual may solicit, accept, and administer private gifts of money and real or personal property for the benefit of or in connection with, the activities and services at the Historic Site.

(B) ACCEPTED BY THE SECRETARY.—Gifts may be accepted by the Secretary for the benefit of or in connection with, the activities and services at the Historic Site notwithstanding the fact that a donor conducts business with or is regulated by the Department of Agriculture in any capacity.

(e) COOPERATIVE AUTHORITIES.—

(1) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—The Secretary is authorized to enter into Agreements for grants, contracts, and cooperative agreements as appropriate with the

Pinchot Institute, public and other private agencies, organizations, institutions, and individuals to provide for the development, administration, maintenance, or restoration of land, facilities, or Forest Service programs at Grey Towers or to otherwise further the purposes of this section.

(2) INTERDEPARTMENTAL.—The Secretary and the Secretary of the Interior are authorized and encouraged to cooperate in promoting public use and enjoyment of Grey Towers and the Delaware Water Gap National Recreation Area and in otherwise furthering the administration and purposes for which both areas were designated. Such cooperation may include co-location and use of facilities within Associated Properties and elsewhere.

(3) OTHER.—The Secretary may authorize use of the grounds and facilities of Grey Towers by the Pinchot Institute and other participating partners including Federal, State, and local agencies, on such terms and conditions as the Secretary may prescribe, including the waiver of special use authorizations and the waiver of rental and use fees.

(f) FUNDS.—

(1) FEES AND CHARGES.—The Secretary may impose reasonable fees and charges for admission to and use of facilities on Grey Towers.

(2) SPECIAL FUND.—Any monies received by the Forest Service in administering Grey Towers shall be deposited into the Treasury of the United States and covered in a special fund called the Grey Towers National Historic Site Fund. Monies in the Grey Towers National Historic Site Fund shall be available until expended, without further appropriation, for support of programs of Grey Towers, and any other expenses incurred in the administration of Grey Towers.

(g) MAP.—The Secretary shall produce and keep for public inspection a map of the Historic Site and associated properties within Pike County, Pennsylvania, which were associated with James and Mary Pinchot, the Yale School of Forestry, or the Forest Service.

(h) SAVINGS PROVISION.—Nothing in this section shall be deemed to diminish the authorities of the Secretary under the Cooperative Forestry Assistance Act or any other law pertaining to the National Forest System.

SEC. 349. (a) SHORT TITLE.—This section may be cited as the "Montana National Forests Boundary Adjustment Act of 2004".

(b) DEFINITIONS.—In this section:

(1) FORESTS.—The term "Forests" means the Helena National Forest, Lolo National Forest, and Beaverhead-Deerlodge National Forest in the State of Montana.

(2) MAP.—The term "map" means—

(A) the map entitled "Helena National Forest Boundary Adjustment Northern Region, USDA Forest Service" and dated September 13, 2004;

(B) the map entitled "Lolo National Forest Boundary Adjustment Northern Region, USDA Forest Service" and dated September 13, 2004; and

(C) the map entitled "Deerlodge National Forest Boundary Adjustment Northern Region USDA Forest Service" and dated September 13, 2004.

(3) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(c) HELENA, LOLO, AND BEAVERHEAD-DEERLODGE NATIONAL FORESTS BOUNDARY ADJUSTMENT.—

(1) IN GENERAL.—The boundaries of the Forests are modified as depicted on the maps.

(2) MAPS.—

(A) AVAILABILITY.—The maps shall be on file and available for public inspection in—

(i) the Office of the Chief of the Forest Service; and

(ii) the office of the Regional Forester, Missoula, Montana.

(B) CORRECTION AUTHORITY.—The Secretary may make technical corrections to the maps.

(3) ADMINISTRATION.—Any land or interest in land acquired within the boundaries of the Forests for National Forest System purposes shall be managed in accordance with—

(A) the Act of March 1, 1911 (commonly known as the "Weeks Law") (16 U.S.C. 480 et seq.); and

(B) the laws (including regulations) applicable to the National Forest System.

(4) LAND AND WATER CONSERVATION FUND.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9), the boundaries of the Forests, as adjusted under paragraph (1), shall be considered to be the boundaries of the Forests as of January 1, 1965.

(5) EFFECT.—Nothing in this section limits the authority of the Secretary to adjust the boundaries of the Forests under section 11 of the Act of March 1, 1911 (16 U.S.C. 521).

SEC. 350. In addition to amounts provided to the Department of the Interior in this Act, $5,000,000 is provided for a grant to Kendall County, Illinois.

TITLE IV—SUPPLEMENTAL APPROPRIATIONS FOR URGENT WILDLAND FIRE SUPPRESSION ACTIVITIES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

WILDLAND FIRE MANAGEMENT

For an additional amount for "Wildland Fire Management", $100,000,000, to remain available until expended, for urgent wildland fire suppression activities pursuant to section 312 of S. Con. Res. 95 (108th Congress) as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287: *Provided,* That such funds shall only become available if funds provided for wildland fire suppression in title I of this Act will be exhausted imminently and the Secretary of the Interior notifies the House and Senate Committees on Appropriations and the House and Senate Committees on the Budget in writing of the need for these additional funds: *Provided further,* That such funds are also available for repayment to other appropriation accounts from which funds were transferred for wildfire suppression: *Provided further,* That cost containment measures shall be implemented within this

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account for fiscal year 2005, and the Secretary of the Interior and the Secretary of Agriculture shall submit a joint report to the Committees on Appropriations of the Senate and the House of Representatives on such cost containment measures by December 31, 2005: *Provided further*, That Public Law 108–287, title X, chapter 3 is amended under the heading "Department of the Interior, Bureau of Land Management, Wildland Fire Management", by striking the phrases "for fiscal year 2004" and "related to the fiscal year 2004 fire season" in the text preceding the first proviso.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

WILDLAND FIRE MANAGEMENT

For an additional amount for "Wildland Fire Management", $400,000,000, to remain available until expended, for urgent wildland fire suppression activities pursuant to section 312 of S. Con. Res. 95 (108th Congress) as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287: *Provided,* That such funds shall only become available if funds provided for wildland fire suppression in title II of this Act will be exhausted imminently and the Secretary of Agriculture notifies the House and Senate Committees on Appropriations and the House and Senate Committees on the Budget in writing of the need for these additional funds: *Provided further,* That such funds are also available for repayment to other appropriation accounts from which funds were transferred for wildfire suppression: *Provided further,* That cost containment measures shall be implemented within this account for fiscal year 2005, and the Secretary of Agriculture and the Secretary of the Interior shall submit a joint report to the Committees on Appropriations of the Senate and the House of Representatives on such cost containment measures by December 31, 2005: *Provided further,* That the Secretary of Agriculture shall establish an independent cost-control review panel to examine and report on fire suppression costs for individual wildfire incidents that exceed $10,000,000 in cost: *Provided further,* That if the independent review panel report finds that appropriate actions were not taken to control suppression costs for one or more such wildfire incidents, then an amount equal to the aggregate estimated excess costs of suppressing those wildfire incidents shall be transferred to the Treasury from unobligated balances remaining at the end of fiscal year 2005 in the Wildland Fire Management account: *Provided further,* That Public Law 108–287, title X, chapter 3 is amended under the heading "Department of Agriculture, Forest Service, Wildland Fire Management", by striking the phrases "for fiscal year 2004" and "related to the fiscal year 2004 fire season" in the text preceding the first proviso.

TITLE V

SEC. 501. (a) ACROSS-THE-BOARD RESCISSIONS.—There is hereby rescinded an amount equal to 0.594 percent of—

(1) the budget authority provided for fiscal year 2005 for any discretionary account in this Act; and

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(2) the budget authority provided in any advance appropriation for fiscal year 2005 for any discretionary account in the Department of the Interior and Related Agencies Appropriations Act, 2004.

(b) PROPORTIONATE APPLICATION.—Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in subsection (a); and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

(c) INDIAN LAND AND WATER CLAIM SETTLEMENTS.—Under the heading "Bureau of Indian Affairs, Indian Land and Water Claim Settlements and Miscellaneous Payments to Indians", the across-the-board rescission in this section, and any subsequent across-the-board rescission for fiscal year 2005, shall apply only to the first dollar amount in the paragraph and the distribution of the rescission shall be at the discretion of the Secretary of the Interior who shall submit a report on such distribution and the rationale therefor to the House and Senate Committees on Appropriations.

This division may be cited as the "Department of the Interior and Related Agencies Appropriations Act, 2005".

DIVISION F—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

TITLE I—DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

(INCLUDING RESCISSION)

For necessary expenses of the Workforce Investment Act of 1998, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by such Act; $2,898,957,000 plus reimbursements, of which $1,885,794,000 is available for obligation for the period July 1, 2005 through June 30, 2006; except that amounts determined by the Secretary of Labor to be necessary pursuant to sections 173(a)(4)(A) and 174(c) of such Act shall be available from October 1, 2004 until expended; of which $994,242,000 is available for obligation for the period April 1, 2005 through June 30, 2006, to carry out chapter 4 of the Act; and of which $16,321,000 is available for the period July 1, 2005 through June 30, 2008 for necessary expenses of construction, rehabilitation, and acquisition of Job Corps centers: *Provided,* That notwithstanding any other provision of law, of the funds provided herein under section 137(c) of the Workforce Investment Act of 1998, $283,371,000 shall be for activities described in section 132(a)(2)(A) of such Act and $1,196,048,000 shall be for activities described in section

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132(a)(2)(B) of such Act: *Provided further,* That $250,000,000 shall be available for Community-Based Job Training Grants, of which $125,000,000 shall be from funds reserved under section 132(a)(2)(A) of the Workforce Investment Act of 1998 and shall be used to carry out such grants under section 171(d) of such Act, except that the 10 percent limitation otherwise applicable to the amount of funds that may be used to carry out section 171(d) shall not be applicable to funds used for Community-Based Job Training grants: *Provided further,* That funds provided to carry out section 132(a)(2)(A) of the Workforce Investment Act of 1998 may be used to provide assistance to a State for State-wide or local use in order to address cases where there have been worker dislocations across multiple sectors or across multiple local areas and such workers remain dislocated; coordinate the State workforce development plan with emerging economic development needs; and train such eligible dislocated workers: *Provided further,* That $8,000,000 shall be for carrying out section 172 of the Workforce Investment Act of 1998: *Provided further,* That, notwithstanding any other provision of law or related regulation, $76,874,000 shall be for carrying out section 167 of the Workforce Investment Act of 1998, including $71,787,000 for formula grants, $4,583,000 for migrant and seasonal housing (of which not less than 70 percent shall be for permanent housing), and $504,000 for other discretionary purposes: *Provided further,* That notwithstanding the transfer limitation under section 133(b)(4) of such Act, up to 30 percent of such funds may be transferred by a local board if approved by the Governor: *Provided further,* That funds provided to carry out section 171(d) of the Workforce Investment Act of 1998 may be used for demonstration projects that provide assistance to new entrants in the workforce and incumbent workers: *Provided further,* That funding provided to carry out projects under section 171 of the Workforce Investment Act of 1998 that are identified in the Conference Agreement, shall not be subject to the requirements of section 171(b)(2)(B) of such Act, the requirements of section 171(c)(4)(D) of such Act, the joint funding requirements of sections 171(b)(2)(A) and 171(c)(4)(A) of such Act, or any time limit requirements of sections 171(b)(2)(C) and 171(c)(4)(B) of such Act: *Provided further,* That no funds from any other appropriation shall be used to provide meal services at or for Job Corps centers.

For necessary expenses of the Act, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by the Act; $2,463,000,000 plus reimbursements, of which $2,363,000,000 is available for obligation for the period October 1, 2005 through June 30, 2006, and of which $100,000,000 is available for the period October 1, 2005 through June 30, 2008, for necessary expenses of construction, rehabilitation, and acquisition of Job Corps centers.

Of the funds provided under this heading in Public Law 108–199 for the Employment and Training Administration, $2,200,000 shall be for a non-competitive grant to the AFL–CIO Appalachian Council, Incorporated, and shall be awarded no later than January 31, 2005.

Of the funds provided under this heading in Public Law 108–199 for the Employment and Training Administration $1,500,000 shall be for a non-competitive grant to the AFL–CIO Working

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for America Institute, and shall be awarded no later than January 31, 2005.

Of the funds provided under this heading in Public Law 108–199 for the Employment and Training Administration, $4,000,000 shall be for a non-competitive grant to the Black Clergy of Philadelphia and Vicinity, and shall be awarded no later than January 31, 2005.

Of the funds provided under this heading in Public Law 108–199 for the Employment and Training Administration, $2,600,000 shall be for a non-competitive grant to the National Center on Education and the Economy, and shall be awarded no later than January 31, 2005.

Notwithstanding any other provision of law, funds awarded under grants to the State of Tennessee for Workforce Essentials, Inc., in Clarksville, Tennessee on June 29, 2004, and to Hampton Roads on behalf of the Hampton Roads Workforce Development Board in Norfolk, Virginia on June 30, 2001, pursuant to section 173 of the Workforce Investment Act of 1998 (29 U.S.C. 2918), may be used to provide services to spouses of members of the armed forces.

The Secretary of Labor shall take no action to amend, through regulatory or administration action, the definition established in 20 CFR 667.220 for functions and activities under title I of the Workforce Investment Act of 1998 until such time as legislation reauthorizing the Act is enacted.

Of the unobligated funds contained in the H–1B Nonimmigrant Petitioner Account that are available to the Secretary of Labor pursuant to section 286(s)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(2)), $100,000,000 are rescinded.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

To carry out title V of the Older Americans Act of 1965, as amended, $440,200,000.

FEDERAL UNEMPLOYMENT BENEFITS AND ALLOWANCES

For payments during the current fiscal year of trade adjustment benefit payments and allowances under part I and section 246; and for training, allowances for job search and relocation, and related State administrative expenses under part II of chapter 2, title II of the Trade Act of 1974 (including the benefits and services described under sections 123(c)(2) and 151(b) and (c) of the Trade Adjustment Assistance Reform Act of 2002, Public Law 107–210), $1,057,300,000, together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15 of the current year.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

For authorized administrative expenses, $141,934,000, together with not to exceed $3,524,301,000 (including not to exceed $1,228,000 which may be used for amortization payments to States which had independent retirement plans in their State employment service agencies prior to 1980), which may be expended from the

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Employment Security Administration Account in the Unemployment Trust Fund including the cost of administering section 51 of the Internal Revenue Code of 1986, as amended, section 7(d) of the Wagner-Peyser Act, as amended, the Trade Act of 1974, as amended, the Immigration Act of 1990, and the Immigration and Nationality Act, as amended, and of which the sums available in the allocation for activities authorized by title III of the Social Security Act, as amended (42 U.S.C. 502–504), and the sums available in the allocation for necessary administrative expenses for carrying out 5 U.S.C. 8501–8523, shall be available for obligation by the States through December 31, 2005, except that funds used for automation acquisitions shall be available for obligation by the States through September 30, 2007; of which $141,934,000, together with not to exceed $763,587,000 of the amount which may be expended from said trust fund, shall be available for obligation for the period July 1, 2005 through June 30, 2006, to fund activities under the Act of June 6, 1933, as amended, including the cost of penalty mail authorized under 39 U.S.C. 3202(a)(1)(E) made available to States in lieu of allotments for such purpose: *Provided,* That to the extent that the Average Weekly Insured Unemployment (AWIU) for fiscal year 2005 is projected by the Department of Labor to exceed 3,227,000, an additional $28,600,000 shall be available for obligation for every 100,000 increase in the AWIU level (including a pro rata amount for any increment less than 100,000) from the Employment Security Administration Account of the Unemployment Trust Fund: *Provided further,* That funds appropriated in this Act which are used to establish a national one-stop career center system, or which are used to support the national activities of the Federal-State unemployment insurance or immigration programs, may be obligated in contracts, grants or agreements with non-State entities: *Provided further,* That funds appropriated under this Act for activities authorized under the Wagner-Peyser Act, as amended, and title III of the Social Security Act, may be used by the States to fund integrated Employment Service and Unemployment Insurance automation efforts, notwithstanding cost allocation principles prescribed under Office of Management and Budget Circular A–87.

ADVANCES TO THE UNEMPLOYMENT TRUST FUND AND OTHER FUNDS

For repayable advances to the Unemployment Trust Fund as authorized by sections 905(d) and 1203 of the Social Security Act, as amended, and to the Black Lung Disability Trust Fund as authorized by section 9501(c)(1) of the Internal Revenue Code of 1954, as amended; and for nonrepayable advances to the Unemployment Trust Fund as authorized by section 8509 of title 5, United States Code, and to the "Federal unemployment benefits and allowances" account, to remain available until September 30, 2006, $517,000,000.

In addition, for making repayable advances to the Black Lung Disability Trust Fund in the current fiscal year after September 15, 2005, for costs incurred by the Black Lung Disability Trust Fund in the current fiscal year, such sums as may be necessary.

PROGRAM ADMINISTRATION

For expenses of administering employment and training programs, $113,810,000, together with not to exceed $57,663,000, which

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may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

EMPLOYEE BENEFITS SECURITY ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Employee Benefits Security Administration, $132,345,000.

PENSION BENEFIT GUARANTY CORPORATION

PENSION BENEFIT GUARANTY CORPORATION FUND

The Pension Benefit Guaranty Corporation is authorized to make such expenditures, including financial assistance authorized by section 104 of Public Law 96–364, within limits of funds and borrowing authority available to such Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended (31 U.S.C. 9104), as may be necessary in carrying out the program, including associated administrative expenses, through September 30, 2005 for such Corporation: *Provided,* That none of the funds available to the Corporation for fiscal year 2005 shall be available for obligations for administrative expenses in excess of $266,330,000: *Provided further,* That obligations in excess of such amount may be incurred after approval by the Office of Management and Budget and the Committees on Appropriations of the House and Senate.

EMPLOYMENT STANDARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Employment Standards Administration, including reimbursement to State, Federal, and local agencies and their employees for inspection services rendered, $402,305,000, together with $2,040,000 which may be expended from the Special Fund in accordance with sections 39(c), 44(d) and 44(j) of the Longshore and Harbor Workers' Compensation Act: *Provided,* That $1,250,000 shall be for the development of an alternative system for the electronic submission of reports required to be filed under the Labor-Management Reporting and Disclosure Act of 1959, as amended, and for a computer database of the information for each submission by whatever means, that is indexed and easily searchable by the public via the Internet: *Provided further,* That the Secretary of Labor is authorized to accept, retain, and spend, until expended, in the name of the Department of Labor, all sums of money ordered to be paid to the Secretary of Labor, in accordance with the terms of the Consent Judgment in Civil Action No. 91–0027 of the United States District Court for the District of the Northern Mariana Islands (May 21, 1992): *Provided further,* That the Secretary of Labor is authorized to establish and, in accordance with 31 U.S.C. 3302, collect and deposit in the Treasury fees for processing applications and issuing certificates under sections 11(d) and 14 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 211(d) and 214) and for processing applications and issuing registrations under title I of the

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Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

SPECIAL BENEFITS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation, benefits, and expenses (except administrative expenses) accruing during the current or any prior fiscal year authorized by title 5, chapter 81 of the United States Code; continuation of benefits as provided for under the heading "Civilian War Benefits" in the Federal Security Agency Appropriation Act, 1947; the Employees' Compensation Commission Appropriation Act, 1944; sections 4(c) and 5(f) of the War Claims Act of 1948 (50 U.S.C. App. 2012); and 50 percent of the additional compensation and benefits required by section 10(h) of the Longshore and Harbor Workers' Compensation Act, as amended, $233,000,000, together with such amounts as may be necessary to be charged to the subsequent year appropriation for the payment of compensation and other benefits for any period subsequent to August 15 of the current year: *Provided,* That amounts appropriated may be used under section 8104 of title 5, United States Code, by the Secretary of Labor to reimburse an employer, who is not the employer at the time of injury, for portions of the salary of a reemployed, disabled beneficiary: *Provided further,* That balances of reimbursements unobligated on September 30, 2004, shall remain available until expended for the payment of compensation, benefits, and expenses: *Provided further,* That in addition there shall be transferred to this appropriation from the Postal Service and from any other corporation or instrumentality required under section 8147(c) of title 5, United States Code, to pay an amount for its fair share of the cost of administration, such sums as the Secretary determines to be the cost of administration for employees of such fair share entities through September 30, 2005: *Provided further,* That of those funds transferred to this account from the fair share entities to pay the cost of administration of the Federal Employees' Compensation Act, $39,668,000 shall be made available to the Secretary as follows: (1) for enhancement and maintenance of automated data processing systems and telecommunications systems, $12,351,000; (2) for automated workload processing operations, including document imaging, centralized mail intake and medical bill processing, $14,221,000; (3) for periodic roll management and medical review, $13,096,000; and (4) the remaining funds shall be paid into the Treasury as miscellaneous receipts: *Provided further,* That the Secretary may require that any person filing a notice of injury or a claim for benefits under chapter 81 of title 5, United States Code, or 33 U.S.C. 901 et seq., provide as part of such notice and claim, such identifying information (including Social Security account number) as such regulations may prescribe.

SPECIAL BENEFITS FOR DISABLED COAL MINERS

For carrying out title IV of the Federal Mine Safety and Health Act of 1977, as amended by Public Law 107–275, (the "Act"), $276,000,000, to remain available until expended.

For making after July 31 of the current fiscal year, benefit payments to individuals under title IV of the Act, for costs incurred in the current fiscal year, such amounts as may be necessary.

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For making benefit payments under title IV for the first quarter of fiscal year 2006, $81,000,000, to remain available until expended.

ADMINISTRATIVE EXPENSES, ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to administer the Energy Employees Occupational Illness Compensation Act, $40,821,000, to remain available until expended: *Provided,* That the Secretary of Labor is authorized to transfer to any executive agency with authority under the Energy Employees Occupational Illness Compensation Act, including within the Department of Labor, such sums as may be necessary in fiscal year 2005 to carry out those authorities: *Provided further,* That the Secretary may require that any person filing a claim for benefits under the Act provide as part of such claim, such identifying information (including Social Security account number) as may be prescribed.

BLACK LUNG DISABILITY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

In fiscal year 2005 and thereafter, such sums as may be necessary from the Black Lung Disability Trust Fund, to remain available until expended, for payment of all benefits authorized by section 9501(d)(1), (2), (4), and (7) of the Internal Revenue Code of 1954, as amended; and interest on advances, as authorized by section 9501(c)(2) of that Act. In addition, the following amounts shall be available from the Fund for fiscal year 2005 for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): $32,646,000 for transfer to the Employment Standards Administration "Salaries and Expenses"; $23,705,000 for transfer to Departmental Management, "Salaries and Expenses"; $342,000 for transfer to Departmental Management, "Office of Inspector General"; and $356,000 for payments into miscellaneous receipts for the expenses of the Department of the Treasury.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Occupational Safety and Health Administration, $468,109,000, including not to exceed $91,747,000 which shall be the maximum amount available for grants to States under section 23(g) of the Occupational Safety and Health Act (the "Act"), which grants shall be no less than 50 percent of the costs of State occupational safety and health programs required to be incurred under plans approved by the Secretary under section 18 of the Act; and, in addition, notwithstanding 31 U.S.C. 3302, the Occupational Safety and Health Administration may retain up to $750,000 per fiscal year of training institute course tuition fees, otherwise authorized by law to be collected, and may utilize such sums for occupational safety and health training and education grants: *Provided,* That, notwithstanding 31 U.S.C. 3302, the Secretary of Labor is authorized, during the fiscal year ending September 30, 2005, to collect and retain fees for services provided

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to Nationally Recognized Testing Laboratories, and may utilize such sums, in accordance with the provisions of 29 U.S.C. 9a, to administer national and international laboratory recognition programs that ensure the safety of equipment and products used by workers in the workplace: *Provided further,* That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further,* That no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Act with respect to any employer of 10 or fewer employees who is included within a category having a Days Away, Restricted, or Transferred (DART) occupational injury and illness rate, at the most precise industrial classification code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of that Act (29 U.S.C. 673), except—

(1) to provide, as authorized by such Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies;

(2) to conduct an inspection or investigation in response to an employee complaint, to issue a citation for violations found during such inspection, and to assess a penalty for violations which are not corrected within a reasonable abatement period and for any willful violations found;

(3) to take any action authorized by such Act with respect to imminent dangers;

(4) to take any action authorized by such Act with respect to health hazards;

(5) to take any action authorized by such Act with respect to a report of an employment accident which is fatal to one or more employees or which results in hospitalization of two or more employees, and to take any action pursuant to such investigation authorized by such Act; and

(6) to take any action authorized by such Act with respect to complaints of discrimination against employees for exercising rights under such Act:

Provided further, That the foregoing proviso shall not apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further,* That not less than $3,200,000 shall be used to extend funding for the Institutional Competency Building training grants which commenced in September 2000, for program activities for the period of September 30, 2005 to September 30, 2006, provided that a grantee has demonstrated satisfactory performance: *Provided further,* That none of the funds appropriated under this paragraph shall be obligated or expended to administer or enforce the provisions of 29 CFR 1910.134(f)(2) (General Industry Respiratory Protection Standard) to the extent that such provisions require the annual fit testing (after the initial fit testing) of respirators for occupational exposure to tuberculosis.

MINE SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Mine Safety and Health Administration, $281,535,000, including purchase and bestowal of certificates and trophies in connection with mine rescue and first-aid work, and the hire of passenger motor vehicles, including up to $2,000,000 for mine rescue and recovery activities; in addition, not to exceed $750,000 may be collected by the National Mine Health and Safety Academy for room, board, tuition, and the sale of training materials, otherwise authorized by law to be collected, to be available for mine safety and health education and training activities, notwithstanding 31 U.S.C. 3302; and, in addition, the Mine Safety and Health Administration may retain up to $1,000,000 from fees collected for the approval and certification of equipment, materials, and explosives for use in mines, and may utilize such sums for such activities; the Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private; the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations; and any funds available to the department may be used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of a major disaster.

BUREAU OF LABOR STATISTICS

SALARIES AND EXPENSES

For necessary expenses for the Bureau of Labor Statistics, including advances or reimbursements to State, Federal, and local agencies and their employees for services rendered, $455,045,000, together with not to exceed $78,473,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund, of which $5,000,000 may be used to fund the mass layoff statistics program under section 15 of the Wagner-Peyser Act (29 U.S.C. 49l–2).

OFFICE OF DISABILITY EMPLOYMENT POLICY

SALARIES AND EXPENSES

For necessary expenses for the Office of Disability Employment Policy to provide leadership, develop policy and initiatives, and award grants furthering the objective of eliminating barriers to the training and employment of people with disabilities, $47,555,000.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For necessary expenses for Departmental Management, including the hire of three sedans, and including the management or operation, through contracts, grants or other arrangements of Departmental activities conducted by or through the Bureau of

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International Labor Affairs, including bilateral and multilateral technical assistance and other international labor activities, $323,108,000, of which, $7,000,000, to remain available until September 30, 2006, is for Frances Perkins Building Security Enhancements, and $30,000,000 is for the acquisition of Departmental information technology, architecture, infrastructure, equipment, software and related needs, which will be allocated by the Department's Chief Information Officer in accordance with the Department's capital investment management process to assure a sound investment strategy; together with not to exceed $314,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund: *Provided,* That no funds made available by this Act may be used by the Solicitor of Labor to participate in a review in any United States court of appeals of any decision made by the Benefits Review Board under section 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921) where such participation is precluded by the decision of the United States Supreme Court in Director, Office of Workers' Compensation Programs v. Newport News Shipbuilding, 115 S. Ct. 1278 (1995), notwithstanding any provisions to the contrary contained in Rule 15 of the Federal Rules of Appellate Procedure: *Provided further,* That no funds made available by this Act may be used by the Secretary of Labor to review a decision under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) that has been appealed and that has been pending before the Benefits Review Board for more than 12 months: *Provided further,* That any such decision pending a review by the Benefits Review Board for more than 1 year shall be considered affirmed by the Benefits Review Board on the 1-year anniversary of the filing of the appeal, and shall be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals: *Provided further,* That these provisions shall not be applicable to the review or appeal of any decision issued under the Black Lung Benefits Act (30 U.S.C. 901 et seq.).

VETERANS EMPLOYMENT AND TRAINING

Not to exceed $195,098,000 may be derived from the Employment Security Administration Account in the Unemployment Trust Fund to carry out the provisions of 38 U.S.C. 4100–4110A, 4212, 4214, and 4321–4327, and Public Law 103–353, and which shall be available for obligation by the States through December 31, 2005, of which $2,000,000 is for the National Veterans' Employment and Training Services Institute. To carry out the Homeless Veterans Reintegration Programs (38 U.S.C. 2021) and the Veterans Workforce Investment Programs (29 U.S.C. 2913), $29,550,000, of which $8,550,000 shall be available for obligation for the period July 1, 2005 through June 30, 2006.

OFFICE OF INSPECTOR GENERAL

For salaries and expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $64,029,000, together with not to exceed $5,561,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

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WORKING CAPITAL FUND

For the acquisition of a new core accounting system for the Department of Labor, including hardware and software infrastructure and the costs associated with implementation thereof, $10,000,000.

GENERAL PROVISIONS

SEC. 101. None of the funds appropriated in this title for the Job Corps shall be used to pay the compensation of an individual, either as direct costs or any proration as an indirect cost, at a rate in excess of Executive Level II.

(TRANSFER OF FUNDS)

SEC. 102. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the current fiscal year for the Department of Labor in this Act may be transferred between a program, project, or activity, but no such program, project, or activity shall be increased by more than 3 percent by any such transfer: *Provided,* That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

SEC. 103. In accordance with Executive Order No. 13126, none of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended for the procurement of goods mined, produced, manufactured, or harvested or services rendered, whole or in part, by forced or indentured child labor in industries and host countries already identified by the United States Department of Labor prior to enactment of this Act.

SEC. 104. There is authorized to be appropriated such sums as may be necessary to the Denali Commission through the Department of Labor to conduct job training of the local workforce where Denali Commission projects will be constructed.

SEC. 105. Not later than 45 days after the date of enactment of this Act, the Secretary of Labor shall issue a monthly transit subsidy of not less than the amount each of its employees of the National Capital Region is eligible to receive, not to exceed a maximum of $100, as directed by Executive Order No. 13150.

SEC. 106. The Department of Labor shall submit its fiscal year 2006 congressional budget justifications to the Committees on Appropriations of the House of Representatives and the Senate in the format as they were prepared prior to fiscal year 2003.

This title may be cited as the "Department of Labor Appropriations Act, 2005".

TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

For carrying out titles II, III, IV, VII, VIII, X, XII, XIX, and XXVI of the Public Health Service Act, section 427(a) of the Federal Coal Mine Health and Safety Act, title V and sections 1128E, 711, and 1820 of the Social Security Act, the Health Care Quality

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Improvement Act of 1986, as amended, the Native Hawaiian Health Care Act of 1988, as amended, the Cardiac Arrest Survival Act of 2000, section 712 of the American Jobs Creation Act of 2004, and the Poison Control Center Enhancement and Awareness Act, as amended, $6,856,624,000, of which $484,629,000 shall be available for construction and renovation (including equipment) of health care and other facilities and other health-related activities as specified in the statement of the managers on the conference report accompanying this Act, and of which $39,499,000 from general revenues, notwithstanding section 1820(j) of the Social Security Act, shall be available for carrying out the Medicare rural hospital flexibility grants program under section 1820 of such Act: *Provided,* That of the funds made available under this heading, $249,000 shall be available until expended for facilities renovations at the Gillis W. Long Hansen's Disease Center: *Provided further,* That in addition to fees authorized by section 427(b) of the Health Care Quality Improvement Act of 1986, fees shall be collected for the full disclosure of information under the Act sufficient to recover the full costs of operating the National Practitioner Data Bank, and shall remain available until expended to carry out that Act: *Provided further,* That fees collected for the full disclosure of information under the "Health Care Fraud and Abuse Data Collection Program", authorized by section 1128E(d)(2) of the Social Security Act, shall be sufficient to recover the full costs of operating the program, and shall remain available until expended to carry out that Act: *Provided further,* That $31,000,000 of the funding provided for community health centers shall be used for base grant adjustments for existing centers: *Provided further,* That no more than $100,000 is available until expended for carrying out the provisions of 42 U.S.C. 233(o) including associated administrative expenses: *Provided further,* That no more than $45,000,000 is available until expended for carrying out the provisions of Public Law 104–73: *Provided further,* That $9,941,000 is available until expended for the National Cord Blood Stem Cell Bank Program as described in House Report 108–401: *Provided further,* That of the funds made available under this heading, $288,283,000 shall be for the program under title X of the Public Health Service Act to provide for voluntary family planning projects: *Provided further,* That amounts provided to said projects under such title shall not be expended for abortions, that all pregnancy counseling shall be nondirective, and that such amounts shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office: *Provided further,* That $793,872,000 shall be for State AIDS Drug Assistance Programs authorized by section 2616 of the Public Health Service Act: *Provided further,* That in addition to amounts provided herein, $25,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out Parts A, B, C, and D of title XXVI of the Public Health Service Act to fund section 2691 Special Projects of National Significance: *Provided further,* That, notwithstanding section 502(a)(1) of the Social Security Act, not to exceed $119,158,000 is available for carrying out special projects of regional and national significance pursuant to section 501(a)(2) of such Act: *Provided further,* That of the funds provided, $40,000,000 shall be provided to the Denali Commission as a direct lump payment pursuant to Public Law

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106–113, of which $10,000,000 shall be for a psychiatric treatment facility in Bethel, Alaska, $10,000,000 shall be for residential and supportive housing for elders, $2,500,000 shall be for medical and dental equipment for rural clinics, and $5,000,000 shall be for upgrade and construction of shelters for victims of domestic violence and child abuse.

HEALTH EDUCATION ASSISTANCE LOANS PROGRAM ACCOUNT

Such sums as may be necessary to carry out the purpose of the program, as authorized by title VII of the Public Health Service Act, as amended. For administrative expenses to carry out the guaranteed loan program, including section 709 of the Public Health Service Act, $3,270,000.

VACCINE INJURY COMPENSATION PROGRAM TRUST FUND

For payments from the Vaccine Injury Compensation Program Trust Fund, such sums as may be necessary for claims associated with vaccine-related injury or death with respect to vaccines administered after September 30, 1988, pursuant to subtitle 2 of title XXI of the Public Health Service Act, to remain available until expended: *Provided,* That for necessary administrative expenses, not to exceed $3,176,000 shall be available from the Trust Fund to the Secretary of Health and Human Services.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

To carry out titles II, III, VII, XI, XV, XVII, XIX, XXI, and XXVI of the Public Health Service Act, sections 101, 102, 103, 201, 202, 203, 301, and 501 of the Federal Mine Safety and Health Act of 1977, sections 20, 21, and 22 of the Occupational Safety and Health Act of 1970, title IV of the Immigration and Nationality Act, and section 501 of the Refugee Education Assistance Act of 1980; including purchase and insurance of official motor vehicles in foreign countries; and purchase, hire, maintenance, and operation of aircraft, $4,533,911,000, of which $272,000,000 shall remain available until expended for equipment, and construction and renovation of facilities, and of which $124,882,000 for international HIV/AIDS shall remain available until September 30, 2006. In addition, such sums as may be derived from authorized user fees, which shall be credited to this account: *Provided,* That in addition to amounts provided herein, the following amounts shall be available from amounts available under section 241 of the Public Health Service Act: (1) $12,794,000 to carry out the National Immunization Surveys; (2) $109,021,000 to carry out the National Center for Health Statistics surveys; (3) $24,751,000 to carry out information systems standards development and architecture and applications-based research used at local public health levels; (4) $463,000 for Health Marketing evaluations; (5) $31,000,000 to carry out Public Health Research; and (6) $87,071,000 to carry out Research Tools and Approaches activities within the National Occupational Research Agenda: *Provided further,* That none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used, in whole or in part, to advocate or promote gun control: *Provided further,* That up

to $30,000,000 shall be made available until expended for Individual Learning Accounts for full-time equivalent employees of the Centers for Disease Control and Prevention: *Provided further,* That the Director may redirect the total amount made available under authority of Public Law 101–502, section 3, dated November 3, 1990, to activities the Director may so designate: *Provided further,* That the Congress is to be notified promptly of any such transfer: *Provided further,* That not to exceed $12,500,000 may be available for making grants under section 1509 of the Public Health Service Act to not more than 15 States, tribes, or tribal organizations: *Provided further,* That without regard to existing statute, funds appropriated may be used to proceed, at the discretion of the Centers for Disease Control and Prevention, with property acquisition, including a long-term ground lease for construction on non-Federal land, to support the construction of a replacement laboratory in the Fort Collins, Colorado area: *Provided further,* That notwithstanding any other provision of law, a single contract or related contracts for development and construction of facilities may be employed which collectively include the full scope of the project: *Provided further,* That the solicitation and contract shall contain the clause "availability of funds" found at 48 CFR 52.232–18: *Provided further*, That of the funds appropriated, $10,000 is for official reception and representation expenses when specifically approved by the Director of the Centers for Disease Control and Prevention.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CANCER INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to cancer, $4,865,525,000, of which up to $8,000,000 may be used for facilities repairs and improvements at the NCI–Frederick Federally Funded Research and Development Center in Frederick, Maryland.

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to cardiovascular, lung, and blood diseases, and blood and blood products, $2,965,453,000.

NATIONAL INSTITUTE OF DENTAL AND CRANIOFACIAL RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to dental disease, $395,080,000.

NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to diabetes and digestive and kidney disease, $1,727,696,000.

NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

For carrying out section 301 and title IV of the Public Health Service Act with respect to neurological disorders and stroke, $1,552,123,000.

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NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

(INCLUDING TRANSFER OF FUNDS)

For carrying out section 301 and title IV of the Public Health Service Act with respect to allergy and infectious diseases, $4,440,007,000: *Provided*, That $100,000,000 may be made available to International Assistance Programs "Global Fund to Fight HIV/AIDS, Malaria, and Tuberculosis", to remain available until expended: *Provided further*, That up to $150,000,000 shall be for extramural facilities construction grants to enhance the Nation's capability to do research on biological and other agents.

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to general medical sciences, $1,959,810,000.

NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

For carrying out section 301 and title IV of the Public Health Service Act with respect to child health and human development, $1,280,915,000.

NATIONAL EYE INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to eye diseases and visual disorders, $674,578,000.

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For carrying out sections 301 and 311 and title IV of the Public Health Service Act with respect to environmental health sciences, $650,027,000.

NATIONAL INSTITUTE ON AGING

For carrying out section 301 and title IV of the Public Health Service Act with respect to aging, $1,060,666,000.

NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to arthritis and musculoskeletal and skin diseases, $515,378,000.

NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS

For carrying out section 301 and title IV of the Public Health Service Act with respect to deafness and other communication disorders, $397,507,000.

NATIONAL INSTITUTE OF NURSING RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to nursing research, $139,198,000.

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NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM

For carrying out section 301 and title IV of the Public Health Service Act with respect to alcohol abuse and alcoholism, $441,911,000.

NATIONAL INSTITUTE ON DRUG ABUSE

For carrying out section 301 and title IV of the Public Health Service Act with respect to drug abuse, $1,014,760,000.

NATIONAL INSTITUTE OF MENTAL HEALTH

For carrying out section 301 and title IV of the Public Health Service Act with respect to mental health, $1,423,609,000.

NATIONAL HUMAN GENOME RESEARCH INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to human genome research, $492,670,000.

NATIONAL INSTITUTE OF BIOMEDICAL IMAGING AND BIOENGINEERING

For carrying out section 301 and title IV of the Public Health Service Act with respect to biomedical imaging and bioengineering research, $300,647,000.

NATIONAL CENTER FOR RESEARCH RESOURCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to research resources and general research support grants, $1,124,141,000: *Provided,* That none of these funds shall be used to pay recipients of the general research support grants program any amount for indirect expenses in connection with such grants: *Provided further,* That $30,000,000 shall be for extramural facilities construction grants.

NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE

For carrying out section 301 and title IV of the Public Health Service Act with respect to complementary and alternative medicine, $123,116,000.

NATIONAL CENTER ON MINORITY HEALTH AND HEALTH DISPARITIES

For carrying out section 301 and title IV of the Public Health Service Act with respect to minority health and health disparities research, $197,780,000.

JOHN E. FOGARTY INTERNATIONAL CENTER

For carrying out the activities at the John E. Fogarty International Center, $67,182,000.

NATIONAL LIBRARY OF MEDICINE

For carrying out section 301 and title IV of the Public Health Service Act with respect to health information communications, $317,947,000, of which $4,000,000 shall be available until expended for improvement of information systems: *Provided,* That in fiscal

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year 2005, the Library may enter into personal services contracts for the provision of services in facilities owned, operated, or constructed under the jurisdiction of the National Institutes of Health: *Provided further,* That in addition to amounts provided herein, $8,200,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out National Information Center on Health Services Research and Health Care Technology and related health services.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

For carrying out the responsibilities of the Office of the Director, National Institutes of Health, $361,145,000, of which up to $10,000,000 shall be used to carry out section 217 of this Act: *Provided,* That funding shall be available for the purchase of not to exceed 29 passenger motor vehicles for replacement only: *Provided further,* That the Director may direct up to 1 percent of the total amount made available in this or any other Act to all National Institutes of Health appropriations to activities the Director may so designate: *Provided further,* That no such appropriation shall be decreased by more than 1 percent by any such transfers and that the Congress is promptly notified of the transfer: *Provided further,* That the National Institutes of Health is authorized to collect third party payments for the cost of clinical services that are incurred in National Institutes of Health research facilities and that such payments shall be credited to the National Institutes of Health Management Fund: *Provided further,* That all funds credited to the National Institutes of Health Management Fund shall remain available for 1 fiscal year after the fiscal year in which they are deposited: *Provided further,* That up to $500,000 shall be available to carry out section 499 of the Public Health Service Act: *Provided further,* That of the funds provided $10,000 shall be for official reception and representation expenses when specifically approved by the Director of NIH: *Provided further,* That a uniform percentage of the amounts appropriated in this Act to each Institute and Center may be utilized for the National Institutes of Health Roadmap Initiative: *Provided further,* That the amount utilized under the preceding proviso shall not exceed $176,800,000 without prior notification to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further,* That amounts utilized under the preceding two provisos shall be in addition to amounts made available for the Roadmap Initiative from the Director's Discretionary Fund and to any amounts allocated to activities related to the Roadmap Initiative through the normal research priority-setting process of individual Institutes and Centers.

BUILDINGS AND FACILITIES

For the study of, construction of, renovation of, and acquisition of equipment for, facilities of or used by the National Institutes of Health, including the acquisition of real property, $111,177,000, to remain available until expended: *Provided,* That notwithstanding any other provision of law, single contracts or related contracts, which collectively include the full scope of the project, may be employed for the development and construction of the first and

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second phases of the John Edward Porter Neuroscience Research Center: *Provided further,* That the solicitations and contracts shall contain the clause "availability of funds" found at 48 CFR 52.232–18.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

For carrying out titles V and XIX of the Public Health Service Act with respect to substance abuse and mental health services, the Protection and Advocacy for Individuals with Mental Illness Act, and section 301 of the Public Health Service Act with respect to program management, $3,295,361,000, of which $23,107,000 shall be available for projects and in the amounts specified in the statement of the managers on the conference report accompanying this Act: *Provided,* That in addition to amounts provided herein, the following amounts shall be available from amounts available under section 241 of the Public Health Service Act: (1) $79,200,000 to carry out subpart II of title XIX of the Public Health Service Act to fund section 1935(b) technical assistance, national data, data collection and evaluation activities, and further that the total available under this Act for section 1935(b) activities shall not exceed 5 percent of the amounts appropriated for subpart II of title XIX; (2) $21,803,000 to carry out subpart I of Part B of title XIX of the Public Health Service Act to fund section 1920(b) technical assistance, national data, data collection and evaluation activities, and further that the total available under this Act for section 1920(b) activities shall not exceed 5 percent of the amounts appropriated for subpart I of Part B of title XIX; (3) $16,000,000 to carry out national surveys on drug abuse; (4) $2,000,000 for mental health data collection; and (5) $4,300,000 for substance abuse treatment programs.

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

For carrying out titles III and IX of the Public Health Service Act, and part A of title XI of the Social Security Act, amounts received from Freedom of Information Act fees, reimbursable and interagency agreements, and the sale of data shall be credited to this appropriation and shall remain available until expended: *Provided,* That the amount made available pursuant to section 927(c) of the Public Health Service Act shall not exceed $318,695,000.

CENTERS FOR MEDICARE AND MEDICAID SERVICES

GRANTS TO STATES FOR MEDICAID

For carrying out, except as otherwise provided, titles XI and XIX of the Social Security Act, $119,124,488,000, to remain available until expended.

For making, after May 31, 2005, payments to States under title XIX of the Social Security Act for the last quarter of fiscal year 2005 for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

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For making payments to States or in the case of section 1928 on behalf of States under title XIX of the Social Security Act for the first quarter of fiscal year 2006, $58,517,290,000, to remain available until expended.

Payment under title XIX may be made for any quarter with respect to a State plan or plan amendment in effect during such quarter, if submitted in or prior to such quarter and approved in that or any subsequent quarter.

PAYMENTS TO HEALTH CARE TRUST FUNDS

For payment to the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as provided under section 1844, 1860D–16, and 1860D–31 of the Social Security Act, sections 103(c) and 111(d) of the Social Security Amendments of 1965, section 278(d) of Public Law 97–248, and for administrative expenses incurred pursuant to section 201(g) of the Social Security Act, $114,608,900,000. To ensure prompt payments of Medicare prescription drug benefits as provided under section 1860 D–16 of the Social Security Act, $5,216,900,000, to become available on October 1, 2005 for fiscal year 2006.

PROGRAM MANAGEMENT

For carrying out, except as otherwise provided, titles XI, XVIII, XIX, and XXI of the Social Security Act, titles XIII and XXVII of the Public Health Service Act, and the Clinical Laboratory Improvement Amendments of 1988, not to exceed $2,696,402,000, to be transferred from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as authorized by section 201(g) of the Social Security Act; together with all funds collected in accordance with section 353 of the Public Health Service Act and section 1857(e)(2) of the Social Security Act, and such sums as may be collected from authorized user fees and the sale of data, which shall remain available until expended: *Provided,* That all funds derived in accordance with 31 U.S.C. 9701 from organizations established under title XIII of the Public Health Service Act shall be credited to and available for carrying out the purposes of this appropriation: *Provided further,* That $24,400,000, to remain available until September 30, 2006, is for contract costs for CMS's Systems Revitalization Plan: *Provided further,* That $78,300,000, to remain available until September 30, 2006, is for contract costs for the Healthcare Integrated General Ledger Accounting System: *Provided further*, That of the amounts made available for research, demonstration and evaluation, $100,000 is available for Advocate Metro Outreach Initiative, Oak Brook, Illinois, to implement an initiative to provide comprehensive health education and services to the deaf and hard-of-hearing community, $150,000 is available for African American Interdenominational Ministries, Inc., Philadelphia, Pennsylvania, to implement an insurance outreach program, $1,900,000 is available for AIDS Healthcare Foundation, Los Angeles, California, for a demonstration of residential and outpatient treatment facilities, $450,000 is available for Bronx-Lebanon Hospital Center, Bronx, New York, for a comprehensive adolescent and young adult health program to demonstrate means of improving health care and preventive services for underserved inner city teenagers and young adults, $300,000 is available for Children's Institute for Palliative Care, Children's

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Hospitals and Clinics, Minneapolis, Minnesota, for a pediatric palliative care demonstration program, $600,000 is available for the City of Detroit, Michigan, for a project to improve access to primary care and preventive health services for low-income and uninsured persons, $100,000 is available for Community Catalyst, Inc., Boston, Massachusetts, for the expansion of a benefits management program, $150,000 is available for Cook County Bureau of Health Services in Chicago, Illinois, for the Antibiotic Resistance Program, $340,000 is available for Donald R. Watkins Memorial Foundation, Houston, Texas, for a comprehensive HIV/AIDS treatment and research demonstration program, $100,000 is available for Focus on Therapeutic Outcomes, Inc., Knoxville, Tennessee, $250,000 is available for Hamot Medical Center, Erie, Pennsylvania and the Ohio Health System, Columbus, Ohio, to implement a demonstration project on the Medicare Advantage program, $25,000 is available for HealthRight, Inc., Philadelphia, Pennsylvania, for their Care Access Program, $75,000 is available for the Inglis Foundation, Philadelphia, Pennsylvania, for healthcare and social services for low-income adults with severe physical disabilities in an effort to promote independent living, $50,000 is available for Medical Care for Children Partnership, Fairfax, Virginia, for access to specialty health care for children who have serious medical needs, $500,000 is available for Memphis Biotech Foundation in Memphis, Tennessee, to develop a biologistics network in Mississippi and Tennessee, $225,000 is available for Muskegon Community Health Project, Muskegon, Michigan, for the Access Health Program, $30,000 is available for Our House of Portland, Portland, Oregon, to develop a Care Program for people living with AIDS, $750,000 is available for Pace Vermont, Burlington, Vennont, for the Rural Program for All-inclusive Care for the Elderly, $150,000 is available for Patient Advocate Foundation, Newport News, Virginia, to assist the PAF in serving patients experiencing difficulty accessing quality health care services, $450,000 is available for Puerto Rico's Governor's Office of Elderly Affairs for the Medication Error Prevention Pilot Program, $1,500,000 is available for San Francisco Department of Public Health, San Francisco, California, for a demonstration project to improve HIV/AIDS treatment and prevention services, $300,000 is available for Santa Clara County, California, for outreach and enrollment assistance activities of the Children's Health Initiative, $500,000 is available for Susquehanna Health System, Williamsport, Pennsylvania, for stabilizing workforce for patient care, $500,000 is available for Swope Health Services, Kansas City, Missouri, to supplement recurring healthcare costs for underemployed, uninsured, and income-qualified patients in Wyandotte and Johnson Counties, Kansas, $100,000 is available for Temple University, Crime and Justice Research Center, Philadelphia, Pennsylvania, for DNA backlog and utilization, and $250,000 is available for University of Maine, Partnership for Early Childhood Health & Services: *Provided further*, That funds appropriated under this heading are available for the Healthy Start, Grow Smart program under which the Centers for Medicare and Medicaid Services may, directly or through grants, contracts, or cooperative agreements, produce and distribute informational materials including, but not limited to, pamphlets and brochures on infant and toddler health care to expectant parents enrolled in the Medicaid program and to parents and guardians enrolled in such program with infants and children: *Provided further,* That

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not less than $79,000,000 shall be for processing Medicare appeals: *Provided further*, That the Secretary of Health and Human Services is directed to collect fees in fiscal year 2005 from Medicare∂Choice organizations pursuant to section 1857(e)(2) of the Social Security Act and from eligible organizations with risk-sharing contracts under section 1876 of that Act pursuant to section 1876(k)(4)(D) of that Act: *Provided further*, That to the extent Medicare claims processing unit costs are projected by the Centers for Medicare and Medicaid Services to exceed $0.87 for Part A claims and/or $0.63 for Part B claims, up to an additional $18,000,000 may be available for obligation for every $0.04 increase in Medicare claims processing unit costs from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds. The calculation of projected unit costs shall be derived in the same manner in which the estimated unit costs were calculated for the Federal budget estimate for the fiscal year.

HEALTH MAINTENANCE ORGANIZATION LOAN AND LOAN GUARANTEE FUND

For carrying out subsections (d) and (e) of section 1308 of the Public Health Service Act, any amounts received by the Secretary in connection with loans and loan guarantees under title XIII of the Public Health Service Act, to be available without fiscal year limitation for the payment of outstanding obligations. During fiscal year 2005, no commitments for direct loans or loan guarantees shall be made.

ADMINISTRATION FOR CHILDREN AND FAMILIES

PAYMENTS TO STATES FOR CHILD SUPPORT ENFORCEMENT AND FAMILY SUPPORT PROGRAMS

For making payments to States or other non-Federal entities under titles I, IV–D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960 (24 U.S.C. ch. 9), $2,873,802,000, to remain available until expended; and for such purposes for the first quarter of fiscal year 2006, $1,200,000,000, to remain available until expended.

For making payments to each State for carrying out the program of Aid to Families with Dependent Children under title IV–A of the Social Security Act before the effective date of the program of Temporary Assistance for Needy Families (TANF) with respect to such State, such sums as may be necessary: *Provided,* That the sum of the amounts available to a State with respect to expenditures under such title IV–A in fiscal year 1997 under this appropriation and under such title IV–A as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall not exceed the limitations under section 116(b) of such Act.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under titles I, IV–D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960 (24 U.S.C. ch. 9), for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

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LOW-INCOME HOME ENERGY ASSISTANCE

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, $1,900,000,000.

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, $300,000,000, to remain available until expended: *Provided,* That these funds are for the unanticipated home energy assistance needs of one or more States, as authorized by section 2604(e) of the Act: *Provided further,* That the entire amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress) as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

REFUGEE AND ENTRANT ASSISTANCE

For necessary expenses for refugee and entrant assistance activities and for costs associated with the care and placement of unaccompanied alien children authorized by title IV of the Immigration and Nationality Act and section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–422), for carrying out section 462 of the Homeland Security Act of 2002 (Public Law 107–296), and for carrying out the Torture Victims Relief Act of 2003 (Public Law 108–179), $488,336,000, of which up to $10,000,000 shall be available to carry out the Trafficking Victims Protection Act of 2003 (Public Law 108–193): *Provided,* That funds appropriated under this heading pursuant to section 414(a) of the Immigration and Nationality Act and section 462 of the Homeland Security Act of 2002 for fiscal year 2005 shall be available for the costs of assistance provided and other activities to remain available through September 30, 2007.

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

For carrying out sections 658A through 658R of the Omnibus Budget Reconciliation Act of 1981 (The Child Care and Development Block Grant Act of 1990), $2,099,729,000 shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: *Provided,* That $19,120,000 shall be available for child care resource and referral and school-aged child care activities, of which $1,000,000 shall be for the Child Care Aware toll free hotline: *Provided further,* That, in addition to the amounts required to be reserved by the States under section 658G, $272,672,000 shall be reserved by the States for activities authorized under section 658G, of which $100,000,000 shall be for activities that improve the quality of infant and toddler care: *Provided further,* That $10,000,000 shall be for use by the Secretary for child care research, demonstration, and evaluation activities.

SOCIAL SERVICES BLOCK GRANT

For making grants to States pursuant to section 2002 of the Social Security Act, $1,700,000,000: *Provided,* That notwithstanding subparagraph (B) of section 404(d)(2) of such Act, the applicable percent specified under such subparagraph for a State to carry out State programs pursuant to title XX of such Act shall be 10 percent.

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CHILDREN AND FAMILIES SERVICES PROGRAMS

For carrying out, except as otherwise provided, the Runaway and Homeless Youth Act, the Developmental Disabilities Assistance and Bill of Rights Act, the Head Start Act, the Child Abuse Prevention and Treatment Act, sections 310 and 316 of the Family Violence Prevention and Services Act, as amended, the Native American Programs Act of 1974, title II of Public Law 95–266 (adoption opportunities), the Adoption and Safe Families Act of 1997 (Public Law 105–89), sections 1201 and 1211 of the Children's Health Act of 2000, the Abandoned Infants Assistance Act of 1988, sections 261 and 291 of the Help America Vote Act of 2002, the Early Learning Opportunities Act, part B(1) of title IV and sections 413, 429A, 1110, and 1115 of the Social Security Act, and sections 40155, 40211, and 40241 of Public Law 103–322; for making payments under the Community Services Block Grant Act, sections 439(h), 473A, and 477(i) of the Social Security Act, and title IV of Public Law 105–285, and for necessary administrative expenses to carry out said Acts and titles I, IV, V, X, XI, XIV, XVI, and XX of the Social Security Act, the Act of July 5, 1960 (24 U.S.C. ch. 9), the Omnibus Budget Reconciliation Act of 1981, title IV of the Immigration and Nationality Act, section 501 of the Refugee Education Assistance Act of 1980, sections 40155, 40211, and 40241 of Public Law 103–322, and section 126 and titles IV and V of Public Law 100–485, $9,069,853,000, of which $32,103,000, to remain available until September 30, 2006, shall be for grants to States for adoption incentive payments, as authorized by section 473A of title IV of the Social Security Act (42 U.S.C. 670–679) and may be made for adoptions completed before September 30, 2005: *Provided further,* That $6,898,580,000 shall be for making payments under the Head Start Act, of which $1,400,000,000 shall become available October 1, 2005 and remain available through September 30, 2006: *Provided further,* That $732,385,000 shall be for making payments under the Community Services Block Grant Act: *Provided further,* That not less than $7,300,000 shall be for section 680(3)(B) of the Community Services Block Grant Act, *Provided further,* That within amounts provided herein for abstinence education for adolescents, up to $10,000,000 may be available for a national abstinence education campaign: *Provided further,* That in addition to amounts provided herein, $6,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out the provisions of section 1110 of the Social Security Act: *Provided further,* That to the extent Community Services Block Grant funds are distributed as grant funds by a State to an eligible entity as provided under the Act, and have not been expended by such entity, they shall remain with such entity for carryover into the next fiscal year for expenditure by such entity consistent with program purposes: *Provided further,* That the Secretary shall establish procedures regarding the disposition of intangible property which permits grant funds, or intangible assets acquired with funds authorized under section 680 of the Community Services Block Grant Act, as amended, to become the sole property of such grantees after a period of not more than 12 years after the end of the grant for purposes and uses consistent with the original grant: *Provided further,* That funds appropriated for section 680(a)(2) of the Community Services Block Grant Act, as amended, shall be available for financing construction and

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rehabilitation and loans or investments in private business enterprises owned by community development corporations: *Provided further,* That $55,000,000 is for a compassion capital fund to provide grants to charitable organizations to emulate model social service programs and to encourage research on the best practices of social service organizations: *Provided further,* That $15,000,000 shall be for activities authorized by the Help America Vote Act of 2002, of which $10,000,000 shall be for payments to States to promote access for voters with disabilities, and of which $5,000,000 shall be for payments to States for protection and advocacy systems for voters with disabilities: *Provided further,* That $100,000,000 shall be for making competitive grants to provide abstinence education (as defined by section 510(b)(2) of the Social Security Act) to adolescents, and for Federal costs of administering the grant: *Provided further,* That grants under the immediately preceding proviso shall be made only to public and private entities which agree that, with respect to an adolescent to whom the entities provide abstinence education under such grant, the entities will not provide to that adolescent any other education regarding sexual conduct, except that, in the case of an entity expressly required by law to provide health information or services the adolescent shall not be precluded from seeking health information or services from the entity in a different setting than the setting in which abstinence education was provided: *Provided further,* That in addition to amounts provided herein for abstinence education for adolescents, $4,500,000 shall be available from amounts available under section 241 of the Public Health Services Act to carry out evaluations (including longitudinal evaluations) of adolescent pregnancy prevention approaches: *Provided further,* That $2,000,000 shall be for improving the Public Assistance Reporting Information System, including grants to States to support data collection for a study of the system's effectiveness.

PROMOTING SAFE AND STABLE FAMILIES

For carrying out section 436 of the Social Security Act, $305,000,000 and for section 437, $99,383,000.

PAYMENTS TO STATES FOR FOSTER CARE AND ADOPTION ASSISTANCE

For making payments to States or other non-Federal entities under title IV–E of the Social Security Act, $5,037,900,000.

For making payments to States or other non-Federal entities under title IV–E of the Act, for the first quarter of fiscal year 2006, $1,767,200,000.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under section 474 of title IV–E, for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

For carrying out, to the extent not otherwise provided, the Older Americans Act of 1965, as amended, and section 398 of the Public Health Service Act, $1,404,634,000, of which $5,500,000

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shall be available for activities regarding medication management, screening, and education to prevent incorrect medication and adverse drug reactions; and of which $4,558,000 shall remain available until September 30, 2007, for the White House Conference on Aging.

OFFICE OF THE SECRETARY

GENERAL DEPARTMENTAL MANAGEMENT

For necessary expenses, not otherwise provided, for general departmental management, including hire of six sedans, and for carrying out titles III, XVII, XX, and XXI of the Public Health Service Act, and the United States-Mexico Border Health Commission Act, $371,975,000, together with $55,851,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund: *Provided,* That of the funds made available under this heading for carrying out title XX of the Public Health Service Act, $13,120,000 shall be for activities specified under section 2003(b)(2), all of which shall be for prevention service demonstration grants under section 510(b)(2) of title V of the Social Security Act, as amended, without application of the limitation of section 2010(c) of said title XX: *Provided further,* That of this amount, $52,838,000 shall be for minority AIDS prevention and treatment activities; $14,847,000 shall be for an Information Technology Security and Innovation Fund for Department-wide activities involving cybersecurity, information technology security, and related innovation projects; and $6,000,000 shall be to assist Afghanistan in the development of maternal and child health clinics, consistent with section 103(a)(4)(H) of the Afghanistan Freedom Support Act of 2002: *Provided further*, That no more than $2,754,000 shall be available for the Office of the Assistant Secretary for Legislation: *Provided further,* That $50,000,000 shall be transferred to the Social Security Administration for processing Medicare appeals: *Provided further,* That specific information requests from the chairmen and ranking members of the Subcommittees on Labor, Health and Human Services, and Education, and Related Agencies, on scientific research or any other matter, shall be transmitted to the Committees on Appropriations in a prompt professional manner and within the time frame specified in the request: *Provided further,* That scientific information requested by the Committees on Appropriations and prepared by government researchers and scientists shall be transmitted to the Committees on Appropriations, uncensored and without delay.

OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General, including the hire of passenger motor vehicles for investigations, in carrying out the provisions of the Inspector General Act of 1978, as amended, $40,323,000: *Provided,* That of such amount, necessary sums are available for providing protective services to the Secretary and investigating non-payment of child support cases for which non-payment is a Federal offense under 18 U.S.C. 228.

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OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, $32,043,000, together with not to exceed $3,314,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund.

POLICY RESEARCH

For carrying out, to the extent not otherwise provided, research studies under section 1110 of the Social Security Act and title III of the Public Health Service Act, $20,750,000, which shall be available from amounts available under section 241 of the Public Health Service Act to carry out national health or human services research and evaluation activities: *Provided,* That the expenditure of any funds available under section 241 of the Public Health Service Act are subject to the requirements of section 206 of this Act.

RETIREMENT PAY AND MEDICAL BENEFITS FOR COMMISSIONED OFFICERS

For retirement pay and medical benefits of Public Health Service Commissioned Officers as authorized by law, for payments under the Retired Serviceman's Family Protection Plan and Survivor Benefit Plan, for medical care of dependents and retired personnel under the Dependents' Medical Care Act (10 U.S.C. chapters 55 and 56), such amounts as may be required during the current fiscal year. The following are definitions for the medical benefits of the Public Health Service Commissioned Officers that apply to 10 U.S.C. chapter 56, section 1116(c). The source of funds for the monthly accrual payments into the Department of Defense Medicare-Eligible Retiree Health Care Fund shall be the Retirement Pay and Medical Benefits for Commissioned Officers account. For purposes of this Act, the term "pay of members" shall be construed to be synonymous with retirement payments to United States Public Health Service officers who are retired for age, disability, or length of service; payments to survivors of deceased officers; medical care to active duty and retired members and dependents and beneficiaries; all of which payments are provided for by the Retirement Pay and Medical Benefits for Commissioned Officers account.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

For expenses necessary to support activities related to countering potential biological, disease, nuclear, radiological and chemical threats to civilian populations, $2,208,287,000: *Provided,* That this amount is distributed as follows: Centers for Disease Control and Prevention, $1,173,300,000; Office of the Secretary, $64,438,000; Strategic National Stockpile, $400,000,000, to remain available until expended; National Institutes of Health, $47,400,000; and Health Resources and Services Administration, $523,149,000: *Provided further,* That employees of the Centers for Disease Control and Prevention or the Public Health Service, both civilian and Commissioned Officers, detailed to States, municipalities, or other organizations under authority of section 214 of the Public Health Service Act for purposes related to homeland security, shall be treated as non-Federal employees for reporting purposes only and

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shall not be included within any personnel ceiling applicable to the Agency, Service, or the Department of Health and Human Services during the period of detail or assignment.

In addition, for activities to ensure a year-round influenza vaccine production capacity; the development and implementation of rapidly expandable influenza vaccine production technologies; and if determined necessary by the Secretary, the purchase of influenza vaccine, $100,000,000, to remain available until expended.

GENERAL PROVISIONS

SEC. 201. Funds appropriated in this title shall be available for not to exceed $50,000 for official reception and representation expenses when specifically approved by the Secretary.

SEC. 202. The Secretary shall make available through assignment not more than 60 employees of the Public Health Service to assist in child survival activities and to work in AIDS programs through and with funds provided by the Agency for International Development, the United Nations International Children's Emergency Fund or the World Health Organization.

SEC. 203. None of the funds appropriated under this Act may be used to implement section 399F(b) of the Public Health Service Act or section 1503 of the National Institutes of Health Revitalization Act of 1993, Public Law 103–43.

SEC. 204. None of the funds appropriated in this Act for the National Institutes of Health, the Agency for Healthcare Research and Quality, and the Substance Abuse and Mental Health Services Administration shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level I.

SEC. 205. None of the funds appropriated in this title for Head Start shall be used to pay the compensation of an individual, either as direct costs or any proration as an indirect cost, at a rate in excess of Executive Level II.

SEC. 206. None of the funds appropriated in this Act may be expended pursuant to section 241 of the Public Health Service Act, except for funds specifically provided for in this Act, or for other taps and assessments made by any office located in the Department of Health and Human Services, prior to the Secretary's preparation and submission of a report to the Committee on Appropriations of the Senate and of the House detailing the planned uses of such funds.

SEC. 207. Notwithstanding section 241(a) of the Public Health Service Act, such portion as the Secretary shall determine, but not more than 2.4 percent, of any amounts appropriated for programs authorized under said Act shall be made available for the evaluation (directly, or by grants or contracts) of the implementation and effectiveness of such programs.

(TRANSFER OF FUNDS)

SEC. 208. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the current fiscal year for the Department of Health and Human Services in this Act may be transferred between a program, project, or activity, but no such program, project, or activity shall be increased by more than 3 percent by any such transfer: *Provided,* That a

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program, project, or activity may be increased by up to an additional 2 percent subject to approval by the House and Senate Committees on Appropriations: *Provided further,* That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

SEC. 209. Of the amounts made available in this Act for the National Institutes of Health, the amount for research related to the human immunodeficiency virus, as jointly determined by the Director of the National Institutes of Health and the Director of the Office of AIDS Research, shall be made available to the "Office of AIDS Research" account. The Director of the Office of AIDS Research shall transfer from such account amounts necessary to carry out section 2353(d)(3) of the Public Health Service Act.

SEC. 210. None of the funds appropriated in this Act may be made available to any entity under title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities.

SEC. 211. None of the funds appropriated by this Act (including funds appropriated to any trust fund) may be used to carry out the Medicare+Choice program if the Secretary denies participation in such program to an otherwise eligible entity (including a Provider Sponsored Organization) because the entity informs the Secretary that it will not provide, pay for, provide coverage of, or provide referrals for abortions: *Provided,* That the Secretary shall make appropriate prospective adjustments to the capitation payment to such an entity (based on an actuarially sound estimate of the expected costs of providing the service to such entity's enrollees): *Provided further,* That nothing in this section shall be construed to change the Medicare program's coverage for such services and a Medicare+Choice organization described in this section shall be responsible for informing enrollees where to obtain information about all Medicare covered services.

SEC. 212. Notwithstanding any other provision of law, no provider of services under title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.

SEC. 213. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167) is amended—

(1) in section 599D (8 U.S.C. 1157 note)—

(A) in subsection (b)(3), by striking "1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, and 2005" and inserting "1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, and 2006";

(B) in subsection (e), by striking "October 1, 2004" each place it appears and inserting "October 1, 2005"; and

(C) in subsection (b)(1)—

(i) in subparagraph (A), by striking "and" at the end;

(ii) in subparagraph (B), by striking the period and inserting "; and"; and

(iii) by adding at the end the following:

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"(C) one or more categories of aliens who are or were nationals and residents of the Islamic Republic or Iran who, as members of a religious minority in Iran, share common characteristics that identify them as targets of persecution in that state on account of race, religion, nationality, membership in a particular social group, or political opinion."; and

(2) in section 599E (8 U.S.C. 1255 note) in subsection (b)(2), by striking "September 30, 2004" and inserting "September 30, 2005".

SEC. 214. (a) Except as provided by subsection (e) none of the funds appropriated by this Act may be used to withhold substance abuse funding from a State pursuant to section 1926 of the Public Health Service Act (42 U.S.C. 300x–26) if such State certifies to the Secretary of Health and Human Services by May 1, 2005 that the State will commit additional State funds, in accordance with subsection (b), to ensure compliance with State laws prohibiting the sale of tobacco products to individuals under 18 years of age.

(b) The amount of funds to be committed by a State under subsection (a) shall be equal to 1 percent of such State's substance abuse block grant allocation for each percentage point by which the State misses the retailer compliance rate goal established by the Secretary of Health and Human Services under section 1926 of such Act.

(c) The State is to maintain State expenditures in fiscal year 2005 for tobacco prevention programs and for compliance activities at a level that is not less than the level of such expenditures maintained by the State for fiscal year 2004, and adding to that level the additional funds for tobacco compliance activities required under subsection (a). The State is to submit a report to the Secretary on all fiscal year 2004 State expenditures and all fiscal year 2005 obligations for tobacco prevention and compliance activities by program activity by July 31, 2005.

(d) The Secretary shall exercise discretion in enforcing the timing of the State obligation of the additional funds required by the certification described in subsection (a) as late as July 31, 2005.

(e) None of the funds appropriated by this Act may be used to withhold substance abuse funding pursuant to section 1926 from a territory that receives less than $1,000,000.

SEC. 215. In order for the Centers for Disease Control and Prevention to carry out international health activities, including HIV/AIDS and other infectious disease, chronic and environmental disease, and other health activities abroad during fiscal year 2005, the Secretary of Health and Human Services—

(1) may exercise authority equivalent to that available to the Secretary of State in section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)). The Secretary of Health and Human Services shall consult with the Secretary of State and relevant Chief of Mission to ensure that the authority provided in this section is exercised in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) and other applicable statutes administered by the Department of State, and

(2) is authorized to provide such funds by advance or reimbursement to the Secretary of State as may be necessary to pay the costs of acquisition, lease, alteration, renovation,

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and management of facilities outside of the United States for the use of the Department of Health and Human Services. The Department of State shall cooperate fully with the Secretary of Health and Human Services to ensure that the Department of Health and Human Services has secure, safe, functional facilities that comply with applicable regulation governing location, setback, and other facilities requirements and serve the purposes established by this Act. The Secretary of Health and Human Services is authorized, in consultation with the Secretary of State, through grant or cooperative agreement, to make available to public or nonprofit private institutions or agencies in participating foreign countries, funds to acquire, lease, alter, or renovate facilities in those countries as necessary to conduct programs of assistance for international health activities, including activities relating to HIV/AIDS and other infectious diseases, chronic and environmental diseases, and other health activities abroad.

SEC. 216. The Division of Federal Occupational Health may utilize personal services contracting to employ professional management/administrative and occupational health professionals.

SEC. 217. (a) AUTHORITY.—Notwithstanding any other provision of law, the Director of the National Institutes of Health may use funds available under section 402(i) of the Public Health Service Act (42 U.S.C. 282(i)) to enter into transactions (other than contracts, cooperative agreements, or grants) to carry out research in support of the NIH Roadmap Initiative of the Director.

(b) PEER REVIEW.—In entering into transactions under subsection (a), the Director of the National Institutes of Health may utilize such peer review procedures (including consultation with appropriate scientific experts) as the Director determines to be appropriate to obtain assessments of scientific and technical merit. Such procedures shall apply to such transactions in lieu of the peer review and advisory council review procedures that would otherwise be required under sections 301(a)(3), 405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494 of the Public Health Service Act (42 U.S.C. 241, 284(b)(1)(B), 284(b)(2), 284a(a)(3)(A), 289a, and 289c).

SEC. 218. Notwithstanding any other provisions of law, funds made available under this heading may be used to continue operating the Council on Graduate Medical Education established by section 301 of Public Law 102–408.

SEC. 219. (a) Notwithstanding section 412.23(b)(2) of title 42 of the Code of Federal Regulations, none of the funds appropriated by this Act may be expended by the Secretary of Health and Human Services to treat a hospital or unit of a hospital that was certified by the Secretary as an inpatient rehabilitation facility on or before June 30, 2004, as a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) until, not later than 60 days after the date on which the report under subsection (b) is issued, the Secretary, taking into account the recommendations in such report—

(1) determines that the classification criteria of hospitals and units of hospitals as inpatient rehabilitation facilities under such section 412.23(b)(2) are not inconsistent with such recommendations; or

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(2) promulgates a regulation providing for revised criteria under such section 412.23(b)(2), which regulation shall be effective and final immediately on an interim basis as of the date of publication of the regulation.

(b) The study referred to in subsection (a) is a study by the Comptroller General of the United States directed in the statement of managers accompanying the conference report on the bill H.R. 1 of the 108th Congress regarding clinically appropriate standards for defining inpatient rehabilitation services under such section 412.23(b)(2).

SEC. 220. In addition to funds appropriated to the Office of Inspector General of the Department of Health and Human Services under Public Law 104–191 and this Act, $25,000,000 shall be transferred from amounts appropriated under section 1015(a)(1) of Public Law 108–173 for activities by the Office of Inspector General of the Department of Health and Human Services relating to oversight of programs established or revised by Public Law 108–173.

SEC. 221. The unobligated balance of the Health Professions Student Loan program authorized in Subpart II, Federally-Supported Student Loan Funds, of title VII of the Public Health Services Act is rescinded.

SEC. 222. The unobligated balance of the Nursing Student Loan program authorized by section 835 of the Public Health Services Act is rescinded.

SEC. 223. The unobligated balance, excluding amounts necessary for the costs of potential defaults, in the Medical Facilities Guarantee and Loan Fund is rescinded.

SEC. 224. The unobligated balance in the amount of $20,000,000 appropriated by Public Law 108–11 under the heading "Public Health and Social Services Emergency Fund" is rescinded.

SEC. 225. The Center for Biodefense and Emerging Infectious Diseases (Building 33) at the National Institutes of Health is hereby named the C.W. Bill Young Center for Biodefense and Emerging Infectious Diseases.

This title may be cited as the "Department of Health and Human Services Appropriations Act, 2005".

TITLE III—DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

For carrying out title I of the Elementary and Secondary Education Act of 1965 ("ESEA") and section 418A of the Higher Education Act of 1965, $14,963,683,000, of which $7,382,995,000 shall become available on July 1, 2005, and shall remain available through September 30, 2006, and of which $7,383,301,000 shall become available on October 1, 2005, and shall remain available through September 30, 2006 for academic year 2005–2006, and of which $25,000,000 shall become available on October 1, 2004 and shall remain available until September 30, 2006: *Provided,* That $7,037,592,000 shall be available for basic grants under section 1124: *Provided further,* That up to $3,500,000 of these funds shall be available to the Secretary of Education on October 1, 2004, to obtain annually updated educational-agency-level census poverty data from the Bureau of the Census: *Provided further,* That $1,365,031,000 shall be available for concentration grants under

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section 1124A: *Provided further,* That $2,219,843,000 shall be available for targeted grants under section 1125: *Provided further,* That $2,219,843,000 shall be available for education finance incentive grants under section 1125A: *Provided further,* That $25,000,000, available until September 30, 2006, shall be for a striving readers initiative authorized under section 1502 of the ESEA: *Provided further,* That $9,500,000 shall be available to carry out part E of title I: *Provided further,* That from the funds available to carry out part E of title I, up to $1,000,000 shall be available to the Secretary of Education to provide technical assistance to State and local educational agencies concerning part A of title I: *Provided further,* That $207,000,000 shall be available for comprehensive school reform grants under part F of the ESEA.

IMPACT AID

For carrying out programs of financial assistance to federally affected schools authorized by title VIII of the Elementary and Secondary Education Act of 1965, $1,253,893,000, of which $1,083,687,000 shall be for basic support payments under section 8003(b), $50,369,000 shall be for payments for children with disabilities under section 8003(d), $48,936,000 shall be for construction under section 8007 and shall remain available through September 30, 2006, $63,000,000 shall be for Federal property payments under section 8002, and $7,901,000, to remain available until expended, shall be for facilities maintenance under section 8008: *Provided,* That $3,000,000 of the funds for section 8007 shall be available for the local educational agencies and in the amounts specified in the statement of the managers on the conference report accompanying this Act: *Provided further,* That, notwithstanding any other provision of law, these funds shall remain available until expended: *Provided further,* That for purposes of computing the amount of a payment for an eligible local educational agency under section 8003(a) of the Elementary and Secondary Education Act (20 U.S.C. 7703(a)) for school year 2004–2005, children enrolled in a school of such agency that would otherwise be eligible for payment under section 8003(a)(1)(B) of such Act, but due to the deployment of both parents or legal guardians, or a parent or legal guardian having sole custody of such children, or due to the death of a military parent or legal guardian while on active duty (so long as such children reside on Federal property as described in section 8003(a)(1)(B)), are no longer eligible under such section, shall be considered as eligible students under such section, provided such students remain in average daily attendance at a school in the same local educational agency they attended prior to their change in eligibility status.

SCHOOL IMPROVEMENT PROGRAMS

For carrying out school improvement activities authorized by titles II, part B of title IV, part A and subparts 6 and 9 of part D of title V, parts A and B of title VI, and parts B and C of title VII of the Elementary and Secondary Education Act of 1965 ("ESEA"); the McKinney-Vento Homeless Assistance Act; section 203 of the Educational Technical Assistance Act of 2002; the Compact of Free Association Amendments Act of 2003; and the Civil Rights Act of 1964, $5,664,977,000, of which $4,034,196,000 shall become available on July 1, 2005, and remain available through

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September 30, 2006, and of which $1,435,000,000 shall become available on October 1, 2005, and shall remain available through September 30, 2006, for academic year 2005–2006: *Provided,* That funds made available to carry out part B of title VII of the ESEA may be used for construction, renovation and modernization of any elementary school, secondary school, or structure related to an elementary school or secondary school, run by the Department of Education of the State of Hawaii, that serves a predominantly Native Hawaiian student body: *Provided further,* That from the funds referred to in the preceding proviso, not less than $1,000,000 shall be for a grant to the Department of Education of the State of Hawaii for the activities described in such proviso, and $600,000 shall be for a grant to the University of Hawaii School of Law for a Center of Excellence in Native Hawaiian law: *Provided further,* That funds made available to carry out part C of title VII of the ESEA may be used for construction: *Provided further,* That from the funds referred to in the preceding proviso, $2,000,000 shall be provided to the Yuut Elitnaurviut Vocational Learning Center in Bethel, Alaska for construction; $1,000,000 shall be provided to the University of Alaska Anchorage for high school enrichment programs of the UAA Native Science and Engineering program; and notwithstanding any other provision of law, of the funds available to the Alaska Native Heritage Center, up to $1,000,000 may be used for repair and renovation of buildings on its campus: *Provided further,* That $415,000,000 shall be for State assessments and related activities authorized under sections 6111 and 6112 of the ESEA: *Provided further,* That the amount made available in the Department of Education Appropriations Act, 2004, under the heading School Improvement Programs and including any funds transferred by the Secretary of Education pursuant to section 304 of that Act for State assessment grants authorized under section 6111 of the Elementary and Secondary Education Act of 1965, shall not be less than $390,000,000: *Provided further,* That, notwithstanding any other provision of law, including any across-the-board reduction that would otherwise apply, the funds made available for fiscal year 2005 under the heading School Improvement Programs for State assessment grants under section 6111 of the Elementary and Secondary Education Act of 1965 shall not be less than $400,000,000: *Provided further,* That $57,283,000 shall be available to carry out section 203 of the Educational Technical Assistance Act of 2002: *Provided further,* That $29,111,000 shall be available to carry out part D of title V of the ESEA: *Provided further,* That no funds appropriated under this heading may be used to carry out section 5494 under the ESEA: *Provided further,* That $12,230,000 shall be available to carry out the Supplemental Education Grants program for the Federated States of Micronesia, and $6,100,000 shall be available to carry out the Supplemental Education Grants program for the Republic of the Marshall Islands: *Provided further,* That up to 5 percent of these amounts may be reserved by the Federated States of Micronesia and the Republic of the Marshall Islands to administer the Supplemental Education Grants programs and to obtain technical assistance, oversight and consultancy services in the administration of these grants and to reimburse the United States Departments of Labor, Health and Human Services, and Education for such services.

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INDIAN EDUCATION

For expenses necessary to carry out, to the extent not otherwise provided, title VII, part A of the Elementary and Secondary Education Act of 1965, $120,856,000.

INNOVATION AND IMPROVEMENT

For carrying out activities authorized by parts G and H of title I, subpart 5 of part A and parts C and D of title II, parts B, C, and D of title V, and section 1504 of the Elementary and Secondary Education Act of 1965 ("ESEA"), $1,101,454,000: *Provided,* That $17,000,000 shall be available to carry out section 2151(c) of the ESEA, of which not less than $10,000,000 shall be provided to the National Board for Professional Teaching Standards, and not less than $7,000,000 shall be provided to the American Board for the Certification of Teacher Excellence: *Provided further,* That $37,279,000 shall be for subpart 2 of part B of title V: *Provided further,* That $417,418,000 shall be available to carry out part D of title V of the ESEA: *Provided further,* That $246,963,000 of the funds for subpart 1, part D of title V of the ESEA shall be available for the projects and in the amounts specified in the statement of the managers on the conference report accompanying this Act.

SAFE SCHOOLS AND CITIZENSHIP EDUCATION

For carrying out activities authorized by subpart 3 of part C of title II, part A of title IV, and subparts 2, 3 and 10 of part D of title V of the Elementary and Secondary Education Act of 1965 ("ESEA"), title VIII–D of the Higher Education Amendments of 1998, and Public Law 102–73, $867,713,000, of which $467,908,000, shall become available on July 1, 2005 and remain available through September 30, 2006: *Provided,* That of the amount available for subpart 2 of part A of title IV of the ESEA, $850,000 shall be used to continue the National Recognition Awards program under the same guidelines outlined by section 120(f) of Public Law 105–244: *Provided further,* That $440,908,000 shall be available for subpart 1 of part A of title IV and $236,472,000 shall be available for subpart 2 of part A of title IV: *Provided further,* That $133,691,000 shall be available to carry out part D of title V of the ESEA: *Provided further,* That of the funds available to carry out subpart 3 of part C of title II, up to $12,292,000 may be used to carry out section 2345 and $3,050,000 shall be used by the Center for Civic Education to implement a comprehensive program to improve public knowledge, understanding, and support of the Congress and the State legislatures: *Provided further,* That $27,000,000 shall be for Youth Offender Grants, of which $5,000,000 shall be used in accordance with section 601 of Public Law 102–73 as that section was in effect prior to enactment of Public Law 105–220: *Provided further,* That of the funds available to carry out subpart 10 of part D of title V, up to $2,000,000 may be used to support the Special Olympics National Summer Games.

ENGLISH LANGUAGE ACQUISITION

For carrying out part A of title III of the ESEA, $681,215,000, of which $595,715,000 shall become available on July 1, 2005,

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and shall remain available through September 30, 2006: *Provided,* That funds reserved under section 3111(c)(1)(D) of the ESEA that are not used in accordance with section 3111(c)(2) may be added to the funds that are available July 1, 2005, through September 30, 2006, for State allotments under section 3111(c)(3).

SPECIAL EDUCATION

For carrying out parts B, C, and D of the Individuals with Disabilities Education Act, $11,767,748,000, of which $6,145,270,000 shall become available for obligation on July 1, 2005, and shall remain available through September 30, 2006, and of which $5,413,000,000 shall become available on October 1, 2005, and shall remain available through September 30, 2006, for academic year 2005–2006: *Provided,* That $11,400,000 shall be for Recording for the Blind and Dyslexic, Inc., to support the development, production, and circulation of recorded educational materials: *Provided further,* That $1,500,000 shall be for the recipient of funds provided by Public Law 105–78 under section 687(b)(2)(G) of the Act (as in effect prior to the enactment of the Individuals with Disabilities Education Improvement Act of 2004) to provide information on diagnosis, intervention, and teaching strategies for children with disabilities: *Provided further,* That the amount for section 611(c) of the Act shall be equal to the amount available for that section during fiscal year 2004, increased by the amount of inflation as specified in section 611(f)(1)(B)(ii) of the Act (as in effect prior to the enactment of the Individuals with Disabilities Education Improvement Act of 2004).

REHABILITATION SERVICES AND DISABILITY RESEARCH

For carrying out, to the extent not otherwise provided, the Rehabilitation Act of 1973, the Assistive Technology Act of 1998 ("the AT Act"), and the Helen Keller National Center Act, $3,076,112,000, of which $1,000,000 shall be awarded to the American Academy of Orthotists and Prosthetists for activities that further the purposes of the grant received by the Academy for the period beginning October 1, 2003, including activities to meet the demand for orthotic and prosthetic provider services and improve patient care: *Provided,* That $30,000,000 shall be used for carrying out the AT Act, including $4,420,760 for State grants for protection and advocacy under section 5 of the AT Act and $4,055,000 shall be for alternative financing programs: *Provided further,* That the Federal share of grants for alternative financing programs under section 4(b)(2)(D) of the AT Act shall not exceed 75 percent, and the requirements in section 301(c)(2) and section 302 of the AT Act (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004) shall not apply to such grants: *Provided further,* That $7,030,000 of the funds for section 303 of the Rehabilitation Act of 1973 shall be available for the projects and in the amounts specified in the statement of the managers of the conference report accompanying this Act.

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SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES

AMERICAN PRINTING HOUSE FOR THE BLIND

For carrying out the Act of March 3, 1879, as amended (20 U.S.C. 101 et seq.), $17,000,000.

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

For the National Technical Institute for the Deaf under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), $55,790,000, of which $1,685,000 shall be for construction and shall remain available until expended: *Provided,* That from the total amount available, the Institute may at its discretion use funds for the endowment program as authorized under section 207.

GALLAUDET UNIVERSITY

For the Kendall Demonstration Elementary School, the Model Secondary School for the Deaf, and the partial support of Gallaudet University under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), $105,400,000: *Provided,* That from the total amount available, the University may at its discretion use funds for the endowment program as authorized under section 207.

VOCATIONAL AND ADULT EDUCATION

For carrying out, to the extent not otherwise provided, the Carl D. Perkins Vocational and Technical Education Act of 1998, the Adult Education and Family Literacy Act, and subparts 4 and 11 of part D of title V of the Elementary and Secondary Education Act of 1965 ("ESEA"), $2,027,166,000, of which $1,226,404,000 shall become available on July 1, 2005 and shall remain available through September 30, 2006 and of which $791,000,000 shall become available on October 1, 2005 and shall remain available through September 30, 2006: *Provided,* That of the amount provided for Adult Education State Grants, $69,135,000 shall be made available for integrated English literacy and civics education services to immigrants and other limited English proficient populations: *Provided further,* That of the amount reserved for integrated English literacy and civics education, notwithstanding section 211 of the Adult Education and Family Literacy Act, 65 percent shall be allocated to States based on a State's absolute need as determined by calculating each State's share of a 10-year average of the Immigration and Naturalization Service data for immigrants admitted for legal permanent residence for the 10 most recent years, and 35 percent allocated to States that experienced growth as measured by the average of the 3 most recent years for which Immigration and Naturalization Service data for immigrants admitted for legal permanent residence are available, except that no State shall be allocated an amount less than $60,000: *Provided further,* That of the amounts made available for the Adult Education and Family Literacy Act, $9,169,000 shall be for national leadership activities under section 243 and $6,692,000 shall be for the National Institute for Literacy under section 242: *Provided further,* That $100,238,000 shall be available to carry out part D of title V of the ESEA: *Provided further,*

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That $95,238,000 shall be available to support the activities authorized under subpart 4 of part D of title V of the Elementary and Secondary Education Act of 1965, of which up to 5 percent shall become available October 1, 2004 and shall remain available through September 30, 2006, for evaluation, technical assistance, school networking, peer review of applications, and program outreach activities, and of which not less than 95 percent shall become available on July 1, 2005, and remain available through September 30, 2006, for grants to local educational agencies: *Provided further,* That funds made available to local education agencies under this subpart shall be used only for activities related to establishing smaller learning communities in high schools.

STUDENT FINANCIAL ASSISTANCE

For carrying out subparts 1, 3 and 4 of part A, part C and part E of title IV of the Higher Education Act of 1965, as amended, $14,380,795,000, which shall remain available through September 30, 2006.

The maximum Pell Grant for which a student shall be eligible during award year 2005–2006 shall be $4,050.

STUDENT AID ADMINISTRATION

For Federal administrative expenses (in addition to funds made available under section 458), to carry out part D of title I, and subparts 1, 3, and 4 of part A, and parts B, C, D and E of title IV of the Higher Education Act of 1965, as amended, $120,247,000.

HIGHER EDUCATION

For carrying out, to the extent not otherwise provided, section 121 and titles II, III, IV, V, VI, and VII of the Higher Education Act of 1965 ("HEA"), as amended, section 1543 of the Higher Education Amendments of 1992, the Mutual Educational and Cultural Exchange Act of 1961, title VIII of the Higher Education Amendments of 1998, and section 117 of the Carl D. Perkins Vocational and Technical Education Act, $2,134,269,000, of which $1,500,000 for interest subsidies authorized by section 121 of the HEA shall remain available until expended: *Provided,* That $9,876,000, to remain available through September 30, 2006, shall be available to fund fellowships for academic year 2006–2007 under part A, subpart 1 of title VII of said Act, under the terms and conditions of part A, subpart 1: *Provided further,* That notwithstanding any other provision of law or any regulation, the Secretary of Education shall not require the use of a restricted indirect cost rate for grants issued pursuant to section 117 of the Carl D. Perkins Vocational and Technical Education Act of 1998: *Provided further,* That $988,000 is for data collection and evaluation activities for programs under the HEA, including such activities needed to comply with the Government Performance and Results Act of 1993: *Provided further,* That notwithstanding any other provision of law, funds made available in this Act to carry out title VI of the HEA and section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 may be used to support visits and study in foreign countries by individuals who are participating in advanced foreign language training and international studies in areas that are vital

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to United States national security and who plan to apply their language skills and knowledge of these countries in the fields of government, the professions, or international development: *Provided further,* That of the funds referred to in the preceding proviso up to 1 percent may be used for program evaluation, national outreach, and information dissemination activities and $1,500,000 shall be used for a contract with the National Research Council to carry out an independent review of title VI international education and foreign language studies and the section 102(b)(6) Fulbright-Hays programs: *Provided further,* That the funds provided for title II of the HEA shall be allocated notwithstanding section 210 of such Act: *Provided further,* That $146,360,000 of the funds for part B of title VII of the Higher Education Act of 1965 shall be available for the projects and in the amounts specified in the statement of the managers of the conference report accompanying this Act.

HOWARD UNIVERSITY

For partial support of Howard University (20 U.S.C. 121 et seq.), $240,715,000, of which not less than $3,552,000 shall be for a matching endowment grant pursuant to the Howard University Endowment Act (Public Law 98–480) and shall remain available until expended.

COLLEGE HOUSING AND ACADEMIC FACILITIES LOANS PROGRAM

For Federal administrative expenses authorized under section 121 of the Higher Education Act of 1965, $578,000 to carry out activities related to existing facility loans entered into under the Higher Education Act of 1965.

HISTORICALLY BLACK COLLEGE AND UNIVERSITY CAPITAL FINANCING PROGRAM ACCOUNT

The aggregate principal amount of outstanding bonds insured pursuant to section 344 of title III, part D of the Higher Education Act of 1965, shall not exceed $357,000,000, and the cost, as defined in section 502 of the Congressional Budget Act of 1974, of such bonds shall not exceed zero.

For administrative expenses to carry out the Historically Black College and University Capital Financing Program entered into pursuant to title III, part D of the Higher Education Act of 1965, as amended, $212,000.

INSTITUTE OF EDUCATION SCIENCES

For carrying out activities authorized by the Education Sciences Reform Act of 2002, as amended, The National Assessment of Educational Progress Authorization Act, and section 208 of the Educational Technical Assistance Act of 2002, $527,453,000: *Provided,* That, of the amount appropriated, $190,518,000 shall be available for obligation until September 30, 2006: *Provided further,* That $83,774,000 shall be for research and innovation in special education authorized under section 177 of the Education Science Reform Act, as amended: *Provided further,* That $10,623,000 of the funds for section 177 of the Act shall be available for the

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projects and in the amounts specified in the statement of the managers of the conference report accompanying this Act.

DEPARTMENTAL MANAGEMENT

PROGRAM ADMINISTRATION

For carrying out, to the extent not otherwise provided, the Department of Education Organization Act, including rental of conference rooms in the District of Columbia and hire of three passenger motor vehicles, $423,379,000.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, as authorized by section 203 of the Department of Education Organization Act, $90,248,000.

OFFICE OF THE INSPECTOR GENERAL

For expenses necessary for the Office of the Inspector General, as authorized by section 212 of the Department of Education Organization Act, $47,790,000.

GENERAL PROVISIONS

SEC. 301. No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.

SEC. 302. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing or clustering. The prohibition described in this section does not include the establishment of magnet schools.

SEC. 303. No funds appropriated under this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

(TRANSFER OF FUNDS)

SEC. 304. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the Department of Education in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: *Provided,* That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

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SEC. 305. Section 8002(m) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702(m)) is amended by striking "5 years" each place it appears and inserting "7 years".

SEC. 306. (a) Section 167 of division H of the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 3) is amended by striking "$200,000, for Western Maine Technical College, South Paris, Maine, for education programs and marketing activities" and inserting "$200,000, for Central Maine Community College, Auburn, Maine, for education programs, student recruitment and marketing activities at the Central Maine Community College-Western Maine University and Community College Center in South Paris, Maine".

(b) In the statement of the managers of the committee of conference accompanying H.R. 2673 (Public Law 108–199; House Report 108–401), in the matter in title III of division E, relating to the Fund for the Improvement of Education under the heading "Innovation and Improvement" the provision specifying $300,000 for the Provo City Public Schools, Provo, Utah, to develop, purchase and implement an English language instructional program for training and certifying ESL teachers shall be deemed to read as follows: "Provo City Public Schools, Provo, Utah, for an English language instructional program, $300,000".

SEC. 307. Notwithstanding any other provision of law, students from the Republic of the Marshall Islands and the Federated States of Micronesia enrolled in institutions in the Republic of Palau shall be eligible for grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 to the extent such grants continue to be available to students from the Republic of the Marshall Islands and the Federated States of Micronesia who are attending institutions in the United States.

This title may be cited as the "Department of Education Appropriations Act, 2005".

TITLE IV—RELATED AGENCIES

ARMED FORCES RETIREMENT HOME

For expenses necessary for the Armed Forces Retirement Home to operate and maintain the Armed Forces Retirement Home—Washington and the Armed Forces Retirement Home—Gulfport, to be paid from funds available in the Armed Forces Retirement Home Trust Fund, $61,624,000, of which $4,000,000 shall remain available until expended for construction and renovation of the physical plants at the Armed Forces Retirement Home—Washington and the Armed Forces Retirement Home—Gulfport.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

For expenses necessary of the Committee for Purchase From People Who Are Blind or Severely Disabled established by Public Law 92–28, $4,707,000.

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

DOMESTIC VOLUNTEER SERVICE PROGRAMS, OPERATING EXPENSES

For expenses necessary for the Corporation for National and Community Service to carry out the provisions of the Domestic Volunteer Service Act of 1973, as amended, $356,598,000: *Provided,* That none of the funds made available to the Corporation for National and Community Service in this Act for activities authorized by section 122 of part C of title I and part E of title II of the Domestic Volunteer Service Act of 1973 shall be used to provide stipends or other monetary incentives to volunteers or volunteer leaders whose incomes exceed 125 percent of the national poverty level.

CORPORATION FOR PUBLIC BROADCASTING

For payment to the Corporation for Public Broadcasting, as authorized by the Communications Act of 1934, an amount which shall be available within limitations specified by that Act, for the fiscal year 2007, $400,000,000: *Provided,* That no funds made available to the Corporation for Public Broadcasting by this Act shall be used to pay for receptions, parties, or similar forms of entertainment for Government officials or employees: *Provided further,* That none of the funds contained in this paragraph shall be available or used to aid or support any program or activity from which any person is excluded, or is denied benefits, or is discriminated against, on the basis of race, color, national origin, religion, or sex: *Provided further,* That for fiscal year 2005, in addition to the amounts provided above, $39,705,000 shall be for costs related to digital program production, development, and distribution, associated with the transition of public broadcasting to digital broadcasting, to be awarded as determined by the Corporation in consultation with public radio and television licensees or permittees, or their designated representatives: *Provided further,* That for fiscal year 2005, in addition to the amounts provided above, $40,000,000 shall be for the costs associated with replacement and upgrade of the public television interconnection system: *Provided further,* That none of the funds made available to the Corporation for Public Broadcasting by this Act, Public Law 108–199 or Public Law 108–7, shall be used to support the Television Future Fund or any similar purpose.

FEDERAL MEDIATION AND CONCILIATION SERVICE

SALARIES AND EXPENSES

For expenses necessary for the Federal Mediation and Conciliation Service to carry out the functions vested in it by the Labor Management Relations Act, 1947 (29 U.S.C. 171–180, 182–183), including hire of passenger motor vehicles; for expenses necessary for the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a); and for expenses necessary for the Service to carry out the functions vested in it by the Civil Service Reform Act, Public Law 95–454 (5 U.S.C. ch. 71), $44,797,000, including $1,500,000, to remain available through September 30, 2006, for activities authorized by the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a): *Provided,* That notwithstanding 31 U.S.C. 3302, fees

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charged, up to full-cost recovery, for special training activities and other conflict resolution services and technical assistance, including those provided to foreign governments and international organizations, and for arbitration services shall be credited to and merged with this account, and shall remain available until expended: *Provided further,* That fees for arbitration services shall be available only for education, training, and professional development of the agency workforce: *Provided further,* That the Director of the Service is authorized to accept and use on behalf of the United States gifts of services and real, personal, or other property in the aid of any projects or functions within the Director's jurisdiction.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Federal Mine Safety and Health Review Commission (30 U.S.C. 801 et seq.), $7,872,000.

INSTITUTE OF MUSEUM AND LIBRARY SERVICES

OFFICE OF MUSEUM AND LIBRARY SERVICES: GRANTS AND ADMINISTRATION

For carrying out the Museum and Library Services Act of 1996, $282,827,000, to remain available until expended: *Provided*, That of the amount provided, $100,000 shall be awarded to Academy of Natural Sciences, Philadelphia, Pennsylvania, for exhibits and programming associated with the Lewis and Clark expedition, $300,000 shall be awarded to Alaska Native Heritage Museum, Anchorage, AK in cooperation with the Koahnic Broadcasting Corporation for its Elders Oral History Project, $50,000 shall be awarded to Alex Haley House and Museum, Henning, TN to preserve collections and improve exhibits, $100,000 shall be awarded to Allegheny County, Pittsburgh, Pennsylvania, for exhibit design and development, $100,000 shall be awarded to Allentown Public Library, Allentown, Pennsylvania, for technological upgrades and educational programs, $400,000 shall be awarded to AMISTAD America, Inc., New Haven, Connecticut, for an endowment fund as authorized under Public Law 108–184, $320,000 shall be awarded to Amistad Research Center, Tulane University, New Orleans, Louisiana, for faculty research fellowship and student internship programs, $50,000 shall be awarded to Anniston Museum of Natural History, Anniston, Alabama, for enhanced classroom curriculum, $100,000 shall be awarded to Antiquarian & Landmarks Society, Hartford, Connecticut, for the Nathan Hale Homestead in Coventry, $100,000 shall be awarded to Arab Community Center for Economic and Social Services (ACCESS), Dearborn, Michigan, for exhibits and museum programs, $75,000 shall be awarded to Athenaeum of Philadelphia, Philadelphia, Pennsylvania, for conservation and preservation of library materials, $75,000 shall be awarded to Audubon Pennsylvania, Audubon, Pennsylvania, for exhibits and nature education programs at the Mill Grove Audubon Center, $200,000 shall be awarded to Autry National Center, Los Angeles, California, for exhibits, education programs and outreach at its Southwest Museum of the American Indian and/or its Museum of the American West, $200,000 shall be awarded to Baylor University, Waco, Texas, for archival activities, exhibits, and education

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programs for the Mayborn Museum Complex, $500,000 shall be awarded to Beth Medrash Govoha, Lakewood, New Jersey, for equipment, exhibits and preservation of collections, $125,000 shall be awarded to Bibliographical Society of America, New York, New York, $500,000 shall be awarded to Bishop Museum in Hawaii for digitization of old Hawaiian language newspapers and other activities to preserve the culture of Native Hawaiians, $100,000 shall be awarded to Boys and Girls Harbor, New York, New York, for the preservation and digitalization of Raices Collection, a multimedia collection documenting the history of Afro-Caribbean Latin music in America, $75,000 shall be awarded to Brooklyn Academy of Music, Brooklyn, New York, for preservation and management of its archives, $50,000 shall be awarded to Business Association of West Parkside, Philadelphia, Pennsylvania, to exhibit the Negro Leagues Baseball Memorial, $200,000 shall be awarded to Canton Museum of Art, Canton, Ohio, to develop and implement the HeARTland program, $100,000 shall be awarded to Cape Cod Maritime Museum, Hyannis, Massachusetts, for the development of exhibitions and programs, $100,000 shall be awarded to Carnegie Museums of Pittsburgh, Pittsburgh, Pennsylvania, for preservation of collections at the Carnegie Museum of Natural History, $25,000 shall be awarded to Catawba County Historical Association, Newton, North Carolina, $200,000 shall be awarded to Chaldean Community Culture Center, West Bloomfield, Michigan, for programs that promote Chaldean language, history, culture and teacher training, $400,000 shall be awarded to Charles H. Wright Museum of African American History, Detroit, Michigan, for exhibits, education programs, technology and operations, $84,000 shall be awarded to Cherry Hill Township in New Jersey for improved library technology, $150,000 shall be awarded to Chicago Historical Society, Chicago, Illinois, for expansion of the Chicago Historical Society's collections and exhibits, $200,000 shall be awarded to Children's Museum in Oak Lawn, Oak Lawn, Illinois, for its "Explore and Soar" education program, $100,000 shall be awarded to City of Henderson, North Carolina, for personnel, equipment and technology for the H. Leslie Perry Memorial Library, $200,000 shall be awarded to City of Jackson, Mississippi, for the Medger Wiley Evers Museum for program and exhibit design and development, $250,000 shall be awarded to City of Jackson, Tennessee, to support technology upgrades at the Jackson-Madison County Public Library, $150,000 shall be awarded to City of Murrieta Public Library, Murrieta, California, for a Literacy thru Technology Program, $500,000 shall be awarded to Claude Pepper Center in Tallahassee, Florida for the digitization of library holdings, $100,000 shall be awarded to College of Physicians of Philadelphia, Philadelphia, Pennsylvania, to preserve its medical library and art collection, $50,000 shall be awarded to Colleton County Memorial Library, Walterboro, South Carolina, for books and library materials, $76,000 shall be awarded to Columbus Museum of Art, Columbus, Ohio, to develop, test, and fabricate the exhibition, train teachers and docents and publicize the project and produce related educational materials, $72,000 shall be awarded to Contra Costa County, Martinez, California, for the Contra Costa Reads program, $300,000 shall be awarded to Currier Museum of Art, Manchester, New Hampshire for educational programs and community outreach, $825,000 shall be awarded to Des Moines Arts Center for the protection of the current collection, $500,000 shall be awarded to

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East Tennessee Historical Society, Knoxville, Tennessee, to expand and develop exhibits that teach of the culture and history of east Tennessee, $30,000 shall be awarded to Edison House Museum, Louisville, Kentucky, for educational programs, $100,000 shall be awarded to Everhart Museum, Scranton, Pennsylvania, $430,000 shall be awarded to Experience Music Project in Seattle, Washington, for an Oral History Program, $100,000 shall be awarded to Fairfax County Public Library, Fairfax, Virginia, for its Motheread/Fatheread Plus family literacy initiative, $800,000 shall be awarded to Field Museum, Chicago, Illinois, for establishing networked computer database for collections management, $100,000 shall be awarded to Fine Arts Museums of San Francisco for the De Young Museum's Art Education Program, $275,000 shall be awarded to Florence Library Learning Center, Los Angeles, California, for reading and other education programs, $650,000 shall be awarded to Florida International Museum, St. Petersburg, Florida, for professional activities, $500,000 shall be awarded to Folger Library, Washington, D.C., for exhibits, operations, and public programs including education and outreach, $50,000 shall be awarded to Frederick Douglass Museum, Washington, D.C., for an African American cultural outreach center, $75,000 shall be awarded to Free Library of Philadelphia, Philadelphia, Pennsylvania, for technology and equipment upgrades, $350,000 shall be awarded to George Washington University, Washington, D.C., for the Eleanor Roosevelt Papers Project, $12,000 shall be awarded to Greenburgh Public Library, Tarrytown, New York, for computers and technology, $50,000 shall be awarded to Greensburg Hempfield Area Public Library, Greensburg, Pennsylvania, for computers, $500,000 shall be awarded to Grout Museum, Waterloo, Iowa, for exhibitions, $200,000 shall be awarded to Harbor Heritage Society, Cleveland, Ohio, for MAKING WAVES: Vessel-wide interpretive exhibit planning for the Steamship William G. Mather Maritime Museum, $250,000 shall be awarded to HealthSpace Cleveland, Cleveland, Ohio, for exhibits, $75,000 shall be awarded to Hellenic Cultural Association, Salt Lake City, Utah, for exhibit and program development at the Hellenic Cultural Museum, $150,000 shall be awarded to Hendry County, LaBelle, Florida, for books and technology for Harlem Library, $500,000 shall be awarded to Hesperia Community Library, Hesperia, California, $75,000 shall be awarded to Historical Society of Western Pennsylvania, Pittsburgh, Pennsylvania, for exhibit and curriculum development for the Western Pennsylvania Sports Museum, $75,000 shall be awarded to HistoryMakers, Chicago, Illinois, to create a digital archive dedicated to preserving the history and accomplishments of African Americans, $150,000 shall be awarded to Home Port Alliance for the USS New Jersey for restoration and preservation, $100,000 shall be awarded to Hopkinsville-Christian County Public Library, Hopkinsville, Kentucky, $250,000 shall be awarded to Hunter College, New York, New York, to digitize, preserve and archive collections of the Center for Puerto Rican Studies and for public access and dissemination activities, $300,000 shall be awarded to Huntsville Museum of Art, Huntsville, Alabama, for exhibits, technology, outreach and education programs, $300,000 shall be awarded to International Museum of Women, San Francisco, California, for education and teacher professional development programs, $75,000 shall be awarded to Iona College, New York, for technology upgrade for the Ryan Library, $150,000 shall be awarded to Italian-American

Cultural Center of Iowa in Des Moines, Iowa, for exhibits, multimedia collections, display, $72,000 shall be awarded to Jackson County Library System, Ripley, West Virginia, $415,000 shall be awarded to James Ford Bell Museum of Natural History, University of Minnesota, Minneapolis, Minnesota, for exhibits and education programs, $350,000 shall be awarded to Johnstown Area Heritage Association, Johnstown, Pennsylvania, for exhibits and education programs for the Heritage Discovery Center, $25,000 shall be awarded to Josephine School Community Museum, Berryville, Virginia, $400,000 shall be awarded to Kansas State University, Manhattan, Kansas, for the 20th Century Soldier Project, $250,000 shall be awarded to Kidspace Children's Museum, Pasadena, California, to develop its Shake Zone Education Exhibit, $100,000 shall be awarded to Lafayette College, Easton, Pennsylvania, for technology updates to the David Bishop Skillman Library, $50,000 shall be awarded to Livingston Parish Hungarian Museum, Denham Springs, Louisiana, $500,000 shall be awarded to Maltz Museum of Jewish Heritage, Beachwood, Ohio, for a Cradle of Christianity: Biblical Treasures from the Holy Land traveling exhibition, $250,000 shall be awarded to MAPS Air Museum, North Canton, Ohio, to develop educational displays, upkeep of current displays, library expansion, historical research and operation expenses, $100,000 shall be awarded to Mauch Chunk Historical Society of Carbon County, Jim Thorpe, Pennsylvania, $500,000 shall be awarded to Memphis Zoo, Memphis, Tennessee, to develop exhibits and support students programs, $400,000 shall be awarded to Miami Museum of Science & Space Transit Planetarium, Miami, Florida, for exhibits, outreach, and education programs, $200,000 shall be awarded to Mid-Hudson Children's Museum, Poughkeepsie, New York, for a Comprehensive Technology Enrichment Program to enhance exhibits, $40,000 shall be awarded to Milford Area Historical Society, Milford, Ohio, for the Promont House Museum, $450,000 shall be awarded to Milton J. Rubenstein Museum of Science and Technology, Syracuse, New York, $1,540,000 shall be awarded to Missouri Historical Society, St. Louis, Missouri, for the establishment and maintenance of an archive for materials relating to the Congressional career of the Honorable Richard A. Gephardt, $260,000 shall be awarded to Mount Vernon Public Library, Mount Vernon, New York for operations and upgrades, $100,000 shall be awarded to Mt. San Antonio College, Walnut, California for equipment, $500,000 shall be awarded to Museum of Appalachia, Norris, Tennessee, to preserve and restore the collection of Appalachian pioneer artifacts, $250,000 shall be awarded to Museum of Aviation Foundation, Warner Robin, Georgia, $200,000 shall be awarded to Museum of Fine Arts, Boston, Massachusetts, for the development of exhibitions and programs, $600,000 shall be awarded to Museum of Flight in Seattle, Washington, for the American Fighter Aces Archive and Collection, $250,000 shall be awarded to Museum of Science and Industry, Chicago, Illinois, for the Science in Your World Program, $500,000 shall be awarded to Museum of Science, Boston, Massachusetts, for community outreach, exhibit design and development, and educational programs, $75,000 shall be awarded to National Center for American Revolution, Wayne, Pennsylvania, for exhibit design and curriculum development for the Museum of the American Revolution at Valley Forge National Historic Park, $100,000 shall

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be awarded to National City Public Library, National City, California, for collections and technology, $950,000 shall be awarded to National D-Day Museum in New Orleans, Louisiana, to improve the education, outreach, and exhibition of the museum, $100,000 shall be awarded to National Museum of American Jewish History, Philadelphia, Pennsylvania, to develop a fully interactive learning center linked to their web site that will extend the reach of the Museum, $1,000,000 shall be awarded to National Museum of Women in the Arts, Washington, D.C., $750,000 shall be awarded to National Trust for Historic Preservation, Washington, D.C., for the Farnsworth House Museum in Plano, Illinois, $2,100,000 shall be awarded to Native American Cultural Center and Museum, Oklahoma City, Oklahoma, $500,000 shall be awarded to New York Botanical Garden, Bronx, New York, for the Virtual Herbarium Project, $1,000,000 shall be awarded to New York Hall of Science to develop, expand, and display science-related materials, $90,000 shall be awarded to North Carolina Museum of Art Foundation, Inc., Raleigh, North Carolina, for exhibits and education programs, $1,000,000 shall be awarded to Omaha Performing Arts Center in Nebraska for telecommunications systems, $100,000 shall be awarded to Pennsylvania Hunting & Fishing Museum, Warren, Pennsylvania, to develop curriculum for conservation education, $200,000 shall be awarded to Pittsburgh Children's Museum, Pittsburgh, Pennsylvania, to expand arts and after-school programs for at-risk children, $950,000 shall be awarded to Please Touch Museum, Philadelphia, Pennsylvania, to develop educational programs focusing on hands-on learning experiences, $320,000 shall be awarded to Portland State University, Portland, Oregon, to enhance library collections and outreach in the area of Middle Eastern and Judaic Studies, $50,000 shall be awarded to Putnam County Library, Cookeville, Tennessee, to improve exhibits and purchase technology upgrades, $100,000 shall be awarded to Reading Company Technical and Historical Society, Inc., Reading, Pennsylvania, to expand interpretive activities, $550,000 shall be awarded to Rochester Museum & Science Center, Rochester, New York, for expansion of exhibitions, $350,000 shall be awarded to Rock and Roll Hall of Fame and Museum, Cleveland, Ohio, for music education programs, $200,000 shall be awarded to Saint Louis County Economic Council, Saint Louis, Missouri, for Jefferson Barracks, $100,000 shall be awarded to Sam Davis Memorial Association, Smyrna, Tennessee, for interpretive exhibits and education programs for the Sam Davis Home, $350,000 shall be awarded to San Bernardino County, San Bernardino, California, for the San Bernardino County Museum, $300,000 shall be awarded to Save the Speaker's House, Inc., Trappe, Pennsylvania, $315,000 shall be awarded to Sci-Quest, The North Alabama Science Center, Huntsville, Alabama, for science and mathematics education programs, $175,000 shall be awarded to Serra Cooperative Library System, San Diego, California, $100,000 shall be awarded to Simon Wiesenthal Center's Los Angeles Museum for Tolerance, Los Angeles, California, for the Tools for Tolerance for Educators program to provide teacher training in diversity, tolerance and cooperation, $50,000 shall be awarded to Smithtown Library, Smithtown, New York, for equipment and technology for its Virtual Worldwide Neighborhood Website Project, $75,000 shall be awarded to Soldiers and Sailors National Military Museum and Memorial, Pittsburgh, Pennsylvania, for education and outreach programs, $125,000 shall

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be awarded to Southwest Missouri State University, Springfield, Missouri, for digitization of Archives and Rare-book Collections at the Meyer Library, $250,000 shall be awarded to Stark County Park District, Canton, Ohio, for exhibits, $1,000,000 shall be awarded to State Historical Society of Iowa in Des Moines, Iowa, for the development of exhibits for the World Food Prize, $250,000 shall be awarded to Taft Museum of Art, Cincinnati, Ohio, $600,000 shall be awarded to Tubman African American Museum, Macon, Georgia, $250,000 shall be awarded to University of Alaska Fairbanks for the continuation of the Alaska Digital Archives project, $250,000 shall be awarded to University of Vermont of Burlington, Vermont, for a digitization project for the preservation of Vermont cultural heritage materials, $500,000 shall be awarded to Vietnam Archives Center at Texas Tech University, Lubbock, Texas, for technology infrastructure, $200,000 shall be awarded to Virginia Living Museum, Newport News, Virginia, for science education, $135,000 shall be awarded to Waterloo Center for the Arts, Waterloo, Iowa, for the Youth Pavillion to provide educational programs and exhibit design and development, $400,000 shall be awarded to Western Reserve Historical Society, Cleveland, Ohio, $25,000 shall be awarded to William McKinley Presidential Library and Museum, Canton, Ohio, $50,000 shall be awarded to Williamsburg County Library, Kingstree, South Carolina, for books, library materials and computers, $250,000 shall be awarded to Winchester Conservation Museum, Edgefield, South Carolina, $50,000 shall be awarded to Wisconsin Historical Society, Madison, Wisconsin, to catalog and microfilm military base papers, $100,000 shall be awarded to Witte Museum, San Antonio, Texas, for the Water Works project, $75,000 shall be awarded to Woodmere Art Museum, Philadelphia, Pennsylvania, for technology upgrades and education and outreach programs, $500,000 shall be awarded to Woodrow Wilson Presidential Library, Staunton, Virginia, $100,000 shall be awarded to World War II Victory Memorial Museum, Auburn, Indiana, and $75,000 shall be awarded to Zimmer Children's Museum, Los Angeles, California, to develop and expand the youTHink education program.

MEDICARE PAYMENT ADVISORY COMMISSION

SALARIES AND EXPENSES

For expenses necessary to carry out section 1805 of the Social Security Act, $9,979,000, to be transferred to this appropriation from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

SALARIES AND EXPENSES

For necessary expenses for the National Commission on Libraries and Information Science, established by the Act of July 20, 1970 (Public Law 91–345, as amended), $1,001,000.

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NATIONAL COUNCIL ON DISABILITY

SALARIES AND EXPENSES

For expenses necessary for the National Council on Disability as authorized by title IV of the Rehabilitation Act of 1973, as amended, $3,371,000.

NATIONAL LABOR RELATIONS BOARD

SALARIES AND EXPENSES

For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management Relations Act, 1947, as amended (29 U.S.C. 141–167), and other laws, $251,875,000: *Provided,* That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935 (29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203), and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 percent of the water stored or supplied thereby is used for farming purposes.

NATIONAL MEDIATION BOARD

SALARIES AND EXPENSES

For expenses necessary to carry out the provisions of the Railway Labor Act, as amended (45 U.S.C. 151–188), including emergency boards appointed by the President, $11,722,000.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Occupational Safety and Health Review Commission (29 U.S.C. 661), $10,595,000.

RAILROAD RETIREMENT BOARD

DUAL BENEFITS PAYMENTS ACCOUNT

For payment to the Dual Benefits Payments Account, authorized under section 15(d) of the Railroad Retirement Act of 1974, $108,000,000, which shall include amounts becoming available in fiscal year 2005 pursuant to section 224(c)(1)(B) of Public Law 98–76; and in addition, an amount, not to exceed 2 percent of the amount provided herein, shall be available proportional to the amount by which the product of recipients and the average benefit received exceeds $108,000,000: *Provided*, That the total amount provided herein shall be credited in 12 approximately equal amounts on the first day of each month in the fiscal year.

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FEDERAL PAYMENTS TO THE RAILROAD RETIREMENT ACCOUNTS

For payment to the accounts established in the Treasury for the payment of benefits under the Railroad Retirement Act for interest earned on unnegotiated checks, $150,000, to remain available through September 30, 2006, which shall be the maximum amount available for payment pursuant to section 417 of Public Law 98–76.

LIMITATION ON ADMINISTRATION

For necessary expenses for the Railroad Retirement Board for administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, $103,370,000, to be derived in such amounts as determined by the Board from the railroad retirement accounts and from moneys credited to the railroad unemployment insurance administration fund.

LIMITATION ON THE OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General for audit, investigatory and review activities, as authorized by the Inspector General Act of 1978, as amended, not more than $7,254,000, to be derived from the railroad retirement accounts and railroad unemployment insurance account: *Provided,* That none of the funds made available in any other paragraph of this Act may be transferred to the Office; used to carry out any such transfer; used to provide any office space, equipment, office supplies, communications facilities or services, maintenance services, or administrative services for the Office; used to pay any salary, benefit, or award for any personnel of the Office; used to pay any other operating expense of the Office; or used to reimburse the Office for any service provided, or expense incurred, by the Office.

SOCIAL SECURITY ADMINISTRATION

PAYMENTS TO SOCIAL SECURITY TRUST FUNDS

For payment to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance trust funds, as provided under sections 201(m), 228(g), and 1131(b)(2) of the Social Security Act, $20,454,000.

SUPPLEMENTAL SECURITY INCOME PROGRAM

For carrying out titles XI and XVI of the Social Security Act, section 401 of Public Law 92–603, section 212 of Public Law 93–66, as amended, and section 405 of Public Law 95–216, including payment to the Social Security trust funds for administrative expenses incurred pursuant to section 201(g)(1) of the Social Security Act, $28,586,829,000, to remain available until expended: *Provided,* That any portion of the funds provided to a State in the current fiscal year and not obligated by the State during that year shall be returned to the Treasury.

For making, after June 15 of the current fiscal year, benefit payments to individuals under title XVI of the Social Security Act, for unanticipated costs incurred for the current fiscal year, such sums as may be necessary.

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For making benefit payments under title XVI of the Social Security Act for the first quarter of fiscal year 2006, $10,930,000,000, to remain available until expended.

LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, including the hire of two passenger motor vehicles, and not to exceed $15,000 for official reception and representation expenses, not more than $8,674,296,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: *Provided,* That not less than $2,000,000 shall be for the Social Security Advisory Board: *Provided further,* That unobligated balances of funds provided under this paragraph at the end of fiscal year 2005 not needed for fiscal year 2005 shall remain available until expended to invest in the Social Security Administration information technology and telecommunications hardware and software infrastructure, including related equipment and non-payroll administrative expenses associated solely with this information technology and telecommunications infrastructure: *Provided further,* That reimbursement to the trust funds under this heading for expenditures for official time for employees of the Social Security Administration pursuant to section 7131 of title 5, United States Code, and for facilities or support services for labor organizations pursuant to policies, regulations, or procedures referred to in section 7135(b) of such title shall be made by the Secretary of the Treasury, with interest, from amounts in the general fund not otherwise appropriated, as soon as possible after such expenditures are made.

In addition, $124,000,000 to be derived from administration fees in excess of $5.00 per supplementary payment collected pursuant to section 1616(d) of the Social Security Act or section 212(b)(3) of Public Law 93–66, which shall remain available until expended. To the extent that the amounts collected pursuant to such section 1616(d) or 212(b)(3) in fiscal year 2005 exceed $124,000,000, the amounts shall be available in fiscal year 2006 only to the extent provided in advance in appropriations Acts.

In addition, up to $3,600,000 to be derived from fees collected pursuant to section 303(c) of the Social Security Protection Act (Public Law 108–203), which shall remain available until expended.

From funds previously appropriated for Federal-State Partnerships, any unobligated balances at the end of fiscal year 2004 shall be transferred to the Supplemental Security Income Program and remain available until expended to promote Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $25,748,000, together with not to exceed $65,359,000, to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

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In addition, an amount not to exceed 3 percent of the total provided in this appropriation may be transferred from the "Limitation on Administrative Expenses", Social Security Administration, to be merged with this account, to be available for the time and purposes for which this account is available: *Provided,* That notice of such transfers shall be transmitted promptly to the Committees on Appropriations of the House and Senate.

TITLE V—GENERAL PROVISIONS

SEC. 501. The Secretaries of Labor, Health and Human Services, and Education are authorized to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations provided in this Act: *Provided,* That such transferred balances are used for the same purpose, and for the same periods of time, for which they were originally appropriated.

SEC. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 503. (a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

SEC. 504. The Secretaries of Labor and Education are authorized to make available not to exceed $28,000 and $20,000, respectively, from funds available for salaries and expenses under titles I and III, respectively, for official reception and representation expenses; the Director of the Federal Mediation and Conciliation Service is authorized to make available for official reception and representation expenses not to exceed $5,000 from the funds available for "Salaries and expenses, Federal Mediation and Conciliation Service"; and the Chairman of the National Mediation Board is authorized to make available for official reception and representation expenses not to exceed $5,000 from funds available for "Salaries and expenses, National Mediation Board".

SEC. 505. Notwithstanding any other provision of this Act, no funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

SEC. 506. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds included in this Act, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state—

(1) the percentage of the total costs of the program or project which will be financed with Federal money;

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(2) the dollar amount of Federal funds for the project or program; and

(3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

SEC. 507. (a) None of the funds appropriated under this Act, and none of the funds in any trust fund to which funds are appropriated under this Act, shall be expended for any abortion.

(b) None of the funds appropriated under this Act, and none of the funds in any trust fund to which funds are appropriated under this Act, shall be expended for health benefits coverage that includes coverage of abortion.

(c) The term "health benefits coverage" means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

SEC. 508. (a) The limitations established in the preceding section shall not apply to an abortion—

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).

(d)(1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, the term "health care entity" includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

SEC. 509. (a) None of the funds made available in this Act may be used for—

(1) the creation of a human embryo or embryos for research purposes; or

(2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.208(a)(2) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

(b) For purposes of this section, the term "human embryo or embryos" includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this

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Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

SEC. 510. (a) None of the funds made available in this Act may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established by section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) The limitation in subsection (a) shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

SEC. 511. None of the funds made available in this Act may be obligated or expended to enter into or renew a contract with an entity if—

(1) such entity is otherwise a contractor with the United States and is subject to the requirement in section 4212(d) of title 38, United States Code, regarding submission of an annual report to the Secretary of Labor concerning employment of certain veterans; and

(2) such entity has not submitted a report as required by that section for the most recent year for which such requirement was applicable to such entity.

SEC. 512. None of the funds made available in this Act may be used to promulgate or adopt any final standard under section 1173(b) of the Social Security Act (42 U.S.C. 1320d–2(b)) providing for, or providing for the assignment of, a unique health identifier for an individual (except in an individual's capacity as an employer or a health care provider), until legislation is enacted specifically approving the standard.

SEC. 513. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 514. None of the funds made available by this Act to carry out the Library Services and Technology Act may be made available to any library covered by paragraph (1) of section 224(f) of such Act (20 U.S.C. 9134(f)), as amended by the Children's Internet Protections Act, unless such library has made the certifications required by paragraph (4) of such section.

SEC. 515. None of the funds made available by this Act to carry out part D of title II of the Elementary and Secondary Education Act of 1965 may be made available to any elementary or secondary school covered by paragraph (1) of section 2441(a) of such Act (20 U.S.C. 6777(a)), as amended by the Children's Internet Protections Act and the No Child Left Behind Act, unless the local educational agency with responsibility for such covered school has made the certifications required by paragraph (2) of such section.

SEC. 516. None of the funds appropriated in this Act may be used to enter into an arrangement under section 7(b)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(4)) with a nongovernmental financial institution to serve as disbursing agent for benefits payable under the Railroad Retirement Act of 1974.

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SEC. 517. (a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that—

(1) creates new programs;

(2) eliminates a program, project, or activity;

(3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;

(4) relocates an office or employees;

(5) reorganizes or renames offices;

(6) reorganizes programs or activities; or

(7) contracts out or privatizes any functions or activities presently performed by Federal employees.

None of the funds made available by this Act may be reprogrammed unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of a reprogramming or announcement of intent to reprogram funds, whichever occurs earlier.

(b) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds in excess of $500,000 or 10 percent, whichever is less, that—

(1) augments existing programs, projects (including construction projects), or activities;

(2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or

(3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of a reprogramming or announcement of intent to reprogram funds, whichever occurs earlier.

SEC. 518. Notwithstanding any other provision of law or regulation, the United States Government's interest in the property at 1818 W. Northern Lights Boulevard in Anchorage, Alaska, with legal description: T13N R4W Section 25, NE¼ NW¼ Portion W135 E953 N350, Anchorage Recording District shall be conveyed to Southcentral Foundation for a replacement Head Start facility.

SEC. 519. (a) IN GENERAL.—Amounts made available under this Act for the administrative and related expenses for departmental management for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced on a pro rata basis by $18,000,000: *Provided*, That not later than 15 days after the enactment of this Act, the Director of the Office of Management and Budget shall report to the House and Senate Committees on Appropriations the accounts subject to the pro rata reductions and the amount to be reduced in each account.

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(b) LIMITATION.—The reduction required by subsection (a) shall not apply to the Food and Drug Administration and the Indian Health Service.

This division may be cited as the "Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2005".

DIVISION G

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2005

TITLE I—LEGISLATIVE BRANCH APPROPRIATIONS

SENATE

EXPENSE ALLOWANCES

For expense allowances of the Vice President, $20,000; the President Pro Tempore of the Senate, $40,000; Majority Leader of the Senate, $40,000; Minority Leader of the Senate, $40,000; Majority Whip of the Senate, $10,000; Minority Whip of the Senate, $10,000; President Pro Tempore emeritus, $15,000; Chairmen of the Majority and Minority Conference Committees, $5,000 for each Chairman; and Chairmen of the Majority and Minority Policy Committees, $5,000 for each Chairman; in all, $195,000.

REPRESENTATION ALLOWANCES FOR THE MAJORITY AND MINORITY LEADERS

For representation allowances of the Majority and Minority Leaders of the Senate, $15,000 for each such Leader; in all, $30,000.

SALARIES, OFFICERS AND EMPLOYEES

For compensation of officers, employees, and others as authorized by law, including agency contributions, $134,840,000, which shall be paid from this appropriation without regard to the following limitations:

OFFICE OF THE VICE PRESIDENT

For the Office of the Vice President, $2,108,000.

OFFICE OF THE PRESIDENT PRO TEMPORE

For the Office of the President Pro Tempore, $561,000.

OFFICE OF THE PRESIDENT PRO TEMPORE EMERITUS

For the Office of the President Pro Tempore emeritus, $163,000.

OFFICES OF THE MAJORITY AND MINORITY LEADERS

For Offices of the Majority and Minority Leaders, $3,808,000.

OFFICES OF THE MAJORITY AND MINORITY WHIPS

For Offices of the Majority and Minority Whips, $2,556,000.

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COMMITTEE ON APPROPRIATIONS

For salaries of the Committee on Appropriations, $13,301,000.

CONFERENCE COMMITTEES

For the Conference of the Majority and the Conference of the Minority, at rates of compensation to be fixed by the Chairman of each such committee, $1,413,000 for each such committee; in all, $2,826,000.

OFFICES OF THE SECRETARIES OF THE CONFERENCE OF THE MAJORITY AND THE CONFERENCE OF THE MINORITY

For Offices of the Secretaries of the Conference of the Majority and the Conference of the Minority, $702,000.

POLICY COMMITTEES

For salaries of the Majority Policy Committee and the Minority Policy Committee, $1,473,000 for each such committee; in all, $2,946,000.

OFFICE OF THE CHAPLAIN

For Office of the Chaplain, $341,000.

OFFICE OF THE SECRETARY

For Office of the Secretary, $19,586,000.

OFFICE OF THE SERGEANT AT ARMS AND DOORKEEPER

For Office of the Sergeant at Arms and Doorkeeper, $50,635,000.

OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY

For Offices of the Secretary for the Majority and the Secretary for the Minority, $1,528,000.

AGENCY CONTRIBUTIONS AND RELATED EXPENSES

For agency contributions for employee benefits, as authorized by law, and related expenses, $33,779,000.

OFFICE OF THE LEGISLATIVE COUNSEL OF THE SENATE

For salaries and expenses of the Office of the Legislative Counsel of the Senate, $5,152,000.

OFFICE OF SENATE LEGAL COUNSEL

For salaries and expenses of the Office of Senate Legal Counsel, $1,265,000.

EXPENSE ALLOWANCES OF THE SECRETARY OF THE SENATE, SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE, AND SECRETARIES FOR THE MAJORITY AND MINORITY OF THE SENATE

For expense allowances of the Secretary of the Senate, $6,000; Sergeant at Arms and Doorkeeper of the Senate, $6,000; Secretary

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for the Majority of the Senate, $6,000; Secretary for the Minority of the Senate, $6,000; in all, $24,000.

CONTINGENT EXPENSES OF THE SENATE

INQUIRIES AND INVESTIGATIONS

For expenses of inquiries and investigations ordered by the Senate, or conducted under section 134(a) of the Legislative Reorganization Act of 1946 (Public Law 97–601), section 112 of the Supplemental Appropriations and Rescission Act, 1980 (Public Law 96–304), and Senate Resolution 281, 96th Congress, agreed to March 11, 1980, $110,000,000.

EXPENSES OF THE UNITED STATES SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

For expenses of the United States Senate Caucus on International Narcotics Control, $520,000.

SECRETARY OF THE SENATE

For expenses of the Office of the Secretary of the Senate, $1,700,000.

SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

For expenses of the Office of the Sergeant at Arms and Doorkeeper of the Senate, $127,182,000, of which $20,045,000 shall remain available until September 30, 2007, and of which $4,255,000 shall remain available until September 30, 2009.

MISCELLANEOUS ITEMS

For miscellaneous items, $18,326,000, of which up to $500,000 shall be made available for a pilot program for mailings of postal patron postcards by Senators for the purpose of providing notice of a town meeting by a Senator in a county (or equivalent unit of local government) at which the Senator will personally attend: *Provided,* That any amount allocated to a Senator for such mailing shall not exceed 50 percent of the cost of the mailing and the remaining cost shall be paid by the Senator from other funds available to the Senator.

SENATORS' OFFICIAL PERSONNEL AND OFFICE EXPENSE ACCOUNT

For Senators' Official Personnel and Office Expense Account, $326,533,000.

OFFICIAL MAIL COSTS

For expenses necessary for official mail costs of the Senate, $300,000.

ADMINISTRATIVE PROVISIONS

SEC. 1. GROSS RATE OF COMPENSATION IN OFFICES OF SENATORS. Effective on and after October 1, 2004, each of the dollar amounts contained in the table under section 105(d)(1)(A) of the Legislative Branch Appropriations Act, 1968 (2 U.S.C. 61–1(d)(1)(A)) shall be deemed to be the dollar amounts in that table, as adjusted

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by law and in effect on September 30, 2004, increased by an additional $50,000 each.

SEC. 2. CONSULTANTS. With respect to fiscal year 2005, the first sentence of section 101(a) of the Supplemental Appropriations Act, 1977 (2 U.S.C. 61h–6(a)) shall be applied by substituting "nine individual consultants" for "eight individual consultants".

SEC. 3. UNITED STATES SENATE COLLECTION. Section 316 of Public Law 101–302 (2 U.S.C. 2107) is amended in the first sentence of subsection (a) by striking "2004" and inserting "2005".

SEC. 4. PRESIDENT PRO TEMPORE EMERITUS OF THE SENATE. Section 7(e) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 32b note) is amended by inserting "and the 109th Congress" after "108th Congress".

SEC. 5. TRANSFER OF FUNDS FROM APPROPRIATIONS ACCOUNT OF THE OFFICE OF THE VICE PRESIDENT AND THE OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY TO THE SENATE CONTINGENT FUND. (a) OFFICE OF THE VICE PRESIDENT.—

(1) IN GENERAL.—Upon the written request of the Vice President, the Secretary of the Senate shall transfer from the appropriations account appropriated under the subheading "OFFICE OF THE VICE PRESIDENT" under the heading "SALARIES, OFFICERS AND EMPLOYEES" such amount as the Vice President shall specify to the appropriations account under the heading "MISCELLANEOUS ITEMS" within the contingent fund of the Senate.

(2) AUTHORITY TO INCUR EXPENSES.—The Vice President may incur such expenses as may be necessary or appropriate. Expenses incurred by the Vice President shall be paid from the amount transferred under paragraph (1) by the Vice President and upon vouchers approved by the Vice President.

(3) AUTHORITY TO ADVANCE SUMS.—The Secretary of the Senate may advance such sums as may be necessary to defray expenses incurred in carrying out paragraphs (1) and (2).

(b) OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY.—

(1) IN GENERAL.—Upon the written request of the Secretary for the Majority or the Secretary for the Minority, the Secretary of the Senate shall transfer from the appropriations account appropriated under the subheading "OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY" under the heading "SALARIES, OFFICERS AND EMPLOYEES" such amount as the Secretary for the Majority or the Secretary for the Minority shall specify to the appropriations account under the heading "MISCELLANEOUS ITEMS" within the contingent fund of the Senate.

(2) AUTHORITY TO INCUR EXPENSES.—The Secretary for the Majority or the Secretary for the Minority may incur such expenses as may be necessary or appropriate. Expenses incurred by the Secretary for the Majority or the Secretary for the Minority shall be paid from the amount transferred under paragraph (1) by the Secretary for the Majority or the Secretary for the Minority and upon vouchers approved by the Secretary for the Majority or the Secretary for the Minority, as applicable.

(3) AUTHORITY TO ADVANCE SUMS.—The Secretary of the Senate may advance such sums as may be necessary to defray expenses incurred in carrying out paragraphs (1) and (2).

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(c) EFFECTIVE DATE.—This section shall apply to fiscal year 2005 and each fiscal year thereafter.

SEC. 6. ACTIVITIES RELATING TO FOREIGN PARLIAMENTARY GROUPS AND FOREIGN OFFICIALS. Section 2(c) of chapter VIII of title I of the Supplemental Appropriations Act, 1987 (2 U.S.C. 65f(c)) is amended in the first sentence by striking "with the approval of" and inserting "and upon notification to".

SEC. 7. TRANSPORTATION OF OFFICIAL RECORDS AND PAPERS TO A SENATOR'S STATE. (a) PAYMENT OF REASONABLE TRANSPORTATION EXPENSES.—Upon request of a Senator, amounts in the appropriation account "Miscellaneous Items" within the contingent fund of the Senate shall be available to pay the reasonable expenses of sending or transporting the official records and papers of the Senator from the District of Columbia to any location designated by such Senator in the State represented by the Senator.

(b) SENDING AND TRANSPORTATION.—The Sergeant at Arms and Doorkeeper of the Senate shall provide for the most economical means of sending or transporting the official records and papers under this section while ensuring the orderly and timely delivery of the records and papers to the location specified by the Senator.

(c) OVERSIGHT.—The Committee on Rules and Administration shall have the authority to issue rules and regulations to carry out the provisions of this section.

(d) OFFICIAL RECORDS DEFINED.—In this section, the term "official records and papers" means books, records, papers, and official files which could be sent as franked mail.

(e) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

SEC. 8. COMPENSATION FOR LOST OR DAMAGED PROPERTY. (a) IN GENERAL.—Any amounts received by the Sergeant at Arms and Doorkeeper of the Senate (in this section referred to as the "Sergeant at Arms") for compensation for damage to, loss of, or loss of use of property of the Sergeant at Arms that was procured using amounts available to the Sergeant at Arms in the account for Contingent Expenses, Sergeant at Arms and Doorkeeper of the Senate, shall be credited to that account or, if applicable, to any subaccount of that account.

(b) AVAILABILITY.—Amounts credited to any account or subaccount under subsection (a) shall be merged with amounts in that account or subaccount and shall be available to the same extent, and subject to the same terms and conditions, as amounts in that account or subaccount.

(c) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each fiscal year thereafter.

SEC. 9. AGE REQUIREMENT FOR SENATE PAGES. Section 491(b)(1) of the Legislative Reorganization Act of 1970 (2 U.S.C. 88b–1(b)(1)) is amended by striking "fourteen" and inserting "sixteen".

SEC. 10. TREATMENT OF ELECTRONIC SERVICES PROVIDED BY SERGEANT AT ARMS. The Office of the Sergeant at Arms and Doorkeeper of the United States Senate, and any officer, employee, or agent of the Office, shall not be treated as acquiring possession, custody, or control of any electronic mail or other electronic communication, data, or information by reason of its being transmitted, processed, or stored (whether temporarily or otherwise) through the use of an electronic system established, maintained, or operated, or the use of electronic services provided, in whole or in part by the Office.

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SEC. 11. MODIFICATION OF APPLICATION OF SECTION 47 OF THE REVISED STATUTES. Section 47 of the Revised Statutes of the United States (2 U.S.C. 48) is amended by striking "of Senators shall be certified by the President of the Senate, and those of Representatives and Delegates" and inserting "of Representatives and Delegates shall be certified".

SEC. 12. OVERSEAS TRAVEL. (a) DEFINITION.—In this section, the term "United States" means each of the several States of the United States, the District of Columbia, and the territories and possessions of the United States.

(b) IN GENERAL.—A member of the Capitol Police may travel outside of the United States if—

(1) that travel is with, or in preparation for, travel of a Senator, including travel of a Senator as part of a congressional delegation;

(2) the member of the Capitol Police is performing security advisory and liaison functions (including advance security liaison preparations) relating to the travel of that Senator; and

(3) the Sergeant at Arms and Doorkeeper of the Senate gives prior approval to the travel of the member of the Capitol Police.

(c) LAW ENFORCEMENT FUNCTIONS.—Subsection (b) shall not be construed to authorize the performance of law enforcement functions by a member of the Capitol Police in connection with the travel authorized under that subsection.

(d) REIMBURSEMENT.—The Capitol Police shall be reimbursed for the overtime pay, travel, and related expenses of any member of the Capitol Police who travels under the authority of this section. Any reimbursement under this subsection shall be paid from the account under the heading "SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE" under the heading "CONTINGENT EXPENSES OF THE SENATE".

(e) AMOUNTS RECEIVED.—Any amounts received by the Capitol Police for reimbursements under subsection (d) shall be credited to the accounts established for the general expenses or salaries of the Capitol Police, and shall be available to carry out the purposes of such accounts during the fiscal year in which the amounts are received and the following fiscal year.

(f) EFFECTIVE DATE.—This section shall apply to fiscal year 2005 and each fiscal year thereafter.

SEC. 13. EXPENSE ALLOWANCES. (a) IN GENERAL.—The matter under the subheading "EXPENSE ALLOWANCES OF THE VICE PRESIDENT, PRESIDENT PRO TEMPORE, MAJORITY AND MINORITY LEADERS AND MAJORITY AND MINORITY WHIPS" under the heading "LEGISLATIVE BRANCH" under chapter VI of title I of the Second Supplemental Appropriations Act, 1978 (Public Law 95–355; 92 Stat. 532) is amended—

(1) in the second sentence (2 U.S.C. 31a–1) (relating to the Majority and Minority Leaders of the Senate) by striking "$20,000" and inserting "$40,000"; and

(2) in the third sentence (2 U.S.C. 32b) (relating to the President pro tempore) by striking "$20,000" and inserting "$40,000".

(b) PRESIDENT PRO TEMPORE EMERITUS.—Section 7(d) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 32b note) is amended in the first sentence (relating to the President pro tempore emeritus) by striking "$7,500" and inserting "$15,000".

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(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal year 2005 and each fiscal year thereafter.

HOUSE OF REPRESENTATIVES

SALARIES AND EXPENSES

For salaries and expenses of the House of Representatives, $1,048,581,000, as follows:

HOUSE LEADERSHIP OFFICES

For salaries and expenses, as authorized by law, $18,678,000, including: Office of the Speaker, $2,708,000, including $25,000 for official expenses of the Speaker; Office of the Majority Floor Leader, $2,027,000, including $10,000 for official expenses of the Majority Leader; Office of the Minority Floor Leader, $2,840,000, including $10,000 for official expenses of the Minority Leader; Office of the Majority Whip, including the Chief Deputy Majority Whip, $1,741,000, including $5,000 for official expenses of the Majority Whip; Office of the Minority Whip, including the Chief Deputy Minority Whip, $1,303,000, including $5,000 for official expenses of the Minority Whip; Speaker's Office for Legislative Floor Activities, $470,000; Republican Steering Committee, $881,000; Republican Conference, $1,500,000; Democratic Steering and Policy Committee, $1,589,000; Democratic Caucus, $792,000; nine minority employees, $1,409,000; training and program development—majority, $290,000; training and program development—minority, $290,000; Cloakroom Personnel—majority, $419,000; and Cloakroom Personnel—minority, $419,000.

MEMBERS' REPRESENTATIONAL ALLOWANCES

INCLUDING MEMBERS' CLERK HIRE, OFFICIAL EXPENSES OF MEMBERS, AND OFFICIAL MAIL

For Members' representational allowances, including Members' clerk hire, official expenses, and official mail, $521,195,000.

COMMITTEE EMPLOYEES

STANDING COMMITTEES, SPECIAL AND SELECT

For salaries and expenses of standing committees, special and select, authorized by House resolutions, $114,299,000: *Provided*, That such amount shall remain available for such salaries and expenses until December 31, 2006.

COMMITTEE ON APPROPRIATIONS

For salaries and expenses of the Committee on Appropriations, $24,926,000, including studies and examinations of executive agencies and temporary personal services for such committee, to be expended in accordance with section 202(b) of the Legislative Reorganization Act of 1946 and to be available for reimbursement to agencies for services performed: *Provided*, That such amount shall remain available for such salaries and expenses until December 31, 2006.

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SALARIES, OFFICERS AND EMPLOYEES

For compensation and expenses of officers and employees, as authorized by law, $160,133,000, including: for salaries and expenses of the Office of the Clerk, including not more than $13,000, of which not more than $10,000 is for the Family Room, for official representation and reception expenses, $20,534,000; for salaries and expenses of the Office of the Sergeant at Arms, including the position of Superintendent of Garages, and including not more than $3,000 for official representation and reception expenses, $5,879,000; for salaries and expenses of the Office of the Chief Administrative Officer, $116,034,000, of which $7,500,000 shall remain available until expended; for salaries and expenses of the Office of the Inspector General, $3,986,000; for salaries and expenses of the Office of Emergency Planning, Preparedness and Operations, $1,000,000, to remain available until expended; for salaries and expenses of the Office of General Counsel, $962,000; for the Office of the Chaplain, $155,000; for salaries and expenses of the Office of the Parliamentarian, including the Parliamentarian and $2,000 for preparing the Digest of Rules, $1,673,000; for salaries and expenses of the Office of the Law Revision Counsel of the House, $2,346,000; for salaries and expenses of the Office of the Legislative Counsel of the House, $6,721,000; for salaries and expenses of the Office of Interparliamentary Affairs, $687,000; and for other authorized employees, $156,000.

ALLOWANCES AND EXPENSES

For allowances and expenses as authorized by House resolution or law, $209,350,000, including: supplies, materials, administrative costs and Federal tort claims, $4,350,000; official mail for committees, leadership offices, and administrative offices of the House, $410,000; Government contributions for health, retirement, Social Security, and other applicable employee benefits, $203,900,000; and miscellaneous items including purchase, exchange, maintenance, repair and operation of House motor vehicles, interparliamentary receptions, and gratuities to heirs of deceased employees of the House, $690,000.

CHILD CARE CENTER

For salaries and expenses of the House of Representatives Child Care Center, such amounts as are deposited in the account established by section 312(d)(1) of the Legislative Branch Appropriations Act, 1992 (2 U.S.C. 2112), subject to the level specified in the budget of the Center, as submitted to the Committee on Appropriations of the House of Representatives.

ADMINISTRATIVE PROVISIONS

SEC. 101. (a) REQUIRING AMOUNTS REMAINING IN MEMBERS' REPRESENTATIONAL ALLOWANCES TO BE USED FOR DEFICIT REDUCTION OR TO REDUCE THE FEDERAL DEBT.—Notwithstanding any other provision of law, any amounts appropriated under this Act for "HOUSE OF REPRESENTATIVES—SALARIES AND EXPENSES—MEMBERS' REPRESENTATIONAL ALLOWANCES" shall be available only for fiscal year 2005. Any amount remaining after all payments are made under such allowances for fiscal year 2005 shall be

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deposited in the Treasury and used for deficit reduction (or, if there is no Federal budget deficit after all such payments have been made, for reducing the Federal debt, in such manner as the Secretary of the Treasury considers appropriate).

(b) REGULATIONS.—The Committee on House Administration of the House of Representatives shall have authority to prescribe regulations to carry out this section.

(c) DEFINITION.—As used in this section, the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress.

SEC. 102. NET EXPENSES OF TELECOMMUNICATIONS REVOLVING FUND. (a) There is hereby established in the Treasury of the United States a revolving fund for the House of Representatives to be known as the Net Expenses of Telecommunications Revolving Fund (hereafter in this section referred to as the "Revolving Fund"), consisting of funds deposited by the Chief Administrative Officer of the House of Representatives from amounts provided by legislative branch offices to purchase, lease, obtain, and maintain the data and voice telecommunications services and equipment located in such offices.

(b) Amounts in the Revolving Fund shall be used by the Chief Administrative Officer without fiscal year limitation to purchase, lease, obtain, and maintain the data and voice telecommunications services and equipment of legislative branch offices.

(c) The Revolving Fund shall be treated as a category of allowances and expenses for purposes of section 101(a) of the Legislative Branch Appropriations Act, 1993 (2 U.S.C. 95b(a)).

(d) Section 306 of the Legislative Branch Appropriations Act, 1989 (2 U.S.C. 117f) is amended—

(1) by striking subsection (b) and redesignating subsection (c) as subsection (b); and

(2) in subsection (b) (as so redesignated), by striking "subsections (a) and (b)" and inserting "subsection (a)".

(e) Section 102 of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 112g) is amended by adding at the end the following new subsection:

"(e) This section shall not apply with respect to any telecommunications equipment which is subject to coverage under section 103 of the Legislative Branch Appropriations Act, 2005 (relating to the Net Expenses of Telecommunications Revolving Fund).".

(f) This section and the amendments made by this section shall apply with respect to fiscal year 2005 and each succeeding fiscal year, except that for purposes of making deposits into the Revolving Fund under subsection (a), the Chief Administrative Officer may deposit amounts provided by legislative branch offices during fiscal year 2004 or any succeeding fiscal year.

SEC. 103. CONTRACT FOR EXERCISE FACILITY. (a) IN GENERAL.—The Chief Administrative Officer of the House of Representatives shall enter into a contract on a competitive basis with a private entity for the management, operation, and maintenance of the exercise facility established for the use of employees of the House of Representatives which is constructed with funds made available under this Act.

(b) USE OF FEES TO SUPPORT CONTRACT.—Any amounts paid as fees for the use of the exercise facility described in subsection (a) shall be used to cover costs incurred by the Chief Administrative Officer under the contract entered into under this section or to

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otherwise support the management, operation, and maintenance of the facility, and shall remain available until expended.

SEC. 104. SENSE OF THE HOUSE. It is the sense of the House of Representatives that Members of the House who use vehicles in traveling for official and representational purposes, including Members who lease vehicles for which the lease payments are made using funds provided under the Members' Representational Allowance, are encouraged to use hybrid electric and alternatively fueled vehicles whenever possible, as the use of these vehicles will help to move our Nation toward the use of a hydrogen fuel cell vehicle and reduce our dependence on oil.

SEC. 105. (a) ESTABLISHMENT OF HOUSE SERVICES REVOLVING FUND.—There is hereby established in the Treasury of the United States a revolving fund for the House of Representatives to be known as the "House Services Revolving Fund" (hereafter in this section referred to as the "Revolving Fund"), consisting of funds deposited by the Chief Administrative Officer of the House of Representatives from all amounts received by the House of Representatives with respect to the following activities:

(1) The operation of the House Barber Shop.

(2) The operation of the House Beauty Shop.

(3) The operation of the House Restaurant System (including vending operations).

(4) The provision of mail services to entities which are not part of the House of Representatives.

(b) USE OF AMOUNTS IN FUND.—Amounts in the Revolving Funds shall be used for any purpose designated by the Chief Administrative Officer which is approved by the Committee on Appropriations of the House of Representatives.

(c) TRANSFER AUTHORITY.—The Revolving Fund shall be treated as a category of allowances and expenses for purposes of section 101(a) of the Legislative Branch Appropriations Act, 1993 (2 U.S.C. 95b(a)).

(d) TERMINATION AND TRANSFER OF EXISTING FUNDS AND ACCOUNTS.—

(1) IN GENERAL.—Each fund and account specified in paragraph (2) is hereby terminated, and the balance of each such fund and account is hereby transferred to the Revolving Fund.

(2) FUNDS AND ACCOUNTS SPECIFIED.—The funds and accounts referred to in paragraph (1) are as follows:

(A) The revolving fund for the House Barber Shop, established by the paragraph under the heading "HOUSE BARBER SHOPS REVOLVING FUND" in the matter relating to the House of Representatives in chapter III of title I of the Supplemental Appropriations Act, 1975 (Public Law 93–554; 88 Stat. 1776).

(B) The revolving funds for the House Beauty Shop, established by the matter under the heading "HOUSE BEAUTY SHOP" in the matter relating to administrative provisions for the House of Representatives in the Legislative Branch Appropriations Act, 1970 (Public Law 91–145; 83 Stat. 347).

(C) The special deposit account established for the House of Representatives Restaurant by section 208 of the First Supplemental Civil Functions Appropriation Act, 1941 (2 U.S.C. 2041 note), or any successor fund or account

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established for the receipt of revenues of the House Restaurant System.

(e) EFFECTIVE DATE.—This section shall take effect October 1, 2004, and shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

SEC. 106. (a) If the Clerk of the House of Representatives is required under any law, rule, or regulation to make available for public inspection a report, statement, or other document filed with the Office of the Clerk, the Clerk shall preserve the report, statement, or document—

(1) for a period of 6 years from the date on which the document is filed; or

(2) if the law, rule, or regulation so provides, the period required under such law, rule, or regulation.

(b) Subsection (a) shall apply with respect to reports, statements, and documents filed before, on, or after the date of the enactment of this Act.

SEC. 107. (a) PERMITTING ORGANIZATIONAL CAUCUSES AND CONFERENCES TO BE HELD AT ANY TIME.—Section 202(a)(1) of House Resolution 988, Ninety-third Congress, agreed to on October 8, 1974, and enacted into permanent law by chapter III of title I of the Supplemental Appropriations Act, 1975 (2 U.S.C. 29a(a)(1)), is amended by striking "conference, to begin on or after" all that follows through "to be attended by all" and inserting "conference of all".

(b) PERIOD OF AVAILABILITY OF PER DIEM.—

(1) MEMBERS.—Section 202(b)(1)(B) of House Resolution 988, Ninety-third Congress, agreed to on October 8, 1974, and enacted into permanent law by chapter III of title I of the Supplemental Appropriations Act, 1975 (2 U.S.C. 29a(b)(1)(B)), is amended by striking "for a period" and all that follows and inserting a period.

(2) STAFF.—Section 1(b) of House Resolution 10, Ninety-fourth Congress, agreed to on January 14, 1975, and enacted into permanent law by section 201 of the Legislative Branch Appropriations Act, 1976 (2 U.S.C. 43b–2(b)), is amended by striking "for a period" and all that follows and inserting a period.

(c) APPLICABILITY OF PROVISIONS TO ORIENTATION SESSIONS FOR NEW MEMBERS.—

(1) MEMBERS.—Section 202 of House Resolution 988, Ninety-third Congress, agreed to on October 8, 1974, and enacted into permanent law by chapter III of title I of the Supplemental Appropriations Act, 1975 (2 U.S.C. 29a), is amended by adding at the end the following new subsection:

"(d) With the approval of the majority leader (in the case of a Member or Member-elect of the majority party) or the minority leader (in the case of a Member or Member-elect of the minority party), subsections (b) and (c) shall apply with respect to the attendance of a Member or Member-elect at a program conducted by the Committee on House Administration for the orientation of new members in the same manner as such provisions apply to the attendance of the Member or Member-elect at the organizational caucus or conference.".

(2) STAFF.—Section 1 of House Resolution 10, Ninety-fourth Congress, agreed to on January 14, 1975, and enacted into

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permanent law by section 201 of the Legislative Branch Appropriations Act, 1976 (2 U.S.C. 43b–2), is amended by adding at the end the following new subsection:

"(c) With the approval of the majority leader (in the case of a Member or Member-elect of the majority party) or the minority leader (in the case of a Member or Member-elect of the minority party), subsections (a) and (b) shall apply with respect to the attendance of a Member or Member-elect at a program conducted by the Committee on House Administration for the orientation of new members in the same manner as such provisions apply to the attendance of the Member or Member-elect at the organizational caucus or conference.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the One Hundred Tenth Congress and each succeeding Congress.

SEC. 108. (a) Subject to the approval of the Committee on House Administration, the Chief Administrative Officer of the House of Representatives shall implement regulations under which the Chief Administrative Officer shall be authorized to handle any mail matter delivered by the United States Postal Service or any other carrier to the House of Representatives, or to any other entity with whom the Chief Administrative Officer has entered into an agreement to receive mail matter delivered to the entity, in such manner as the Chief Administrative Officer deems necessary to ensure the safety of any individuals who may come into contact with, or otherwise be exposed to, such mail matter.

(b) No action taken under the regulations implemented pursuant to this section may serve as a basis for civil or criminal liability of any individual or entity.

(c) As used in this section, the term "handle" includes but is not limited to collecting, isolating, testing, opening, disposing, and destroying.

(d) This section shall apply with respect to fiscal year 2004 and each succeeding fiscal year.

SEC. 109. (a) There is established in the House of Representatives an office to be known as the Republican Policy Committee, which shall have such responsibilities as may be assigned by the chair of the Republican Conference.

(b) There shall be a lump sum allowance for the salaries and expenses of the Republican Policy Committee, which shall be treated as a category of House leadership offices for purposes of section 101(c) of the Legislative Branch Appropriations Act, 1993 (2 U.S.C. 95b(c)).

(c) This section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

SEC. 110. The first sentence of section 5 of House Resolution 1238, Ninety-first Congress, agreed to December 22, 1970 (as enacted into permanent law by chapter VIII of the supplemental Appropriations Act, 1971) (2 U.S.C. 31b–5), is amended—

(1) by striking "step 5 of level 11" and inserting "step 11 of level 13"; and

(2) by striking "step 9 of level 8" and inserting "step 8 of level 12".

JOINT ITEMS

For Joint Committees, as follows:

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JOINT ECONOMIC COMMITTEE

For salaries and expenses of the Joint Economic Committee, $4,139,000, to be disbursed by the Secretary of the Senate.

JOINT COMMITTEE ON TAXATION

For salaries and expenses of the Joint Committee on Taxation, $8,433,000, to be disbursed by the Chief Administrative Officer of the House of Representatives.

For other joint items, as follows:

OFFICE OF THE ATTENDING PHYSICIAN

For medical supplies, equipment, and contingent expenses of the emergency rooms, and for the Attending Physician and his assistants, including: (1) an allowance of $2,175 per month to the Attending Physician; (2) an allowance of $725 per month each to four medical officers while on duty in the Office of the Attending Physician; (3) an allowance of $725 per month to two assistants and $580 per month each not to exceed 11 assistants on the basis heretofore provided for such assistants; and (4) $1,680,000 for reimbursement to the Department of the Navy for expenses incurred for staff and equipment assigned to the Office of the Attending Physician, which shall be advanced and credited to the applicable appropriation or appropriations from which such salaries, allowances, and other expenses are payable and shall be available for all the purposes thereof, $2,528,000, to be disbursed by the Chief Administrative Officer of the House of Representatives.

CAPITOL GUIDE SERVICE AND SPECIAL SERVICES OFFICE

For salaries and expenses of the Capitol Guide Service and Special Services Office, $3,844,000, to be disbursed by the Secretary of the Senate: *Provided*, That no part of such amount may be used to employ more than 58 individuals: *Provided further,* That the Capitol Guide Board is authorized, during emergencies, to employ not more than two additional individuals for not more than 120 days each, and not more than 10 additional individuals for not more than 6 months each, for the Capitol Guide Service.

STATEMENTS OF APPROPRIATIONS

For the preparation, under the direction of the Committees on Appropriations of the Senate and the House of Representatives, of the statements for the second session of the 108th Congress, showing appropriations made, indefinite appropriations, and contracts authorized, together with a chronological history of the regular appropriations bills as required by law, $30,000, to be paid to the persons designated by the chairmen of such committees to supervise the work.

CAPITOL POLICE

SALARIES

For salaries of employees of the Capitol Police, including overtime, hazardous duty pay differential, and Government contributions for health, retirement, social security, professional liability

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insurance, and other applicable employee benefits, $203,440,000, to be disbursed by the Chief of the Capitol Police or his designee.

GENERAL EXPENSES

For necessary expenses of the Capitol Police, including motor vehicles, communications and other equipment, security equipment and installation, uniforms, weapons, supplies, materials, training, medical services, forensic services, stenographic services, personal and professional services, the employee assistance program, the awards program, postage, communication services, travel advances, relocation of instructor and liaison personnel for the Federal Law Enforcement Training Center, and not more than $5,000 to be expended on the certification of the Chief of the Capitol Police in connection with official representation and reception expenses, $28,888,000, to be disbursed by the Chief of the Capitol Police or his designee: *Provided,* That, notwithstanding any other provision of law, the cost of basic training for the Capitol Police at the Federal Law Enforcement Training Center for fiscal year 2005 shall be paid by the Secretary of Homeland Security from funds available to the Department of Homeland Security.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

SEC. 1001. TRANSFER AUTHORITY. Amounts appropriated for fiscal year 2005 for the Capitol Police may be transferred between the headings "SALARIES" and "GENERAL EXPENSES" upon the approval of the Committees on Appropriations of the Senate and the House of Representatives.

SEC. 1002. LIMITATION ON CERTAIN HIRING AUTHORITY OF CAPITOL POLICE. Section 1006(b) of the Legislative Branch Appropriations Act, 2004 (Public Law 108–83; 117 Stat. 1023) is amended—

(1) in paragraph (3)—

(A) in subparagraph (B), by inserting at the end "The Chief of Police may hire individuals under this subsection who are not submitted for selection under this subparagraph. All hirings under this subparagraph shall comply with the limitations under this paragraph for any fiscal year."; and

(B) in subparagraph (C), by striking "(C) LIMITATION.—" and inserting "(C) LIMITATION FOR FISCAL YEAR 2004.—"; and

(C) by adding at the end the following:

"(D) LIMITATION FOR FISCAL YEAR 2005.—During fiscal year 2005, the number of individuals hired under this subsection may not exceed—

"(i) the number of Library of Congress Police employees who separated from service or transferred to a position other than a Library of Congress Police employee position during fiscal year 2004 for whom a corresponding hire was not made under this subsection; and

"(ii) the number of Library of Congress Police employees who separate from service or transfer to a position other than a Library of Congress Police employee position during fiscal year 2005."; and

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(2) in paragraph (4), by striking the first sentence and inserting "Notwithstanding subsection (a)(1)(C), the Chief of the Capitol Police may detail an individual hired under this subsection to the Library of Congress Police on a nonreimbursable basis. Any individual detailed under this subsection shall receive necessary training, including training by the Library of Congress Police.".

SEC. 1003. AUTHORIZATION OF WEAPONS. Section 1824 of the Revised Statutes (2 U.S.C. 1941) is amended—

(1) in the first sentence—

(A) by striking "The Sergeant at Arms of the Senate and the Sergeant at Arms of the House of Representatives" and inserting "The Capitol Police Board"; and

(B) by striking all beginning with "payable out" through the period and inserting "payable from appropriations to the Capitol Police upon certification of payment by the Chief of the Capitol Police."; and

(2) in the second sentence—

(A) by inserting "or other arms as authorized by the Capitol Police Board" after "furnished"; and

(B) by striking "the Sergeant at Arms of the Senate and the Sergeant at Arms of the House of Representatives" and inserting "the Capitol Police Board".

SEC. 1004. SOLE AND EXCLUSIVE AUTHORITY OF BOARD AND CHIEF TO DETERMINE RATES OF PAY. (a) IN GENERAL.—The Capitol Police Board and the Chief of the Capitol Police shall have the sole and exclusive authority to determine the rates and amounts for each of the following for members of the Capitol Police:

(1) The rate of basic pay (including the rate of basic pay upon appointment), premium pay, specialty assignment and proficiency pay, and merit pay.

(2) The rate of cost-of-living adjustments, comparability adjustments, and locality adjustments.

(3) The amount for recruitment and relocation bonuses.

(4) The amount for retention allowances.

(5) The amount for educational assistance payments.

(b) NO REVIEW OR APPEAL PERMITTED.—The determination of a rate or amount described in subsection (a) may not be subject to review or appeal in any manner.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) any authority provided under law for a committee of the House of Representatives or Senate, or any other entity of the legislative branch, to review or approve any determination of a rate or amount described in subsection (a);

(2) any rate or amount described in subsection (a) which is established under law; or

(3) the terms of any collective bargaining agreement.

(d) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

SEC. 1005. ACCEPTANCE OF DONATIONS OF ANIMALS. (a) IN GENERAL.—The Capitol Police may accept the donation of animals to be used in the canine units of the Capitol Police.

(b) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each fiscal year thereafter.

SEC. 1006. SETTLEMENT AND PAYMENT OF TORT CLAIMS. (a) FEDERAL TORT CLAIMS ACT.—

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(1) IN GENERAL.—Except as provided in paragraph (2), the Chief of the Capitol Police, in accordance with regulations prescribed by the Attorney General and any regulations as the Capitol Police Board may prescribe, may consider, ascertain, determine, compromise, adjust, and settle, in accordance with the provisions of chapter 171 of title 28, United States Code, any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Capitol Police while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) SPECIAL RULE FOR CLAIMS MADE BY MEMBERS OF CONGRESS AND CONGRESSIONAL EMPLOYEES.—

(A) IN GENERAL.—With respect to any claim described in paragraph (1) which is made by a Member of Congress or any officer or employee of Congress, the Chief of the Capitol Police shall—

(i) not later than 14 days after the receipt of such a claim, notify the Chairman of the applicable Committee of the receipt of the claim; and

(ii) not later than 90 days after the receipt of such a claim, submit a proposal for the resolution of such claim which shall be subject to the approval of the Chairman of the applicable Committee.

(B) EXTENSION.—The 90-day period in subparagraph (A)(ii) may be extended for an additional period (not to exceed 90 days) for good cause by the Chairman of the applicable Committee, upon the request of the Chief of the Capitol Police.

(C) APPROVAL CONSISTENT WITH FEDERAL TORT CLAIMS ACT.—Nothing in this paragraph may be construed to permit the Chairman of an applicable Committee to approve a proposal for the resolution of a claim described in paragraph (1) which is not consistent with the terms and conditions applicable under chapter 171 of title 28, United States Code, to the resolution of claims for money damages against the United States.

(D) APPLICABLE COMMITTEE DEFINED.—In this paragraph, the term "applicable Committee" means—

(i) the Committee on Rules and Administration of the Senate, in the case of a claim of a Senator or an officer or employee whose pay is disbursed by the Secretary of the Senate; or

(ii) the Committee on House Administration of the House of Representatives, in the case of a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or an officer or employee whose pay is disbursed by the Chief Administrative Officer of the House of Representatives.

(3) HEAD OF AGENCY.—For purposes of section 2672 of title 28, United States Code, the Chief of the Capitol Police shall be the head of a Federal agency with respect to the Capitol Police.

(4) REGULATIONS.—The Capitol Police Board may prescribe regulations to carry out this subsection.

(b) CLAIMS OF EMPLOYEES OF CAPITOL POLICE.—

(1) IN GENERAL.—The Capitol Police Board may prescribe regulations to apply the provisions of section 3721 of title 31, United States Code, for the settlement and payment of a claim against the Capitol Police by an employee of the Capitol Police for damage to, or loss of personal property incident to service.

(2) LIMITATION.—No settlement and payment of a claim under regulations prescribed under this subsection may exceed the limits applicable to the settlement and payment of claims under section 3721 of title 31, United States Code.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) any payment under section 1304 of title 31, United States Code, of a final judgment, award, compromise settlement, and interest and costs specified in the judgment based on a claim against the Capitol Police; or

(2) any authority for any—

(A) settlement under section 414 of the Congressional Accountability Act of 1995 (2 U.S.C. 1414), or

(B) payment under section 415 of that Act (2 U.S.C. 1415).

(d) EFFECTIVE DATE.—This section shall apply to fiscal year 2005 and each fiscal year thereafter.

SEC. 1007. DEPLOYMENT OUTSIDE OF JURISDICTION. (a) REQUIREMENTS FOR PRIOR NOTICE AND APPROVAL.—The Chief of the Capitol Police may not deploy any officer outside of the areas established by law for the jurisdiction of the Capitol Police unless—

(1) the Chief provides prior notification to the Committees on Appropriations of the House of Representatives and Senate of the costs anticipated to be incurred with respect to the deployment; and

(2) the Capitol Police Board gives prior approval to the deployment.

(b) EXCEPTION FOR CERTAIN SERVICES.—Subsection (a) does not apply with respect to the deployment of any officer for any of the following purposes:

(1) Responding to an imminent threat or emergency.

(2) Intelligence gathering.

(3) Providing protective services.

(c) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

SEC. 1008. GENERAL COUNSEL. The Capitol Police General Counsel, in the capacity as in-house counsel and in conjunction with the Capitol Police Employment Counsel for employment and labor law matters, shall be responsible for implementing and maintaining an effective legal compliance system with all applicable laws, under the oversight of the Capitol Police Board.

SEC. 1009. RELEASE OF SECURITY INFORMATION. (a) DEFINITION.—In this section, the term "security information" means information that—

(1) is sensitive with respect to the policing, protection, physical security, intelligence, counterterrorism actions, or emergency preparedness and response relating to Congress, any statutory protectee of the Capitol Police, and the Capitol buildings and grounds; and

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(2) is obtained by, on behalf of, or concerning the Capitol Police Board, the Capitol Police, or any incident command relating to emergency response.

(b) AUTHORITY OF BOARD TO DETERMINE CONDITIONS OF RELEASE.—Notwithstanding any other provision of law, any security information in the possession of the Capitol Police may be released by the Capitol Police to another entity, including an individual, only if the Capitol Police Board determines in consultation with other appropriate law enforcement officials, experts in security preparedness, and appropriate committees of Congress, that the release of the security information will not compromise the security and safety of the Capitol buildings and grounds or any individual whose protection and safety is under the jurisdiction of the Capitol Police.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect the ability of the Senate and the House of Representatives (including any Member, officer, or committee of either House of Congress) to obtain information from the Capitol Police regarding the operations and activities of the Capitol Police that affect the Senate and House of Representatives.

(d) REGULATIONS.—The Capitol Police Board may promulgate regulations to carry out this section, with the approval of the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives.

(e) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act and apply with respect to—

(1) any remaining portion of fiscal year 2004, if this Act is enacted before October 1, 2004; and

(2) fiscal year 2005 and each fiscal year thereafter.

OFFICE OF COMPLIANCE

SALARIES AND EXPENSES

For salaries and expenses of the Office of Compliance, as authorized by section 305 of the Congressional Accountability Act of 1995 (2 U.S.C. 1385), $2,421,000, of which $305,000 shall remain available until September 30, 2006: *Provided,* That the Executive Director of the Office of Compliance may, within the limits of available appropriations, dispose of surplus or obsolete personal property by interagency transfer, donation, or discarding.

CONGRESSIONAL BUDGET OFFICE

SALARIES AND EXPENSES

For salaries and expenses necessary for operation of the Congressional Budget Office, including not more than $3,000 to be expended on the certification of the Director of the Congressional Budget Office in connection with official representation and reception expenses, $34,919,000.

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ARCHITECT OF THE CAPITOL

GENERAL ADMINISTRATION

For salaries for the Architect of the Capitol, and other personal services, at rates of pay provided by law; for surveys and studies in connection with activities under the care of the Architect of the Capitol; for all necessary expenses for the general and administrative support of the operations under the Architect of the Capitol including the Botanic Garden; electrical substations of the Capitol, Senate and House office buildings, and other facilities under the jurisdiction of the Architect of the Capitol; including furnishings and office equipment; including not more than $5,000 for official reception and representation expenses, to be expended as the Architect of the Capitol may approve; for purchase or exchange, maintenance, and operation of a passenger motor vehicle, $80,347,000, of which $2,220,000 shall remain available until September 30, 2009.

CAPITOL BUILDING

(INCLUDING TRANSFER OF FUNDS)

For all necessary expenses for the maintenance, care, and operation of the Capitol, $28,857,000, of which not more than $10,600,000, may be transferred for the use of the Capitol Visitor Center project: *Provided*, That the amount so transferred shall be deposited into the account established for the Capitol Visitor Center project and shall be subject to the same terms and conditions applicable to the amounts appropriated for such project under the heading "Capitol Visitor Center" in the Legislative Branch Appropriations Act, 2004: *Provided further*, That the amount so transferred, together with $3,900,000 of the other amounts appropriated under this heading, shall remain available until expended.

CAPITOL GROUNDS

For all necessary expenses for care and improvement of grounds surrounding the Capitol, the Senate and House office buildings, and the Capitol Power Plant, $6,974,000.

SENATE OFFICE BUILDINGS

For all necessary expenses for the maintenance, care and operation of Senate office buildings; and furniture and furnishings to be expended under the control and supervision of the Architect of the Capitol, $62,083,000, of which $9,070,000 shall remain available until September 30, 2009.

HOUSE OFFICE BUILDINGS

For all necessary expenses for the maintenance, care and operation of the House office buildings, $65,353,000, of which $27,103,000 shall remain available until September 30, 2009.

CAPITOL POWER PLANT

For all necessary expenses for the maintenance, care and operation of the Capitol Power Plant; lighting, heating, power (including

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the purchase of electrical energy) and water and sewer services for the Capitol, Senate and House office buildings, Library of Congress buildings, and the grounds about the same, Botanic Garden, Senate garage, and air conditioning refrigeration not supplied from plants in any of such buildings; heating the Government Printing Office and Washington City Post Office, and heating and chilled water for air conditioning for the Supreme Court Building, the Union Station complex, the Thurgood Marshall Federal Judiciary Building and the Folger Shakespeare Library, expenses for which shall be advanced or reimbursed upon request of the Architect of the Capitol and amounts so received shall be deposited into the Treasury to the credit of this appropriation, $56,834,000, of which $1,000,000 shall remain available until September 30, 2009: *Provided,* That not more than $4,400,000 of the funds credited or to be reimbursed to this appropriation as herein provided shall be available for obligation during fiscal year 2005.

LIBRARY BUILDINGS AND GROUNDS

For all necessary expenses for the mechanical and structural maintenance, care and operation of the Library buildings and grounds, $40,097,000, of which $21,506,000 shall remain available until September 30, 2009.

CAPITOL POLICE BUILDINGS AND GROUNDS

For all necessary expenses for the maintenance, care, and operation of buildings and grounds of the United States Capitol Police, $5,853,000, of which $500,000 shall remain available until September 30, 2009.

BOTANIC GARDEN

For all necessary expenses for the maintenance, care and operation of the Botanic Garden and the nurseries, buildings, grounds, and collections; and purchase and exchange, maintenance, repair, and operation of a passenger motor vehicle; all under the direction of the Joint Committee on the Library, $6,326,000: *Provided,* That this appropriation shall not be available for construction of the National Garden.

ADMINISTRATIVE PROVISIONS

SEC. 1101. MANAGEMENT AND OPERATION OF THE CAPITOL POWER PLANT. (a) DEFINITION.—In this section, the term "appropriate congressional committees" means—

(1) the Committee on Appropriations of the Senate and the House of Representatives;

(2) the Committee on Rules and Administration of the Senate; and

(3) the House Office Building Commission.

(b) STUDY OF CONTRACT WITH A PRIVATE ENTITY.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall conduct a study and submit to the appropriate congressional committees and the Architect of the Capitol a report that—

(1) analyzes the costs, cost effectiveness, benefits, and feasibility of the Architect of the Capitol entering into a contract

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with a private entity for the management and operation of the Capitol Power Plant; and

(2) makes a recommendation on whether the Architect of the Capitol should enter into such a contract.

(c) IMPLEMENTATION PLAN.—If the Comptroller General makes a recommendation under subsection (b)(2) in favor of entering into a contract, the Architect of the Capitol shall submit an implementation plan for that contract to the appropriate congressional committees not later than the later of—

(1) 270 days after the date of enactment of this Act; or

(2) the date of the completion of the West Refrigeration Plant.

(d) CONTRACT.—Subject to the approval of the appropriate congressional committees, the Architect of the Capitol shall enter into a contract with a private entity for the management and operation of the Capitol Power Plant.

(e) EFFECTIVE DATE.—This section shall apply to fiscal year 2005 and each fiscal year thereafter.

SEC. 1102. (a) The Comptroller General shall conduct an analysis of the operations of the Office of the Architect of the Capitol, and shall include in the analysis recommendations regarding the extent to which the functions and duties of the Architect of the Capitol may be carried out more effectively through contracts with private entities, through reassignment to other entities of the legislative branch, and through such other methods as the Comptroller General considers appropriate.

(b) Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report on the analysis conducted under subsection (a) to the Committees on Appropriations of the House of Representatives and Senate.

LIBRARY OF CONGRESS

SALARIES AND EXPENSES

For necessary expenses of the Library of Congress not otherwise provided for, including development and maintenance of the Library's catalogs; custody and custodial care of the Library buildings; special clothing; cleaning, laundering and repair of uniforms; preservation of motion pictures in the custody of the Library; operation and maintenance of the American Folklife Center in the Library; preparation and distribution of catalog records and other publications of the Library; hire or purchase of one passenger motor vehicle; and expenses of the Library of Congress Trust Fund Board not properly chargeable to the income of any trust fund held by the Board, $384,671,000, of which not more than $6,000,000 shall be derived from collections credited to this appropriation during fiscal year 2005, and shall remain available until expended, under the Act of June 28, 1902 (chapter 1301; 32 Stat. 480; 2 U.S.C. 150) and not more than $350,000 shall be derived from collections during fiscal year 2005 and shall remain available until expended for the development and maintenance of an international legal information database and activities related thereto: *Provided,* That the Library of Congress may not obligate or expend any funds derived from collections under the Act of June 28, 1902, in excess of the amount authorized for obligation or expenditure in appropriations Acts: *Provided further,* That the total amount

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available for obligation shall be reduced by the amount by which collections are less than the $6,350,000: *Provided further,* That of the total amount appropriated, $12,481,000 shall remain available until expended for the partial acquisition of books, periodicals, newspapers, and all other materials including subscriptions for bibliographic services for the Library, including $40,000 to be available solely for the purchase, when specifically approved by the Librarian, of special and unique materials for additions to the collections: *Provided further,* That of the total amount appropriated, not more than $12,000 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for the Overseas Field Offices: *Provided further,* That of the total amount appropriated, $2,250,000 shall remain available until expended for the purpose of teaching educators and librarians how to incorporate the Library's digital collections into school curricula and shall be transferred to the educational consortium formed to conduct the "Adventure of the American Mind" project as approved by the Library: *Provided further,* That of the total amount appropriated, $500,000 shall remain available until expended, and shall be transferred to the Abraham Lincoln Bicentennial Commission for carrying out the purposes of Public Law 106–173, of which $10,000 may be used for official representation and reception expenses of the Abraham Lincoln Bicentennial Commission: *Provided further,* That of the total amount appropriated, $15,620,000 shall remain available until expended for partial support of the National Audio-Visual Conservation Center: *Provided further,* That of the total amount appropriated, $2,795,000 shall remain available until expended for the development and maintenance of the Alternate Computer Facility: *Provided further,* That of the total amount appropriated, $500,000 shall be used to provide a grant to the Middle Eastern Text Initiative for translation and publishing of middle eastern text: *Provided further,* That, of the total amount appropriated, $100,000 shall be provided to the Association for Diplomatic Studies and Training to provide for the oral history of United States foreign affairs personnel: *Provided further,* That of the total amount appropriated, $300,000 shall be made available to initiate with the University of South Carolina a Cooperative Preservation and Conservation project for Movietone Newsreel collections.

COPYRIGHT OFFICE

SALARIES AND EXPENSES

For necessary expenses of the Copyright Office, $53,611,000, of which not more than $26,981,000, to remain available until expended, shall be derived from collections credited to this appropriation during fiscal year 2005 under section 708(d) of title 17, United States Code: *Provided,* That the Copyright Office may not obligate or expend any funds derived from collections under such section, in excess of the amount authorized for obligation or expenditure in appropriations Acts: *Provided further,* That not more than $6,496,000 shall be derived from collections during fiscal year 2005 under sections 111(d)(2), 119(b)(2), 802(h), 1005, and 1316 of such title: *Provided further,* That the total amount available for obligation shall be reduced by the amount by which collections are less than $33,477,000: *Provided further,* That not more than $100,000 of the amount appropriated is available for the maintenance of an

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"International Copyright Institute" in the Copyright Office of the Library of Congress for the purpose of training nationals of developing countries in intellectual property laws and policies: *Provided further,* That not more than $4,250 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for activities of the International Copyright Institute and for copyright delegations, visitors, and seminars.

CONGRESSIONAL RESEARCH SERVICE

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of section 203 of the Legislative Reorganization Act of 1946 (2 U.S.C. 166) and to revise and extend the Annotated Constitution of the United States of America, $96,893,000: *Provided,* That no part of such amount may be used to pay any salary or expense in connection with any publication, or preparation of material therefor (except the Digest of Public General Bills), to be issued by the Library of Congress unless such publication has obtained prior approval of either the Committee on House Administration of the House of Representatives or the Committee on Rules and Administration of the Senate.

BOOKS FOR THE BLIND AND PHYSICALLY HANDICAPPED

SALARIES AND EXPENSES

For salaries and expenses to carry out the Act of March 3, 1931 (chapter 400; 46 Stat. 1487; 2 U.S.C. 135a), $54,412,000, of which $16,235,000 shall remain available until expended: *Provided,* That, of the total amount appropriated, $200,000 shall remain available until expended to reimburse the National Federation of the Blind for costs incurred in the operation of its "NEWSLINE" program.

ADMINISTRATIVE PROVISIONS

SEC. 1201. INCENTIVE AWARDS PROGRAM. Of the amounts appropriated to the Library of Congress in this Act, not more than $5,000 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for the incentive awards program.

SEC. 1202. REIMBURSABLE AND REVOLVING FUND ACTIVITIES. (a) IN GENERAL.—For fiscal year 2005, the obligational authority of the Library of Congress for the activities described in subsection (b) may not exceed $106,985,000.

(b) ACTIVITIES.—The activities referred to in subsection (a) are reimbursable and revolving fund activities that are funded from sources other than appropriations to the Library in appropriations Acts for the legislative branch.

(c) TRANSFER OF FUNDS.—During fiscal year 2005, the Librarian of Congress may temporarily transfer funds appropriated in this Act, under the heading "LIBRARY OF CONGRESS" under the subheading "SALARIES AND EXPENSES" to the revolving fund for

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the FEDLINK Program and the Federal Research Program established under section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 2 U.S.C. 182c): *Provided,* That the total amount of such transfers may not exceed $1,900,000: *Provided further,* That the appropriate revolving fund account shall reimburse the Library for any amounts transferred to it before the period of availability of the Library appropriation expires.

SEC. 1203. NATIONAL DIGITAL INFORMATION INFRASTRUCTURE AND PRESERVATION PROGRAM. The Miscellaneous Appropriations Act, 2001 (enacted into law by section 1(a)(4) of Public Law 106–554, 114 Stat. 2763A–194) is amended in the first proviso under the subheading "SALARIES AND EXPENSES" under the heading "LIBRARY OF CONGRESS" in chapter 9 of division A—

(1) by inserting "and pledges" after "other than money"; and

(2) by striking "March 31, 2005" and inserting "March 31, 2010".

SEC. 1204. UNITED STATES DIPLOMATIC FACILITIES. Funds made available for the Library of Congress under this Act are available for transfer to the Department of State as remittance for a fee charged by the Department for fiscal year 2005 for the maintenance, upgrade, or construction of United States diplomatic facilities only to the extent that the amount of the fee so charged is equal to or less than the unreimbursed value of the services provided during fiscal year 2005 to the Library of Congress on State Department diplomatic facilities.

SEC. 1205. NATIONAL FILM PRESERVATION BOARD AND NATIONAL FILM PRESERVATION FOUNDATION. (a) EFFECTIVE DATES.—Notwithstanding the effective date under section 113 of the National Film Preservation Act of 1996 (2 U.S.C. 179w), title I of that Act shall be considered to be effective through fiscal year 2005.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 151711(a) of title 36, United States Code, is amended by striking "2003" and inserting "2005".

GOVERNMENT PRINTING OFFICE

CONGRESSIONAL PRINTING AND BINDING

(INCLUDING TRANSFER OF FUNDS)

For authorized printing and binding for the Congress and the distribution of Congressional information in any format; printing and binding for the Architect of the Capitol; expenses necessary for preparing the semimonthly and session index to the Congressional Record, as authorized by law (section 902 of title 44, United States Code); printing and binding of Government publications authorized by law to be distributed to Members of Congress; and printing, binding, and distribution of Government publications authorized by law to be distributed without charge to the recipient, $88,800,000: *Provided,* That this appropriation shall not be available for paper copies of the permanent edition of the Congressional Record for individual Representatives, Resident Commissioners or Delegates authorized under section 906 of title 44, United States Code: *Provided further,* That this appropriation shall be available for the payment of obligations incurred under the appropriations for similar purposes for preceding fiscal years: *Provided further,*

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That notwithstanding the 2-year limitation under section 718 of title 44, United States Code, none of the funds appropriated or made available under this Act or any other Act for printing and binding and related services provided to Congress under chapter 7 of title 44, United States Code, may be expended to print a document, report, or publication after the 27-month period beginning on the date that such document, report, or publication is authorized by Congress to be printed, unless Congress reauthorizes such printing in accordance with section 718 of title 44, United States Code: *Provided further,* That any unobligated or unexpended balances in this account or accounts for similar purposes for preceding fiscal years may be transferred to the Government Printing Office revolving fund for carrying out the purposes of this heading, subject to the approval of the Committees on Appropriations of the House of Representatives and Senate.

OFFICE OF SUPERINTENDENT OF DOCUMENTS

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For expenses of the Office of Superintendent of Documents necessary to provide for the cataloging and indexing of Government publications and their distribution to the public, Members of Congress, other Government agencies, and designated depository and international exchange libraries as authorized by law, $31,953,000: *Provided,* That amounts of not more than $2,000,000 from current year appropriations are authorized for producing and disseminating Congressional serial sets and other related publications for fiscal years 2003 and 2004 to depository and other designated libraries: *Provided further,* That any unobligated or unexpended balances in this account or accounts for similar purposes for preceding fiscal years may be transferred to the Government Printing Office revolving fund for carrying out the purposes of this heading, subject to the approval of the Committees on Appropriations of the House of Representatives and Senate.

GOVERNMENT PRINTING OFFICE REVOLVING FUND

The Government Printing Office may make such expenditures, within the limits of funds available and in accord with the law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the programs and purposes set forth in the budget for the current fiscal year for the Government Printing Office revolving fund: *Provided,* That not more than $5,000 may be expended on the certification of the Public Printer in connection with official representation and reception expenses: *Provided further,* That the revolving fund shall be available for the hire or purchase of not more than 12 passenger motor vehicles: *Provided further,* That expenditures in connection with travel expenses of the advisory councils to the Public Printer shall be deemed necessary to carry out the provisions of title 44, United States Code: *Provided further,* That the revolving fund shall be available for temporary or intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not more than the daily equivalent of the annual rate of basic

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pay for level V of the Executive Schedule under section 5316 of such title: *Provided further,* That the revolving fund and the funds provided under the headings "OFFICE OF SUPERINTENDENT OF DOCUMENTS" and "SALARIES AND EXPENSES" together may not be available for the full-time equivalent employment of more than 2,621 workyears (or such other number of workyears as the Public Printer may request, subject to the approval of the Committees on Appropriations of the House of Representatives and Senate): *Provided further,* That activities financed through the revolving fund may provide information in any format: *Provided further,* That not more than $10,000 may be expended from the revolving fund in support of the activities of the Benjamin Franklin Tercentenary Commission established by Public Law 107–202.

ADMINISTRATIVE PROVISION

SEC. 1301. DISCOUNTS FOR SALES COPIES. Section 1708 of title 44, United States Code, is amended by striking "of not to exceed 25 percent may be allowed to book dealers and quantity purchasers", and inserting the following: "may be allowed as determined by the Superintendent of Documents".

GOVERNMENT ACCOUNTABILITY OFFICE

SALARIES AND EXPENSES

For necessary expenses of the Government Accountability Office, including not more than $12,500 to be expended on the certification of the Comptroller General of the United States in connection with official representation and reception expenses; temporary or intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not more than the daily equivalent of the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of such title; hire of one passenger motor vehicle; advance payments in foreign countries in accordance with section 3324 of title 31, United States Code; benefits comparable to those payable under section 901(5), (6), and (8) of the Foreign Service Act of 1980 (22 U.S.C. 4081(5), (6), and (8)); and under regulations prescribed by the Comptroller General of the United States, rental of living quarters in foreign countries, $470,973,000: *Provided,* That not more than $4,919,000 of payments received under section 782 of title 31, United States Code, shall be available for use in fiscal year 2005: *Provided further,* That not more than $2,500,000 of reimbursements received under section 9105 of title 31, United States Code, shall be available for use in fiscal year 2005: *Provided further,* That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the National Intergovernmental Audit Forum or a Regional Intergovernmental Audit Forum shall be available to finance an appropriate share of either Forum's costs as determined by the respective Forum, including necessary travel expenses of non-Federal participants: *Provided further,* That payments hereunder to the Forum may be credited as reimbursements to any appropriation from which costs involved are initially financed: *Provided further,* That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the American Consortium on International Public Administration (ACIPA) shall be available to finance an

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appropriate share of ACIPA costs as determined by the ACIPA, including any expenses attributable to membership of ACIPA in the International Institute of Administrative Sciences.

ADMINISTRATIVE PROVISION

SEC. 1401. REPORTS TO THE COMPTROLLER GENERAL. (a) LIMITATIONS ON EXPENDITURES, OBLIGATIONS, AND VOLUNTARY SERVICES.—Section 1351 of title 31, United States Code, is amended by inserting "A copy of each report shall also be transmitted to the Comptroller General on the same date the report is transmitted to the President and Congress." after the first sentence.

(b) PROHIBITED OBLIGATIONS AND EXPENDITURES.—Section 1517(b) of title 31, United States Code, is amended by inserting "A copy of each report shall also be transmitted to the Comptroller General on the same date the report is transmitted to the President and Congress." after the first sentence.

PAYMENT TO THE OPEN WORLD LEADERSHIP CENTER TRUST FUND

For a payment to the Open World Leadership Center Trust Fund for financing activities of the Open World Leadership Center, $13,500,000.

ADMINISTRATIVE PROVISIONS

SEC. 1501. EXPANSION OF OPEN WORLD LEADERSHIP COUNTRIES.—Section 313(j) of the Legislative Branch Appropriations Act, 2001 (2 U.S.C. 1151(j)) is amended—

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

(2) in paragraph (2), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(3) any other country that is designated by the Board, except that the Board shall notify the Committees on Appropriations of the Senate and the House of Representatives of the designation at least 90 days before the designation is to take effect.".

SEC. 1502. BOARD MEMBERSHIP. Section 313(a)(2) of the Legislative Branch Appropriations Act, 2001 (2 U.S.C. 1151(a)(2)), as enacted by reference in section 1(a)(2) of the Consolidated Appropriations Act, 2001, is amended—

(1) in the matter preceding subparagraph (A), by striking "nine members" and inserting "11 members"; and

(2) by inserting after subparagraph (D) the following new subparagraph:

"(E) The chair of the Subcommittee on Legislative Branch of the Committee on Appropriations of the House of Representatives and the chair of the Subcommittee on Legislative Branch of the Committee on Appropriations of the Senate.".

TITLE II—GENERAL PROVISIONS

SEC. 201. MAINTENANCE AND CARE OF PRIVATE VEHICLES. No part of the funds appropriated in this Act shall be used for the

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maintenance or care of private vehicles, except for emergency assistance and cleaning as may be provided under regulations relating to parking facilities for the House of Representatives issued by the Committee on House Administration and for the Senate issued by the Committee on Rules and Administration.

SEC. 202. FISCAL YEAR LIMITATION. No part of the funds appropriated in this Act shall remain available for obligation beyond fiscal year 2005 unless expressly so provided in this Act.

SEC. 203. RATES OF COMPENSATION AND DESIGNATION. Whenever in this Act any office or position not specifically established by the Legislative Pay Act of 1929 (46 Stat. 32 et seq.) is appropriated for or the rate of compensation or designation of any office or position appropriated for is different from that specifically established by such Act, the rate of compensation and the designation in this Act shall be the permanent law with respect thereto: *Provided,* That the provisions in this Act for the various items of official expenses of Members, officers, and committees of the Senate and House of Representatives, and clerk hire for Senators and Members of the House of Representatives shall be the permanent law with respect thereto.

SEC. 204. CONSULTING SERVICES. The expenditure of any appropriation under this Act for any consulting service through procurement contract, under section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued under existing law.

SEC. 205. AWARDS AND SETTLEMENTS. Such sums as may be necessary are appropriated to the account described in subsection (a) of section 415 of the Congressional Accountability Act of 1995 (2 U.S.C. 1415(a)) to pay awards and settlements as authorized under such subsection.

SEC. 206. COSTS OF LBFMC. Amounts available for administrative expenses of any legislative branch entity which participates in the Legislative Branch Financial Managers Council (LBFMC) established by charter on March 26, 1996, shall be available to finance an appropriate share of LBFMC costs as determined by the LBFMC, except that the total LBFMC costs to be shared among all participating legislative branch entities (in such allocations among the entities as the entities may determine) may not exceed $2,000.

SEC. 207. LANDSCAPE MAINTENANCE. The Architect of the Capitol, in consultation with the District of Columbia, is authorized to maintain and improve the landscape features, excluding streets and sidewalks, in the irregular shaped grassy areas bounded by Washington Avenue, SW on the northeast, Second Street SW on the west, Square 582 on the south, and the beginning of the I–395 tunnel on the southeast.

SEC. 208. LIMITATION ON TRANSFERS. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 209. ETRAVEL SERVICE. Notwithstanding any other provision of law, no entity within the legislative branch shall be required to use the eTravel Service established by the Administrator of

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General Services for official travel by officers or employees of the entity during fiscal year 2005 or any succeeding fiscal year.

SEC. 210. VOLUNTARY SEPARATION INCENTIVE PAYMENTS. (a) AUTHORITY TO OFFER PAYMENTS.—Notwithstanding any other provision of law, the head of any office in the legislative branch may establish a program under which voluntary separation incentive payments may be offered to eligible employees of the office to encourage such employees to separate from service voluntarily (whether by retirement or resignation), in accordance with this section.

(b) AMOUNT AND ADMINISTRATION OF PAYMENTS.—A voluntary separation incentive payment made under this section—

(1) shall be paid in a lump sum after the employee's separation;

(2) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code, if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

(B) an amount determined by the head of the office involved, not to exceed $25,000;

(3) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this section;

(4) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(5) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation; and

(6) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

(c) PLAN.—

(1) PLAN REQUIRED FOR MAKING PAYMENTS.—No voluntary separation incentive payment may be paid under this section with respect to an office unless the head of the office submits a plan described in paragraph (2) to each applicable committee described in paragraph (3), and each applicable committee approves the plan.

(2) CONTENTS OF PLAN.—A plan described in this paragraph with respect to an office is a plan containing the following information:

(A) The specific positions and functions to be reduced or eliminated.

(B) A description of which categories of employees will be offered incentives.

(C) The time period during which incentives may be paid.

(D) The number and amounts of voluntary separation incentive payments to be offered.

(E) A description of how the office will operate without the eliminated positions and functions.

(3) APPLICABLE COMMITTEE.—For purposes of this subsection, the "applicable committee" with respect to an office means any committee of the House of Representatives or Senate

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with jurisdiction over the activities of the office under the applicable rules of the House of Representatives and the Senate (as determined by the head of the office), but does not include the Committees on Appropriations of the House of Representatives and the Senate.

(d) EXCLUSION OF CERTAIN OFFICES.—This section shall not apply to any office which is an Executive agency under section 105 of title 5, United States Code, or any employee of such an office.

(e) ELIGIBLE EMPLOYEE DEFINED.—

(1) IN GENERAL.—In this section, an "eligible employee" is an employee (as defined in section 2105, United States Code) or a Congressional employee (as defined in section 2107, United States Code) who—

(A) is serving under an appointment without time limitation; and

(B) has been currently employed for a continuous period of at least 3 years.

(2) EXCLUSIONS.—An "eligible employee" does not include any of the following:

(A) A reemployed annuitant under subchapter III of chapter 83 or 84 of title 5, United States Code, or another retirement system for employees of the Government.

(B) An employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 of title 5, United States Code, or another retirement system for employees of the Government.

(C) An employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(D) An employee who has previously received any voluntary separation incentive payment from the Federal Government under this section or any other authority.

(E) An employee covered by statutory reemployment rights who is on transfer employment with another organization.

(F) Any employee who—

(i) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379 of title 5, United States Code, or any other authority;

(ii) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753 of such title or any other authority; or

(iii) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754 of such title or any other authority.

(f) REPAYMENT FOR INDIVIDUALS RETURNING TO GOVERNMENT EMPLOYMENT.—

(1) IN GENERAL.—Subject to paragraph (2), an employee who has received a voluntary separation incentive payment

under this section and accepts employment with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to repay the entire amount of the incentive payment to the office that paid the incentive payment.

(2) WAIVER FOR INDIVIDUALS POSSESSING UNIQUE ABILITIES.—

(A) If the employment is with an Executive agency (as defined by section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment required under this subsection if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(B) If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment required under this subsection if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(C) If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment required under this subsection if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(3) TREATMENT OF PERSONAL SERVICES CONTRACTS.—For purposes of paragraph (1) (but not paragraph (2)), the term "employment" includes employment under a personal services contract with the United States.

(g) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act, and shall apply with respect to the portion of fiscal year 2005 occurring on and after such date and to each succeeding fiscal year.

SEC. 211. CAPITOL GROUNDS ENCLOSURE. None of the funds contained in this Act may be used to study, design, plan, or otherwise further the construction or consideration of a fence to enclose the perimeter of the grounds of the United States Capitol.

SEC. 212. CONGRESSIONAL RECOGNITION FOR EXCELLENCE IN ARTS EDUCATION. Section 210 of the Legislative Branch Appropriations Act, 2003 is amended—

(1) by striking the first proviso; and

(2) by striking "*Provide further*," and inserting "*Provided*,".

SEC. 213. TRANSFER OF JURISDICTION OVER REAL PROPERTY NEAR JAPANESE AMERICAN PATRIOTISM MEMORIAL. (a) TRANSFER OF JURISDICTION.—

(1) IN GENERAL.—Jurisdiction over the parcels of Federal real property described under paragraph (2) (over which jurisdiction was transferred under section 514(b)(2)(C) of the Omnibus Parks and Public Lands Management Act of 1996 (40 U.S.C. 5102 note; Public Law 104–333)) is transferred to the Architect of the Capitol, without consideration.

(2) PARCELS.—The parcels of Federal real property referred to under paragraph (1) are the following:

(A) That portion of New Jersey Avenue, N.W., between the northernmost point of the intersection of New Jersey Avenue, N.W., and D Street, N.W., and the northernmost point of the intersection of New Jersey Avenue, N.W., and

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Louisiana Avenue, N.W., between squares 631 and W632, which remains Federal property, and whose maintenance and repair shall be the responsibility of the District of Columbia.

(B) That portion of D Street, N.W., between its intersection with New Jersey Avenue, N.W., and its intersection with Louisiana Avenue, N.W., between squares 630 and W632, which remains Federal property.

(b) MISCELLANEOUS.—

(1) COMPLIANCE WITH OTHER LAWS.—Compliance with this section shall be deemed to satisfy the requirements of all laws otherwise applicable to transfers of jurisdiction over parcels of Federal real property.

(2) UNITED STATES CAPITOL GROUNDS.—

(A) DEFINITION.—Section 5102 of title 40, United States Code, is amended to include within the definition of the United States Capitol Grounds the parcels of Federal real property described in subsection (a)(2).

(B) JURISDICTION OF CAPITOL POLICE.—The United States Capitol Police shall have jurisdiction over the parcels of Federal real property described in subsection (a)(2) in accordance with section 9 of the Act entitled "An Act to define the United States Capitol Grounds, to regulate the use thereof, and for other purposes", approved July 31, 1946 (2 U.S.C. 1961).

(3) EFFECT OF TRANSFER.—A person relinquishing jurisdiction over any parcel of Federal real property transferred by subsection (a) shall not retain any interest in the parcel except as specifically provided in this section.

(c) EFFECTIVE DATE.—This Act shall apply to fiscal year 2005 and each fiscal year thereafter.

SEC. 214. COMMISSION ON THE ABRAHAM LINCOLN STUDY ABROAD FELLOWSHIP PROGRAM. EXTENSION OF REPORT AND TERMINATION DATES.—Section 104 of division H of the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 435) is amended—

(1) in subsection (f), by striking "December 1, 2004" and inserting "December 1, 2005"; and

(2) in subsection (g), by striking "December 31, 2004" and inserting "December 31, 2005".

SEC. 215. (a) The Chief Administrative Officer of the House of Representatives and the Sergeant at Arms and Doorkeeper of the Senate may enter into a memorandum of understanding under which the Sergeant at Arms and Doorkeeper shall provide all services of the United States Capitol telephone exchange for the House of Representatives, in accordance with such terms and conditions as may be provided in the memorandum of understanding.

(b) For any period during which a memorandum of understanding is in effect pursuant to this section—

(1) all positions in the United States Capitol telephone exchange for which the employing authority is the Chief Administrative Officer shall be transferred to the Sergeant at Arms and Doorkeeper;

(2) all employees in the United States Capitol telephone exchange for whom the employing authority is the Chief Administrative Officer shall be transferred to, and appointed by, the Sergeant at Arms and Doorkeeper; and

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(3) the Sergeant at Arms and Doorkeeper shall serve as the employing authority for all personnel of the United States Capitol telephone exchange.

(c) In carrying out a memorandum of understanding pursuant to this section, the Sergeant at Arms and Doorkeeper shall ensure that, with respect to any employee of the United States Capitol telephone exchange whose employing authority prior to the effective date of the memorandum was the Chief Administrative Officer—

(1) the rate of pay and leave accrual for the employee shall not be less than the employee's rate of pay and leave accrual for the most recent pay period prior to such date, unless—

(A) the employee does not remain in the same position with the exchange; or

(B) the rate of pay or leave accrual is reduced for cause; and

(2) any leave accrued by the employee that remains unused as of such date shall be transferred to the employee and made available for the employee to use under the same terms and conditions that applied to the use of the leave prior to such date.

(d) The last sentence of section 4(b) of the House Employees Position Classification Act (2 U.S.C. 293(b)) is amended by striking "succeeding year," and inserting the following: "succeeding year (other than any period during which a memorandum of understanding described in section 215(a) of the Legislative Branch Appropriations Act, 2005 is in effect),".

(e)(1) A memorandum of understanding under this section may include a provision requiring the reimbursement by the House of Representatives during a fiscal year (paid out of the applicable accounts of the House) of the expenses incurred by the Sergeant at Arms and Doorkeeper during the fiscal year in carrying out the memorandum with respect to the employees of the United States Capitol telephone exchange whose employing authority prior to the effective date of the memorandum was the Chief Administrative Officer.

(2) Any reimbursement made pursuant to this subsection—

(A) in the case of a reimbursement for salaries or agency contributions and related expenses, shall be deposited in the account under the heading "OFFICE OF THE SERGEANT AT ARMS AND DOORKEEPER" or "AGENCY CONTRIBUTIONS AND RELATED EXPENSES", under the heading "SALARIES, OFFICERS AND EMPLOYEES"; and

(B) in the case of a reimbursement for expenses, shall be deposited in the account under the heading "SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE" under the heading "CONTINGENT EXPENSES OF THE SENATE".

(3) Any funds deposited under paragraph (2) shall be available in like manner and for the same purposes as are other funds in the account to which the funds were deposited.

(f) This section and the amendment made by this section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

This division may be cited as the "Legislative Branch Appropriations Act, 2005".

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DIVISION H—TRANSPORTATION, TREASURY, INDEPENDENT AGENCIES, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2005

TITLE I

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

For necessary expenses of the Office of the Secretary, $87,234,000, of which not to exceed $2,220,000 shall be available for the immediate Office of the Secretary; not to exceed $705,000 shall be available for the immediate Office of the Deputy Secretary; not to exceed $15,395,000 shall be available for the Office of the General Counsel; not to exceed $12,627,000 shall be available for the Office of the Under Secretary of Transportation for Policy; not to exceed $8,573,000 shall be available for the Office of the Assistant Secretary for Budget and Programs; not to exceed $2,316,000 shall be available for the Office of the Assistant Secretary for Governmental Affairs; not to exceed $23,436,000 shall be available for the Office of the Assistant Secretary for Administration; not to exceed $1,929,000 shall be available for the Office of Public Affairs; not to exceed $1,456,000 shall be available for the Office of the Executive Secretariat; not to exceed $704,000 shall be available for the Board of Contract Appeals; not to exceed $1,278,000 shall be available for the Office of Small and Disadvantaged Business Utilization; not to exceed $2,053,000 for the Office of Intelligence and Security; not to exceed $3,150,000 shall be available for the Office of Emergency Transportation; and not to exceed $11,392,000 shall be available for the Office of the Chief Information Officer: *Provided,* That the Secretary of Transportation is authorized to transfer funds appropriated for any office of the Office of the Secretary to any other office of the Office of the Secretary: *Provided further,* That no appropriation for any office shall be increased or decreased by more than 5 percent by all such transfers: *Provided further,* That any change in funding greater than 5 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further,* That not to exceed $60,000 shall be for allocation within the Department for official reception and representation expenses as the Secretary may determine: *Provided further,* That notwithstanding any other provision of law, excluding fees authorized in Public Law 107–71, there may be credited to this appropriation up to $2,500,000 in funds received in user fees: *Provided further,* That none of the funds provided in this Act shall be available for the position of Assistant Secretary for Public Affairs.

OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, $8,700,000.

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COMPENSATION FOR AIR CARRIERS

(RESCISSION)

Of the funds made available under section 101(a)(2) of Public Law 107–42, $235,000,000 are rescinded.

TRANSPORTATION PLANNING, RESEARCH, AND DEVELOPMENT

For necessary expenses for conducting transportation planning, research, systems development, development activities, and making grants, to remain available until expended, $20,000,000.

WORKING CAPITAL FUND

Necessary expenses for operating costs and capital outlays of the Working Capital Fund, not to exceed $151,054,000, shall be paid from appropriations made available to the Department of Transportation: *Provided,* That such services shall be provided on a competitive basis to entities within the Department of Transportation: *Provided further,* That the above limitation on operating expenses shall not apply to non-DOT entities: *Provided further,* That no funds appropriated in this Act to an agency of the Department shall be transferred to the Working Capital Fund without the approval of the agency modal administrator: *Provided further,* That no assessments may be levied against any program, budget activity, subactivity or project funded by this Act unless notice of such assessments and the basis therefor are presented to the House and Senate Committees on Appropriations and are approved by such Committees.

MINORITY BUSINESS RESOURCE CENTER PROGRAM

For the cost of guaranteed loans, $500,000, as authorized by 49 U.S.C. 332: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $18,367,000. In addition, for administrative expenses to carry out the guaranteed loan program, $400,000.

MINORITY BUSINESS OUTREACH

For necessary expenses of Minority Business Resource Center outreach activities, $3,000,000, to remain available until September 30, 2006: *Provided,* That notwithstanding 49 U.S.C. 332, these funds may be used for business opportunities related to any mode of transportation.

NEW HEADQUARTERS BUILDING

For necessary expenses of the Department of Transportation's new headquarters building and related services, $68,000,000, to remain available until expended.

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PAYMENTS TO AIR CARRIERS

(AIRPORT AND AIRWAY TRUST FUND)

In addition to funds made available from any other source to carry out the essential air service program under 49 U.S.C. 41731 through 41742, $52,000,000, to be derived from the Airport and Airway Trust Fund, to remain available until expended.

FEDERAL AVIATION ADMINISTRATION

OPERATIONS

For necessary expenses of the Federal Aviation Administration, not otherwise provided for, including operations and research activities related to commercial space transportation, administrative expenses for research and development, establishment of air navigation facilities, the operation (including leasing) and maintenance of aircraft, subsidizing the cost of aeronautical charts and maps sold to the public, lease or purchase of passenger motor vehicles for replacement only, in addition to amounts made available by Public Law 108–176, $7,775,000,000, of which $4,918,073,000 shall be derived from the Airport and Airway Trust Fund, of which not to exceed $6,234,417,600 shall be available for air traffic services activities; not to exceed $916,894,000 shall be available for aviation regulation and certification activities; not to exceed $224,039,000 shall be available for research and acquisition activities; not to exceed $11,674,000 shall be available for commercial space transportation activities; not to exceed $52,124,000 shall be available for financial services activities; not to exceed $69,821,600 shall be available for human resources program activities; not to exceed $149,569,800 shall be available for region and center operations and regional coordination activities; not to exceed $139,302,000 shall be available for staff offices; and not to exceed $36,254,000 shall be available for information services: *Provided*, That none of the funds in this Act shall be available for the Federal Aviation Administration to finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of the enactment of this Act: *Provided further,* That there may be credited to this appropriation funds received from States, counties, municipalities, foreign authorities, other public authorities, and private sources, for expenses incurred in the provision of agency services, including receipts for the maintenance and operation of air navigation facilities, and for issuance, renewal or modification of certificates, including airman, aircraft, and repair station certificates, or for tests related thereto, or for processing major repair or alteration forms: *Provided further,* That of the funds appropriated under this heading, not less than $7,000,000 shall be for the contract tower cost-sharing program: *Provided further,* That funds may be used to enter into a grant agreement with a nonprofit standard-setting organization to assist in the development of aviation safety standards: *Provided further,* That none of the funds in this Act shall be available for new applicants for the second career training program: *Provided further,* That none of the funds in this Act shall be available for paying premium pay under 5 U.S.C. 5546(a) to any Federal Aviation Administration employee unless such employee actually performed work during the time corresponding to such premium pay: *Provided*

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further, That none of the funds in this Act may be obligated or expended to operate a manned auxiliary flight service station in the contiguous United States: *Provided further,* That none of the funds in this Act for aeronautical charting and cartography are available for activities conducted by, or coordinated through, the Working Capital Fund: *Provided further,* That of the funds provided under this heading, $4,000,000 is available only for recruitment, personnel compensation and benefits, and related costs to raise the level of operational air traffic control supervisors to the level of 1,846: *Provided further,* That none of the funds in this Act may be obligated or expended for an employee of the Federal Aviation Administration to purchase a store gift card or gift certificate through use of a Government-issued credit card.

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for acquisition, establishment, technical support services, improvement by contract or purchase, and hire of air navigation and experimental facilities and equipment, as authorized under part A of subtitle VII of title 49, United States Code, including initial acquisition of necessary sites by lease or grant; engineering and service testing, including construction of test facilities and acquisition of necessary sites by lease or grant; construction and furnishing of quarters and related accommodations for officers and employees of the Federal Aviation Administration stationed at remote localities where such accommodations are not available; and the purchase, lease, or transfer of aircraft from funds available under this heading; to be derived from the Airport and Airway Trust Fund, $2,540,000,000, of which $2,119,000,000 shall remain available until September 30, 2007, and of which $421,000,000 shall remain available until September 30, 2005: *Provided,* That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred in the establishment and modernization of air navigation facilities: *Provided further,* That upon initial submission to the Congress of the fiscal year 2006 President's budget, the Secretary of Transportation shall transmit to the Congress a comprehensive capital investment plan for the Federal Aviation Administration which includes funding for each budget line item for fiscal years 2006 through 2010, with total funding for each year of the plan constrained to the funding targets for those years as estimated and approved by the Office of Management and Budget.

RESEARCH, ENGINEERING, AND DEVELOPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for research, engineering, and development, as authorized under part A of subtitle VII of title 49, United States Code, including construction of experimental facilities and acquisition of necessary sites by lease or grant, $130,927,000, to be derived from the Airport and Airway Trust Fund and to remain available until September 30, 2007: *Provided,* That there may be credited to this appropriation funds received from States, counties, municipalities, other public

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authorities, and private sources, for expenses incurred for research, engineering, and development.

GRANTS-IN-AID FOR AIRPORTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(AIRPORT AND AIRWAY TRUST FUND)

For liquidation of obligations incurred for grants-in-aid for airport planning and development, and noise compatibility planning and programs as authorized under subchapter I of chapter 471 and subchapter I of chapter 475 of title 49, United States Code, and under other law authorizing such obligations; for procurement, installation, and commissioning of runway incursion prevention devices and systems at airports of such title; for grants authorized under section 41743 of title 49, United States Code; and for inspection activities and administration of airport safety programs, including those related to airport operating certificates under section 44706 of title 49, United States Code, $2,800,000,000 to be derived from the Airport and Airway Trust Fund and to remain available until expended: *Provided,* That none of the funds under this heading shall be available for the planning or execution of programs the obligations for which are in excess of $3,500,000,000 in fiscal year 2005, notwithstanding section 47117(g) of title 49, United States Code: *Provided further,* That none of the funds under this heading shall be available for the replacement of baggage conveyor systems, reconfiguration of terminal baggage areas, or other airport improvements that are necessary to install bulk explosive detection systems: *Provided further,* That notwithstanding any other provision of law, not more than $68,802,000 of funds limited under this heading shall be obligated for administration and not less than $20,000,000 shall be for the Small Community Air Service Development Program.

GRANTS-IN-AID FOR AIRPORTS

(AIRPORT AND AIRWAY TRUST FUND)

(RESCISSION OF CONTRACT AUTHORIZATION)

Of the amount authorized for the fiscal year ending September 30, 2004, under sections 48103 and 48112 of title 49, United States Code, $265,000,000 are rescinded.

GENERAL PROVISIONS—FEDERAL AVIATION ADMINISTRATION

SEC. 101. Notwithstanding any other provision of law, airports may transfer without consideration to the Federal Aviation Administration (FAA) instrument landing systems (along with associated approach lighting equipment and runway visual range equipment) which conform to FAA design and performance specifications, the purchase of which was assisted by a Federal airport-aid program, airport development aid program or airport improvement program grant: *Provided,* That, the Federal Aviation Administration shall accept such equipment, which shall thereafter be operated and maintained by FAA in accordance with agency criteria.

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SEC. 102. None of the funds in this Act may be used to compensate in excess of 375 technical staff-years under the federally funded research and development center contract between the Federal Aviation Administration and the Center for Advanced Aviation Systems Development during fiscal year 2005.

SEC. 103. None of the funds made available in this Act may be used for engineering work related to an additional runway at Louis Armstrong New Orleans International Airport.

SEC. 104. None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation, or weather reporting: *Provided,* That the prohibition of funds in this section does not apply to negotiations between the agency and airport sponsors to achieve agreement on "below-market" rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for air traffic control facilities.

SEC. 105. None of the funds appropriated or limited by this Act may be used to change weight restrictions or prior permission rules at Teterboro Airport in Teterboro, New Jersey.

SEC. 106. (a) Section 44302(f)(1) of title 49, United States Code, is amended by striking "2004," each place it appears and inserting "2005,".

(b) Section 44303(b) of such title is amended by striking "2004," and inserting "2005,".

SEC. 107. Notwithstanding any provision of law, the Secretary of Transportation is authorized and directed to make project grants under chapter 471 of title 49, United States Code, from funds available under 49 U.S.C. 48103, for the cost of acquisition of land, or reimbursement of the cost of land if purchased prior to enactment of this provision and prior to a grant agreement, for non-exclusive use aeronautical purposes on an airport layout plan that has been approved by the Secretary on January 23, 2004, pursuant to section 49 U.S.C. 47107(a)(16), for any small hub airport as defined in 49 U.S.C. 47102, and had scheduled or chartered direct international flights totaling at least 200 million pounds gross aircraft landed weight for calendar year 2002.

FEDERAL HIGHWAY ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

Necessary expenses for administration and operation of the Federal Highway Administration, not to exceed $346,500,000, shall be paid in accordance with law from appropriations made available by this Act to the Federal Highway Administration together with advances and reimbursements received by the Federal Highway Administration.

FEDERAL-AID HIGHWAYS

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

None of the funds in this Act shall be available for the implementation or execution of programs, the obligations for which

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are in excess of $34,700,000,000 for Federal-aid highways and highway safety construction programs for fiscal year 2005: *Provided,* That within the $34,700,000,000 obligation limitation on Federal-aid highways and highway safety construction programs, not more than $462,500,000 shall be available for the implementation or execution of programs for transportation research (sections 502, 503, 504, 506, 507, and 508 of title 23, United States Code, as amended; section 5505 of title 49, United States Code, as amended; and sections 5112 and 5204–5209 of Public Law 105–178) for fiscal year 2005: *Provided further,* That this limitation on transportation research programs shall not apply to any authority previously made available for obligation: *Provided further*, That within the $232,000,000 obligation limitation on Intelligent Transportation Systems, the following sums shall be made available for Intelligent Transportation System projects that are designed to achieve the goals and purposes set forth in section 5203 of the Intelligent Transportation Systems Act of 1998 (subtitle C of title V of Public Law 105–178; 112 Stat. 453; 23 U.S.C. 502 note) in the following specified areas:

Alameda Corridor-East Project, San Gabriel Valley, California, $2,000,000.

Alexandria Fiber Optic Cable for Traffic Signal Coordination, Virginia, $2,000,000.

Alliance for Transportation Research, Transportation Technology Center, New Mexico, $750,000.

Appalachian Transportation Institute and U3C, West Virginia, $1,000,000.

Atlanta Construction and Traffic Management Project, Georgia, $2,000,000.

Baltimore City Intelligent Transportation System, Maryland, $1,000,000.

Bay County Regional ITS, Florida, $2,000,000.

Calmar Research Vehicle Communication Systems, New York, $1,150,000.

Center for Injury Sciences, Alabama, $2,000,000.

Central Florida Regional Transportation Authority (LYNX): North Orange/South Seminole ITS Enhanced Circulator, $500,000.

Cicero Avenue Smart Corridor, Illinois, $1,000,000.

City of Boston Directional Signage Program, Massachusetts, $1,000,000.

City of Elk Grove ITS Project, California, $1,500,000.

City of Fort Worth Intelligent Transportation Systems, Texas, $1,800,000.

City of San Antonio Municipal ITS Technologies, Texas, $1,300,000.

Clark County ITS, Washington, $2,000,000.

Commercial Vehicle Information Systems Network, Illinois, $500,000.

COTA ITS Integration Project Phases II and III, Ohio, $800,000.

DeKalb Co. Signal System Improvements, Georgia, $500,000.

Downtown Signalization Project, Mechanicsburg, Pennsylvania, $750,000.

FAST-TRAC Signal Expansion, Michigan, $1,000,000.

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Florida State University System Center for Intermodal Transportation Safety, $3,000,000.

Freeway Incident Management Program, Houston, Texas, $3,250,000.

Ft. Lauderdale Intelligent Trans System Improvement, Florida, $1,000,000.

GEARS Demonstration Project, Cumberland County, Pennsylvania, $150,000.

Germantown ITS, Tennessee, $500,000.

GMU ITS Appropriations, Virginia, $2,000,000.

Highway Speed E-ZPass, Outerbridge Crossing, New York, $350,000.

Hillsborough Area Regional Transit Authority: Bus Tracking, Communication and Security, Florida, $750,000.

I–70 Incident Management Plan, Colorado, $1,250,000. I–91 Fiber and ITS Construction, Massachusetts, $2,500,000.

Intelligent Transportation at George Washington University, Virginia, $1,000,000.

Intelligent Transportation System Feasibility Study and Implementation Plan, Edmond, Oklahoma, $100,000.

Intelligent Transportation System, Jackson, Tennessee, $385,000.

Intelligent Transportation System, Wichita, Kansas, $1,250,000.

Intelligent Transportation Systems, Nebraska, $450,000.

Intelligent Transportation Systems, City of Jackson, Tennessee, $1,000,000.

Intelligent Transportation Systems, Illinois, $5,000,000.

Intercity Transit ITS (Thurston County), Washington, $2,000,000.

Interurban Transit Partnership, Grand Rapids, Michigan, $2,000,000.

Iowa ITS, $2,000,000.

ITS—Commercial Vehicle Safety and Integration Statewide, Utah, $500,000.

ITS—Northwest Arkansas Regional Architecture, Arkansas, $250,000.

ITS—Rural Recreation & Tourism, Statewide, Utah, $750,000.

ITS—Springfield, Illinois, $650,000.

ITS Deployment Project, Inglewood, California, $400,000.

ITS Statewide, Maryland, $1,000,000.

Jacksonville Transportation Authority: Intelligent Transportation Systems Regional Planning, Florida, $750,000.

JAXPORT Intermodal Cargo Tracking Project, Florida, $900,000.

Kansas City SmartPort, Missouri, $750,000.

King County, County-Wide Signal Program, Washington, $2,000,000.

Lake County Passage, Lake County, Illinois, $1,250,000.

Laredo ITS Multi-Agency Integration and Incidence Project, Texas, $500,000.

Los Angeles Union Station Communication System, $1,000,000.

Lynnwood Traffic Management Center of Multi-Jurisdictional ITS, Washington, $1,000,000.

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MARTA Automated Fare Collection/Smart Card System, Georgia, $500,000.

Missouri Statewide Rural ITS, $2,500,000.

Montgomery County Integrated ITS Program, Maryland, $750,000.

Montgomery Intelligent Transportation System Acquisition and Implementation, Alabama, $1,000,000.

Nepperhan Traffic Improvements, City of Yonkers, New York, $300,000.

Northwest Arkansas Regional Planning Commission—ITS Regional Architecture, $300,000.

Park Avenue Corridor Improvements, New Jersey, $1,000,000.

Park Avenue Corridor Improvements, Union County, New Jersey, $765,000.

Pennsylvania Turnpike ITS Initiative, Pennsylvania, $2,000,000.

PSU's Center for Transportation Studies ITS Initiative, Oregon, $400,000.

Puget Sound In-Vehicle Traffic Map Expansion Program, Washington, $2,000,000.

Pulaski at Irving Park Intersection Improvement, Illinois, $500,000.

PVTA ITS, Massachusetts, $1,000,000.

Regional ITS Springfield, Missouri, $2,000,000.

Reston Traffic Signal Prioritization, Virginia, $750,000.

Route 28 traffic light synchronization, $500,000.

Route 50 signalization improvement, Virginia, $1,000,000.

Route 7 signalization improvements, Virginia, $500,000.

Rural Highway Information System, Kentucky, $2,000,000.

San Diego Joint Transportation Operations Center, California, $750,000.

SCDOT InRoads, South Carolina, $2,500,000.

Signal Pre-emption Upgrades, Culver City, California, $110,000.

South Boulevard Signal System, North Carolina, $470,000.

Springfield Regional Intelligent Transportation System, Missouri, $2,000,000.

Stamford Urban Transitway Phase II, Connecticut, $1,000,000.

State Transportation Incident Management Center, Wisconsin, $500,000.

STRAP 3 Transportation Program Tracking, $1,500,000.

The Mass Country Roads Traveler Information System, Massachusetts, $200,000.

TMC Transportation Operations Center, Texas, $500,000.

Traffic Operations Center, City of Fresno, California, $500,000.

Traffic Response and Information, Partnership Center, Maryland, $1,500,000.

Transportation Management & Emergency Ops Center/ Oakland, California, $750,000.

Transportation Research Center, Georgia, $1,000,000.

Traveler Information System, Seattle, Washington, $1,000,000.

Tri-County ITS Coordination Initiative, Michigan, $500,000.

Twin Cities, Minnesota Redundant Communications Pilot, $750,000.

University of Alaska Arctic Transportation Engineering Research Center, Alaska, $1,500,000.

University of Kentucky Transportation Center, $1,500,000.

US 2 Lohman Rail Crossing Advance Warning, Montana, $1,000,000.

US 280 Corridor ITS, Alabama, $800,000.

US 280, Jefferson County, ITS, Alabama, $4,000,000.

US 98 Widening from Bayshore Road to Portside Road, Florida, $500,000.

Variable Message Signs and 511 Implementation, Idaho, $2,250,000.

Ventura County Intelligent Transportation Systems, California, $750,000.

Vermont Roadway Weather Information System, $1,000,000.

Village of Tarrytown, New York, $320,000.

West Baton Rouge Emergency Communications Center, Louisiana, $1,500,000.

Wisconsin State Patrol Mobile Data Communications Network—Phase III, $3,400,000.

FEDERAL-AID HIGHWAYS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for carrying out the provisions of title 23, United States Code, that are attributable to Federal-aid highways, including the National Scenic and Recreational Highway as authorized by 23 U.S.C. 148, not otherwise provided, including reimbursement for sums expended pursuant to the provisions of 23 U.S.C. 308, $35,000,000,000 or so much thereof as may be available in and derived from the Highway Trust Fund, to remain available until expended.

FEDERAL-AID HIGHWAYS

(HIGHWAY TRUST FUND)

(RESCISSION)

Of the unobligated balances of funds apportioned to each State under chapter 1 of title 23, United States Code, $520,277,000 are rescinded: *Provided,* That such rescission shall not apply to the funds distributed in accordance with 23 U.S.C. 133(d)(1) and the first sentence of 23 U.S.C. 133(d)(3)(A) or to the funds apportioned to the program authorized under section 163 of title 23, United States Code.

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FEDERAL-AID HIGHWAYS

EMERGENCY RELIEF PROGRAM

(INCLUDING RECISSION)

(HIGHWAY TRUST FUND)

For an additional amount for the "Emergency Relief Program" as authorized under section 125 of title 23, United States Code, $741,000,000, to be derived from the Highway Trust Fund (other than the Mass Transit Account) and to remain available until expended: *Provided*, That of the unobligated balances of funds apportioned to each State under chapter 1 of title 23, United States Code, $741,000,000 are rescinded: *Provided further*, That such rescission shall not apply to the funds distributed in accordance with 23 U.S.C. 133(d)(1) and the first sentence of 23 U.S.C. 133(d)(3)(A) or to the funds apportioned to the program authorized under section 163 of title 23, United States Code.

APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM

For necessary expenses for the Appalachian Development Highway System as authorized under section 1069(y) of Public Law 102–240, as amended, $80,000,000, to remain available until expended.

GENERAL PROVISIONS—FEDERAL HIGHWAY ADMINISTRATION

SEC. 110. (a) For fiscal year 2005, the Secretary of Transportation shall—

(1) not distribute from the obligation limitation for Federal-aid highways amounts authorized for administrative expenses and programs funded from the administrative takedown authorized by section 104(a)(1)(A) of title 23, United States Code, for the highway use tax evasion program, for the Bureau of Transportation Statistics, and for the programs, projects, and activities funded from the takedown authorized by section 117 of this Act;

(2) not distribute an amount from the obligation limitation for Federal-aid highways that is equal to the unobligated balance of amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highways and highway safety programs for the prior fiscal years the funds for which are allocated by the Secretary;

(3) determine the ratio that—

(A) the obligation limitation for Federal-aid Highways less the aggregate of amounts not distributed under paragraphs (1) and (2), bears to

(B) the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction programs (other than sums authorized to be appropriated for sections set forth in paragraphs (1) through (7) of subsection (b) and sums authorized to be appropriated for section 105 of title 23, United States Code, equal to the amount referred to in subsection (b)(8)) for such fiscal year less the aggregate of the amounts not distributed under paragraph (1) of this subsection;

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(4) distribute the obligation limitation for Federal-aid highways less the aggregate amounts not distributed under paragraphs (1) and (2) for section 201 of the Appalachian Regional Development Act of 1965 and $2,000,000,000 for such fiscal year under section 105 of title 23, United States Code (relating to minimum guarantee) so that the amount of obligation authority available for each of such sections is equal to the amount determined by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such section (except in the case of section 105, $2,000,000,000) for such fiscal year;

(5) distribute the obligation limitation provided for Federal-aid highways less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraph (4) for each of the programs that are allocated by the Secretary under title 23, United States Code (other than activities to which paragraph (1) applies and programs to which paragraph (4) applies) by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such program for such fiscal year; and

(6) distribute the obligation limitation provided for Federal-aid highways less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraphs (4) and (5) for Federal-aid highways and highway safety construction programs (other than the minimum guarantee program, but only to the extent that amounts apportioned for the minimum guarantee program for such fiscal year exceed $2,639,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under title 23, United States Code, in the ratio that—

(A) sums authorized to be appropriated for such programs that are apportioned to each State for such fiscal year, bear to

(B) the total of the sums authorized to be appropriated for such programs that are apportioned to all States for such fiscal year.

(b) EXCEPTIONS FROM OBLIGATION LIMITATION.—The obligation limitation for Federal-aid highways shall not apply to obligations: (1) under section 125 of title 23, United States Code; (2) under section 147 of the Surface Transportation Assistance Act of 1978; (3) under section 9 of the Federal-Aid Highway Act of 1981; (4) under sections 131(b) and 131(j) of the Surface Transportation Assistance Act of 1982; (5) under sections 149(b) and 149(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987; (6) under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991; (7) under section 157 of title 23, United States Code, as in effect on the day before the date of the enactment of the Transportation Equity Act for the 21st Century; (8) under section 105 of title 23, United States Code (but, only in an amount equal to $639,000,000 for such fiscal year); and (9) for Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century or subsequent public laws for multiple years or to remain available until used, but only to the extent that such obligation authority has not lapsed or been used.

(c) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (a), the Secretary shall after August 1

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for such fiscal year revise a distribution of the obligation limitation made available under subsection (a) if a State will not obligate the amount distributed during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year giving priority to those States having large unobligated balances of funds apportioned under sections 104 and 144 of title 23, United States Code, section 160 (as in effect on the day before the enactment of the Transportation Equity Act for the 21st Century) of title 23, United States Code, and under section 1015 of the Intermodal Surface Transportation Efficiency Act of 1991.

(d) APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.—The obligation limitation shall apply to transportation research programs carried out under chapter 5 of title 23, United States Code, except that obligation authority made available for such programs under such limitation shall remain available for a period of 3 fiscal years.

(e) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—Not later than 30 days after the date of the distribution of obligation limitation under subsection (a), the Secretary shall distribute to the States any funds: (1) that are authorized to be appropriated for such fiscal year for Federal-aid highways programs (other than the program under section 160 of title 23, United States Code) and for carrying out subchapter I of chapter 311 of title 49, United States Code, and highway-related programs under chapter 4 of title 23, United States Code; and (2) that the Secretary determines will not be allocated to the States, and will not be available for obligation, in such fiscal year due to the imposition of any obligation limitation for such fiscal year. Such distribution to the States shall be made in the same ratio as the distribution of obligation authority under subsection (a)(6). The funds so distributed shall be available for any purposes described in section 133(b) of title 23, United States Code.

(f) SPECIAL RULE.—Obligation limitation distributed for a fiscal year under subsection (a)(4) of this section for a section set forth in subsection (a)(4) shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

SEC. 111. Notwithstanding 31 U.S.C. 3302, funds received by the Bureau of Transportation Statistics from the sale of data products, for necessary expenses incurred pursuant to 49 U.S.C. 111 may be credited to the Federal-aid highways account for the purpose of reimbursing the Bureau for such expenses: *Provided,* That such funds shall be subject to the obligation limitation for Federal-aid highways and highway safety construction.

SEC. 112. Of the funds made available to the Bureau of Transportation Statistics in fiscal year 2005, $400,000 shall be available to administer section 5402 of title 39, United States Code.

SEC. 113. (a) Notwithstanding any other provision of law, in section 1602 of the Transportation Equity Act for the 21st Century, item number 89 is amended by striking "Construct I–495/Route 2 interchange east of existing interchange to provide access to commuter rail station, Littleton" and inserting "Ayer commuter rail station improvements, land acquisition and parking improvements".

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(b) Of the $6,000,000 portion of the funds appropriated under the heading "Highway Demonstration Projects" in title I of Public Law 102–143 (105 Stat. 929) that was allocated for Routes 70/38 Circle Elimination, New Jersey, $4,500,000 shall be transferred to, and made available for, the following projects in the specified amounts: Mantua Creek Overpass in Paulsboro, New Jersey, $2,000,000; Delsea Drive Route 47 Timber Creek in Westville, New Jersey, $787,000; Camden Waterfront Parking Garage in Camden, New Jersey, $1,213,000; and Route 47 Chapel Heights Avenue in Gloucester, New Jersey, $500,000.

(c) Of the amount made available under item number 89 of the table contained in section 1107(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2052), $3,300,000 shall be used to carry out a comprehensive regional transportation study on the multimodal transportation needs in Grand Traverse County, Michigan, and to implement recommendations resulting from the study.

(d) Of the funds provided for under "Transportation and Community and System Preservation Program" in Public Law 106–69 and Public Law 106–346 for the project known as "Utah-Colorado 'Isolated Empire' Rail Connector Study" as referenced in House Report 106–355 and House Report 106–940, any remaining unobligated balance as of October 1, 2004, shall be made available to the Central Utah Rail Line (Sigurd/Salina to Levan) Project.

(e) Section 378 of the Department of Transportation and Related Agencies Appropriations Act, 2001 (114 Stat. 1356A–38) is amended by striking "an extension of Highway 180 from the City of Mendota" and inserting "an extension of Highway 180 from the City of Fresno".

SEC. 114. None of the funds made available in this Act may be used to require a State or local government to post a traffic control device or variable message sign, or any other type of traffic warning sign, in a language other than English, except with respect to the names of cities, streets, places, events, or signs related to an international border.

SEC. 115. Division F, title I, section 115 of Public Law 108–199 is amended by inserting before the period at the end the following: ": *Provided further,* That notwithstanding any other provision of law and the preceding clauses of this provision, the Secretary of Transportation may use amounts made available by this section to make grants for any surface transportation project otherwise eligible for funding under title 23 or title 49, United States Code".

SEC. 116. Of the funds available under section 104(a)(1)(A) of title 23, United States Code, $5,000,000 shall be available for environmental streamlining activities, which may include making grants to, or entering into contracts, cooperative agreements, and other transactions, with a Federal agency, State agency, local agency, authority, association, non-profit or for-profit corporation, or institution of higher education.

SEC. 117. Notwithstanding any other provision of law, whenever an allocation is made of the sums authorized to be appropriated for expenditure on the Federal lands highway program, and whenever an apportionment is made of the sums authorized to be appropriated for the surface transportation program, the congestion mitigation and air quality improvement program, the National Highway System, the Interstate maintenance program, the bridge program, the Appalachian development highway system, and the minimum

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guarantee program, the Secretary of Transportation shall deduct a sum in such amount not to exceed 4.1 percent of all sums so authorized: *Provided*, That of the amount so deducted in accordance with this section, $25,000,000 shall be made available to make grants to support planning, highway corridor development, and highway construction projects in the area that comprises the Delta Regional Authority; and $1,211,360,000 shall be made available for surface transportation projects as identified under this section in the statement of the managers accompanying this Act: *Provided further*, That notwithstanding any other provision of law and the preceding clauses of this provision, the Secretary of Transportation may use amounts made available by this section to make grants for any surface transportation project otherwise eligible for funding under title 23 or, title 49, United States Code: *Provided further*, That funds made available under this section, at the request of a State, shall be transferred by the Secretary to another Federal agency: *Provided further*, That the Federal share payable on account of any program, project, or activity carried out with funds made available under this section shall be 100 percent: *Provided further*, That the sum deducted in accordance with this section shall remain available until expended: *Provided further*, That all funds made available under this section shall be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs set forth in this Act or any other Act: *Provided further*, That the obligation limitation made available for the programs, projects, and activities for which funds are made available under this section shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

SEC. 118. Of the funds made available under section 188(a)(1) of title 23, United States Code, $100,000,000 are rescinded.

SEC. 119. For the purposes of 23 U.S.C. 181(9)(D) the project described in section 626 of division B, title VI of Public Law 108–7 is eligible as a publicly owned intermodal surface freight transfer facility.

SEC. 120. Notwithstanding any other provision of law, the Department of Transportation shall complete approval of the proposed surety substitution for one-half of the bond debt service reserve amount for the RETRAC project within 30 days after receiving from RETRAC a binding commitment from a qualified provider to deliver a surety at an acceptable price. Such bond debt service funds so released shall be deposited into the RETRAC project contingency fund for payment of RETRAC project costs in the event current project cost projections are exceeded.

SEC. 121. DESIGNATION OF MIKE O'CALLAGHAN-PAT TILLMAN MEMORIAL BRIDGE. (a) IN GENERAL.—The Hoover Dam Bypass Bridge in the Lake Mead National Recreation Area between Nevada and Arizona is designated as the "Mike O'Callaghan-Pat Tillman Memorial Bridge".

(b) REFERENCES IN LAW.—Any reference in a law (including regulations), map, document, paper, or other record of the United States to the bridge described in subsection (a) shall be considered to be a reference to the Mike O'Callaghan-Pat Tillman Memorial Bridge.

SEC. 122. BYPASS BRIDGE AT HOOVER DAM. (a) IN GENERAL.—Subject to subsection (b), the Secretary of Transportation may

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expend from any funds appropriated for expenditure in accordance with title 23, United States Code, for payment of debt service by the States of Arizona and Nevada on notes issued for the bypass bridge project at Hoover Dam, pending appropriation or replenishment for that project.

(b) REIMBURSEMENT.—Funds expended under subsection (a) shall be reimbursed from the funds made available to the States of Arizona and Nevada for payment of debt service on notes issued for the bypass bridge project at Hoover Dam.

SEC. 123. None of the funds made available in this Act shall be available for the development or dissemination by the Federal Highway Administration of any version of a programmatic agreement which regards the Dwight D. Eisenhower National System of Interstate and Defense Highways as eligible for inclusion on the National Register of Historic Places.

SEC. 124. Of the unobligated balances made available under Public Law 100–17, Public Law 100–457, Public Law 101–516, Public Law 102–143, Public Law 102–240, Public Law 102–388, Public Law 103–331, Public Law 105–178, and Public Law 106–346, $16,407,908.88 are rescinded.

SEC. 125. Notwithstanding any other provision of law, projects and activities described in the statement of managers accompanying this Act under the headings "Federal-Aid Highways" and "Federal Transit Administration" shall be eligible for fiscal year 2005 funds made available for the project for which each project or activity is so designated and projects and activities under the heading "Job Access and Reverse Commute Grants" shall be awarded those grants upon receipt of an application: *Provided,* That the Federal share payable on account of any such projects and activities subject to this section shall be the same as the share required by the Federal program under which each project or activity is designated unless otherwise provided in this Act.

SEC. 126. Notwithstanding any other provision of law, in addition to amounts provided in this or any other Act for fiscal year 2005, $34,000,000, to be derived from the Highway Trust Fund and to remain available until expended, shall be available for the replacement of the Belleair Causeway Bridge in Pinellas County, Florida.

SEC. 127. Of the amounts made available for the Federal-Aid Highways Emergency Relief Program under division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 (118 Stat. 1251), such sums as may be necessary shall be available for replacement of the I–10 bridge spanning Escambia Bay in Escambia and Santa Rosa Counties, Florida.

SEC. 128. Section 14003 of Public Law 108–287, the Department of Defense Appropriations Act, 2005, is amended by adding a new subsection (c) at the end as follows:

"(c) Upon a request by a State to the Secretary that the State has an insufficient amount or type of apportionment to effectively utilize the funds provided in paragraph (b), the Secretary shall waive the requirement for apportionment. Such funds shall be eligible for any activity defined in section 133(b) of title 23. Funds distributed to each State under this section shall not be subject to section 105 of title 23.".

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FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

MOTOR CARRIER SAFETY

LIMITATION ON ADMINISTRATIVE EXPENSES

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

(INCLUDING TRANSFER OF FUNDS)

Notwithstanding any other provision of law, none of the funds in this Act shall be available for expenses for administration of motor carrier safety programs and motor carrier safety research, and grants, the obligations for which are in excess of $257,547,000 for fiscal year 2005: *Provided,* That $33,000,000 shall be available to make grants to, or enter into contracts with, States, local governments, or other persons for carrying out border commercial motor vehicle safety programs and enforcement activities and projects for the purposes described in 49 U.S.C. 31104(f)(2)(B), and the Federal share payable under such grants shall be 100 percent; $20,000,000 shall be available to make grants to, or enter into contracts with, States, local governments, or other persons for commercial driver's licenses program improvements, and the Federal share payable under such grants shall be 100 percent; $13,200,000 shall be available to make grants to States for implementation of section 210 of the Motor Carrier Safety Improvement Act of 1999, and the Federal share payable under such grant shall be 100 percent; and $7,400,000 shall be available to make grants to, or enter into contracts with, States, local governments, or other persons for the commercial vehicle analysis reporting system, and the Federal share payable under such grants shall be 100 percent: *Provided further,* That notwithstanding any other provision of law, for payment of obligations incurred to pay administrative expenses of and grants by the Federal Motor Carrier Safety Administration, $257,547,000, to be derived from the Highway Trust Fund, together with advances and reimbursements received by the Federal Motor Carrier Safety Administration, the sum of which shall remain available until expended.

NATIONAL MOTOR CARRIER SAFETY PROGRAM

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out 49 U.S.C. 31102, 31106, and 31309, $190,000,000 to be derived from the Highway Trust Fund and to remain available until expended: *Provided,* That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of $190,000,000 for "Motor Carrier Safety Grants" and "Information Systems," and of which $17,000,000 shall be available for grants to States for implementation of section 210 of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1764–1765) and $1,000,000 shall be available for grants to States, local governments,

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or other entities for commercial driver's license program improvements: *Provided further,* That for grants made to States for implementation of section 210 of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1764–1765), and for grants to States, local governments, or other entities for commercial driver's license program improvements, the Federal share payable under such grants shall be 100 percent.

GENERAL PROVISIONS—FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

SEC. 130. Funds appropriated or limited in this Act shall be subject to the terms and conditions stipulated in section 350 of Public Law 107–87, including that the Secretary submit a report to the House and Senate Appropriations Committees annually on the safety and security of transportation into the United States by Mexico-domiciled motor carriers.

SEC. 131. None of the funds appropriated or otherwise made available by this Act may be used before December 31, 2005 to implement or enforce any provisions of the Final Rule, issued on April 16, 2003 (Docket No. FMCSA–97–2350), with respect to either of the following:

(1) The operators of utility service vehicles, as that term is defined in section 395.2 of title 49, Code of Federal Regulations.

(2) Maximum daily hours of service for drivers engaged in the transportation of property or passengers to or from a motion picture or television production site located within a 100-air mile radius of the work reporting location of such drivers.

SEC. 132. None of the funds made available under this Act may be used to issue or implement the Department of Transportation's proposed regulation entitled Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSSs), published in the Federal Register, volume 67, number 53, on March 19, 2002, relating to a phase-in period to bring vehicles into compliance with the requirements of the regulation.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OPERATIONS AND RESEARCH

(HIGHWAY TRUST FUND)

For expenses necessary to discharge the functions of the Secretary, with respect to traffic and highway safety under chapter 301 of title 49, United States Code, and part C of subtitle VI of title 49, United States Code, $157,386,000, to be derived from the sum authorized to be deducted under section 117 of this Act and transferred to the National Highway Traffic Safety Administration, to remain available until expended: *Provided,* That such funds shall be transferred to and administered by the National Highway Traffic Safety Administration: *Provided further,* That none of the funds in this Act may be used to augment information technology or computer support funds provided to NHTSA in excess of $2,900,000: *Provided further,* That none of the funds appropriated by this Act may be obligated or expended to plan, finalize, or

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implement any rulemaking to add to section 575.104 of title 49 of the Code of Federal Regulations any requirement pertaining to a grading standard that is different from the three grading standards (treadwear, traction, and temperature resistance) already in effect: *Provided further,* That all funds made available under this heading shall be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs set forth in this Act or any other Act: *Provided further,* That the obligation limitation made available for the programs, projects, and activities for which funds are made available under this heading shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

OPERATIONS AND RESEARCH

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out the provisions of 23 U.S.C. 403, to remain available until expended, $72,000,000, to be derived from the Highway Trust Fund: *Provided,* That none of the funds in this Act shall be available for the planning or execution of programs the total obligations for which, in fiscal year 2005, are in excess of $72,000,000 for programs authorized under 23 U.S.C. 403.

NATIONAL DRIVER REGISTER

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

For payment of obligations incurred in carrying out chapter 303 of title 49, United States Code, $3,600,000, to be derived from the Highway Trust Fund: *Provided,* That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of $3,600,000 for the National Driver Register authorized under chapter 303 of title 49, United States Code.

HIGHWAY TRAFFIC SAFETY GRANTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out the provisions of 23 U.S.C. 402, 405, and 410, to remain available until expended, $225,000,000, to be derived from the Highway Trust Fund: *Provided,* That none

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of the funds in this Act shall be available for the planning or execution of programs the total obligations for which, in fiscal year 2005, are in excess of $225,000,000 for programs authorized under 23 U.S.C. 402, 405, and 410, of which $165,000,000 shall be for "Highway Safety Programs" under 23 U.S.C. 402, $20,000,000 shall be for "Occupant Protection Incentive Grants" under 23 U.S.C. 405, and $40,000,000 shall be for "Alcohol-Impaired Driving Countermeasures Grants" under 23 U.S.C. 410: *Provided further,* That none of these funds shall be used for construction, rehabilitation, or remodeling costs, or for office furnishings and fixtures for State, local, or private buildings or structures: *Provided further,* That not to exceed $10,000,000 of the funds made available for section 402, not to exceed $2,306,000 of the funds made available for section 405, and not to exceed $2,000,000 of the funds made available for section 410 shall be available to NHTSA for administering highway safety grants under chapter 4 of title 23, United States Code: *Provided further,* That not to exceed $1,000,000 of the funds subject to allocation under section 157 of title 23, United States Code, and not to exceed $1,000,000 of the funds subject to apportionment under section 163 of that title, shall be available to the National Highway Traffic Safety Administration for administering highway safety grants under those sections: *Provided further,* That not to exceed $500,000 of the funds made available for section 410 "Alcohol-Impaired Driving Countermeasures Grants" shall be available for technical assistance to the States.

GENERAL PROVISIONS—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

SEC. 140. Notwithstanding any other provision of law, States may use funds provided in this Act under section 402 of title 23, United States Code, to produce and place highway safety public service messages in television, radio, cinema, and print media, and on the Internet in accordance with guidance issued by the Secretary of Transportation: *Provided,* That any State that uses funds for such public service messages shall submit to the Secretary a report describing and assessing the effectiveness of the messages: *Provided further,* That $10,000,000 of the funds allocated under section 157 of title 23, United States Code, shall be used as directed by the National Highway Traffic Safety Administrator to purchase national paid advertising (including production and placement) to support national safety belt mobilizations: *Provided further,* That, of the funds allocated under section 163 of title 23, United States Code, $6,000,000 shall be used as directed by the Administrator to support national impaired driving mobilizations and enforcement efforts, $14,000,000 shall be used as directed by the Administrator to purchase national paid advertising (including production and placement) to support such national impaired driving mobilizations and enforcement efforts.

SEC. 141. Notwithstanding any other provision of law, funds appropriated or limited in the Act to educate the motoring public on how to share the road safely with commercial motor vehicles shall be administered by the National Highway Traffic Safety Administration and shall not be used by or made available to any other Federal agency.

SEC. 142. Notwithstanding any other provision of law, for fiscal year 2005 the Secretary of Transportation is authorized to use amounts made available to carry out section 157 of title 23, United

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States Code, to make innovative project allocations, not to exceed the prior year's amounts for such allocations, before making incentive grants for use of seat belts.

FEDERAL RAILROAD ADMINISTRATION

SAFETY AND OPERATIONS

For necessary expenses of the Federal Railroad Administration, not otherwise provided for, $139,769,000, of which $15,350,000 shall remain available until expended.

RAILROAD RESEARCH AND DEVELOPMENT

For necessary expenses for railroad research and development, $36,025,000, to remain available until expended.

RAILROAD REHABILITATION AND IMPROVEMENT PROGRAM

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210), as amended, in such amounts and at such times as may be necessary to pay any amounts required pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: *Provided,* That pursuant to section 502 of such Act, as amended, no new direct loans or loan guarantee commitments shall be made using Federal funds for the credit risk premium during fiscal year 2005: *Provided further,* That the Secretary of Transportation and the National Railroad Passenger Corporation shall reach agreement on a schedule for the repayment of all principal and interest on their June 28, 2002 direct loan agreement that provides for repayment in five equal annual installments over a 5-year period beginning in fiscal year 2005: *Provided further,* That each annual installment payment shall be made no later than thirty days after the enactment of the Departments of Transportation and Treasury, Independent Agencies, and General Government Appropriations Act for the fiscal year: *Provided further,* That in the event the Secretary and the National Railroad Passenger Corporation are unable to agree on the terms and conditions of such revised repayment schedule within sixty days after the enactment of this Act, then all principal and interest shall come due as provided for under the existing terms of the June 28, 2002 direct loan agreement.

NEXT GENERATION HIGH-SPEED RAIL

For necessary expenses for the Next Generation High-Speed Rail program as authorized under 49 U.S.C. 26101 and 26102, $19,650,000, to remain available until expended.

ALASKA RAILROAD REHABILITATION

To enable the Secretary of Transportation to make grants to the Alaska Railroad, $25,000,000, for capital rehabilitation and improvements benefiting its passenger operations, to remain available until expended.

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GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

To enable the Secretary of Transportation to make quarterly grants to the National Railroad Passenger Corporation, $1,217,000,000, to remain available until September 30, 2005: *Provided,* That not less than $500,000,000 shall be provided in quarterly grants for capital expenses: *Provided further,* That the Secretary of Transportation shall approve funding to cover operating losses and capital expenditures, including advance purchase orders, for the National Railroad Passenger Corporation only after receiving and reviewing a grant request for each specific train route: *Provided further,* That each such grant request shall be accompanied by a detailed financial analysis, revenue projection, and capital expenditure projection justifying the Federal support to the Secretary's satisfaction: *Provided further,* That the Secretary of Transportation shall reserve $60,000,000 of the funds provided under this heading and is authorized to transfer such sums to the Surface Transportation Board, upon request from said Board, to carry out directed service orders issued pursuant to section 11123 of title 49, United States Code, to respond to the cessation of commuter rail operations by the National Railroad Passenger Corporation: *Provided further,* That the Secretary of Transportation shall make the reserved funds available to the National Railroad Passenger Corporation through an appropriate grant instrument during the end of the fourth quarter of fiscal year 2005 to the extent that no directed service orders have been issued by the Surface Transportation Board as of the date of transfer or there is a balance of reserved funds not needed by the Board to pay for any directed service order issued through September 30, 2005: *Provided further,* That not later than 60 days after enactment of this Act, Amtrak shall transmit, in electronic format, to the Secretary of Transportation, the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation a comprehensive business plan approved by the Board of Directors for fiscal year 2005 under section 24104(a) of title 49, United States Code: *Provided further,* That the business plan shall include, as applicable, targets for ridership, revenues, and capital and operating expenses: *Provided further,* That the plan shall also include a separate accounting of such targets for the Northeast Corridor; commuter service; long-distance Amtrak service; State-supported service; each intercity train route; including Autotrain; and commercial activities including contract operations and mail and express: *Provided further,* That the business plan shall include a description of the work to be funded, along with cost estimates and an estimated timetable for completion of the projects covered by this business plan: *Provided further,* That not later than December 1, 2004 and no later than 30 days following the last business day of the previous month thereafter, Amtrak shall submit to the Secretary of Transportation and the House and Senate Committees on Appropriations a supplemental report, in electronic format, regarding the pending business plan, which shall describe the work completed to date, any changes to the business plan, and the reasons for such changes: *Provided further,* That none of the funds in this Act may be used for operating expenses, including advance purchase orders, and capital projects not approved by the Secretary of Transportation nor on the National

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Railroad Passenger Corporation's fiscal year 2005 business plan: *Provided further,* That Amtrak shall display the business plan and all subsequent supplemental plans on the Corporation's website within a reasonable timeframe following their submission to the appropriate entities: *Provided further,* That none of the funds under this heading may be obligated or expended until the National Railroad Passenger Corporation agrees to continue abiding by the provisions of paragraphs 1, 2, 3, 5, 9, and 11 of the summary of conditions for the direct loan agreement of June 28, 2002, in the same manner as in effect on the date of enactment of this Act: *Provided further,* That the Secretary of Transportation is authorized to retain up to $4,000,000 of the funds provided to be used to retain a consultant or consultants to assist the Secretary in preparing a comprehensive valuation of Amtrak's assets to be completed not later than September 30, 2005: *Provided further,* That these funds shall be available to the Secretary of Transportation until expended: *Provided further,* That this valuation shall to be used to retain a consultant or consultants to develop to the Secretary's satisfaction a methodology for determining the avoidable and fully allocated costs of each Amtrak route: *Provided further,* That once the Secretary has approved the methodology for determining the avoidable and fully allocated costs of each Amtrak route, Amtrak shall apply that methodology in compiling an annual report to Congress on the avoidable and fully allocated costs of each of its routes, with the initial report for fiscal year 2005 to be submitted to the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation before December 31, 2005, and each subsequent report to be submitted within 90 days after the end of the fiscal year to which the report pertains.

GENERAL PROVISIONS—FEDERAL RAILROAD ADMINISTRATION

SEC. 150. For the purpose of assisting State-supported intercity rail service, in order to demonstrate whether competition will provide higher quality rail passenger service at reasonable prices, the Secretary of Transportation, working with affected States, shall develop and implement a procedure for fair competitive bidding by Amtrak and non-Amtrak operators for State-supported routes: *Provided,* That in the event a State desires to select or selects a non-Amtrak operator for the route, the State may make an agreement with Amtrak to use facilities and equipment of, or have services provided by, Amtrak under terms agreed to by the State and Amtrak to enable the non-Amtrak operator to provide the State-supported service: *Provided further,* That if the parties cannot agree on terms, the Secretary shall, as a condition of receipt of Federal grant funds, order that the facilities and equipment be made available and the services be provided by Amtrak under reasonable terms and compensation: *Provided further,* That when prescribing reasonable compensation to Amtrak, the Secretary shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services: *Provided further,* That the Secretary may reprogram up to $2,500,000 from the Amtrak operating grant funds for costs associated with the implementation of the fair bid procedure and demonstration of competition under this section.

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SEC. 151. Notwithstanding any provisions of this or any other Act, during the fiscal year ending September 30, 2005, and hereafter, the Federal Railroad Administration may use funds appropriated by this or any other Act to provide for the installation of a broadband high speed internet service connection, including necessary equipment, for Federal Railroad Administration employees, and to either pay directly recurring monthly charges or to reimburse a percentage of such monthly charges which are paid by such employees: *Provided,* That the Federal Railroad Administration certifies that adequate safeguards against private misuse exist, and that the service is necessary for direct support of the agency's mission.

SEC. 152. Public Law 97–468 is amended—

(1) in section 608(a)(5) by inserting ", including any amount appropriated or otherwise made available to the State-owned railroad," before "shall be retained";

(2) in section 608 by adding a new subsection (e) as follows:

"(e) The State-owned railroad may take any necessary or appropriate action, consistent with Federal railroad safety laws, to preserve and protect its rail properties in the interests of safety."; and

(3) in section 604(d)(2) by adding a new paragraph (D) as follows:

"(D) Any hazardous substance, petroleum or other contaminant release at or from the State-owned rail properties that began prior to January 5, 1985, shall be and remain the liability of the United States for damages and for the costs of investigation and cleanup. Such liability shall be enforceable under 42 U.S.C. 9601 et seq. for any release described in the preceding sentence.".

SEC. 153. Notwithstanding any other provision of law, from funds made available to the Federal Railroad Administration under the heading "Next Generation High-Speed Rail" in the Consolidated Appropriations Act of 2004 (Public Law 108–199), the Secretary of Transportation may award a grant in the amount of $400,000 to the Illinois Department of Transportation for KBS Railroad track and grade crossing improvements in Kankakee County and Northeastern Illinois.

SEC. 154. The Northern New England High Speed Rail Corridor is expanded to include the train routes from Boston, Massachusetts, to Albany, New York, and from Springfield, Massachusetts, to New Haven, Connecticut.

SEC. 155. Not later than March 1, 2005, Amtrak shall submit to the House and Senate Committees on Appropriations a report detailing Amtrak's obligations pursuant to 49 U.S.C. 24306(a), describing all investments made to develop mail and express, year-to-year operating results generated by mail and express, a detailed description of the impact on employees related to termination of mail and express, a detailed description of the proposed liquidation of assets related to mail and express, and an accounting of all incurred and estimated costs resulting from such termination, including legal and accounting costs, any contingent obligations that may result, and any other related costs. Before submission, both the Amtrak Board of Directors and the Department of Transportation shall review this report.

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FEDERAL TRANSIT ADMINISTRATION

ADMINISTRATIVE EXPENSES

For necessary administrative expenses of the Federal Transit Administration's programs authorized by chapter 53 of title 49, United States Code, $9,750,000: *Provided,* That no more than $78,000,000 of budget authority shall be available for these purposes: *Provided further,* That of the funds available not to exceed $900,000 shall be available for the Office of the Administrator; not to exceed $6,520,000 shall be available for the Office of Administration; not to exceed $4,100,000 shall be available for the Office of the Chief Counsel; not to exceed $1,243,000 shall be available for the Office of Communication and Congressional Affairs; not to exceed $7,396,000 shall be available for the Office of Program Management; not to exceed $6,929,000 shall be available for the Office of Budget and Policy; not to exceed $4,645,000 shall be available for the Office of Demonstration and Innovation; not to exceed $3,013,000 shall be available for the Office of Civil Rights; not to exceed $4,171,000 shall be available for the Office of Planning; not to exceed $20,150,000 shall be available for regional offices; and not to exceed $16,433,000 shall be available for the central account: *Provided further,* That the Administrator is authorized to transfer funds appropriated for an office of the Federal Transit Administration: *Provided further,* That no appropriation for an office shall be increased or decreased by more than a total of 5 percent during the fiscal year by all such transfers: *Provided further,* That any change in funding greater than 5 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further,* That any funding transferred from the central account shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further,* That none of the funds provided or limited in this Act may be used to create a permanent office of transit security under this heading: *Provided further,* That of the funds in this Act available for the execution of contracts under section 5327(c) of title 49, United States Code, $2,000,000 shall be reimbursed to the Department of Transportation's Office of Inspector General for costs associated with audits and investigations of transit-related issues, including reviews of new fixed guideway systems: *Provided further,* That up to $2,500,000 for the National transit database shall remain available until expended: *Provided further,* That upon submission to the Congress of the fiscal year 2006 President's budget, the Secretary of Transportation shall transmit to Congress the annual report on new starts, proposed allocations of funds for fiscal year 2006: *Provided further,* That the amount herein appropriated shall be reduced by $20,000 per day for each day after initial submission of the President's budget that the report has not been submitted to the Congress.

FORMULA GRANTS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out 49 U.S.C. 5307, 5308, 5310, 5311, 5327, and section 3038 of Public Law 105–178, $504,022,000, to remain available until expended: *Provided,* That no more than $4,032,175,000 of budget authority shall be available

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for these purposes: *Provided further,* That notwithstanding any other provision of law, $50,000,000 of the funds to carry out 49 U.S.C. 5308 shall be transferred to and merged with funding provided for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities under "Federal Transit Administration, Capital investment grants".

UNIVERSITY TRANSPORTATION RESEARCH

For necessary expenses to carry out 49 U.S.C. 5505, $750,000, to remain available until expended: *Provided,* That no more than $6,000,000 of budget authority shall be available for these purposes.

TRANSIT PLANNING AND RESEARCH

For necessary expenses to carry out 49 U.S.C. 5303, 5304, 5305, 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322, $16,000,000, to remain available until expended: *Provided,* That no more than $128,000,000 of budget authority shall be available for these purposes: *Provided further,* That $5,250,000 is available to provide rural transportation assistance (49 U.S.C. 5311(b)(2)), $4,000,000 is available to carry out programs under the National Transit Institute (49 U.S.C. 5315), $8,250,000 is available to carry out transit cooperative research programs (49 U.S.C. 5313(a)), $60,385,600 is available for metropolitan planning (49 U.S.C. 5303, 5304, and 5305), $12,614,400 is available for State planning (49 U.S.C. 5313(b)); and $37,500,000 is available for the national planning and research program (49 U.S.C. 5314).

TRUST FUND SHARE OF EXPENSES

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out 49 U.S.C. 5303–5308, 5310–5315, 5317(b), 5322, 5327, 5334, 5505, and sections 3037 and 3038 of Public Law 105–178, $6,744,500,000, to remain available until expended, and to be derived from the Mass Transit Account of the Highway Trust Fund: *Provided,* That $3,528,153,000 shall be paid to the Federal Transit Administration's formula grants account: *Provided further,* That $112,000,000 shall be paid to the Federal Transit Administration's transit planning and research account: *Provided further,* That $68,250,000 shall be paid to the Federal Transit Administration's administrative expenses account: *Provided further,* That $5,250,000 shall be paid to the Federal Transit Administration's university transportation research account: *Provided further,* That $109,375,000 shall be paid to the Federal Transit Administration's job access and reverse commute grants program: *Provided further,* That $2,921,472,000 shall be paid to the Federal Transit Administration's capital investment grants account.

CAPITAL INVESTMENT GRANTS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out 49 U.S.C. 5308, 5309, 5318, and 5327, $417,353,000, to remain available until expended:

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Provided, That no more than $3,338,825,000 of budget authority shall be available for these purposes: *Provided further*, That there shall be available for fixed guideway modernization, $1,214,400,000; there shall be available for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities, $675,000,000, which shall include $50,000,000 made available under 5309(m)(3)(C) of this title, plus $50,000,000 transferred from "Federal Transit Administration, Formula Grants"; and there shall be available for new fixed guideway systems $1,449,425,000, with $3,591,548 in unobligated balances made available in Public Law 106–346, and $22,554,144 in unobligated balances made available in Public Law 107–87, to be available as follows:

Atlanta, Georgia/North Springs (North Line Extension), $265,410.

Baltimore, Maryland, Central Light Rail Double Track, $29,010,000.

Birmingham-Transit Corridor, Alabama, $1,000,000.

Boston, Massachusetts, Silver Line III, $3,000,000.

Capital Metro-Bus Rapid Transit, Texas, $1,000,000.

CATRAIL RTC Rail Project, Nevada, $1,000,000.

Charlotte, North Carolina, South Corridor Light Rail Project, $30,000,000.

Chicago, Illinois, Douglas Branch Reconstruction, $85,000,000.

Chicago, Illinois, Ravenswood Line Extension, $40,000,000.

Cleveland, Ohio, Euclid Corridor Transportation Project, $25,000,000.

Dallas, Texas NW/SE Extension, $8,500,000.

Denver, Colorado, Southeast Corridor LRT, $80,000,000.

Dulles Corridor Rapid Transit Project, Virginia, $25,000,000.

Fort Lauderdale, Florida, South Florida Commuter Rail Upgrades, $11,409,506.

Harrisburg, Pennsylvania, Corridor One Rail MOS, $2,000,000.

Hawaii and Alaska Ferry Boats, $10,296,000.

Houston Advanced Metro Transit Plan, Texas, $8,500,000.

I–5/I–205/SR50, Transit Loop, Washington and Oregon, $1,500,000.

Las Vegas, Nevada, Resort Corridor Fixed Guideway Project, $30,000,000.

Little Rock River Rail, Arkansas, $3,500,000.

Los Angeles, California/MOS3 Metro Rail (North Hollywood), $675,103.

Los Angeles, California, Eastside Light Rail Transit Project, $60,000,000.

Los Angeles, California, Gold Line Foothill Extension, $500,000.

Metra Commuter Rail Expansions and Extensions, Illinois, $52,000,000.

Minneapolis, Minnesota, Hiawatha Light Rail Project, $33,698,453.

Minneapolis, Minnesota, Northstar Commuter Rail Project, $5,000,000.

Nashville, Tennessee, East Corridor Commuter Rail, $2,000,000.

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New Jersey Trans-Hudson Midtown Corridor, $1,200,000.
New Orleans, Louisiana, Canal Street Corridor Project, $16,747,023.
New York, New York Long Island Rail Road East Side Access, $100,000,000.
Norfolk, Virginia, Light Rail Transit Project, $2,000,000.
Northern New Jersey Hudson-Bergen Light Rail MOS2, $100,000,000.
Northern New Jersey Newark Rail Link MOS 1, $319,463.
Northern New Jersey Newark-Elizabeth Rail Line MOS1, $1,365,876.
Philadelphia, Pennsylvania, Schuylkill Valley MetroRail, $10,000,000.
Phoenix, Arizona, Central Phoenix/East Valley Light Rail, $75,000,000.
Pittsburgh, Pennsylvania, North Shore Light Rail Connector, $55,000,000.
Pittsburgh, Pennsylvania, Stage II Light Rail, $1,140,792.
Portland, Oregon, Interstate Max Light Rail Extension, $23,480,000.
Raleigh, North Carolina, Triangle Transit Authority Regional Rail Project, $20,000,000.
Rhode Island Integrated Commuter Rail Project, $6,000,000.
Regional Commuter Rail (Weber County to Salt Lake City), Utah, $8,000,000.
Salt Lake City, Utah/CBD to University LRT, $1,147,398.
Salt Lake City, Utah/Medical Center Extension, $8,836,110.
San Diego, California, Mid-Coast Light Rail Extension, $1,000,000.
San Diego, California, Mission Valley East Light Rail Extension, $81,640,000.
San Diego, California, Oceanside-Escondido Rail Corridor, $55,000,000.
San Francisco, California, BART Extension to San Fran International Airport, $100,000,000.
San Francisco, California, Muni Third Street Light Rail Project, $10,000,000.
San Juan, Puerto Rico, Tren Urbano Rapid Transit System, $44,620,000.
Santa Clara County, California, Silicon Valley Rapid Transit Corridor Project, $2,500,000.
Seattle, Washington, Central Link Initial Segment, $80,000,000.
Sound Transit Sounder Commuter Rail, Lakewood to Nisqually, Washington, $4,000,000.
South Shore Commuter Rail, Indiana, $2,500,000.
St. Louis, Missouri/Metrolink St. Clair Extension, $60,436.
Stamford, Connecticut Urban Transitway, Phase 2, $3,000,000.
Washington County, Oregon, Wilsonville to Beaverton Commuter Rail Project, $9,000,000.
Washington, DC/Largo Extension, Maryland, $76,770,615.

JOB ACCESS AND REVERSE COMMUTE GRANTS

For necessary expenses to carry out section 3037 of the Federal Transit Act of 1998, $15,625,000, to remain available until

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expended: *Provided,* That no more than $125,000,000 of budget authority shall be available for these purposes: *Provided further,* That up to $300,000 of the funds provided under this heading may be used by the Federal Transit Administration for technical assistance and support and performance reviews of the Job Access and Reverse Commute Grants program.

GENERAL PROVISIONS—FEDERAL TRANSIT ADMINISTRATION

SEC. 160. The limitations on obligations for the programs of the Federal Transit Administration shall not apply to any authority under 49 U.S.C. 5338, previously made available for obligation, or to any other authority previously made available for obligation.

SEC. 161. Notwithstanding any other provision of law, and except for fixed guideway modernization projects, funds made available by this Act under "Federal Transit Administration, Capital investment grants" for projects specified in this Act or identified in reports accompanying this Act not obligated by September 30, 2007, and other recoveries, shall be made available for other projects under 49 U.S.C. 5309.

SEC. 162. Notwithstanding any other provision of law, any funds appropriated before October 1, 2004, under any section of chapter 53 of title 49, United States Code, that remain available for expenditure may be transferred to and administered under the most recent appropriation heading for any such section.

SEC. 163. None of the funds in this Act shall be available to any Federal transit grantee after February 1, 2004, involved directly or indirectly, in any activity that promotes the legalization or medical use of any substance listed in schedule I of section 202 of the Controlled Substances Act (21 U.S.C. 812 et seq.).

SEC. 164. From unobligated balances in the Federal Transit Administration's Discretionary Grants account, not to exceed $72,792,311 shall be transferred as follows: to the Federal Transit Administration's Formula Grants account, not to exceed $42,190,828; and to the Interstate Transfer Grants—Transit account, not to exceed $30,601,483: *Provided,* That these unobligated balances are used, together with Formula Grant funds that are available for reapportionment in such account, to restore obligation authority reduced due to a prior deficiency.

SEC. 165. Funds made available for Alaska or Hawaii ferry boats or ferry terminal facilities pursuant to 49 U.S.C. 5309(m)(2)(B) may be used to construct new vessels and facilities, or to improve existing vessels and facilities, including both the passenger and vehicle-related elements of such vessels and facilities, and for repair facilities: *Provided,* That not more than $3,000,000 of the funds made available pursuant to 49 U.S.C. 5309(m)(2)(B) may be used by the State of Hawaii to initiate and operate a passenger ferryboat services demonstration project to test the viability of different intra-island and inter-island ferry boat routes and technology: *Provided further,* That notwithstanding 49 U.S.C. 5302(a)(7), funds made available for Alaska or Hawaii ferry boats may be used to acquire passenger ferry boats and to provide passenger ferry transportation services within areas of the State of Hawaii under the control or use of the National Park Service.

SEC. 166. Notwithstanding any other provision of law, unobligated funds made available for a new fixed guideway systems projects under the heading "Federal Transit Administration, Capital Investment Grants" in any appropriations act prior to this Act

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may be used during this fiscal year to satisfy expenses incurred for such projects.

SEC. 167. The Secretary shall continue the pilot program authorized under section 166 of the Consolidated Appropriations Act, 2004, Public Law 108–199; 118 Stat. 309, for cooperative procurement of major capital equipment under sections 5307, 5309, and 5311. The program shall be administered as required under subsections (b) through (g) of section 166, except that there shall be five pilot projects: *Provided,* That the Secretary shall evaluate all proposals based on selection criteria set forth in the announcement of the program and request for proposals (Federal Register Notice—Vol. 69, No. 120, Page 35127, June 23, 2004). All proposed projects shall be evaluated and the proposing party shall receive notification of acceptance or denial by no later than 90 days after the Secretary receives a request for review of a proposed project: *Provided further,* That not later than 30 days after delivery of the base order under each of the five pilot projects, the Secretary shall submit to the House and Senate Committees on Appropriations a report on the results of that pilot project. Each report shall evaluate any savings realized through the cooperative procurement and the benefits of incorporating cooperative procurement, as shown by that project, into the mass transit program as a whole.

SEC. 168. Amounts made available under chapter 53 of title 49, United States Code, and section 1108 of Public Law 102–240 to the Port Authority of Allegheny County for the Airport Busway/Wabash HOV Facility project that remain unexpended may be used by the Port Authority for the purchase of buses and bus-related equipment in accordance with 49 U.S.C. 5309.

SEC. 169. Notwithstanding any other provision of law, any unobligated funds made available under the bus category of the Capital Investment Account in prior fiscal year Appropriations Act for the Greater New Haven Transit District Fuel Cell and Electric Bus project or CNG/alternative fuel vehicle project shall be transferred to and administered under the Transit Planning and Research account, subject to such terms and conditions as the Secretary deems appropriate.

SEC. 170. Notwithstanding any other provision of law, any unobligated funds made available to the Matanuska Susitna Borough under "Federal Transit Administration, Buses and Bus Facilities" shall be available for expenditure on ferry boat and ferry facilities and related expenses as part of the Port MacKenzie Intermodal Facility project.

SEC. 171. Notwithstanding any other provision of law, $8,900,000 of the funds made available under the new fixed guideway systems category of the Capital Investment Grants account in Public Law 107–87 for the "Honolulu, Hawaii, bus rapid transit project" shall be made available to the city and county of Honolulu for replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities under 49 U.S.C. 5309 and shall remain available to the city and county of Honolulu for those purposes until expended: *Provided*, That any remaining unobligated balance from said project in Public Law 107–87 shall be transferred for any eligible activity under title 23, United States Code, and administered under that title, for use on improvements to the Kapolei Interchange Complex and shall remain available until expended: *Provided further*, That funds

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made available in Public Law 108–10 for "Hawaii: BRT Systems, Appurtenances and Facilities" shall be generally available for bus and bus facilities by the city and county of Honolulu.

SEC. 172. Notwithstanding any other provision of law, the Navy may receive funds from the State of Hawaii for the procurement of passenger ferry boats to provide passenger ferry transportation services for the Arizona War Memorial.

SEC. 173. The Federal Transit Administration is directed to comply with section 3042 of the Federal Transit Act of 1998 (Public Law 105–178, as amended; 112 Stat. 338) and is further directed to comply with the associated Committee report language contained in House Report 108–401, accompanying H.R. 2673, pages 997–998.

SEC. 174. Hereafter, notwithstanding any other provision of law, for the purpose of calculating the non-New Starts share of the total project cost of both phases of San Francisco Muni's Third Street Light Rail Transit project, the Secretary of Transportation shall include all non-New Starts contributions made towards Phase 1 of the two-phase project for engineering, final design and construction, and also shall allow non-New Starts funds expended on one element or phase of the project to be used to meet the non-New Starts share requirement of any element or phase of the project: *Provided further,* That none of the funds provided in this Act for the San Francisco Muni Third Street Light Rail Transit Project shall be obligated if the Federal Transit Administration determines that the project is found to be "not recommended" after evaluation and computation of revised transportation system user benefit data.

SEC. 175. Funds made available for the Burlington-Bennington, Vermont Commuter Rail project in Public Law 106–346, the Burlington-Middlebury, Vermont Commuter Rail project and Vermont Transportation Authority Rolling Stock in Public Law 108–7 that remain unobligated, and funds made available for the Burlington-Essex, Vermont commuter rail project in Public Laws 105–277 and 105–66 that remain unexpended shall be transferred to the Federal Railroad Administration and made available to upgrade and improve the publicly-owned Vermont Rail Infrastructure from Bennington to Burlington with a northern terminus in Essex Junction: *Provided,* That the Federal share shall be 80 percent of the total cost of the project and funds shall remain available until expended.

SEC. 176. Notwithstanding any other provision of law, any unobligated funds designated to the Oklahoma Transit Association on pages 1305 through 1307 of the Joint Explanatory Statement of the Committee of Conference for Public Law 108–7 may be made available to the Metropolitan Tulsa Transit Authority and the Central Oklahoma Transportation and Parking Authority for any project or activity authorized under section 3037 of Public Law 105–178 upon receipt of an application.

SEC. 177. Notwithstanding 49 U.S.C. 5336, any funds remaining available under Federal Transit Administration grant numbers NY–03–345–00, NY–03–0325–00, NY–03–0405, NY–90–X398–00, NY–90–X373–00, NY–90–X418–00, NY–90–X465–00 together with an amount not to exceed $19,200,000 in urbanized area formula funds that were allocated by the New York Metropolitan Transportation Council to the New York City Department of Transportation as a designated recipient under 49 U.S.C. 5307 may be made available to the New York Metropolitan Transportation Authority for eligible

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capital projects authorized under 49 U.S.C. 5307 and 5309 subject to the agreements, obligations, and responsibilities as set forth in the contracts of assistance applicable to these grants.

SEC. 178. Hereafter, fixed guideway extensions and new segments included in Metropolitan Transit Authority of Harris County, Texas, resolutions 2003–77 and 2003–93, and approved by the voters on November 4, 2003, shall be considered as the preferred alternatives for purposes of 49 U.S.C. 5390(e)(1)(A), 23 CFR 771.123, and 49 CFR 611.7.

SEC. 179. Of the funds made available under the heading "Federal Transit Administration—Discretionary Grants" in Public Laws 102–388 and 103–122 for the Hawthorne-Warwick Commuter Rail Project, $4,000,000 shall be available for the Scranton, Pennsylvania, NY City Rail Service Fixed Guideway Project to be carried out in accordance with 49 U.S.C. 5309, $1,100,000 shall be made available to study the feasibility of utilizing diesel multiple unit rolling stock on MOS–3 of the Hudson Bergen Light Rail Transit System to be carried out in accordance with 49 U.S.C. 5309, and $6,000,000 shall be transferred to the Federal Railroad Administration and made available for the New York and Susquehanna and Western Rail Road Diesel Multiple Unit Compliance and Demonstration Project to be carried out under terms and conditions as determined by the Secretary: *Provided,* That the Federal share shall be 80 percent of the net project cost of that demonstration project and funds for that project shall remain available until expended.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the Corporation's budget for the current fiscal year.

OPERATIONS AND MAINTENANCE

(HARBOR MAINTENANCE TRUST FUND)

For necessary expenses for operations and maintenance of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation, $15,900,000, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662: *Provided,* That, of this amount, $1,500,000 shall be for the concrete replacement project and related expenses at the Eisenhower and Snell Locks.

MARITIME ADMINISTRATION

MARITIME SECURITY PROGRAM

For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $98,700,000, to remain available until expended.

OPERATIONS AND TRAINING

For necessary expenses of operations and training activities authorized by law, $109,478,000, of which $23,753,000 shall remain available until September 30, 2005, for salaries and benefits of employees of the United States Merchant Marine Academy; of which $13,138,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy; and of which $8,090,000 shall remain available until expended for the State Maritime Schools Schoolship Maintenance and Repair.

SHIP DISPOSAL

For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, $21,616,000, to remain available until expended.

MARITIME GUARANTEED LOAN (TITLE XI) PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For administrative expenses to carry out the guaranteed loan program, not to exceed $4,764,000, which shall be transferred to and merged with the appropriation for Operations and Training: *Provided,* That of the $25,000,000 authorized for the cost of guaranteed loans in chapter 10 of Public Law 108–11, Making Emergency Wartime Supplemental Appropriations for the Fiscal Year 2003, and for Other Purposes, available until September 30, 2005, and pursuant to the Department of Transportation Inspector General report CR–2004–095 certifying that the recommendations of report CR–2003–031 have been implemented to the Inspector General's satisfaction, up to $2,000,000 shall be used by the Department of Transportation to develop a comprehensive computer based financial monitoring system.

NATIONAL DEFENSE TANK VESSEL CONSTRUCTION PROGRAM

For necessary expenses to carry out the program of financial assistance for the construction of new product tank vessels as authorized by section 53101 of title 46, United States Code, as amended, $75,000,000, to remain available until expended.

SHIP CONSTRUCTION

(RESCISSION)

Of the unobligated balances available under this heading, $1,979,000 are rescinded.

GENERAL PROVISIONS—MARITIME ADMINISTRATION

SEC. 180. Notwithstanding any other provision of this Act, the Maritime Administration is authorized to furnish utilities and services and make necessary repairs in connection with any lease, contract, or occupancy involving Government property under control of the Maritime Administration, and payments received therefore shall be credited to the appropriation charged with the cost thereof: *Provided,* That rental payments under any such lease, contract, or occupancy for items other than such utilities, services, or repairs shall be covered into the Treasury as miscellaneous receipts.

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SEC. 181. No obligations shall be incurred during the current fiscal year from the construction fund established by the Merchant Marine Act, 1936, or otherwise, in excess of the appropriations and limitations contained in this Act or in any prior appropriations Act.

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

RESEARCH AND SPECIAL PROGRAMS

For expenses necessary to discharge the functions of the Research and Special Programs Administration, $47,115,000, of which $645,000 shall be derived from the Pipeline Safety Fund, and of which $3,425,000 shall remain available until September 30, 2007: *Provided,* That up to $1,200,000 in fees collected under 49 U.S.C. 5108(g) shall be deposited in the general fund of the Treasury as offsetting receipts: *Provided further,* That there may be credited to this appropriation, to be available until expended, funds received from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training, for reports publication and dissemination, and for travel expenses incurred in performance of hazardous materials exemptions and approvals functions.

PIPELINE SAFETY

(PIPELINE SAFETY FUND)

(OIL SPILL LIABILITY TRUST FUND)

For expenses necessary to conduct the functions of the pipeline safety program, for grants-in-aid to carry out a pipeline safety program, as authorized by 49 U.S.C. 60107, and to discharge the pipeline program responsibilities of the Oil Pollution Act of 1990, $69,769,000, of which $15,000,000 shall be derived from the Oil Spill Liability Trust Fund and shall remain available until September 30, 2007; of which $54,769,000 shall be derived from the Pipeline Safety Fund, of which $23,105,000 shall remain available until September 30, 2007: *Provided further,* That not less than $1,000,000 of the funds provided under this heading shall be for the one-call State grant program.

EMERGENCY PREPAREDNESS GRANTS

(EMERGENCY PREPAREDNESS FUND)

For necessary expenses to carry out 49 U.S.C. 5127(c), $200,000, to be derived from the Emergency Preparedness Fund, to remain available until September 30, 2006: *Provided,* That not more than $14,300,000 shall be made available for obligation in fiscal year 2005 from amounts made available by 49 U.S.C. 5116(i) and 5127(d): *Provided further,* That none of the funds made available by 49 U.S.C. 5116(i), 5127(c), and 5127(d) shall be made available for obligation by individuals other than the Secretary of Transportation, or his designee.

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OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General to carry out the provisions of the Inspector General Act of 1978, as amended, $59,000,000: *Provided,* That the Inspector General shall have all necessary authority, in carrying out the duties specified in the Inspector General Act, as amended (5 U.S.C. App. 3) to investigate allegations of fraud, including false statements to the government (18 U.S.C. 1001), by any person or entity that is subject to regulation by the Department: *Provided further,* That the funds made available under this heading shall be used to investigate, pursuant to section 41712 of title 49, United States Code: (1) unfair or deceptive practices and unfair methods of competition by domestic and foreign air carriers and ticket agents; and (2) the compliance of domestic and foreign air carriers with respect to item (1) of this proviso.

SURFACE TRANSPORTATION BOARD

SALARIES AND EXPENSES

For necessary expenses of the Surface Transportation Board, including services authorized by 5 U.S.C. 3109, $21,250,000: *Provided,* That notwithstanding any other provision of law, not to exceed $1,050,000 from fees established by the Chairman of the Surface Transportation Board shall be credited to this appropriation as offsetting collections and used for necessary and authorized expenses under this heading: *Provided further,* That the sum herein appropriated from the general fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are received during fiscal year 2005, to result in a final appropriation from the general fund estimated at no more than $20,200,000.

GENERAL PROVISIONS—DEPARTMENT OF TRANSPORTATION

(INCLUDING TRANSFERS OF FUNDS)

SEC. 185. During the current fiscal year applicable appropriations to the Department of Transportation shall be available for maintenance and operation of aircraft; hire of passenger motor vehicles and aircraft; purchase of liability insurance for motor vehicles operating in foreign countries on official department business; and uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901–5902).

SEC. 186. Appropriations contained in this Act for the Department of Transportation shall be available for services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for an Executive Level IV.

SEC. 187. None of the funds in this Act shall be available for salaries and expenses of more than 106 political and Presidential appointees in the Department of Transportation: *Provided,* That none of the personnel covered by this provision may be assigned on temporary detail outside the Department of Transportation.

SEC. 188. None of the funds in this Act shall be used to implement section 404 of title 23, United States Code.

SEC. 189. (a) No recipient of funds made available in this Act shall disseminate personal information (as defined in 18 U.S.C.

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2725(3)) obtained by a State department of motor vehicles in connection with a motor vehicle record as defined in 18 U.S.C. 2725(1), except as provided in 18 U.S.C. 2721 for a use permitted under 18 U.S.C. 2721.

(b) Notwithstanding subsection (a), the Secretary shall not withhold funds provided in this Act for any grantee if a State is in noncompliance with this provision.

SEC. 190. Funds received by the Federal Highway Administration, Federal Transit Administration, and Federal Railroad Administration from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training may be credited respectively to the Federal Highway Administration's "Federal-Aid Highways" account, the Federal Transit Administration's "Transit Planning and Research" account, and to the Federal Railroad Administration's "Safety and Operations" account, except for State rail safety inspectors participating in training pursuant to 49 U.S.C. 20105.

SEC. 191. Notwithstanding any other provisions of law, rule or regulation, the Secretary of Transportation is authorized to allow the issuer of any preferred stock heretofore sold to the Department to redeem or repurchase such stock upon the payment to the Department of an amount determined by the Secretary.

SEC. 192. None of the funds in this Act to the Department of Transportation may be used to make a grant unless the Secretary of Transportation notifies the House and Senate Committees on Appropriations not less than 3 full business days before any discretionary grant award, letter of intent, or full funding grant agreement totaling $1,000,000 or more is announced by the department or its modal administrations from: (1) any discretionary grant program of the Federal Highway Administration other than the emergency relief program; (2) the airport improvement program of the Federal Aviation Administration; or (3) any program of the Federal Transit Administration other than the formula grants and fixed guideway modernization programs: *Provided,* That no notification shall involve funds that are not available for obligation.

SEC. 193. Rebates, refunds, incentive payments, minor fees and other funds received by the Department of Transportation from travel management centers, charge card programs, the subleasing of building space, and miscellaneous sources are to be credited to appropriations of the Department of Transportation and allocated to elements of the Department of Transportation using fair and equitable criteria and such funds shall be available until expended.

SEC. 194. Amounts made available in this or any other Act that the Secretary determines represent improper payments by the Department of Transportation to a third party contractor under a financial assistance award, which are recovered pursuant to law, shall be available—

(1) to reimburse the actual expenses incurred by the Department of Transportation in recovering improper payments; and

(2) to pay contractors for services provided in recovering improper payments: *Provided,* That amounts in excess of that required for paragraphs (1) and (2)—

(A) shall be credited to and merged with the appropriation from which the improper payments were made, and

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shall be available for the purposes and period for which such appropriations are available; or

(B) if no such appropriation remains available, shall be deposited in the Treasury as miscellaneous receipts: *Provided,* That prior to the transfer of any such recovery to an appropriations account, the Secretary shall notify the House and Senate Committees on Appropriations of the amount and reasons for such transfer: *Provided further,* That for purposes of this section, the term "improper payments", has the same meaning as that provided in section 2(d)(2) of Public Law 107–300.

SEC. 195. The Secretary of Transportation is authorized to transfer the unexpended balances available for the bonding assistance program from "Office of the Secretary, Salaries and expenses" to "Minority Business Outreach".

SEC. 196. None of the funds made available in this Act to the Department of Transportation may be obligated for the Office of the Secretary of Transportation to approve assessments or reimbursable agreements pertaining to funds appropriated to the modal administrations in this Act, except for activities underway on the date of enactment of this Act, unless such assessments or agreements have completed the normal reprogramming process for Congressional notification.

SEC. 197. Funds provided in this Act for the Working Capital Fund shall be reduced by $20,844,000, which limits fiscal year 2005 Working Capital Fund obligational authority for elements of the Department of Transportation funded in this Act to no more than $130,210,000: *Provided,* That such reductions from the budget request shall be allocated by the Department of Transportation to each appropriations account in proportion to the amount included in each account for the Working Capital Fund.

SEC. 198. For the purpose of any applicable law, for fiscal years 2004 and 2005, the city of Norman, Oklahoma, shall be considered to be part of the Oklahoma City urbanized area.

SEC. 199. Section 41716(b) of title 49, United States Code, is amended by adding before the period at the end the following: "; except that the Secretary may grant not to exceed 4 additional slot exemptions at LaGuardia Airport to an incumbent air carrier operating at least 20 but not more than 28 slots at such airport as of October 1, 2004, to provide air transportation between LaGuardia Airport and a small hub airport or nonhub airport".

TITLE II

DEPARTMENT OF THE TREASURY

DEPARTMENTAL OFFICES

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Departmental Offices including operation and maintenance of the Treasury Building and Annex; hire of passenger motor vehicles; maintenance, repairs, and improvements of, and purchase of commercial insurance policies for, real properties leased or owned overseas, when necessary for the performance of official business, $157,559,000, of which not

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to exceed $7,274,000 for executive direction program activities; not to exceed $7,200,000 for general counsel program activities; not to exceed $31,657,000 for economic policies and programs activities; not to exceed $26,072,000 for financial policies and programs activities; not to exceed $10,633,000 for terrorism and financial intelligence policies and programs activities; not to exceed $16,760,000 for Treasury-wide management policies and programs activities; not to exceed $57,963,000 for administration programs activities: *Provided,* That the Secretary of the Treasury is authorized to transfer funds appropriated for any program activity of the Departmental Offices to any other program activity of the Departmental Offices upon notification to the House and Senate Committees on Appropriations: *Provided further,* That no appropriation for any program activity shall be increased or decreased by more than 2.5 percent by all such transfers: *Provided further,* That any change in funding greater than 2.5 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further,* That the funds identified within the administration program activity to support the Office of Foreign Assets Control shall be transferred to "Office of Foreign Assets Control": *Provided further,* That this transfer authority shall be in addition to any other provided in this Act: *Provided further,* That of the amount appropriated under this heading, not to exceed $3,000,000, to remain available until September 30, 2006, for information technology modernization requirements; not to exceed $100,000 for official reception and representation expenses; and not to exceed $258,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Secretary of the Treasury and to be accounted for solely on his certificate: *Provided further,* That of the amount appropriated under this heading, $3,393,000, to remain available until September 30, 2006, is for the Treasury-wide Financial Statement Audit Program, of which such amounts as may be necessary may be transferred to accounts of the Department's offices and bureaus to conduct audits: *Provided further,* That this transfer authority shall be in addition to any other provided in this Act.

OFFICE OF FOREIGN ASSETS CONTROL

SALARIES AND EXPENSES

For necessary expenses of the Office of Foreign Assets Control, $22,291,000: *Provided,* That the funding available shall support no less than 138 full time equivalent positions.

DEPARTMENT-WIDE SYSTEMS AND CAPITAL INVESTMENTS PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For development and acquisition of automatic data processing equipment, software, and services for the Department of the Treasury, $32,260,000, to remain available until September 30, 2007: *Provided,* That these funds shall be transferred to accounts and in amounts as necessary to satisfy the requirements of the Department's offices, bureaus, and other organizations: *Provided further,* That this transfer authority shall be in addition to any other transfer authority provided in this Act: *Provided further,* That none of the funds appropriated shall be used to support

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or supplement "Internal Revenue Service, Information Systems" or "Internal Revenue Service, Business Systems Modernization".

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, not to exceed $2,000,000 for official travel expenses, including hire of passenger motor vehicles; and not to exceed $100,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Inspector General of the Treasury, $16,500,000, of which not to exceed $2,500 shall be available for official reception and representation expenses.

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Treasury Inspector General for Tax Administration in carrying out the Inspector General Act of 1978, as amended, including purchase (not to exceed 150 for replacement only for police-type use) and hire of passenger motor vehicles (31 U.S.C. 1343(b)); services authorized by 5 U.S.C. 3109, at such rates as may be determined by the Inspector General for Tax Administration; not to exceed $6,000,000 for official travel expenses; and not to exceed $500,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Inspector General for Tax Administration, $129,126,000; and of which not to exceed $1,500 shall be available for official reception and representation expenses.

AIR TRANSPORTATION STABILIZATION PROGRAM ACCOUNT

For necessary expenses to administer the Air Transportation Stabilization Board established by section 102 of the Air Transportation Safety and System Stabilization Act (Public Law 107–42), $2,000,000, to remain available until expended.

TREASURY BUILDING AND ANNEX REPAIR AND RESTORATION

For the repair, alteration, and improvement of the Treasury Building and Annex, $12,316,000, to remain available until September 30, 2007.

EXPANDED ACCESS TO FINANCIAL SERVICES

(RESCISSION)

Of the unobligated balances available under this heading, $4,000,000 are rescinded.

VIOLENT CRIME REDUCTION PROGRAM

(RESCISSION)

Of the unobligated balances available under this heading, $1,200,000 are rescinded.

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FINANCIAL CRIMES ENFORCEMENT NETWORK

SALARIES AND EXPENSES

For necessary expenses of the Financial Crimes Enforcement Network, including hire of passenger motor vehicles; travel expenses of non-Federal law enforcement personnel to attend meetings concerned with financial intelligence activities, law enforcement, and financial regulation; not to exceed $14,000 for official reception and representation expenses; and for assistance to Federal law enforcement agencies, with or without reimbursement, $72,502,000, of which $7,500,000 shall be available for BSA Direct; of which not to exceed $7,000,000 shall remain available until September 30, 2007; and of which $8,354,000 shall remain available until September 30, 2006: *Provided,* That funds appropriated in this account may be used to procure personal services contracts: *Provided further,* That up to $350,000 of the funds under this heading may be available for planning, sponsoring, administering, receiving, and such other expenses as the Director deems necessary, including reception and representation expenses, to host the 2005 Annual Plenary of the Egmont Group.

FINANCIAL MANAGEMENT SERVICE

SALARIES AND EXPENSES

For necessary expenses of the Financial Management Service, $230,930,000, of which not to exceed $9,220,000 shall remain available until September 30, 2007, for information systems modernization initiatives; and of which not to exceed $2,500 shall be available for official reception and representation expenses.

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

SALARIES AND EXPENSES

For necessary expenses of carrying out section 1111 of the Homeland Security Act of 2002, including hire of passenger motor vehicles, $83,000,000; of which not to exceed $6,000 for official reception and representation expenses; not to exceed $50,000 for cooperative research and development programs for laboratory services; and provision of laboratory assistance to State and local agencies with or without reimbursement.

UNITED STATES MINT

UNITED STATES MINT PUBLIC ENTERPRISE FUND

Pursuant to section 5136 of title 31, United States Code, the United States Mint is provided funding through the United States Mint Public Enterprise Fund for costs associated with the production of circulating coins, numismatic coins, and protective services, including both operating expenses and capital investments. The aggregate amount of new liabilities and obligations incurred during fiscal year 2005 under such section 5136 for circulating coinage and protective service capital investments of the United States Mint shall not exceed $24,000,000.

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BUREAU OF THE PUBLIC DEBT

ADMINISTERING THE PUBLIC DEBT

For necessary expenses connected with any public-debt issues of the United States, $179,566,000, of which not to exceed $2,500 shall be available for official reception and representation expenses, and of which not to exceed $2,000,000 shall remain available until expended for systems modernization: *Provided,* That the sum appropriated herein from the General Fund for fiscal year 2005 shall be reduced by not more than $4,400,000 as definitive security issue fees and Treasury Direct Investor Account Maintenance fees are collected, so as to result in a final fiscal year 2005 appropriation from the general fund estimated at $175,166,000. In addition, $60,000 to be derived from the Oil Spill Liability Trust Fund to reimburse the Bureau for administrative and personnel expenses for financial management of the Fund, as authorized by section 1012 of Public Law 101–380.

INTERNAL REVENUE SERVICE

PROCESSING, ASSISTANCE, AND MANAGEMENT

For necessary expenses of the Internal Revenue Service for prefiling taxpayer assistance and education, filing and account services, shared services support, general management and administration; and services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, $4,089,574,000, of which up to $4,100,000 shall be for the Tax Counseling for the Elderly Program, of which $8,000,000 shall be available for low-income taxpayer clinic grants, and of which not to exceed $25,000 shall be for official reception and representation expenses.

TAX LAW ENFORCEMENT

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Internal Revenue Service for determining and establishing tax liabilities; providing litigation support; conducting criminal investigation and enforcement activities; securing unfiled tax returns; collecting unpaid accounts; conducting a document matching program; resolving taxpayer problems through prompt identification, referral and settlement; expanded customer service and public outreach programs, strengthened enforcement activities, and enhanced research efforts to reduce erroneous filings associated with the earned income tax credit; compiling statistics of income and conducting compliance research; purchase (for police-type use, not to exceed 850) and hire of passenger motor vehicles (31 U.S.C. 1343(b)); and services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, $4,398,729,000, of which not to exceed $1,000,000 shall remain available until September 30, 2007, for research: *Provided,* That up to $10,000,000 may be transferred as necessary from this account to the IRS Processing, Assistance, and Management appropriation or the IRS Information Systems appropriation solely for the purposes of management of the Earned Income Tax Credit compliance program and to reimburse the Social Security Administration for the cost of implementing section 1090

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of the Taxpayer Relief Act of 1997 (Public Law 105–33): *Provided further,* That this transfer authority shall be in addition to any other transfer authority provided in this Act.

INFORMATION SYSTEMS

For necessary expenses of the Internal Revenue Service for information systems and telecommunications support, including developmental information systems and operational information systems; the hire of passenger motor vehicles (31 U.S.C. 1343(b)); and services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, $1,590,492,000, of which $200,000,000 shall remain available until September 30, 2006.

BUSINESS SYSTEMS MODERNIZATION

For necessary expenses of the Internal Revenue Service, $205,000,000, to remain available until September 30, 2007, for the capital asset acquisition of information technology systems, including management and related contractual costs of said acquisitions, including contractual costs associated with operations authorized by 5 U.S.C. 3109: *Provided,* That none of these funds may be obligated until the Internal Revenue Service submits to the Committees on Appropriations, and such Committees approve, a plan for expenditure that: (1) meets the capital planning and investment control review requirements established by the Office of Management and Budget, including Circular A–11 part 3; (2) complies with the Internal Revenue Service's enterprise architecture, including the modernization blueprint; (3) conforms with the Internal Revenue Service's enterprise life cycle methodology; (4) is approved by the Internal Revenue Service, the Department of the Treasury, and the Office of Management and Budget; (5) has been reviewed by the Government Accountability Office; and (6) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government.

HEALTH INSURANCE TAX CREDIT ADMINISTRATION

For expenses necessary to implement the health insurance tax credit included in the Trade Act of 2002 (Public Law 107–210), $34,841,000.

GENERAL PROVISIONS—INTERNAL REVENUE SERVICE

SEC. 201. Not to exceed 5 percent of any appropriation made available in this Act to the Internal Revenue Service or not to exceed 3 percent of appropriations under the heading "Tax Law Enforcement" may be transferred to any other Internal Revenue Service appropriation upon the advance approval of the Committees on Appropriations.

SEC. 202. The Internal Revenue Service shall maintain a training program to ensure that Internal Revenue Service employees are trained in taxpayers' rights, in dealing courteously with the taxpayers, and in cross-cultural relations.

SEC. 203. The Internal Revenue Service shall institute and enforce policies and procedures that will safeguard the confidentiality of taxpayer information.

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SEC. 204. Funds made available by this or any other Act to the Internal Revenue Service shall be available for improved facilities and increased manpower to provide sufficient and effective 1–800 help line service for taxpayers. The Commissioner shall continue to make the improvement of the Internal Revenue Service 1–800 help line service a priority and allocate resources necessary to increase phone lines and staff to improve the Internal Revenue Service 1–800 help line service.

GENERAL PROVISIONS—DEPARTMENT OF THE TREASURY

SEC. 210. Appropriations to the Department of the Treasury in this Act shall be available for uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901), including maintenance, repairs, and cleaning; purchase of insurance for official motor vehicles operated in foreign countries; purchase of motor vehicles without regard to the general purchase price limitations for vehicles purchased and used overseas for the current fiscal year; entering into contracts with the Department of State for the furnishing of health and medical services to employees and their dependents serving in foreign countries; and services authorized by 5 U.S.C. 3109.

SEC. 211. Not to exceed 2 percent of any appropriations in this Act made available to the Departmental Offices—Salaries and Expenses, Office of Inspector General, Financial Management Service, Alcohol and Tobacco Tax and Trade Bureau, Financial Crimes Enforcement Network, and Bureau of the Public Debt, may be transferred between such appropriations upon the advance approval of the Committees on Appropriations: *Provided,* That no transfer may increase or decrease any such appropriation by more than 2 percent.

SEC. 212. Not to exceed 2 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to the Treasury Inspector General for Tax Administration's appropriation upon the advance approval of the Committees on Appropriations: *Provided,* That no transfer may increase or decrease any such appropriation by more than 2 percent.

SEC. 213. Of the funds available for the purchase of law enforcement vehicles, no funds may be obligated until the Secretary of the Treasury certifies that the purchase by the respective Treasury bureau is consistent with Departmental vehicle management principles: *Provided,* That the Secretary may delegate this authority to the Assistant Secretary for Management.

SEC. 214. None of the funds appropriated in this Act or otherwise available to the Department of the Treasury or the Bureau of Engraving and Printing may be used to redesign the $1 Federal Reserve note.

SEC. 215. The Secretary of the Treasury may transfer funds from "Financial management service, salaries and expenses" to "Debt services" as necessary to cover the costs of debt collection: *Provided,* That such amounts shall be reimbursed to such salaries and expenses account from debt collections received in the Debt Services Account.

SEC. 216. Section 122(g)(1) of Public Law 105–119 (5 U.S.C. 3104 note), is further amended by striking "6 years" and inserting "7 years".

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SEC. 217. None of the funds appropriated or otherwise made available by this or any other Act may be used by the United States Mint to construct or operate any museum without the explicit approval of the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs.

SEC. 218. None of the funds appropriated or otherwise made available by this or any other Act or source to the Department of the Treasury, the Bureau of Engraving and Printing, and the United States Mint, individually or collectively, may be used to consolidate any or all functions of the Bureau of Engraving and Printing and the United States Mint without the explicit approval of the House Committee on Financial Services; the Senate Committee on Banking, Housing, and Urban Affairs; the House Committee on Appropriations; and the Senate Committee on Appropriations.

SEC. 219. Section 101(f) of the Treasury Department Appropriations Act, 1997 (division A of Public Law 104–208), as amended, is further amended by striking "hereby" and "until October 1, 2004," and inserting "Hereafter" before the phrase "there is established".

SEC. 220. (a) Section 3333 of title 31, United States Code, is amended as follows:

(1) By revising paragraph (a)(1) to read as follows:

"(a)(1) The Secretary of the Treasury is not liable for a payment made by the Secretary or depositary in due course and without negligence, of—

"(A) a check, draft, or warrant drawn on the Treasury or the depositary;

"(B) an electronic payment issued by the Treasury or the depositary; and

"(C) a debt obligation guaranteed or assumed by the United States Government.";

(2) By inserting after paragraph (a)(2) the following new paragraph:

"(3) The amount of the relief shall be charged to the Check Forgery Insurance Fund (31 U.S.C. 3343). A recovery or repayment of a loss for which replacement is made out of the fund shall be credited to the fund and is available for the purposes for which the fund was established.".

(b) The Check Forgery Insurance Fund (31 U.S.C. 3343) shall be available to fund amounts relating to the payment of items listed in 31 U.S.C. 3333(a)(1), as amended above, prior to the enactment of this Act.

SEC. 221. Not later than 60 days after enactment of this Act, the Secretary of the Treasury shall submit to the Committees on Appropriations a report describing how statutory provisions addressing currency manipulation by America's trading partners contained in, and relating to, title 22 U.S.C. 5304, 5305, and 286y can be better clarified administratively to provide for improved and more predictable evaluation, and to enable the problem of currency manipulation to be better understood by the American people and the Congress.

SEC. 222. TERRORISM AND FINANCIAL INTELLIGENCE. (a) IN GENERAL.—Subchapter I of chapter 3 of title 31, United States Code, is amended by adding at the end the following:

"§ 313. Terrorism and financial intelligence

"(a) OFFICE OF TERRORISM AND FINANCIAL INTELLIGENCE.—

"(1) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of Terrorism and Financial Intelligence (in this section referred to as 'OTFI'), which shall be the successor to any such office in existence on the date of enactment of this section.

"(2) LEADERSHIP.—

"(A) UNDERSECRETARY.—There is established within the Department of the Treasury, the Office of the Undersecretary for Terrorism and Financial Crimes, who shall serve as the head of the OTFI, and shall report to the Secretary of the Treasury through the Deputy Secretary of the Treasury. The Office of the Undersecretary for Terrorism and Financial Crimes shall be the successor to the Office of the Undersecretary for Enforcement.

"(B) APPOINTMENT.—The Undersecretary for Terrorism and Financial Crimes shall be appointed by the President, by and with the advice and consent of the Senate.

"(3) ASSISTANT SECRETARY FOR TERRORIST FINANCING.—

"(A) ESTABLISHMENT.—There is established within the OTFI the position of Assistant Secretary for Terrorist Financing.

"(B) APPOINTMENT.—The Assistant Secretary for Terrorist Financing shall be appointed by the President, by and with the advice and consent of the Senate.

"(C) DUTIES.—The Assistant Secretary for Terrorist Financing shall be responsible for formulating and coordinating the counter terrorist financing and anti-money laundering efforts of the Department of the Treasury, and shall report directly to the Undersecretary for Terrorism and Financial Crimes.

"(4) FUNCTIONS.—The functions of the OTFI include providing policy, strategic, and operational direction to the Department on issues relating to—

"(A) implementation of titles I and II of the Bank Secrecy Act;

"(B) United States economic sanctions programs;

"(C) combating terrorist financing;

"(D) combating financial crimes, including money laundering, counterfeiting, and other offenses threatening the integrity of the banking and financial systems;

"(E) other enforcement matters;

"(F) those intelligence analysis and coordination functions described in subsection (b); and

"(G) the security functions and programs of the Department of the Treasury.

"(5) REPORTS TO CONGRESS ON PROPOSED MEASURES.—The Undersecretary for Terrorism and Financial Crimes and the Assistant Secretary for Terrorist Financing shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 72 hours after proposing by rule, regulation, order, or otherwise, any measure to reorganize the structure of the Department for combatting money laundering and terrorist financing, before any such proposal becomes effective.

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"(6) OTHER OFFICES WITHIN OTFI.—Notwithstanding any other provision of law, the following offices of the Department of the Treasury shall be within the OTFI:

"(A) The Office of the Assistant Secretary for Intelligence and Analysis, which shall report directly to the Undersecretary for Terrorism and Financial Crimes.

"(B) The Office of the Assistant Secretary for Terrorist Financing, which shall report directly to the Undersecretary for Terrorism and Financial Crimes.

"(C) The Office of Foreign Assets Control (in this section referred to as the 'OFAC'), which shall report directly to the Undersecretary for Terrorism and Financial Crimes.

"(D) The Executive Office for Asset Forfeiture, which shall report to the Undersecretary for Terrorism and Financial Crimes.

"(E) The Office of Intelligence and Analysis (in this section referred to as the 'OIA'), which shall report to the Assistant Secretary for Intelligence and Analysis.

"(F) The Office of Terrorist Financing, which shall report to the Assistant Secretary for Terrorist Financing.

"(7) FINCEN.—

"(A) REPORTING TO UNDERSECRETARY.—The Financial Crimes Enforcement Network (in this section referred to as 'FinCEN'), a bureau of the Department of the Treasury, shall report to the Undersecretary for Terrorism and Financial Crimes. The Undersecretary for Terrorism and Financial Crimes may not redelegate its reporting authority over FinCEN.

"(B) OFFICE OF COMPLIANCE.—There is established within FinCEN, an Office of Compliance.

"(b) OFFICE OF INTELLIGENCE AND ANALYSIS.—

"(1) ASSISTANT SECRETARY FOR INTELLIGENCE AND ANALYSIS.—The Assistant Secretary for Intelligence and Analysis shall head the OIA.

"(2) RESPONSIBILITIES.—The OIA shall be responsible for the receipt, analysis, collation, and dissemination of intelligence and counterintelligence information related to the operations and responsibilities of the entire Department of the Treasury, including all components and bureaus of the Department.

"(3) PRIMARY FUNCTIONS.—The primary functions of the OIA are—

"(A) to build a robust analytical capability on terrorist finance by coordinating and overseeing work involving intelligence analysts in all components of the Department of the Treasury, focusing on the highest priorities of the Department, as well as ensuring that the existing intelligence needs of the OFAC and FinCEN are met; and

"(B) to provide intelligence support to senior officials of the Department on a wide range of international economic and other relevant issues.

"(4) OTHER FUNCTIONS AND DUTIES.—The OIA shall—

"(A) carry out the intelligence support functions that are assigned, to the Office of Intelligence Support under section 311 (pursuant to section 105 of the Intelligence Authorization Act for Fiscal Year 2004);

"(B) serve in a liaison capacity with the intelligence community; and

"(C) represent the Department in various intelligence related activities.

"(5) DUTIES OF THE ASSISTANT SECRETARY.—The Assistant Secretary for Intelligence and Analysis shall serve as the Senior Officer Intelligence Community, and shall represent the Department in intelligence community fora, including the National Foreign Intelligence Board committees and the Intelligence Community Management Staff.

"(c) DELEGATION.—To the extent that any authorities, powers, and responsibilities over enforcement matters delegated to the Undersecretary for Terrorism and Financial Crimes, or the positions of Assistant Secretary for Terrorism and Financial Crimes, Assistant Secretary for Enforcement and Operations, or Deputy Assistant Secretary for Terrorist Financing and Financial Crimes, have not been transferred to the Department of Homeland Security, the Department of Justice, or the Assistant Secretary for Tax Policy (related to the customs revenue functions of the Bureau of Alcohol and Tobacco Tax and Trade), those remaining authorities, powers, and responsibilities are delegated to the Undersecretary for Terrorism and Financial Crimes.

"(d) DESIGNATION AS ENFORCEMENT ORGANIZATION.—The Office of Terrorism and Financial Intelligence (including any components thereof) is designated as a law enforcement organization of the Department of the Treasury for purposes of section 9703 of title 31, United States Code, and other relevant authorities.

"(e) USE OF EXISTING RESOURCES.—The Secretary may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary on the date of enactment of this section in carrying out this section, except as otherwise prohibited by law.

"(f) REFERENCES.—References in this section to the 'Secretary', 'Undersecretary', 'Deputy Secretary', 'Deputy Assistant Secretary', 'Office', 'Assistant Secretary', and 'Department' are references to positions and offices of the Department of the Treasury, unless otherwise specified.".

(b) CONFORMING AMENDMENTS.—

(1) TITLE 31.—Section 311 of title 31, United States Code, is amended—

(A) in subsection (a)—

(i) by redesignating paragraphs (1) and (2) as para- graphs (2) and (3), respectively; and

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

"(1) be within the Office of Terrorism and Financial Intelligence;"; and

(B) in subsection (b), by striking "Enforcement" and inserting "Terrorism and Financial Crimes".

(2) OTHER OFFICE ABOLISHED.—The Office of the Undersecretary for Enforcement of the Department of the Treasury, established in accordance with section 103 of the Treasury Department Appropriations Act, 1994 (Public Law 103–123) is abolished, and all rights, duties, and responsibilities of that office are transferred on the date of enactment of this Act to the Office of the Undersecretary for Terrorism and Financial Crimes of the Department of the Treasury in accordance with this section and the amendments made by this section, except

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as otherwise specifically provided in this section or the amendments made by this section, or other applicable law.

TITLE III

EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

COMPENSATION OF THE PRESIDENT

For compensation of the President, including an expense allowance at the rate of $50,000 per annum as authorized by 3 U.S.C. 102, $450,000: *Provided,* That none of the funds made available for official expenses shall be expended for any other purpose and any unused amount shall revert to the Treasury pursuant to section 1552 of title 31, United States Code.

WHITE HOUSE OFFICE

SALARIES AND EXPENSES

For necessary expenses for the White House as authorized by law, including not to exceed $3,850,000 for services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 105; subsistence expenses as authorized by 3 U.S.C. 105, which shall be expended and accounted for as provided in that section; hire of passenger motor vehicles, newspapers, periodicals, teletype news service, and travel (not to exceed $100,000 to be expended and accounted for as provided by 3 U.S.C. 103); and not to exceed $19,000 for official entertainment expenses, to be available for allocation within the Executive Office of the President, $62,000,000: *Provided,* That of the funds appropriated under this heading, up to $9,975,000 shall be available for reimbursements to the White House Communications Agency: *Provided further,* That of the funds appropriated under this heading, $2,475,000 shall be for the Homeland Security Council.

EXECUTIVE RESIDENCE AT THE WHITE HOUSE

OPERATING EXPENSES

For the care, maintenance, repair and alteration, refurnishing, improvement, heating, and lighting, including electric power and fixtures, of the Executive Residence at the White House and official entertainment expenses of the President, $12,760,000, to be expended and accounted for as provided by 3 U.S.C. 105, 109, 110, and 112–114.

REIMBURSABLE EXPENSES

For the reimbursable expenses of the Executive Residence at the White House, such sums as may be necessary: *Provided,* That all reimbursable operating expenses of the Executive Residence shall be made in accordance with the provisions of this paragraph: *Provided further,* That, notwithstanding any other provision of law, such amount for reimbursable operating expenses shall be the exclusive authority of the Executive Residence to incur obligations and to receive offsetting collections, for such expenses: *Provided further,* That the Executive Residence shall require each person sponsoring a reimbursable political event to pay in advance an amount equal

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to the estimated cost of the event, and all such advance payments shall be credited to this account and remain available until expended: *Provided further,* That the Executive Residence shall require the national committee of the political party of the President to maintain on deposit $25,000, to be separately accounted for and available for expenses relating to reimbursable political events sponsored by such committee during such fiscal year: *Provided further,* That the Executive Residence shall ensure that a written notice of any amount owed for a reimbursable operating expense under this paragraph is submitted to the person owing such amount within 60 days after such expense is incurred, and that such amount is collected within 30 days after the submission of such notice: *Provided further,* That the Executive Residence shall charge interest and assess penalties and other charges on any such amount that is not reimbursed within such 30 days, in accordance with the interest and penalty provisions applicable to an outstanding debt on a United States Government claim under section 3717 of title 31, United States Code: *Provided further,* That each such amount that is reimbursed, and any accompanying interest and charges, shall be deposited in the Treasury as miscellaneous receipts: *Provided further,* That the Executive Residence shall prepare and submit to the Committees on Appropriations, by not later than 90 days after the end of the fiscal year covered by this Act, a report setting forth the reimbursable operating expenses of the Executive Residence during the preceding fiscal year, including the total amount of such expenses, the amount of such total that consists of reimbursable official and ceremonial events, the amount of such total that consists of reimbursable political events, and the portion of each such amount that has been reimbursed as of the date of the report: *Provided further,* That the Executive Residence shall maintain a system for the tracking of expenses related to reimbursable events within the Executive Residence that includes a standard for the classification of any such expense as political or nonpolitical: *Provided further,* That no provision of this paragraph may be construed to exempt the Executive Residence from any other applicable requirement of subchapter I or II of chapter 37 of title 31, United States Code.

WHITE HOUSE REPAIR AND RESTORATION

For the repair, alteration, and improvement of the Executive Residence at the White House, $1,900,000, to remain available until expended, for required maintenance, safety and health issues, and continued preventative maintenance.

COUNCIL OF ECONOMIC ADVISERS

SALARIES AND EXPENSES

For necessary expenses of the Council of Economic Advisers in carrying out its functions under the Employment Act of 1946 (15 U.S.C. 1021), $4,040,000.

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OFFICE OF POLICY DEVELOPMENT

SALARIES AND EXPENSES

For necessary expenses of the Office of Policy Development, including services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, $2,300,000.

NATIONAL SECURITY COUNCIL

SALARIES AND EXPENSES

For necessary expenses of the National Security Council, including services as authorized by 5 U.S.C. 3109, $8,932,000.

OFFICE OF ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Office of Administration, including services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, and hire of passenger motor vehicles, $92,269,000, of which $12,075,000 shall remain available until expended for the Capital Investment Plan for continued modernization of the information technology infrastructure within the Executive Office of the President: *Provided,* That $4,000,000 of Capital Investment Plan funds may not be obligated until the Executive Office of the President has submitted a report to the Committees on Appropriations that includes an Enterprise Architecture, as defined in OMB Circular A–130 and the Federal Chief Information Officers Council guidance, that is reviewed and approved by the Office of Management and Budget, reviewed by the United States Government Accountability Office, and approved by the Committees on Appropriations.

OFFICE OF MANAGEMENT AND BUDGET

SALARIES AND EXPENSES

For necessary expenses of the Office of Management and Budget, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109 and to carry out the provisions of chapter 35 of title 44, United States Code, $68,411,000, of which not to exceed $1,500 shall be available for official representation expenses: *Provided,* That, as provided in 31 U.S.C. 1301(a), appropriations shall be applied only to the objects for which appropriations were made except as otherwise provided by law: *Provided further,* That none of the funds appropriated in this Act for the Office of Management and Budget may be used for the purpose of reviewing any agricultural marketing orders or any activities or regulations under the provisions of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 et seq.): *Provided further,* That none of the funds made available for the Office of Management and Budget by this Act may be expended for the altering of the transcript of actual testimony of witnesses, except for testimony of officials of the Office of Management and Budget, before the Committees on Appropriations or their subcommittees: *Provided further,* That the preceding shall not apply to printed hearings released by the Committees on Appropriations: *Provided further,* That none of the funds appropriated in this Act may be available

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to pay the salary or expenses of any employee of the Office of Management and Budget who calculates, prepares, or approves any tabular or other material that proposes the sub-allocation of budget authority or outlays by the Committees on Appropriations among their subcommittees: *Provided further,* That none of the funds provided in this or prior Acts shall be used, directly or indirectly, by the Office of Management and Budget, for evaluating or determining if water resource project or study reports submitted by the Chief of Engineers acting through the Secretary of the Army are in compliance with all applicable laws, regulations, and requirements relevant to the Civil Works water resource planning process: *Provided further,* That the Office of Management and Budget shall have not more than 60 days in which to perform budgetary policy reviews of water resource matters on which the Chief of Engineers has reported. The Director of the Office of Management and Budget shall notify the appropriate authorizing and Appropriations Committees when the 60-day review is initiated. If water resource reports have not been transmitted to the appropriate authorizing and appropriating committees within 15 days of the end of the OMB review period based on the notification from the Director, Congress shall assume OMB concurrence with the report and act accordingly.

OFFICE OF NATIONAL DRUG CONTROL POLICY

SALARIES AND EXPENSES

For necessary expenses of the Office of National Drug Control Policy; for research activities pursuant to the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701 et seq.); not to exceed $10,000 for official reception and representation expenses; and for participation in joint projects or in the provision of services on matters of mutual interest with nonprofit, research, or public organizations or agencies, with or without reimbursement, $27,000,000; of which $1,350,000 shall remain available until expended for policy research and evaluation: *Provided,* That the Office is authorized to accept, hold, administer, and utilize gifts, both real and personal, public and private, without fiscal year limitation, for the purpose of aiding or facilitating the work of the Office.

COUNTERDRUG TECHNOLOGY ASSESSMENT CENTER

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Counterdrug Technology Assessment Center for research activities pursuant to the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701 et seq.), $42,000,000, which shall remain available until expended, consisting of $18,000,000 for counternarcotics research and development projects, and $24,000,000 for the continued operation of the technology transfer program: *Provided,* That the $18,000,000 for counternarcotics research and development projects shall be available for transfer to other Federal departments or agencies.

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FEDERAL DRUG CONTROL PROGRAMS

HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of National Drug Control Policy's High Intensity Drug Trafficking Areas Program, $228,350,000, for drug control activities consistent with the approved strategy for each of the designated High Intensity Drug Trafficking Areas, of which no less than 51 percent shall be transferred to State and local entities for drug control activities, which shall be obligated within 120 days of the date of the enactment of this Act: *Provided,* That up to 49 percent, to remain available until September 30, 2006, may be transferred to Federal agencies and departments at a rate to be determined by the Director, of which not less than $2,000,000 shall be used for auditing services and associated activities, and at least $500,000 of the $2,000,000 shall be used to develop and implement a data collection system to measure the performance of the High Intensity Drug Trafficking Areas Program: *Provided further,* That High Intensity Drug Trafficking Areas Programs designated as of September 30, 2004, shall be funded at no less than the fiscal year 2004 initial allocation levels unless the Director submits to the Committees on Appropriations, and the Committees approve, justification for changes in those levels based on clearly articulated priorities for the High Intensity Drug Trafficking Areas Programs, as well as published Office of National Drug Control Policy performance measures of effectiveness: *Provided further,* That a request shall be submitted in compliance with the reprogramming guidelines to the Committees on Appropriations for approval prior to the obligation of funds of an amount in excess of the fiscal year 2005 budget request: *Provided further,* That not to exceed $2,000,000 of the funds made available under this heading in excess of the fiscal year 2005 budget request shall be available for the Consolidated Priority Organization Target program.

OTHER FEDERAL DRUG CONTROL PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For activities to support a national anti-drug campaign for youth, and for other purposes, authorized by the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701 et seq.), $213,700,000, to remain available until expended, of which the following amounts are available as follows: $120,000,000 to support a national media campaign, as authorized by the Drug-Free Media Campaign Act of 1998; $80,000,000 to continue a program of matching grants to drug-free communities, of which $2,000,000 shall be a directed grant to the Community Anti-Drug Coalitions of America for the National Community Anti-Drug Coalition Institute, as authorized in chapter 2 of the National Narcotics Leadership Act of 1988, as amended; $2,000,000 for the Counterdrug Intelligence Executive Secretariat; $750,000 for the National Drug Court Institute; $1,000,000 for the National Alliance for Model State Drug Laws; $7,500,000 for the United States Anti-Doping Agency for anti-doping activities; $1,450,000 for the United States membership dues to the World Anti-Doping Agency; and $1,000,000

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for evaluations and research related to National Drug Control Program performance measures: *Provided,* That such funds may be transferred to other Federal departments and agencies to carry out such activities: *Provided further,* That of the amounts appropriated for a national media campaign, not to exceed 10 percent shall be for administration, advertising production, research and testing, labor and related costs of the national media campaign.

UNANTICIPATED NEEDS

For expenses necessary to enable the President to meet unanticipated needs, in furtherance of the national interest, security, or defense which may arise at home or abroad during the current fiscal year, as authorized by 3 U.S.C. 108, $1,000,000.

SPECIAL ASSISTANCE TO THE PRESIDENT

SALARIES AND EXPENSES

For necessary expenses to enable the Vice President to provide assistance to the President in connection with specially assigned functions; services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 106, including subsistence expenses as authorized by 3 U.S.C. 106, which shall be expended and accounted for as provided in that section; and hire of passenger motor vehicles, $4,571,000.

OFFICIAL RESIDENCE OF THE VICE PRESIDENT

OPERATING EXPENSES (INCLUDING TRANSFER OF FUNDS)

For the care, operation, refurnishing, improvement, and to the extent not otherwise provided for, heating and lighting, including electric power and fixtures, of the official residence of the Vice President; the hire of passenger motor vehicles; and not to exceed $90,000 for official entertainment expenses of the Vice President, to be accounted for solely on his certificate, $333,000: *Provided,* That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities.

TITLE IV

INDEPENDENT AGENCIES

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

SALARIES AND EXPENSES

For expenses necessary for the Architectural and Transportation Barriers Compliance Board, as authorized by section 502 of the Rehabilitation Act of 1973, as amended, $5,686,000: *Provided,* That, notwithstanding any other provision of law, there may be credited to this appropriation funds received for publications and training expenses.

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ELECTION ASSISTANCE COMMISSION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the Help America Vote Act of 2002, $14,000,000, of which $2,800,000 shall be transferred to the National Institute of Standards and Technology for election reform activities authorized under the Help America Vote Act of 2002.

FEDERAL ELECTION COMMISSION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the Federal Election Campaign Act of 1971, as amended, $52,159,000, of which no less than $4,700,000 shall be available for internal automated data processing systems, and of which not to exceed $5,000 shall be available for reception and representation expenses.

FEDERAL LABOR RELATIONS AUTHORITY

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Federal Labor Relations Authority, pursuant to Reorganization Plan Numbered 2 of 1978, and the Civil Service Reform Act of 1978, including services authorized by 5 U.S.C. 3109, and including hire of experts and consultants, hire of passenger motor vehicles, and rental of conference rooms in the District of Columbia and elsewhere, $25,673,000: *Provided,* That public members of the Federal Service Impasses Panel may be paid travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government service, and compensation as authorized by 5 U.S.C. 3109: *Provided further,* That notwithstanding 31 U.S.C. 3302, funds received from fees charged to non-Federal participants at labor-management relations conferences shall be credited to and merged with this account, to be available without further appropriation for the costs of carrying out these conferences.

(RESCISSION)

Of the unobligated balances under this heading from prior year appropriations, $3,000,000 are rescinded.

FEDERAL MARITIME COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. App. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902, $19,496,000: *Provided,* That not to exceed $2,000 shall be available for official reception and representation expenses.

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GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

(INCLUDING TRANSFER OF FUNDS)

To carry out the purposes of the Fund established pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 592), the revenues and collections deposited into the Fund shall be available for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings; rental of buildings in the District of Columbia; restoration of leased premises; moving governmental agencies (including space adjustments and telecommunications relocation expenses) in connection with the assignment, allocation and transfer of space; contractual services incident to cleaning or servicing buildings, and moving; repair and alteration of federally owned buildings including grounds, approaches and appurtenances; care and safeguarding of sites; maintenance, preservation, demolition, and equipment; acquisition of buildings and sites by purchase, condemnation, or as otherwise authorized by law; acquisition of options to purchase buildings and sites; conversion and extension of federally owned buildings; preliminary planning and design of projects by contract or otherwise; construction of new buildings (including equipment for such buildings); and payment of principal, interest, and any other obligations for public buildings acquired by installment purchase and purchase contract; in the aggregate amount of $7,217,043,000, of which: (1) $708,542,000 shall remain available until expended for construction (including funds for sites and expenses and associated design and construction services) of additional projects at the following locations:

New Construction:

California:

Los Angeles, Federal Bureau of Investigation Facility, $14,054,000.

Los Angeles, United States Courthouse, $314,385,000.

San Diego, United States Courthouse, $3,068,000.

District of Columbia:

Southeast Federal Center Site Remediation, $2,650,000.

Illinois:

Chicago, 10 West Jackson Place (Purchase), $53,170,000.

Maine:

Calais, Border Station, $3,269,000.

Madawaska, Border Station, $1,760,000.

Maryland:

Montgomery County, Food and Drug Administration Consolidation, $88,710,000.

Minnesota:

Warroad, Border Station, $1,837,000.

New Mexico:

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Las Cruces, United States Courthouse, $60,000,000.
New York:
Alexandria Bay, Border Station, $8,884,000.
Massena, Border Station, $15,000,000.
North Dakota:
Dunseith, Border Station, $2,301,000.
Portal, Border Station, $22,351,000.
Texas:
El Paso, Paso Del Norte Border Station, $26,191,000.
El Paso, United States Courthouse, $63,462,000.
El Paso, Ysleta Border Station, $2,491,000.
Vermont:
Derby Line, Border Station, $3,190,000.
Norton, Border Station, $580,000.
Richford, Border Station, $589,000.
Nonprospectus Construction, $10,000,000.
Judgment Fund repayment, $10,000,000:

Provided, That each of the foregoing limits of costs on new construction projects may be exceeded to the extent that savings are effected in other such projects, but not to exceed 10 percent of the amounts included in an approved prospectus, if required, unless advance approval is obtained from the Committees on Appropriations of a greater amount: *Provided further,* That all funds for direct construction projects shall expire on September 30, 2006, and remain in the Federal Buildings Fund except for funds for projects as to which funds for design or other funds have been obligated in whole or in part prior to such date; (2) $980,222,000 shall remain available until expended for repairs and alterations, which includes associated design and construction services:

Repairs and Alterations:
District of Columbia:
Eisenhower Executive Office Building, $5,000,000.
Federal Office Building 6, $8,267,000.
Hoover FBI Building, $10,242,000.
Mary E. Switzer Building, $80,335,000.
New Executive Office Building, $6,262,000.
Steam Distribution System, $2,000,000.
Theodore Roosevelt Building, $9,730,000.
Georgia:
Atlanta, Martin Luther King, Jr. Federal Building, $14,800,000.
Atlanta, United States Court of Appeals, $32,004,000.
Hawaii:
Hilo, Federal Building, $5,133,000.
Louisiana:
New Orleans, Boggs Federal Building, $22,581,000.
New Orleans, Wisdom Courthouse of Appeals, $8,005,000.
Maryland:
Baltimore, George H. Fallon Federal Building, $46,163,000.
Suitland, National Record Center, $7,989,000.
Woodlawn, SSA Altmeyer Building, $6,300,000.
Minnesota:
St. Paul, Warren E. Burger Federal Building—Courthouse, $36,644,000.
Missouri:

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Kansas City, Richard Bolling Federal Building, $40,048,000.
New York:
New York, Foley Square Courthouse, $2,505,000.
Queens, Joseph P. Addabbo Federal Building, $5,455,000.
Ohio:
Cincinnati, Potter Stewart Courthouse, $37,975,000.
Cleveland, Celebreeze Federal Building, $37,375,000.
Washington:
Seattle, William Nakamura Courthouse, $50,210,000.
Special Emphasis Programs:
Chlorofluorocarbons Program, $13,000,000.
Energy Program, $30,000,000.
Glass Fragment Retention, $20,000,000.
Design Program, $48,699,000.
Basic Repairs and Alterations, $393,500,000:

Provided further, That funds made available in this or any previous Act in the Federal Buildings Fund for Repairs and Alterations shall, for prospectus projects, be limited to the amount identified for each project, except each project in this or any previous Act may be increased by an amount not to exceed 10 percent unless advance approval is obtained from the Committees on Appropriations of a greater amount: *Provided further,* That additional projects for which prospectuses have been fully approved may be funded under this category only if advance approval is obtained from the Committees on Appropriations: *Provided further,* That the amounts provided in this or any prior Act for "Repairs and Alterations" may be used to fund costs associated with implementing security improvements to buildings necessary to meet the minimum standards for security in accordance with current law and in compliance with the reprogramming guidelines of the appropriate Committees of the House and Senate: *Provided further,* That the difference between the funds appropriated and expended on any projects in this or any prior Act, under the heading "Repairs and Alterations", may be transferred to Basic Repairs and Alterations or used to fund authorized increases in prospectus projects: *Provided further,* That all funds for repairs and alterations prospectus projects shall expire on September 30, 2006, and remain in the Federal Buildings Fund except funds for projects as to which funds for design or other funds have been obligated in whole or in part prior to such date: *Provided further,* That the amount provided in this or any prior Act for Basic Repairs and Alterations may be used to pay claims against the Government arising from any projects under the heading "Repairs and Alterations" or used to fund authorized increases in prospectus projects; (3) $161,442,000 for installment acquisition payments including payments on purchase contracts which shall remain available until expended; (4) $3,657,315,000 for rental of space which shall remain available until expended; and (5) $1,709,522,000 for building operations which shall remain available until expended: *Provided further,* That funds available to the General Services Administration shall not be available for expenses of any construction, repair, alteration and acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses for the development of a proposed prospectus: *Provided further,*

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That funds available in the Federal Buildings Fund may be expended for emergency repairs when advance approval is obtained from the Committees on Appropriations: *Provided further,* That notwithstanding any other provision of law, the Administrator of General Services is authorized and directed to proceed with site acquisition, design, and subject to availability of funds, construction and management and inspection, of a new Federal Building in Tuscaloosa, Alabama for which funds for site acquisition and design were provided in Public Law 108–199: *Provided further,* That amounts necessary to provide reimbursable special services to other agencies under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 592(b)(2)) and amounts to provide such reimbursable fencing, lighting, guard booths, and other facilities on private or other property not in Government ownership or control as may be appropriate to enable the United States Secret Service to perform its protective functions pursuant to 18 U.S.C. 3056, shall be available from such revenues and collections: *Provided further,* That revenues and collections and any other sums accruing to this Fund during fiscal year 2005, excluding reimbursements under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 592(b)(2)) in excess of the aggregate new obligational authority authorized for Real Property Activities of the Federal Buildings Fund in this Act shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

GENERAL ACTIVITIES

GOVERNMENT-WIDE POLICY

For expenses authorized by law, not otherwise provided for, for Government-wide policy and evaluation activities associated with the management of real and personal property assets and certain administrative services; Government-wide policy support responsibilities relating to acquisition, telecommunications, information technology management, and related technology activities; and services as authorized by 5 U.S.C. 3109, $62,100,000.

OPERATING EXPENSES

For expenses authorized by law, not otherwise provided for, for Government-wide activities associated with utilization and donation of surplus personal property; disposal of real property; providing Internet access to Federal information and services; agency-wide policy direction and management, and Board of Contract Appeals; accounting, records management, and other support services incident to adjudication of Indian Tribal Claims by the United States Court of Federal Claims; services as authorized by 5 U.S.C. 3109; and not to exceed $7,500 for official reception and representation expenses, $92,175,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General and services authorized by 5 U.S.C. 3109, $42,351,000: *Provided,* That not to exceed $15,000 shall be available for payment for information and detection of fraud against the Government, including payment for recovery of stolen Government property: *Provided further,* That

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not to exceed $2,500 shall be available for awards to employees of other Federal agencies and private citizens in recognition of efforts and initiatives resulting in enhanced Office of Inspector General effectiveness.

ELECTRONIC GOVERNMENT FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses in support of interagency projects that enable the Federal Government to expand its ability to conduct activities electronically, through the development and implementation of innovative uses of the Internet and other electronic methods, $3,000,000, to remain available until expended: *Provided,* That these funds may be transferred to Federal agencies to carry out the purposes of the Fund: *Provided further,* That this transfer authority shall be in addition to any other transfer authority provided in this Act: *Provided further,* That such transfers may not be made until 10 days after a proposed spending plan and justification for each project to be undertaken has been submitted to the Committees on Appropriations.

ALLOWANCES AND OFFICE STAFF FOR FORMER PRESIDENTS

(INCLUDING TRANSFER OF FUNDS)

For carrying out the provisions of the Act of August 25, 1958, as amended (3 U.S.C. 102 note), and Public Law 95–138, $3,106,000: *Provided,* That the Administrator of General Services shall transfer to the Secretary of the Treasury such sums as may be necessary to carry out the provisions of such Acts.

GENERAL PROVISIONS—GENERAL SERVICES ADMINISTRATION

(INCLUDING RECISSION OF FUNDS)

SEC. 401. The appropriate appropriation or fund available to the General Services Administration shall be credited with the cost of operation, protection, maintenance, upkeep, repair, and improvement, included as part of rentals received from Government corporations pursuant to law (40 U.S.C. 129).

SEC. 402. Funds available to the General Services Administration shall be available for the hire of passenger motor vehicles.

SEC. 403. Funds in the Federal Buildings Fund made available for fiscal year 2005 for Federal Buildings Fund activities may be transferred between such activities only to the extent necessary to meet program requirements: *Provided,* That any proposed transfers shall be approved in advance by the Committees on Appropriations.

SEC. 404. No funds made available by this Act shall be used to transmit a fiscal year 2006 request for United States Courthouse construction that: (1) does not meet the design guide standards for construction as established and approved by the General Services Administration, the Judicial Conference of the United States, and the Office of Management and Budget; and (2) does not reflect the priorities of the Judicial Conference of the United States as set out in its approved 5-year construction plan: *Provided,* That the fiscal year 2006 request must be accompanied by a standardized

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courtroom utilization study of each facility to be constructed, replaced, or expanded.

SEC. 405. None of the funds provided in this Act may be used to increase the amount of occupiable square feet, provide cleaning services, security enhancements, or any other service usually provided through the Federal Buildings Fund, to any agency that does not pay the rate per square foot assessment for space and services as determined by the General Services Administration in compliance with the Public Buildings Amendments Act of 1972 (Public Law 92–313).

SEC. 406. From funds made available under the heading "Federal Buildings Fund, Limitations on Availability of Revenue", claims against the Government of less than $250,000 arising from direct construction projects and acquisition of buildings may be liquidated from savings effected in other construction projects with prior notification to the Committees on Appropriations.

SEC. 407. Notwithstanding 40 U.S.C. 524, 571, and 572, the Administrator of General Services may sell the Middle River Depot at Middle River, Maryland, and credit the proceeds of such sale as offsetting collections to the Federal Buildings Fund, to be available, in addition to amounts otherwise appropriated for such Fund, for such capital activities of the Fund as the Administrator may deem appropriate: *Provided,* That the Administrator shall, to the maximum extent practicable, cooperate and consult with Baltimore County, Maryland officials and other interested persons in communities located near the Middle River Depot so that the sale and use of the property is compatible with local economic development plans and is not inconsistent with local land use, environmental and zoning laws.

SEC. 408. Section 572(a)(2)(ii) of title 40, United States Code, is amended by inserting the following before the period: ", highest and best use of property studies, utilization of property studies, deed compliance inspection, and the expenses incurred in a relocation".

SEC. 409. Of the amounts made available under the heading "Federal Buildings Fund" for New Construction and Repairs and Alterations in this or any prior Act, a total amount of $106,000,000 are rescinded: *Provided,* That the Administrator of General Services shall notify the Appropriations Committees of the House of Representatives and Senate of the specific projects, or parts thereof, from which funds have been rescinded within 30 days of enactment of this Act.

SEC. 410. In order to address heightened security requirements for the proposed Moss United States Courthouse Annex project, the Administrator of General Services is authorized to acquire and demolish the real property, including land and improvements, located in Salt Lake City, Utah, at the corner of 400 South Street and West Temple, said land and improvements commonly known as the Shubrick Building; to use previously appropriated project funds to immediately initiate compliance procedures in accordance with the National Historic Preservation Act and the National Environmental Policy Act; and to redesign the proposed courthouse expansion to incorporate this new site.

SEC. 411. CONVEYANCE OF LAND TO THE RECREATION AND PARK COMMISSION FOR THE PARISH OF EAST BATON ROUGE, LOUISIANA. (a) CONVEYANCE.—Not later than 60 days after the date of enactment of this Act, the Postmaster General of the United States

Postal Service shall convey, for the consideration specified in subsection (b), the land described in subsection (d), including any improvements thereon, to the General Services Administration.

(b) PURCHASE PRICE.—Upon the conveyance described in subsection (a), the Administrator of General Services shall pay the United States Postal Service a purchase price equaling the fair market value not to exceed $975,000, which price may be paid by cash or credited to the existing USPS/GSA property swap program.

(c) RECONVEYANCE.—Not later than 10 days after the conveyance described in subsection (a), the Administrator of General Services shall convey, without consideration by quitclaim deed and without recourse, the land described in subsection (d), including any improvements thereon, to the Recreation and Park Commission for the Parish of East Baton Rouge, Louisiana, for use as a downtown park or for other public purposes.

(d) DESCRIPTION OF PROPERTY.—The land referred to in subsections (a) and (c) is the property formerly used as the Main Postal Office Carrier Annex in Baton Rouge, Louisiana and located at 750 Florida Street. This land is situated north of Convention Street, south of Florida Street and west of 7th Street. This land comprises approximately 27,500 square feet and is improved by a one-story building.

SEC. 412. Notwithstanding any other provision of law, the Administrator of General Services may convey, by sale, lease, exchange or otherwise, including through leaseback arrangements, real and related personal property, or interests therein, and retain the net proceeds of such dispositions in an account within the Federal Buildings Fund to be used for the General Services Administration's real property capital needs: *Provided,* That all net proceeds realized under this section shall only be expended as authorized in annual appropriations Acts: *Provided further,* That for the purposes of this section, the term "net proceeds" means the rental and other sums received less the costs of the disposition, and the term "real property capital needs" means any expenses necessary and incident to the agency's real property capital acquisitions, improvements, and dispositions.

SEC. 413. LAND CONVEYANCE, NAHANT, MASSACHUSETTS. (a) CONVEYANCE AUTHORIZED.—Notwithstanding any other provision of law, the Administrator of General Services may sell all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, that is located at Castle Road, Gardner Road and Goddard Drive in Nahant, Massachusetts to the Town of Nahant. In the event a binding sales contract is not executed within 30 days of enactment the Administrator shall commence with a public, competitive sale of the property.

(b) CONSIDERATION.—As consideration for conveyance under subsection (a), the Town of Nahant shall pay, in a single lump sum payment, $2,000,000.

(c) DEPOSIT OF FUNDS.—Notwithstanding any other provision of law, the Administrator may deposit the net proceeds in the Real Property Relocation account of the General Services Administration. In the event proceeds exceed $2,000,000, the net amount in excess of $2,000,000 shall be deposited in the United States Coast Guard Housing Fund established under 14 U.S.C. 687.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection

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(a) shall be determined by a survey satisfactory to the Administrator. The cost of the survey shall be borne by the purchaser.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Administrator may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Administrator considers appropriate to protect the interests of the United States.

SEC. 414. None of the funds appropriated by this Act or any other Act may be used after July 1, 2005 for the provision of any telecommunications service for any Federal Government owned building, unless such building is in compliance with a regulation or Executive order issued after the date of enactment of this section that requires, to the extent deemed appropriate by the President or his designee, the provision of telecommunications services using redundant and physically separate entry points to those buildings, and the use of physically diverse local network facilities for the provision of such telecommunications services.

MERIT SYSTEMS PROTECTION BOARD

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out functions of the Merit Systems Protection Board pursuant to Reorganization Plan Numbered 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, and direct procurement of survey printing, $34,677,000 together with not to exceed $2,626,000 for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts determined by the Merit Systems Protection Board.

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

For payment to the Morris K. Udall Scholarship and Excellence in National Environmental Policy Trust Fund, pursuant to the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5601 et seq.), $1,996,000, to remain available until expended, of which up to $50,000 shall be used to conduct financial audits pursuant to the Accountability of Tax Dollars Act of 2002 (Public Law 107–289) notwithstanding sections 8 and 9 of Public Law 102–259: *Provided,* That up to 60 percent of such funds may be transferred by the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for the necessary expenses of the Native Nations Institute.

ENVIRONMENTAL DISPUTE RESOLUTION FUND

For payment to the Environmental Dispute Resolution Fund to carry out activities authorized in the Environmental Policy and

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Conflict Resolution Act of 1998, $1,309,000, to remain available until expended.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

OPERATING EXPENSES

For necessary expenses in connection with the administration of the National Archives and Records Administration (including the Information Security Oversight Office) and archived Federal records and related activities, as provided by law, and for expenses necessary for the review and declassification of documents, and for the hire of passenger motor vehicles, $266,945,000: *Provided,* That the Archivist of the United States is authorized to use any excess funds available from the amount borrowed for construction of the National Archives facility, for expenses necessary to provide adequate storage for holdings.

ELECTRONIC RECORDS ARCHIVES

For necessary expenses in connection with the development of the electronic records archives, to include all direct project costs associated with research, analysis, design, development, and program management, $35,914,000.

REPAIRS AND RESTORATION

For the repair, alteration, and improvement of archives facilities, and to provide adequate storage for holdings, $13,432,000, to remain available until expended, of which $3,000,000 is for site preparation and construction management to construct a new regional archives and records facility in Anchorage, Alaska, and of which $2,000,000 is for the repair and restoration of the plaza that surrounds the Lyndon Baines Johnson Presidential Library that is under the joint control and custody of the University of Texas: *Provided,* That such funds may be transferred directly to the University and used, together with University funds, for repair and restoration of the plaza and remain available until expended for this purpose.

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

GRANTS PROGRAM

For necessary expenses for allocations and grants for historical publications and records as authorized by 44 U.S.C. 2504, as amended, $5,000,000, to remain available until expended.

NATIONAL TRANSPORTATION SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the National Transportation Safety Board, including hire of passenger motor vehicles and aircraft; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for a GS–15; uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901–5902) $76,700,000, of which not to exceed $2,000 may be used for official reception and representation expenses.

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(RESCISSION)

Of the available unobligated balances made available under Public Law 106–246, $8,000,000 are rescinded.

OFFICE OF GOVERNMENT ETHICS

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Government Ethics pursuant to the Ethics in Government Act of 1978, as amended and the Ethics Reform Act of 1989, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, and not to exceed $1,500 for official reception and representation expenses, $11,238,000.

OFFICE OF PERSONNEL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF TRUST FUNDS)

For necessary expenses to carry out functions of the Office of Personnel Management pursuant to Reorganization Plan Numbered 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109; medical examinations performed for veterans by private physicians on a fee basis; rental of conference rooms in the District of Columbia and elsewhere; hire of passenger motor vehicles; not to exceed $2,500 for official reception and representation expenses; advances for reimbursements to applicable funds of the Office of Personnel Management and the Federal Bureau of Investigation for expenses incurred under Executive Order No. 10422 of January 9, 1953, as amended; and payment of per diem and/or subsistence allowances to employees where Voting Rights Act activities require an employee to remain overnight at his or her post of duty, $125,500,000, of which $12,000,000 shall remain available until September 30, 2007; and in addition $128,462,000 for administrative expenses, to be transferred from the appropriate trust funds of the Office of Personnel Management without regard to other statutes, including direct procurement of printed materials, for the retirement and insurance programs, of which $27,640,000 shall remain available until expended for the cost of automating the retirement recordkeeping systems: *Provided,* That the provisions of this appropriation shall not affect the authority to use applicable trust funds as provided by sections 8348(a)(1)(B), and 9004(f)(1)(A) and (2)(A) of title 5, United States Code: *Provided further,* That no part of this appropriation shall be available for salaries and expenses of the Legal Examining Unit of the Office of Personnel Management established pursuant to Executive Order No. 9358 of July 1, 1943, or any successor unit of like purpose: *Provided further,* That the President's Commission on White House Fellows, established by Executive Order No. 11183 of October 3, 1964, may, during fiscal year 2005, accept donations of money, property, and personal services: *Provided further,* That such donations, including those from prior years, may be used for the development of publicity materials to provide information about the White House Fellows, except that no such donations shall be accepted for travel or reimbursement

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of travel expenses, or for the salaries of employees of such Commission.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF TRUST FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act, as amended, including services as authorized by 5 U.S.C. 3109, hire of passenger motor vehicles, $1,627,000, and in addition, not to exceed $16,461,000 for administrative expenses to audit, investigate, and provide other oversight of the Office of Personnel Management's retirement and insurance programs, to be transferred from the appropriate trust funds of the Office of Personnel Management, as determined by the Inspector General: *Provided,* That the Inspector General is authorized to rent conference rooms in the District of Columbia and elsewhere.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

For payment of Government contributions with respect to retired employees, as authorized by chapter 89 of title 5, United States Code, and the Retired Federal Employees Health Benefits Act (74 Stat. 849), as amended, such sums as may be necessary.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEE LIFE INSURANCE

For payment of Government contributions with respect to employees retiring after December 31, 1989, as required by chapter 87 of title 5, United States Code, such sums as may be necessary.

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

For financing the unfunded liability of new and increased annuity benefits becoming effective on or after October 20, 1969, as authorized by 5 U.S.C. 8348, and annuities under special Acts to be credited to the Civil Service Retirement and Disability Fund, such sums as may be necessary: *Provided,* That annuities authorized by the Act of May 29, 1944, as amended, and the Act of August 19, 1950, as amended (33 U.S.C. 771–775), may hereafter be paid out of the Civil Service Retirement and Disability Fund.

OFFICE OF SPECIAL COUNSEL

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Special Counsel pursuant to Reorganization Plan Numbered 2 of 1978, the Civil Service Reform Act of 1978 (Public Law 95–454), as amended, the Whistleblower Protection Act of 1989 (Public Law 101–12), as amended, Public Law 103–424, and the Uniformed Services Employment and Reemployment Act of 1994 (Public Law 103–353), including services as authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms

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in the District of Columbia and elsewhere, and hire of passenger motor vehicles; $15,449,000.

UNITED STATES POSTAL SERVICE

PAYMENT TO THE POSTAL SERVICE FUND

For payment to the Postal Service Fund for revenue forgone on free and reduced rate mail, pursuant to subsections (c) and (d) of section 2401 of title 39, United States Code, $90,709,000, of which $61,709,000 shall not be available for obligation until October 1, 2005: *Provided,* That mail for overseas voting and mail for the blind shall continue to be free: *Provided further,* That 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level: *Provided further,* That none of the funds made available to the Postal Service by this Act shall be used to implement any rule, regulation, or policy of charging any officer or employee of any State or local child support enforcement agency, or any individual participating in a State or local program of child support enforcement, a fee for information requested or provided concerning an address of a postal customer: *Provided further,* That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in fiscal year 2005.

EMERGENCY PREPAREDNESS

For an additional amount for "Payment to the Postal Service Fund" for emergency expenses to enable the Postal Service to protect postal employees and postal customers from exposure to hazardous materials in the mail, $507,000,000, to remain available until expended: *Provided*, That the Postal Service shall submit a spending plan for funds under this heading to the Office of Management and Budget and the House and Senate Committees on Appropriations: *Provided further*, That the Government Accountability Office shall review the spending plan and capabilities of the systems to detect hazardous materials: *Provided further*, That $7,000,000 is for the mail irradiation facility in Washington, D.C.: *Provided further*, That the $7,000,000 specified for the mail irradiation facility is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

UNITED STATES TAX COURT

SALARIES AND EXPENSES

For necessary expenses, including contract reporting and other services as authorized by 5 U.S.C. 3109, $41,180,000: *Provided,* That travel expenses of the judges shall be paid upon the written certificate of the judge.

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TITLE V

GENERAL PROVISIONS

THIS ACT

(INCLUDING TRANSFERS OF FUNDS)

SEC. 501. Such sums as may be necessary for fiscal year 2005 pay raises for programs funded in this Act shall be absorbed within the levels appropriated in this Act or previous appropriations Acts.

SEC. 502. None of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings funded in this Act.

SEC. 503. None of the funds appropriated in this Act shall remain available for obligation beyond the current fiscal year, nor may any be transferred to other appropriations, unless expressly so provided herein.

SEC. 504. The expenditure of any appropriation under this Act for any consulting service through procurement contract pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 505. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

SEC. 506. None of the funds made available by this Act shall be available for any activity or for paying the salary of any Government employee where funding an activity or paying a salary to a Government employee would result in a decision, determination, rule, regulation, or policy that would prohibit the enforcement of section 307 of the Tariff Act of 1930.

SEC. 507. No part of any appropriation contained in this Act shall be available to pay the salary for any person filling a position, other than a temporary position, formerly held by an employee who has left to enter the Armed Forces of the United States and has satisfactorily completed his period of active military or naval service, and has within 90 days after his release from such service or from hospitalization continuing after discharge for a period of not more than 1 year, made application for restoration to his former position and has been certified by the Office of Personnel Management as still qualified to perform the duties of his former position and has not been restored thereto.

SEC. 508. No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c, popularly known as the "Buy America Act").

SEC. 509. No funds appropriated or otherwise made available under this Act shall be made available to any person or entity that has been convicted of violating the Buy American Act (41 U.S.C. 10a–10c).

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SEC. 510. None of the funds provided in this Act, provided by previous appropriations Acts to the agencies or entities funded in this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury derived by the collection of fees and available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose; (5) augments existing programs, projects, or activities in excess of $5,000,000 or 10 percent, whichever is less; (6) reduces existing programs, projects, or activities by $5,000,000 or 10 percent, whichever is less; or (7) creates, reorganizes, or restructures a branch, division, office, bureau, board, commission, agency, administration, or department different from the budget justifications submitted to the Committees on Appropriations or the table accompanying the statement of the managers accompanying this Act, whichever is more detailed, unless prior approval is received from the House and Senate Committees on Appropriations: *Provided,* That not later than 60 days after the date of enactment of this Act, each agency funded by this Act shall submit a report to the Committee on Appropriations of the Senate and of the House of Representatives to establish the baseline for application of reprogramming and transfer authorities for the current fiscal year: *Provided further,* That the report shall include: (1) a table for each appropriation with a separate column to display the President's budget request, adjustments made by Congress, adjustments due to enacted rescissions, if appropriate, and the fiscal year enacted level; (2) a delineation in the table for each appropriation both by object class and program, project, and activity as detailed in the budget appendix for the respective appropriation; and (3) an identification of items of special congressional interest: *Provided further,* That the amount appropriated or limited for salaries and expenses for an agency shall be reduced by $100,000 per day for each day after the required date that the report has not been submitted to the Congress.

SEC. 511. Except as otherwise specifically provided by law, not to exceed 50 percent of unobligated balances remaining available at the end of fiscal year 2005 from appropriations made available for salaries and expenses for fiscal year 2005 in this Act, shall remain available through September 30, 2006, for each such account for the purposes authorized: *Provided,* That a request shall be submitted to the Committees on Appropriations for approval prior to the expenditure of such funds: *Provided further,* That these requests shall be made in compliance with reprogramming guidelines.

SEC. 512. None of the funds made available in this Act may be used by the Executive Office of the President to request from the Federal Bureau of Investigation any official background investigation report on any individual, except when—

(1) such individual has given his or her express written consent for such request not more than 6 months prior to the date of such request and during the same presidential administration; or

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(2) such request is required due to extraordinary circumstances involving national security.

SEC. 513. The cost accounting standards promulgated under section 26 of the Office of Federal Procurement Policy Act (Public Law 93–400; 41 U.S.C. 422) shall not apply with respect to a contract under the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

SEC. 514. For the purpose of resolving litigation and implementing any settlement agreements regarding the nonforeign area cost-of-living allowance program, the Office of Personnel Management may accept and utilize (without regard to any restriction on unanticipated travel expenses imposed in an Appropriations Act) funds made available to the Office pursuant to court approval.

SEC. 515. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions.

SEC. 516. The provision of section 515 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.

SEC. 517. In order to promote Government access to commercial information technology, the restriction on purchasing nondomestic articles, materials, and supplies set forth in the Buy American Act (41 U.S.C. 10a et seq.), shall not apply to the acquisition by the Federal Government of information technology (as defined in section 11101 of title 40, United States Code, that is a commercial item (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

SEC. 518. Public Law 108–199 is amended in division H, section 161, by inserting "and all Federal agencies" after "Office of Management and Budget".

SEC. 519. None of the funds made available in the Act may be used to finalize, implement, administer, or enforce—

(1) the proposed rule relating to the determination that real estate brokerage is an activity that is financial in nature or incidental to a financial activity published in the Federal Register on January 3, 2001 (66 Fed. Reg. 307 et seq.); or

(2) the revision proposed in such rule to section 1501.2 of title 12 of the Code of Federal Regulations.

SEC. 520. TREATMENT OF THE TENNESSEE VALLEY AUTHORITY. The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3(a)(42)(B) (15 U.S.C. 78c(a)(42)(B)), by inserting "by the Tennessee Valley Authority or" after "issued or guaranteed"; and

(2) by adding at the end the following new section:

"SEC. 37. TENNESSEE VALLEY AUTHORITY.

"(a) IN GENERAL.—Commencing with the issuance by the Tennessee Valley Authority of an annual report on Commission Form 10–K (or any successor thereto) for fiscal year 2006 and thereafter, the Tennessee Valley Authority shall file with the Commission, in accordance with such rules and regulations as the Commission has prescribed or may prescribe, such periodic, current, and supplementary information, documents, and reports as would be required pursuant to section 13 if the Tennessee Valley Authority were

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an issuer of a security registered pursuant to section 12. Notwithstanding the preceding sentence, the Tennessee Valley Authority shall not be required to register any securities under this title, and shall not be deemed to have registered any securities under this title.

"(b) LIMITED TREATMENT AS ISSUER.—Commencing with the issuance by the Tennessee Valley Authority of an annual report on Commission Form 10–K (or any successor thereto) for fiscal year 2006 and thereafter, the Tennessee Valley Authority shall be deemed to be an issuer for purposes of section 10A, other than for subsection (m)(1) or (m)(3) of section 10A. The Tennessee Valley Authority shall not be required by this subsection to comply with the rules issued by any national securities exchange or national securities association in response to rules issued by the Commission pursuant to section 10A(m)(1).

"(c) NO EFFECT ON TVA AUTHORITY.—Nothing in this section shall be construed to diminish, impair, or otherwise affect the authority of the Board of Directors of the Tennessee Valley Authority to carry out its statutory functions under the Tennessee Valley Authority Act of 1933.".

SEC. 521. Section 307 of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended by adding at the end the following new subsection:

"(e) DOCKS, WATERFRONT TRANSPORTATION DEVELOPMENT, AND RELATED INFRASTRUCTURE PROJECTS.—The Secretary of Transportation is authorized to make direct lump sum payments to the Commission to construct docks, waterfront development projects, and related transportation infrastructure, provided the local community provides a ten percent non-Federal match in the form of any necessary land or planning and design funds. To carry out this section, there is authorized to be appropriated such sums as may be necessary.".

SEC. 522. (a) PRIVACY OFFICER.—Each agency shall have a Chief Privacy Officer to assume primary responsibility for privacy and data protection policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of information in an identifiable form;

(2) assuring that technologies used to collect, use, store, and disclose information in identifiable form allow for continuous auditing of compliance with stated privacy policies and practices governing the collection, use and distribution of information in the operation of the program;

(3) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as defined in the Privacy Act of 1974;

(4) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(5) conducting a privacy impact assessment of proposed rules of the Department on the privacy of information in an identifiable form, including the type of personally identifiable information collected and the number of people affected;

(6) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of section 552a

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of title 5, 11 United States Code, internal controls, and other relevant matters;

(7) ensuring that the Department protects information in an identifiable form and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction;

(8) training and educating employees on privacy and data protection policies to promote awareness of and compliance with established privacy and data protection policies; and

(9) ensuring compliance with the Departments established privacy and data protection policies.

(b) ESTABLISHING PRIVACY AND DATA PROTECTION PROCEDURES AND POLICIES.—

(1) IN GENERAL.—Within 12 months of enactment of this Act, each agency shall establish and implement comprehensive privacy and data protection procedures governing the agency's collection, use, sharing, disclosure, transfer, storage and security of information in an identifiable form relating to the agency employees and the public. Such procedures shall be consistent with legal and regulatory guidance, including OMB regulations, the Privacy Act of 1974, and section 208 of the E-Government Act of 2002.

(c) RECORDING.—Each agency shall prepare a written report of its use of information in an identifiable form, along with its privacy and data protection policies and procedures and record it with the Inspector General of the agency to serve as a benchmark for the agency. Each report shall be signed by the agency privacy officer to verify that the agency intends to comply with the procedures in the report. By signing the report the privacy officer also verifies that the agency is only using information in identifiable form as detailed in the report.

(d) INDEPENDENT, THIRD-PARTY REVIEW.—

(1) IN GENERAL.—At least every 2 years, each agency shall have performed an independent, third party review of the use of information in identifiable form as the privacy and data protection procedures of the agency to—

(A) determine the accuracy of the description of the use of information in identifiable form;

(B) determine the effectiveness of the privacy and data protection procedures;

(C) ensure compliance with the stated privacy and data protection policies of the agency and applicable laws and regulations; and

(D) ensure that all technologies used to collect, use, store, and disclose information in identifiable form allow for continuous auditing of compliance with stated privacy policies and practices governing the collection, use and distribution of information in the operation of the program.

(2) PURPOSES.—The purposes of reviews under this subsection are to—

(A) ensure the agency's description of the use of information in an identifiable form is accurate and accounts for the agency's current technology and its processing of information in an identifiable form;

(B) measure actual privacy and data protection practices against the agency's recorded privacy and data protection procedures;

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(C) ensure compliance and consistency with both online and offline stated privacy and data protection policies; and

(D) provide agencies with ongoing awareness and recommendations regarding privacy and data protection procedures.

(3) REQUIREMENTS OF REVIEW.—The Inspector General of each agency shall contract with an independent, third party that is a recognized leader in privacy consulting, privacy technology, data collection and data use management, and global privacy issues, to—

(A) evaluate the agency's use of information in identifiable form;

(B) evaluate the privacy and data protection procedures of the agency; and

(C) recommend strategies and specific steps to improve privacy and data protection management.

(4) CONTENT.—Each review under this subsection shall include—

(A) a review of the agency's technology, practices and procedures with regard to the collection, use, sharing, disclosure, transfer and storage of information in identifiable form;

(B) a review of the agency's stated privacy and data protection procedures with regard to the collection, use, sharing, disclosure, transfer, and security of personal information in identifiable form relating to agency employees and the public;

(C) a detailed analysis of agency intranet, network and Websites for privacy vulnerabilities, including—

(i) noncompliance with stated practices, procedures and policies; and

(ii) risks for inadvertent release of information in an identifiable form from the website of the agency; and

(D) a review of agency compliance with this Act.

(e) REPORT.—

(1) IN GENERAL.—Upon completion of a review, the Inspector General of an agency shall submit to the head of that agency a detailed report on the review, including recommendations for improvements or enhancements to management of information in identifiable form, and the privacy and data protection procedures of the agency.

(2) INTERNET AVAILABILITY.—Each agency shall make each independent third party review, and each report of the Inspector General relating to that review available to the public.

(f) DEFINITION.—In this section, the definition of "identifiable form" is consistent with Public Law 107–347, the E-Government Act of 2002, and means any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means.

SEC. 523. None of the funds made available under this Act may be obligated or expended to establish or implement a pilot program under which not more than 10 designated essential air service communities located in proximity to hub airports are required to assume 10 percent of their essential air subsidy costs for a 4-year period commonly referred to as the EAS local participation program.

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SEC. 524. None of the funds made available in this Act may be used by the Council of Economic Advisers to produce an Economic Report of the President regarding the inclusion of employment at a retail fast food restaurant as part of the definition of manufacturing employment.

SEC. 525. Section 302(e)(3)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)(3)(B)) is amended by striking "$1,000" and inserting in its place "$2,000".

SEC. 526. The Former Presidents Act, 3 U.S.C. 102, note, is amended to add the following at the end of section 1(b): "Amounts provided for 'Allowances and Office Staff for Former Presidents' may be used to pay fees of an independent contractor who is not a member of the staff of the office of a former President for the review of Presidential records of a former President in connection with the transfer of such records to the National Archives and Records Administration or a Presidential Library without regard to the limitation on staff compensation set forth herein.".

SEC. 527. Of funds so made available in Items 18 and 19 of the table contained in section 3031 of Public Law 105–178, $5,000,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project; of funds made available in Public Law 104–50 for Crossroads Intermodal Station, New York, $1,000,000 shall be available for the Buffalo Inner Harbor Redevelopment Project; of the funds made available in Public Law 104–205 for Crossroads Intermodal Station, New York, $1,000,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project; of funds made available in Public Law 106–346 for Buffalo, New York Intermodal facility, $500,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project; of funds made available in Public Law 108–7 for Buffalo Intermodal Transportation Center, $5,000,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project.

SEC. 528. Funds in this Act that are apportioned to the Charleston Area Regional Transportation Authority to carry out section 5307 of title 49, United States Code, may be used to acquire land, equipment, or facilities used in public transportation from another governmental authority in the same geographic area: *Provided,* That the non-Federal share under section 5307 may include revenues from the sale of advertising and concessions.

SEC. 529. To the extent that funds remain available within the current budget for the project, the Secretary shall amend the Full Funding Grant Agreement for the Tri-Met Interstate light rail extension in Portland, Oregon, to allow acquisition of up to a total of twenty-four light rail vehicles.

SEC. 530. Section 1023(h) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 127 note; Public Law 102–240 as amended by section 347 of Public Law 108–7) is amended in paragraph (1) by striking "October 1, 2003" and inserting "October 1, 2005".

SEC. 531. Unobligated funds in an amount not to exceed $4,500,000 that were designated to the North Country County Consortium, New York project in the conference report accompanying Public Law 108–99 under the Job Access and Reverse Commute Account shall be transferred to and administered under the bus category of the Capital Investment Grants Account and available for North Country Bus and Bus Related Equipment.

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SEC. 532. Section 312a(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 439a(a)) is amended—

(1) by striking the "or" at the end of paragraph (a)(3);

(2) by striking the period, and adding a semi-colon at the end of paragraph (a)(4);

(3) by adding a new paragraph (a)(5) to read as follows: "(5) for donations to State and local candidates subject to the provisions of State law; or"; and

(4) by adding a new paragraph (a)(6) to read as follows: "(6) for any other lawful purpose unless prohibited by subsection (b) of this section.".

SEC. 533. From funds made available in this Act under the headings "White House Office", "Executive Residence at the White House", "White House Repair and Restoration", "Council of Economic Advisors", "Office of Policy Development", "National Security Council", "Office of Administration", "Office of Management and Budget", "Office of National Drug Control Policy", "Special Assistance to the President", and "Official Residence of the Vice President", the Director of the Office of Management and Budget (or such other officer as the President may designate in writing), may, fifteen days after giving notice to the House and Senate Committees on Appropriations, transfer not to exceed 10 percent of any such appropriation to any other such appropriation, to be merged with and available for the same time and for the same purposes as the appropriation to which transferred: *Provided*, That the amount of an appropriation shall not be increased by more than 50 percent by such transfers: *Provided further*, That no amount shall be transferred from "Special Assistance to the President" or "Official Residence of the Vice President" without the approval of the Vice President.

TITLE VI

GENERAL PROVISIONS

DEPARTMENTS, AGENCIES, AND CORPORATIONS

SEC. 601. Funds appropriated in this or any other Act may be used to pay travel to the United States for the immediate family of employees serving abroad in cases of death or life threatening illness of said employee.

SEC. 602. No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for fiscal year 2005 shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such department, agency, or instrumentality.

SEC. 603. Unless otherwise specifically provided, the maximum amount allowable during the current fiscal year in accordance with section 16 of the Act of August 2, 1946 (60 Stat. 810), for the purchase of any passenger motor vehicle (exclusive of buses, ambulances, law enforcement, and undercover surveillance vehicles), is hereby fixed at $8,100 except station wagons for which the maximum shall be $9,100: *Provided,* That these limits may be exceeded

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by not to exceed $3,700 for police-type vehicles, and by not to exceed $4,000 for special heavy-duty vehicles: *Provided further,* That the limits set forth in this section may not be exceeded by more than 5 percent for electric or hybrid vehicles purchased for demonstration under the provisions of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976: *Provided further,* That the limits set forth in this section may be exceeded by the incremental cost of clean alternative fuels vehicles acquired pursuant to Public Law 101–549 over the cost of comparable conventionally fueled vehicles.

SEC. 604. Appropriations of the executive departments and independent establishments for the current fiscal year available for expenses of travel, or for the expenses of the activity concerned, are hereby made available for quarters allowances and cost-of-living allowances, in accordance with 5 U.S.C. 5922–5924.

SEC. 605. Unless otherwise specified during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States unless such person: (1) is a citizen of the United States; (2) is a person in the service of the United States on the date of the enactment of this Act who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date and is actually residing in the United States; (3) is a person who owes allegiance to the United States; (4) is an alien from Cuba, Poland, South Vietnam, the countries of the former Soviet Union, or the Baltic countries lawfully admitted to the United States for permanent residence; (5) is a South Vietnamese, Cambodian, or Laotian refugee paroled in the United States after January 1, 1975; or (6) is a national of the People's Republic of China who qualifies for adjustment of status pursuant to the Chinese Student Protection Act of 1992: *Provided,* That for the purpose of this section, an affidavit signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his or her status have been complied with: *Provided further,* That any person making a false affidavit shall be guilty of a felony, and, upon conviction, shall be fined no more than $4,000 or imprisoned for not more than 1 year, or both: *Provided further,* That the above penal clause shall be in addition to, and not in substitution for, any other provisions of existing law: *Provided further,* That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government. This section shall not apply to citizens of Ireland, Israel, or the Republic of the Philippines, or to nationals of those countries allied with the United States in a current defense effort, or to international broadcasters employed by the United States Information Agency, or to temporary employment of translators, or to temporary employment in the field service (not to exceed 60 days) as a result of emergencies.

SEC. 606. Appropriations available to any department or agency during the current fiscal year for necessary expenses, including maintenance or operating expenses, shall also be available for payment to the General Services Administration for charges for space and services and those expenses of renovation and alteration of

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buildings and facilities which constitute public improvements performed in accordance with the Public Buildings Act of 1959 (73 Stat. 749), the Public Buildings Amendments of 1972 (87 Stat. 216), or other applicable law.

SEC. 607. In addition to funds provided in this or any other Act, all Federal agencies are authorized to receive and use funds resulting from the sale of materials, including Federal records disposed of pursuant to a records schedule recovered through recycling or waste prevention programs. Such funds shall be available until expended for the following purposes:

(1) Acquisition, waste reduction and prevention, and recycling programs as described in Executive Order No. 13101 (September 14, 1998), including any such programs adopted prior to the effective date of the Executive order.

(2) Other Federal agency environmental management programs, including, but not limited to, the development and implementation of hazardous waste management and pollution prevention programs.

(3) Other employee programs as authorized by law or as deemed appropriate by the head of the Federal agency.

SEC. 608. Funds made available by this or any other Act for administrative expenses in the current fiscal year of the corporations and agencies subject to chapter 91 of title 31, United States Code, shall be available, in addition to objects for which such funds are otherwise available, for rent in the District of Columbia; services in accordance with 5 U.S.C. 3109; and the objects specified under this head, all the provisions of which shall be applicable to the expenditure of such funds unless otherwise specified in the Act by which they are made available: *Provided,* That in the event any functions budgeted as administrative expenses are subsequently transferred to or paid from other funds, the limitations on administrative expenses shall be correspondingly reduced.

SEC. 609. No part of any appropriation for the current fiscal year contained in this or any other Act shall be paid to any person for the filling of any position for which he or she has been nominated after the Senate has voted not to approve the nomination of said person.

SEC. 610. No part of any appropriation contained in this or any other Act shall be available for interagency financing of boards (except Federal Executive Boards), commissions, councils, committees, or similar groups (whether or not they are interagency entities) which do not have a prior and specific statutory approval to receive financial support from more than one agency or instrumentality.

SEC. 611. Funds made available by this or any other Act to the Postal Service Fund (39 U.S.C. 2003) shall be available for employment of guards for all buildings and areas owned or occupied by the Postal Service and under the charge and control of the Postal Service, and such guards shall have, with respect to such property, the powers of special policemen provided by the first section of the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318), and, as to property owned or occupied by the Postal Service, the Postmaster General may take the same actions as the Administrator of General Services may take under the provisions of sections 2 and 3 of the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318a and 318b), attaching thereto penal consequences under the authority and within the limits provided

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in section 4 of the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318c).

SEC. 612. None of the funds made available pursuant to the provisions of this Act shall be used to implement, administer, or enforce any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

SEC. 613. (a) Notwithstanding any other provision of law, and except as otherwise provided in this section, no part of any of the funds appropriated for fiscal year 2005, by this or any other Act, may be used to pay any prevailing rate employee described in section 5342(a)(2)(A) of title 5, United States Code—

(1) during the period from the date of expiration of the limitation imposed by the comparable section for previous fiscal years until the normal effective date of the applicable wage survey adjustment that is to take effect in fiscal year 2005, in an amount that exceeds the rate payable for the applicable grade and step of the applicable wage schedule in accordance with such section; and

(2) during the period consisting of the remainder of fiscal year 2005, in an amount that exceeds, as a result of a wage survey adjustment, the rate payable under paragraph (1) by more than the sum of—

(A) the percentage adjustment taking effect in fiscal year 2005 under section 5303 of title 5, United States Code, in the rates of pay under the General Schedule; and

(B) the difference between the overall average percentage of the locality-based comparability payments taking effect in fiscal year 2005 under section 5304 of such title (whether by adjustment or otherwise), and the overall average percentage of such payments which was effective in the previous fiscal year under such section.

(b) Notwithstanding any other provision of law, no prevailing rate employee described in subparagraph (B) or (C) of section 5342(a)(2) of title 5, United States Code, and no employee covered by section 5348 of such title, may be paid during the periods for which subsection (a) is in effect at a rate that exceeds the rates that would be payable under subsection (a) were subsection (a) applicable to such employee.

(c) For the purposes of this section, the rates payable to an employee who is covered by this section and who is paid from a schedule not in existence on September 30, 2004, shall be determined under regulations prescribed by the Office of Personnel Management.

(d) Notwithstanding any other provision of law, rates of premium pay for employees subject to this section may not be changed from the rates in effect on September 30, 2004, except to the extent determined by the Office of Personnel Management to be consistent with the purpose of this section.

(e) This section shall apply with respect to pay for service performed after September 30, 2004.

(f) For the purpose of administering any provision of law (including any rule or regulation that provides premium pay, retirement, life insurance, or any other employee benefit) that requires any deduction or contribution, or that imposes any requirement or limitation on the basis of a rate of salary or basic pay, the

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rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

(g) Nothing in this section shall be considered to permit or require the payment to any employee covered by this section at a rate in excess of the rate that would be payable were this section not in effect.

(h) The Office of Personnel Management may provide for exceptions to the limitations imposed by this section if the Office determines that such exceptions are necessary to ensure the recruitment or retention of qualified employees.

SEC. 614. During the period in which the head of any department or agency, or any other officer or civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of $5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is expressly approved by the Committees on Appropriations. For the purposes of this section, the term "office" shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual.

SEC. 615. Notwithstanding section 1346 of title 31, United States Code, or section 610 of this Act, funds made available for the current fiscal year by this or any other Act shall be available for the interagency funding of national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities, as provided by Executive Order No. 12472 (April 3, 1984).

SEC. 616. (a) None of the funds appropriated by this or any other Act may be obligated or expended by any Federal department, agency, or other instrumentality for the salaries or expenses of any employee appointed to a position of a confidential or policy-determining character excepted from the competitive service pursuant to section 3302 of title 5, United States Code, without a certification to the Office of Personnel Management from the head of the Federal department, agency, or other instrumentality employing the Schedule C appointee that the Schedule C position was not created solely or primarily in order to detail the employee to the White House.

(b) The provisions of this section shall not apply to Federal employees or members of the armed services detailed to or from—

(1) the Central Intelligence Agency;

(2) the National Security Agency;

(3) the Defense Intelligence Agency;

(4) the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(5) the Bureau of Intelligence and Research of the Department of State;

(6) any agency, office, or unit of the Army, Navy, Air Force, and Marine Corps, the Department of Homeland Security, the Federal Bureau of Investigation and the Drug Enforcement Administration of the Department of Justice, the Department of Transportation, the Department of the Treasury, and the Department of Energy performing intelligence functions; and

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(7) the Director of Central Intelligence.

SEC. 617. No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for the current fiscal year shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from discrimination and sexual harassment and that all of its workplaces are not in violation of title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973.

SEC. 618. No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who—

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

SEC. 619. (a) None of the funds made available in this or any other Act may be obligated or expended for any employee training that—

(1) does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties;

(2) contains elements likely to induce high levels of emotional response or psychological stress in some participants;

(3) does not require prior employee notification of the content and methods to be used in the training and written end of course evaluation;

(4) contains any methods or content associated with religious or quasi-religious belief systems or "new age" belief systems as defined in Equal Employment Opportunity Commission Notice N–915.022, dated September 2, 1988; or

(5) is offensive to, or designed to change, participants' personal values or lifestyle outside the workplace.

(b) Nothing in this section shall prohibit, restrict, or otherwise preclude an agency from conducting training bearing directly upon the performance of official duties.

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SEC. 620. No funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: "These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.": *Provided*, That notwithstanding the preceding paragraph, a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that they do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

SEC. 621. No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

SEC. 622. None of the funds appropriated by this or any other Act may be used by an agency to provide a Federal employee's home address to any labor organization except when the employee has authorized such disclosure or when such disclosure has been ordered by a court of competent jurisdiction.

SEC. 623. None of the funds made available in this Act or any other Act may be used to provide any non-public information such as mailing or telephone lists to any person or any organization outside of the Federal Government without the approval of the Committees on Appropriations.

SEC. 624. No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofor authorized by the Congress.

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SEC. 625. (a) In this section the term "agency"—

(1) means an Executive agency as defined under section 105 of title 5, United States Code;

(2) includes a military department as defined under section 102 of such title, the Postal Service, and the Postal Rate Commission; and

(3) shall not include the Government Accountability Office.

(b) Unless authorized in accordance with law or regulations to use such time for other purposes, an employee of an agency shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under section 6301(2) of title 5, United States Code, has an obligation to expend an honest effort and a reasonable proportion of such employee's time in the performance of official duties.

SEC. 626. Notwithstanding 31 U.S.C. 1346 and section 610 of this Act, funds made available for the current fiscal year by this or any other Act to any department or agency, which is a member of the Joint Financial Management Improvement Program (JFMIP), shall be available to finance an appropriate share of JFMIP administrative costs, as determined by the JFMIP, but not to exceed a total of $800,000 including the salary of the Executive Director and staff support.

SEC. 627. Notwithstanding 31 U.S.C. 1346 and section 610 of this Act, the head of each Executive department and agency is hereby authorized to transfer to or reimburse "General Services Administration, Government-wide Policy" with the approval of the Director of the Office of Management and Budget, funds made available for the current fiscal year by this or any other Act, including rebates from charge card and other contracts: *Provided,* That these funds shall be administered by the Administrator of General Services to support Government-wide financial, information technology, procurement, and other management innovations, initiatives, and activities, as approved by the Director of the Office of Management and Budget, in consultation with the appropriate interagency groups designated by the Director (including the Chief Financial Officers Council and the Joint Financial Management Improvement Program for financial management initiatives, the Chief Information Officers Council for information technology initiatives, the Chief Human Capital Officers Council for human capital initiatives, and the Federal Acquisition Council for procurement initiatives). The total funds transferred or reimbursed shall not exceed $17,000,000. Such transfers or reimbursements may only be made 15 days following notification of the Committees on Appropriations by the Director of the Office of Management and Budget.

SEC. 628. None of the funds made available in this or any other Act may be used by the Office of Personnel Management or any other department or agency of the Federal Government to prohibit any agency from using appropriated funds as they see fit to independently contract with private companies to provide online employment applications and processing services.

SEC. 629. Notwithstanding any other provision of law, a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

SEC. 630. Nothwithstanding section 1346 of title 31, United States Code, or section 610 of this Act, funds made available for

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the current fiscal year by this or any other Act shall be available for the interagency funding of specific projects, workshops, studies, and similar efforts to carry out the purposes of the National Science and Technology Council (authorized by Executive Order No. 12881), which benefit multiple Federal departments, agencies, or entities: *Provided,* That the Office of Management and Budget shall provide a report describing the budget of and resources connected with the National Science and Technology Council to the Committees on Appropriations, the House Committee on Science; and the Senate Committee on Commerce, Science, and Transportation 90 days after enactment of this Act.

SEC. 631. Any request for proposals, solicitation, grant application, form, notification, press release, or other publications involving the distribution of Federal funds shall indicate the agency providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided: *Provided,* That this provision shall apply to direct payments, formula funds, and grants received by a State receiving Federal funds.

SEC. 632. Subsection (f) of section 403 of Public Law 103–356 (31 U.S.C. 501 note), as amended, is further amended by striking "October 1, 2004" and inserting "October 1, 2005".

SEC. 633. (a) PROHIBITION OF FEDERAL AGENCY MONITORING OF INDIVIDUALS' INTERNET USE.—None of the funds made available in this or any other Act may be used by any Federal agency—

(1) to collect, review, or create any aggregation of data, derived from any means, that includes any personally identifiable information relating to an individual's access to or use of any Federal Government Internet site of the agency; or

(2) to enter into any agreement with a third party (including another government agency) to collect, review, or obtain any aggregation of data, derived from any means, that includes any personally identifiable information relating to an individual's access to or use of any nongovernmental Internet site.

(b) EXCEPTIONS.—The limitations established in subsection (a) shall not apply to—

(1) any record of aggregate data that does not identify particular persons;

(2) any voluntary submission of personally identifiable information;

(3) any action taken for law enforcement, regulatory, or supervisory purposes, in accordance with applicable law; or

(4) any action described in subsection (a)(1) that is a system security action taken by the operator of an Internet site and is necessarily incident to the rendition of the Internet site services or to the protection of the rights or property of the provider of the Internet site.

(c) DEFINITIONS.—For the purposes of this section:

(1) The term "regulatory" means agency actions to implement, interpret or enforce authorities provided in law.

(2) The term "supervisory" means examinations of the agency's supervised institutions, including assessing safety and soundness, overall financial condition, management practices and policies and compliance with applicable standards as provided in law.

SEC. 634. (a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision

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providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.

(b) Nothing in this section shall apply to a contract with—

(1) any of the following religious plans:

(A) Personal Care's HMO; and

(B) OSF Health Plans, Inc.; and

(2) any existing or future plan, if the carrier for the plan objects to such coverage on the basis of religious beliefs.

(c) In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual to discrimination on the basis that the individual refuses to prescribe or otherwise provide for contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions.

(d) Nothing in this section shall be construed to require coverage of abortion or abortion-related services.

SEC. 635. The Congress of the United States recognizes the United States Anti-Doping Agency (USADA) as the official anti-doping agency for Olympic, Pan American, and Paralympic sport in the United States.

SEC. 636. Notwithstanding any other provision of law, funds appropriated for official travel by Federal departments and agencies may be used by such departments and agencies, if consistent with Office of Management and Budget Circular A–126 regarding official travel for Government personnel, to participate in the fractional aircraft ownership pilot program.

SEC. 637. None of the funds made available under this or any other Act for fiscal year 2005 and each fiscal year thereafter shall be expended for the purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making such purchase determines that such offered product or service provides the best value to the buying agency pursuant to governmentwide procurement regulations, issued pursuant to section 25(c)(1) of the Office of Federal Procurement Act (41 U.S.C. 421(c)(1)) that impose procedures, standards, and limitations of section 2410n of title 10, United States Code.

SEC. 638. Notwithstanding any other provision of law, none of the funds appropriated or made available under this Act or any other appropriations Act may be used to implement or enforce restrictions or limitations on the Coast Guard Congressional Fellowship Program, or to implement the proposed regulations of the Office of Personnel Management to add sections 300.311 through 300.316 to part 300 of title 5 of the Code of Federal Regulations, published in the Federal Register, volume 68, number 174, on September 9, 2003 (relating to the detail of executive branch employees to the legislative branch).

SEC. 639. Each Executive department and agency shall evaluate the creditworthiness of an individual before issuing the individual a government purchase charge card or government travel charge card. The department or agency may not issue a government purchase charge card or government travel charge card to an individual that either lacks a credit history or is found to have an unsatisfactory credit history as a result of this evaluation: *Provided*, That this restriction shall not preclude issuance of a restricted-use charge, debit, or stored value card made in accordance with agency procedures to: (1) an individual with an unsatisfactory credit history where such card is used to pay travel expenses and the agency

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determines there is no suitable alternative payment mechanism available before issuing the card; or (2) an individual who lacks a credit history. Each Executive department and agency shall establish guidelines and procedures for disciplinary actions to be taken against agency personnel for improper, fraudulent, or abusive use of government charge cards, which shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or agency or with applicable standards of conduct.

SEC. 640. (a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2005 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.5 percent, and this adjustment shall apply to civilian employees in the Department of Defense and the Department of Homeland Security and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2005.

(b) Notwithstanding section 613 of this Act, the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2005 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as "Rest of US" pursuant to section 5304 of title 5 for purposes of this paragraph.

(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2005.

SEC. 641. (a) Not later than 180 days after the end of the fiscal year, the head of each Federal agency shall submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States in that fiscal year.

(b) The report required by subsection (a) shall separately indicate—

(1) the dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States;

(2) an itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act (41 U.S.C. 10a et seq.); and

(3) a summary of the total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States.

(c) The head of each Federal agency submitting a report under subsection (a) shall make the report publicly available to the maximum extent practicable.

(d) This section shall not apply to acquisitions made by an agency, or component thereof, that is an element of the intelligence community as set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

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SEC. 642. Notwithstanding any other provision of law, no executive branch agency shall purchase, construct, and/or lease any additional facilities, except within or contiguous to existing locations, to be used for the purpose of conducting Federal law enforcement training without the advance approval of the Committees on Appropriations, except that the Federal Law Enforcement Training Center is authorized to obtain the temporary use of additional facilities by lease, contract, or other agreement for training which cannot be accommodated in existing Center facilities.

SEC. 643. Section 653(j) of title 42, United States Code, is amended by adding at the end the following new paragraph:

"(7) INFORMATION COMPARISONS AND DISCLOSURE TO ASSIST IN FEDERAL DEBT COLLECTION.—

"(A) FURNISHING OF INFORMATION BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall furnish to the Secretary, on such periodic basis as determined by the Secretary of the Treasury in consultation with the Secretary, information in the custody of the Secretary of the Treasury for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to persons—

"(i) who owe delinquent nontax debt to the United States; and

"(ii) whose debt has been referred to the Secretary of the Treasury in accordance with 31 U.S.C. 3711(g).

"(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.—The Secretary of the Treasury shall seek information pursuant to this section only to the extent necessary to improve collection of the debt described in subparagraph (A).

"(C) DUTIES OF THE SECRETARY.—

"(i) INFORMATION DISCLOSURE.—The Secretary, in cooperation with the Secretary of the Treasury, shall compare information in the National Directory of New Hires with information provided by the Secretary of the Treasury with respect to persons described in subparagraph (A) and shall disclose information in such Directory regarding such persons to the Secretary of the Treasury in accordance with this paragraph, for the purposes specified in this paragraph. Such comparison of information shall not be considered a matching program as defined in 5 U.S.C. 552a.

"(ii) CONDITION ON DISCLOSURE.—The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part. Support collection under section 466(b) of this title shall be given priority over collection of any delinquent Federal nontax debt against the same income.

"(D) USE OF INFORMATION BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury may use information provided under this paragraph only for purposes of collecting the debt described in subparagraph (A).

"(E) DISCLOSURE OF INFORMATION BY THE SECRETARY OF THE TREASURY.—

"(i) PURPOSE OF DISCLOSURE.—The Secretary of the Treasury may make a disclosure under this

subparagraph only for purposes of collecting the debt described in subparagraph (A).

"(ii) DISCLOSURES PERMITTED.—Subject to clauses (iii) and (iv), the Secretary of the Treasury may disclose information resulting from a data match pursuant to this paragraph only to the Attorney General in connection with collecting the debt described in subparagraph (A).

"(iii) CONDITIONS ON DISCLOSURE.—Disclosures under this subparagraph shall be—

"(I) made in accordance with data security and control policies established by the Secretary of the Treasury and approved by the Secretary;

"(II) subject to audit in a manner satisfactory to the Secretary; and

"(III) subject to the sanctions under subsection (l)(2).

"(iv) ADDITIONAL DISCLOSURES.—

"(I) DETERMINATION BY SECRETARIES.—The Secretary of the Treasury and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of the Treasury (in consultation with and approved by the Secretary), of the costs and benefits of such disclosures and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

"(II) PERMITTED PERSONS OR ENTITIES.—If the Secretary of the Treasury and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of the Treasury, in connection with collecting the debt described in subparagraph (A), to a contractor or agent of either Secretary and to the Federal agency that referred such debt to the Secretary of the Treasury for collection, subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

"(v) RESTRICTIONS ON REDISCLOSURE.—A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for collecting the debt described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

"(F) REIMBURSEMENT OF HHS COSTS.—The Secretary of the Treasury shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph. Any such costs paid by the Secretary of the Treasury shall be considered costs of implementing 31 U.S.C. 3711(g) in accordance with 31 U.S.C. 3711(g)(6) and may be paid from the account established pursuant to 31 U.S.C. 3711(g)(7).".

SEC. 644. Notwithstanding section 1346 of title 31, United States Code, and section 610 of this Act and any other provision of law, the head of each appropriate executive department and agency shall transfer to or reimburse the Federal Aviation Administration, upon the direction of the Director of the Office of Management and Budget, funds made available by this or any other Act for the purposes described below, and shall submit budget requests for such purposes. These funds shall be administered by the Federal Aviation Administration, in consultation with the appropriate interagency groups designated by the Director and shall be used to ensure the uninterrupted, continuous operation of the Midway Atoll Airfield by the Federal Aviation Administration pursuant to an operational agreement with the Department of the Interior for the entirety of fiscal year 2005 and any period thereafter that precedes the enactment of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2006. The Director of the Office of Management and Budget shall mandate the necessary transfers after determining an equitable allocation between the appropriate executive departments and agencies of the responsibility for funding the continuous operation of the Midway Atoll Airfield based on, but not limited to, potential use, interest in maintaining aviation safety, and applicability to governmental operations and agency mission. The total funds transferred or reimbursed shall not exceed $6,000,000 for any twelve-month period. Such sums shall be sufficient to ensure continued operation of the airfield throughout the period cited above. Funds shall be available for operation of the airfield or airfield-related capital upgrades. The Director of the Office of Management and Budget shall notify the Committees on Appropriations of such transfers or reimbursements within 15 days of this Act. Such transfers or reimbursements shall begin within 30 days of enactment of this Act.

SEC. 645. (a) DESIGNATION.—The United States Courthouse located at 95 Seventh Street in San Francisco, California, shall be known and designated as the "James R. Browning United States Courthouse".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the courthouse referred to in subsection (a) shall be deemed to be a reference to the "James R. Browning United States Courthouse".

DIVISION I—DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2005

TITLE I—DEPARTMENT OF VETERANS AFFAIRS

VETERANS BENEFITS ADMINISTRATION

COMPENSATION AND PENSIONS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation benefits to or on behalf of veterans and a pilot program for disability examinations as authorized by law (38 U.S.C. 107, chapters 11, 13, 18, 51, 53, 55, and 61); pension benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 15, 51, 53, 55, and 61; 92 Stat. 2508);

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and burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 540 et seq.) and for other benefits as authorized by law (38 U.S.C. 107, 1312, 1977, and 2106, chapters 23, 51, 53, 55, and 61; 50 U.S.C. App. 540–548; 43 Stat. 122, 123; 45 Stat. 735; 76 Stat. 1198), $32,607,688,000, to remain available until expended: *Provided,* That not to exceed $20,703,000 of the amount appropriated under this heading shall be reimbursed to "General operating expenses" and "Medical services" for necessary expenses in implementing those provisions authorized in the Omnibus Budget Reconciliation Act of 1990, and in the Veterans' Benefits Act of 1992 (38 U.S.C. chapters 51, 53, and 55), the funding source for which is specifically provided as the "Compensation and pensions" appropriation: *Provided further,* That such sums as may be earned on an actual qualifying patient basis, shall be reimbursed to "Medical facilities revolving fund" to augment the funding of individual medical facilities for nursing home care provided to pensioners as authorized.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 21, 30, 31, 34, 35, 36, 39, 51, 53, 55, and 61), $2,556,232,000, to remain available until expended: *Provided,* That expenses for rehabilitation program services and assistance which the Secretary is authorized to provide under section 3104(a) of title 38, United States Code, other than under subsection (a)(1), (2), (5), and (11) of that section, shall be charged to this account.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and veterans mortgage life insurance as authorized by 38 U.S.C. chapter 19; 70 Stat. 887; 72 Stat. 487, $44,380,000, to remain available until expended.

VETERANS HOUSING BENEFIT PROGRAM FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the program, as authorized by 38 U.S.C. chapter 37, as amended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That during fiscal year 2005, within the resources available, not to exceed $500,000 in gross obligations for direct loans are authorized for specially adapted housing loans.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, $154,075,000, which may be transferred to and merged with the appropriation for "General operating expenses".

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VOCATIONAL REHABILITATION LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $47,000, as authorized by 38 U.S.C. chapter 31, as amended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That funds made available under this heading are available to subsidize gross obligations for the principal amount of direct loans not to exceed $4,108,000.

In addition, for administrative expenses necessary to carry out the direct loan program, $311,000, which may be transferred to and merged with the appropriation for "General operating expenses".

NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For administrative expenses to carry out the direct loan program authorized by 38 U.S.C. chapter 37, subchapter V, as amended, $571,000, which may be transferred to and merged with the appropriation for "General operating expenses": *Provided,* That no new loans in excess of $50,000,000 may be made in fiscal year 2005.

GUARANTEED TRANSITIONAL HOUSING LOANS FOR HOMELESS VETERANS PROGRAM ACCOUNT

For the administrative expenses to carry out the guaranteed transitional housing loan program authorized by 38 U.S.C. chapter 37, subchapter VI, not to exceed $750,000 of the amounts appropriated by this Act for "General operating expenses" and "Medical administration" may be expended.

VETERANS HEALTH ADMINISTRATION

MEDICAL SERVICES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs and veterans described in paragraphs (1) through (8) of section 1705(a) of title 38, United States Code, including care and treatment in facilities not under the jurisdiction of the department and including medical supplies and equipment and salaries and expenses of health-care employees hired under title 38, United States Code, and aid to State homes as authorized by section 1741 of title 38, United States Code; $19,472,777,000, plus reimbursements: *Provided,* That of the funds made available under this heading, not to exceed $1,100,000,000 shall be available until September 30, 2006: *Provided further,* That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for treatment for veterans who are service-connected disabled, lower income, or have special needs: *Provided further,* That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding

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for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: *Provided further,* That of the funds made available under this heading, the Secretary may transfer up to $400,000,000, to remain available until expended, to "Construction, major projects" for purposes of implementing CARES subject to a determination by the Secretary that such funds will improve access and quality of veteran's health care needs: *Provided further,* That, during the fiscal year ending September 30, 2005, the Secretary may transfer not more than $125,000,000 of the unobligated balances in this account and amounts made available under this heading to "General operating expenses" for costs associated with processing claims where the basis of the entitlement is claimed disability incurred as a result of a veteran's service, subject to a determination by the Secretary of Veterans Affairs that such additional funds are necessary: *Provided further,* That, notwithstanding any other provision of law, the Secretary of Veterans Affairs may authorize the dispensing of prescription drugs from Veterans Health Administration facilities to enrolled veterans with privately written prescriptions based on requirements established by the Secretary: *Provided further,* That the implementation of the program described in the previous proviso shall incur no additional cost to the Department of Veterans Affairs: *Provided further,* That for the DOD VA Health Care Sharing Incentive Fund, as authorized by section 721 of Public Law 107–314, a minimum of $15,000,000, to remain available until expended, for any purpose authorized by 38 U.S.C. 8111.

MEDICAL ADMINISTRATION

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities; information technology hardware and software; uniforms or allowances therefor, as authorized by sections 5901–5902 of title 5, United States Code; and administrative and legal expenses of the department for collecting and recovering amounts owed the department as authorized under chapter 17 of title 38, United States Code, and the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.); $4,705,000,000, of which $250,000,000 shall be available until September 30, 2006, plus reimbursements.

MEDICAL FACILITIES

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities and other necessary facilities for the Veterans Health Administration; for administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction and renovation of any facility under the jurisdiction or for the use of the department; for oversight, engineering and architectural activities not charged to project costs; for repairing, altering, improving or providing facilities in the several hospitals and homes under the jurisdiction of the department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; for leases of facilities; and for laundry and food services, $3,745,000,000, of which $250,000,000 shall be available until September 30, 2006.

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MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development as authorized by chapter 73 of title 38, United States Code, to remain available until September 30, 2006, $405,593,000, plus reimbursements.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Department of Veterans Affairs, not otherwise provided for, including administrative expenses in support of department-wide capital planning, management and policy activities, uniforms or allowances therefor; not to exceed $25,000 for official reception and representation expenses; hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail, $1,324,753,000: *Provided,* That expenses for services and assistance authorized under 38 U.S.C. 3104(a)(1), (2), (5), and (11) that the Secretary determines are necessary to enable entitled veterans: (1) to the maximum extent feasible, to become employable and to obtain and maintain suitable employment; or (2) to achieve maximum independence in daily living, shall be charged to this account: *Provided further,* That the Veterans Benefits Administration shall be funded at not less than $1,027,193,000: *Provided further,* That of the funds made available under this heading, not to exceed $66,000,000 shall be available for obligation until September 30, 2006: *Provided further,* That from the funds made available under this heading, the Veterans Benefits Administration may purchase up to two passenger motor vehicles for use in operations of that Administration in Manila, Philippines.

NATIONAL CEMETERY ADMINISTRATION

For necessary expenses of the National Cemetery Administration for operations and maintenance, not otherwise provided for, including uniforms or allowances therefor; cemeterial expenses as authorized by law; purchase of one passenger motor vehicle for use in cemeterial operations; and hire of passenger motor vehicles, $148,925,000: *Provided,* That of the funds made available under this heading, not to exceed $7,400,000 shall be available until September 30, 2006.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $69,711,000, to remain available until September 30, 2006.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending and improving any of the facilities including parking projects under the jurisdiction or for the use of the Department of Veterans Affairs, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, and 8122 of title 38, United States Code, including

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planning, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, where the estimated cost of a project is more than the amount set forth in 38 U.S.C. 8104(a)(3)(A) or where funds for a project were made available in a previous major project appropriation, $458,800,000, to remain available until expended, of which $370,709,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities; and of which $8,091,000 shall be to make reimbursements as provided in 41 U.S.C. 612 for claims paid for contract disputes: *Provided,* That except for advance planning activities, including needs assessments which may or may not lead to capital investments, and other capital asset management related activities, such as portfolio development and management activities, and investment strategy studies funded through the advance planning fund and the planning and design activities funded through the design fund and CARES funds, including needs assessments which may or may not lead to capital investments, none of the funds appropriated under this heading shall be used for any project which has not been approved by the Congress in the budgetary process: *Provided further,* That funds provided in this appropriation for fiscal year 2005, for each approved project (except those for CARES activities referenced above) shall be obligated: (1) by the awarding of a construction documents contract by September 30, 2005; and (2) by the awarding of a construction contract by September 30, 2006: *Provided further,* That the Secretary of Veterans Affairs shall promptly report in writing to the Committees on Appropriations any approved major construction project in which obligations are not incurred within the time limitations established above.

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities including parking projects under the jurisdiction or for the use of the Department of Veterans Affairs, including planning and assessments of needs which may lead to capital investments, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, 8122, and 8162 of title 38, United States Code, where the estimated cost of a project is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), $230,779,000, to remain available until expended, along with unobligated balances of previous "Construction, minor projects" appropriations which are hereby made available for any project where the estimated cost is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), of which $182,100,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities: *Provided,* That from amounts appropriated under this heading, additional amounts may be used for CARES activities upon notification of and approval by the Committees on Appropriations: *Provided further,* That funds in this account shall be available for: (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the department which are necessary because of loss

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or damage caused by any natural disaster or catastrophe; and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans as authorized by 38 U.S.C. 8131–8137, $105,163,000, to remain available until expended.

GRANTS FOR THE CONSTRUCTION OF STATE VETERANS CEMETERIES

For grants to aid States in establishing, expanding, or improving State veterans cemeteries as authorized by 38 U.S.C. 2408, $32,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFERS OF FUNDS)

SEC. 101. Any appropriation for fiscal year 2005 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" may be transferred to any other of the mentioned appropriations.

SEC. 102. Appropriations available to the Department of Veterans Affairs for fiscal year 2005 for salaries and expenses shall be available for services authorized by 5 U.S.C. 3109 hire of passenger motor vehicles; lease of a facility or land or both; and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902.

SEC. 103. No appropriations in this Act for the Department of Veterans Affairs (except the appropriations for "Construction, major projects", "Construction, minor projects", and the "Parking revolving fund") shall be available for the purchase of any site for or toward the construction of any new hospital or home.

SEC. 104. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or examination of any persons (except beneficiaries entitled under the laws bestowing such benefits to veterans, and persons receiving such treatment under 5 U.S.C. 7901–7904 or 42 U.S.C. 5141–5204), unless reimbursement of cost is made to the "Medical services" account at such rates as may be fixed by the Secretary of Veterans Affairs.

SEC. 105. Appropriations available to the Department of Veterans Affairs for fiscal year 2005 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" shall be available for payment of prior year accrued obligations required to be recorded by law against the corresponding prior year accounts within the last quarter of fiscal year 2004.

SEC. 106. Appropriations accounts available to the Department of Veterans Affairs for fiscal year 2005 shall be available to pay prior year obligations of corresponding prior year appropriations accounts resulting from title X of the Competitive Equality Banking Act, Public Law 100–86, except that if such obligations are from trust fund accounts they shall be payable from "Compensation and pensions".

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SEC. 107. Notwithstanding any other provision of law, during fiscal year 2005, the Secretary of Veterans Affairs shall, from the National Service Life Insurance Fund (38 U.S.C. 1920), the Veterans' Special Life Insurance Fund (38 U.S.C. 1923), and the United States Government Life Insurance Fund (38 U.S.C. 1955), reimburse the "General operating expenses" account for the cost of administration of the insurance programs financed through those accounts: *Provided,* That reimbursement shall be made only from the surplus earnings accumulated in an insurance program in fiscal year 2005 that are available for dividends in that program after claims have been paid and actuarially determined reserves have been set aside: *Provided further,* That if the cost of administration of an insurance program exceeds the amount of surplus earnings accumulated in that program, reimbursement shall be made only to the extent of such surplus earnings: *Provided further,* That the Secretary shall determine the cost of administration for fiscal year 2005 which is properly allocable to the provision of each insurance program and to the provision of any total disability income insurance included in such insurance program.

SEC. 108. Notwithstanding any other provision of law, the Department of Veterans Affairs shall continue the Franchise Fund pilot program authorized to be established by section 403 of Public Law 103–356 until October 1, 2005: *Provided,* That the Franchise Fund, established by title I of Public Law 104–204 to finance the operations of the Franchise Fund pilot program, shall continue until October 1, 2005.

SEC. 109. Amounts deducted from enhanced-use lease proceeds to reimburse an account for expenses incurred by that account during a prior fiscal year for providing enhanced-use lease services, may be obligated during the fiscal year in which the proceeds are received.

SEC. 110. Funds available in any Department of Veterans Affairs appropriation for fiscal year 2005 or funds for salaries and other administrative expenses shall also be available to reimburse the Office of Resolution Management and the Office of Employment Discrimination Complaint Adjudication for all services provided at rates which will recover actual costs but not exceed $29,318,000 for the Office of Resolution Management and $3,059,000 for the Office of Employment and Discrimination Complaint Adjudication: *Provided,* That payments may be made in advance for services to be furnished based on estimated costs: *Provided further,* That amounts received shall be credited to "General operating expenses" for use by the office that provided the service.

SEC. 111. No appropriations in this Act for the Department of Veterans Affairs shall be available to enter into any new lease of real property if the estimated annual rental is more than $300,000 unless the Secretary submits a report which the Committees on Appropriations of the Congress approve within 30 days following the date on which the report is received.

SEC. 112. No funds of the Department of Veterans Affairs shall be available for hospital care, nursing home care, or medical services provided to any person under chapter 17 of title 38, United States Code, for a non-service-connected disability described in section 1729(a)(2) of such title, unless that person has disclosed to the Secretary of Veterans Affairs, in such form as the Secretary

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may require, current, accurate third-party reimbursement information for purposes of section 1729 of such title: *Provided,* That the Secretary may recover, in the same manner as any other debt due the United States, the reasonable charges for such care or services from any person who does not make such disclosure as required: *Provided further,* That any amounts so recovered for care or services provided in a prior fiscal year may be obligated by the Secretary during the fiscal year in which amounts are received.

SEC. 113. Of the amounts provided in this Act, $25,000,000 shall be for information technology initiatives to support the enterprise architecture of the Department of Veterans Affairs.

SEC. 114. None of the funds made available to the Department in this Act, or any other Act, may be used to implement sections 2 and 5 of Public Law 107–287.

SEC. 115. (a) Hereafter receipts that would otherwise be credited to the accounts listed in subsection (c) shall be deposited into the Medical Care Collections Fund, and shall be transferred to and merged with the "Medical services" account, in fiscal year 2005 and subsequent years, to remain available until expended, to carry out the purposes of the "Medical services" account.

(b) The unobligated balances in the accounts listed in subsection (c), shall be transferred to and merged with the "Medical services" account in fiscal year 2005 and subsequent years, and remain available until expended, to carry out the purposes of the "Medical services" account: *Provided,* That the obligated balances in these accounts may be transferred to the "Medical services" account at the discretion of the Secretary of Veterans Affairs and shall remain available until expended.

(c) Veterans Extended Care Revolving Fund; Medical Facilities Revolving Fund; Special Therapeutic and Rehabilitation Fund; Nursing Home Revolving Fund; Veterans Health Services Improvement Fund; and Parking Revolving Fund.

SEC. 116. (a) The Secretary of Veterans Affairs shall conduct by contract a program of recovery audits for the fee basis and other medical services contracts with respect to payments for hospital care. Notwithstanding section 3302(b) of title 31, United States Code, amounts collected, by setoff or otherwise, as the result of such audits shall be available, without fiscal year limitation, for the purposes for which funds are appropriated under "Medical services" and the purposes of paying a contractor a percent of the amount collected as a result of an audit carried out by the contractor.

(b) All amounts so collected under subsection (a) with respect to a designated health care region (as that term is defined in section 1729A(d)(2) of title 38, United States Code) shall be allocated, net of payments to the contractor, to that region.

SEC. 117. Notwithstanding any other provision of law, at the discretion of the Secretary of Veterans Affairs, proceeds or revenues derived from enhanced-use leasing activities (including disposal) that are deposited into the Medical Care Collections Fund may be transferred and merged with "Construction, major projects" and "Construction, minor projects" accounts and be used for construction (including site acquisition and disposition), alterations and improvements of any medical facility under the jurisdiction or for the use of the Department of Veterans Affairs. Such sums as realized are in addition to the amount provided for in "Construction, major projects" and "Construction, minor projects".

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SEC. 118. Amounts made available under "Medical services" are available—

(1) for furnishing recreational facilities, supplies, and equipment; and

(2) for funeral expenses, burial expenses, and other expenses incidental to funerals and burials for beneficiaries receiving care in the department.

SEC. 119. That such sums as may be deposited to the Medical Care Collections Fund pursuant to 38 U.S.C. 1729A may be transferred to "Medical services", to remain available until expended for the purposes of this account.

SEC. 120. Amounts made available for fiscal year 2005 under the "Medical services", "Medical administration", and "Medical facilities" accounts may be transferred between the accounts to the extent necessary to implement the restructuring of the Veterans Health Administration accounts after notice of the amount and purpose of the transfer is provided to the Committees on Appropriations of the Senate and House of Representatives and a period of 30 days has elapsed: *Provided,* That the limitation on transfers is 20 percent in fiscal year 2005.

SEC. 121. Any appropriation for fiscal year 2005 for the Veterans Benefits Administration made available under the heading "General operating expenses" may be transferred to the "Veterans Housing Benefit Program Fund Program Account" for the purpose of providing funds for the nationwide property management contract if the administrative costs of such contract exceed $8,800,000 in the budget year.

SEC. 122. The Department of Veterans Affairs is authorized to expend such sums as are available in the unobligated balances of the funds originally appropriated to "Medical Care" for emergency expenses resulting from the January 1994 earthquake in southern California in Public Law 103–211, Emergency Supplemental Appropriations Act of 1994, for the same purposes of the "Medical Services" account, to remain available until expended.

SEC. 123. Notwithstanding any other provision of law, the Secretary of Veterans Affairs (Secretary) shall allow veterans eligible under existing VA Medical Care requirements and who reside in Alaska to obtain medical care services from medical facilities supported by the Indian Health Services or tribal organizations. The Secretary shall: (1) limit the application of this provision to rural Alaskan veterans in areas where an existing VA facility or VA-contracted service is unavailable; (2) require participating veterans and facilities to comply with all appropriate rules and regulations, as established by the Secretary; (3) require this provision to be consistent with CARES; and (4) result in no additional cost to the Department of Veterans Affairs or the Indian Health Service.

SEC. 124. Of the funds made available under the heading "Construction, minor projects" in chapter 11 of division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, Public Law 108–324, the Secretary of Veterans Affairs may transfer up to $19,800,000 to the "Medical Facilities" account for non-recurring maintenance expenses related to hurricane and tropical storm damage.

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TITLE II—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

TENANT-BASED RENTAL ASSISTANCE

(INCLUDING TRANSFER OF FUNDS)

For activities and assistance for the provision of tenant-based rental assistance authorized under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ("the Act" herein), not otherwise provided for, $14,885,000,000, to remain available until expended, of which $10,685,000,000 shall be available on October 1, 2004 and $4,200,000,000 shall be available on October 1, 2005: *Provided,* That the amounts made available under this heading are provided as follows:

(1) $13,462,989,000 for renewals of expiring section 8 tenant-based annual contributions contracts (including renewals of enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act): *Provided,* That notwithstanding any other provision of law, from amounts provided under this paragraph, the Secretary for the calendar year 2005 funding cycle shall renew such contracts for each public housing agency based on verified Voucher Management System (VMS) leasing and cost data averaged for the months of May, June, and July of 2004, and by applying the 2005 Annual Adjustment Factor as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers: *Provided further,* That if such data is not available, verifiable, or complete, the Secretary shall use verified VMS leasing and cost data averaged for the months of February, March, and April of 2004, and by applying the 2005 Annual Adjustment Factor as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers: *Provided further,* That if such data is not available, verifiable, or complete, the Secretary shall use leasing and cost data from the most recent end-of-year financial statements for public housing agency fiscal years ending no later than March 31, 2004, and by applying the 2005 Annual Adjustment Factor as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers: *Provided further,* That the Secretary shall, to the extent necessary to stay within the amount provided under this paragraph, pro rate each public housing agency's allocation otherwise established pursuant to this paragraph: *Provided further,* That the entire amount provided under this paragraph shall be obligated to the public housing agencies based on the allocation and pro rata method described above: *Provided further,* That public housing agencies participating in the Moving to Work demonstration shall be funded pursuant to their Moving to Work agreements and shall be subject to the same pro rata adjustments under the previous proviso: *Provided further*, That none of the funds provided in this paragraph may be used to support a total number of unit months under lease which

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exceeds a public housing agency's authorized level of units under contract;

(2) $163,000,000 for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134), conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, and tenant protection assistance, including replacement and relocation assistance;

(3) $46,000,000 for family self-sufficiency coordinators under section 23 of the Act;

(4) $2,904,000 shall be transferred to the Working Capital Fund; and

(5) $1,210,107,000 for administrative and other expenses of public housing agencies in administering the section 8 tenant-based rental assistance program, of which up to $25,000,000 shall be available to the Secretary to allocate to public housing agencies that need additional funds to administer their section 8 programs: *Provided,* That $1,185,107,000 of the amount provided in this paragraph shall be allocated for the calendar year 2005 funding cycle on a pro rata basis to public housing agencies based on the amount public housing agencies were eligible to receive in calendar year 2004: *Provided further,* That all amounts provided under this paragraph shall be only for activities related to the provision of tenant-based rental assistance authorized under section 8, including related development activities.

PROJECT-BASED RENTAL ASSISTANCE

(INCLUDING TRANSFER OF FUNDS)

For activities and assistance for the provision of project-based subsidy contracts under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ("the Act" herein), not otherwise provided for, $5,341,000,000 to remain available until expended: *Provided*, That the amounts made available under this heading are provided as follows:

(1) $5,237,100,000 for expiring or terminating section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for amendments to section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for contracts entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act, for renewal of section 8 contracts for units in projects that are subject to approved plans of action under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and for administrative and other expenses associated with project-based activities and assistance funded under this paragraph.

(2) $101,900,000 for performance-based contract administrators for section 8 project-based assistance.

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(3) $2,000,000 shall be transferred to the Working Capital Fund.

PUBLIC HOUSING CAPITAL FUND

(INCLUDING TRANSFER OF FUNDS)

For the Public Housing Capital Fund Program to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g) (the "Act") $2,600,000,000, to remain available until September 30, 2008: *Provided,* That notwithstanding any other provision of law or regulation, during fiscal year 2005, the Secretary may not delegate to any Department official other than the Deputy Secretary and the Assistant Secretary for Public and Indian Housing any authority under paragraph (2) of section 9(j) regarding the extension of the time periods under such section: *Provided further,* That for purposes of such section 9(j), the term "obligate" means, with respect to amounts, that the amounts are subject to a binding agreement that will result in outlays, immediately or in the future: *Provided further,* That of the total amount provided under this heading, up to $38,700,000 shall be for carrying out activities under section 9(h) of such Act, of which $12,500,000 shall be for the provision of remediation services to public housing agencies identified as "troubled" under the Section 8 Management Assessment Program and for surveys used to calculate local Fair Market Rents and assess housing conditions in connection with rental assistance under section 8 of the Act: *Provided further,* That $10,150,000 shall be transferred to the Working Capital Fund: *Provided further,* That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended: *Provided further,* That of the total amount provided under this heading, up to $30,000,000 shall be available for the Secretary of Housing and Urban Development to make grants, notwithstanding section 205 of this Act, to public housing agencies for emergency capital needs resulting from unforeseen emergencies and natural disasters occurring in fiscal year 2005: *Provided further,* That of the total amount provided under this heading, $53,500,000 shall be for supportive services, service coordinators and congregate services as authorized by section 34 of the Act and the Native American Housing Assistance and Self-Determination Act of 1996: *Provided further,* That up to $3,000,000 is to support the costs of administrative and judicial receiverships in effect prior to date of enactment of this Act: *Provided further,* That of the total amount provided under this heading, $15,000,000 shall be for Neighborhood Networks grants for activities authorized in section 9(d)(1)(E) of the United States Housing Act of 1937, as amended, of which up to $1,000,000 may be used for technical assistance in connection with such grants as authorized in section 9(h)(8) of such Act: *Provided further,* That notwithstanding any other provision of law, amounts made available in the previous proviso shall be awarded to public housing agencies on a competitive basis: *Provided further,* That notwithstanding section 9(d)(1)(E) of the United States Housing Act of 1937, any Neighborhood Networks computer center established with funding made available under this heading in this or any other Act, shall be available for use by residents of public housing and residents

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of other housing assisted with funding made available under this title in this Act or any other Act.

PUBLIC HOUSING OPERATING FUND

For 2005 payments to public housing agencies for the operation and management of public housing, as authorized by section 9(e) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g(e)), $2,458,000,000, of which $10,000,000 in bonus funds shall be provided to public housing agencies that assist program participants in moving away from dependency on housing assistance programs: *Provided,* That of the total amount provided under this heading, $8,000,000 shall be for programs, as determined appropriate by the Attorney General, which assist in the investigation, prosecution, and prevention of violent crimes and drug offenses in public and federally-assisted low-income housing, including Indian housing, which shall be administered by the Department of Justice through a cooperative agreement with the Department of Housing and Urban Development: *Provided further,* That any such 2005 payment shall be provided in an amount sufficient to cover only the period beginning with the start of a public housing agency's fiscal year and ending on December 31, 2005: *Provided further,* That for fiscal year 2006 and all fiscal years thereafter, the Secretary shall provide assistance under this heading to public housing agencies on a calendar year basis: *Provided further,* That, in fiscal year 2005 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act: *Provided further,* That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended.

REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING (HOPE VI)

For grants to public housing agencies for demolition, site revitalization, replacement housing, and tenant-based assistance grants to projects as authorized by section 24 of the United States Housing Act of 1937, as amended, $144,000,000, to remain available until September 30, 2006, of which the Secretary may use up to $4,000,000 for technical assistance and contract expertise, to be provided directly or indirectly by grants, contracts or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of the department and of public housing agencies and to residents: *Provided,* That none of such funds shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgments, unless expressly permitted herein.

NATIVE AMERICAN HOUSING BLOCK GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For the Native American Housing Block Grants program, as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111 et seq.), $627,000,000, to remain available until expended, of which $2,200,000 shall be contracted through the Secretary as technical

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assistance and capacity building to be used by the National American Indian Housing Council in support of the implementation of NAHASDA; of which $4,500,000 shall be to support the inspection of Indian housing units, contract expertise, training, and technical assistance in the training, oversight, and management of Indian housing and tenant-based assistance, including up to $300,000 for related travel; and of which $2,600,000 shall be transferred to the Working Capital Fund: *Provided,* That of the amount provided under this heading, $2,000,000 shall be made available for the cost of guaranteed notes and other obligations, as authorized by title VI of NAHASDA: *Provided further,* That such costs, including the costs of modifying such notes and other obligations, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize the total principal amount of any notes and other obligations, any part of which is to be guaranteed, not to exceed $17,926,000: *Provided further,* That for administrative expenses to carry out the guaranteed loan program, up to $150,000 from amounts in the first proviso, which shall be transferred to and merged with the appropriation for "Salaries and expenses", to be used only for the administrative costs of these guarantees.

INDIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a), $5,000,000, to remain available until expended: *Provided,* That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $145,345,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to $250,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for "Salaries and expenses", to be used only for the administrative costs of these guarantees.

NATIVE HAWAIIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b), $1,000,000, to remain available until expended: *Provided,* That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $37,403,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to $35,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for "Salaries and expenses", to be used only for the administrative costs of these guarantees.

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COMMUNITY PLANNING AND DEVELOPMENT

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

For carrying out the Housing Opportunities for Persons with AIDS program, as authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.), $284,000,000, to remain available until September 30, 2006: *Provided,* That the Secretary shall renew all expiring contracts for permanent supportive housing that were funded under section 854(c)(3) of such Act that meet all program requirements before awarding funds for new contracts and activities authorized under this section: *Provided further,* That the Secretary may use up to $2,500,000 of the funds under this heading for training, oversight, and technical assistance activities.

RURAL HOUSING AND ECONOMIC DEVELOPMENT

For the Office of Rural Housing and Economic Development in the Department of Housing and Urban Development, $24,000,000 to remain available until expended, which amount shall be competitively awarded by September 1, 2005, to Indian tribes, State housing finance agencies, State community and/or economic development agencies, local rural nonprofits and community development corporations to support innovative housing and economic development activities in rural areas.

EMPOWERMENT ZONES/ENTERPRISE COMMUNITIES

For grants in connection with a second round of empowerment zones and enterprise communities, $10,000,000, to remain available until September 30, 2005, for "Urban Empowerment Zones", as authorized in section 1391(g) of the Internal Revenue Code of 1986 (26 U.S.C. 1391(g)), including $666,666 for each empowerment zone for use in conjunction with economic development activities consistent with the strategic plan of each empowerment zone.

COMMUNITY DEVELOPMENT FUND

(INCLUDING TRANSFERS OF FUNDS)

For assistance to units of State and local government, and to other entities, for economic and community development activities, and for other purposes, $4,709,000,000, to remain available until September 30, 2007, unless otherwise specified: *Provided,* That of the amount provided, $4,150,035,000 is for carrying out the community development block grant program under title I of the Housing and Community Development Act of 1974, as amended (the "Act" herein) (42 U.S.C. 5301 et seq.): *Provided further,* That unless explicitly provided for under this heading (except for planning grants provided in the third paragraph and amounts made available in the second paragraph), not to exceed 20 percent of any grant made with funds appropriated under this heading (other than a grant made available in this paragraph to the Housing Assistance Council or the National American Indian Housing Council, or a grant using funds under section 107(b)(3) of the Act) shall be expended for planning and management development and administration: *Provided further,* That $69,000,000 shall be for grants to Indian tribes notwithstanding section 106(a)(1) of such Act, of which, notwithstanding any other provision of law

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(including section 205 of this Act), up to $4,000,000 may be used for emergencies that constitute imminent threats to health and safety; $3,300,000 shall be for a grant to the Housing Assistance Council; $2,400,000 shall be for a grant to the National American Indian Housing Council; $4,800,000 shall be available as a grant to the National Housing Development Corporation, for operating expenses not to exceed $2,000,000 and for a program of affordable housing acquisition and rehabilitation; $4,800,000 shall be available as a grant to the Raza Development Fund of La Raza for the HOPE Fund, of which $500,000 is for technical assistance and fund management, and $4,300,000 is for investments in the HOPE Fund and financing to affiliated organizations; $43,700,000 shall be for grants pursuant to section 107 of the Act, of which $9,000,000 shall be for the Native Hawaiian block grant authorized under title VIII of the Native American Housing Assistance and Self-Determination Act of 1996, to remain available until expended, of which $500,000 shall be for training and technical assistance; $3,465,000 shall be transferred to the Working Capital Fund; $25,000,000 shall be for grants pursuant to the Self Help Homeownership Opportunity Program; $34,500,000 shall be for capacity building, of which $30,000,000 shall be for Capacity Building for Community Development and Affordable Housing for LISC and the Enterprise Foundation for activities as authorized by section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, with not less than $5,000,000 of the funding to be used in rural areas, including tribal areas, and of which $4,500,000 shall be for capacity building activities administered by Habitat for Humanity International; $2,000,000 shall be for the Special Olympics National Games Organizing Committee for planning, equipment, and operational expenses associated with the 2006 games in Ames, Iowa; $62,000,000 shall be available for YouthBuild program activities authorized by subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, as amended, and such activities shall be an eligible activity with respect to any funds made available under this heading: *Provided*, That local YouthBuild programs that demonstrate an ability to leverage private and nonprofit funding shall be given a priority for YouthBuild funding: *Provided further,* That no more than 10 percent of any grant award under the YouthBuild program may be used for administrative costs: *Provided further,* That of the amount made available for YouthBuild not less than $9,000,000 is for grants to establish YouthBuild programs in underserved and rural areas and $2,000,000 is to be made available for a grant to YouthBuild USA for capacity building for community development and affordable housing activities as specified in section 4 of the HUD Demonstration Act of 1993, as amended.

Of the amount made available under this heading, $42,000,000 shall be available for neighborhood initiatives that are utilized to improve the conditions of distressed and blighted areas and neighborhoods, to stimulate investment, economic diversification, and community revitalization in areas with population outmigration or a stagnating or declining economic base, or to determine whether housing benefits can be integrated more effectively with welfare reform initiatives: *Provided,* That amounts made available under this paragraph shall be provided in accordance with the terms

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and conditions specified in the statement of managers accompanying this Act.

Of the amount made available under this heading, $262,000,000 shall be available for grants for the Economic Development Initiative (EDI) to finance a variety of targeted economic investments in accordance with the terms and conditions specified in the statement of managers accompanying this Act: *Provided,* That none of the funds provided under this paragraph may be used for program operations.

The referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended with respect to item number 2 with respect to amounts made available for the City of Boaz, Alabama by striking "facilities renovation and expansion" and inserting "construction of a new library".

The referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended with respect to item number 740 by striking "facilities renovation and construction" and inserting "an economic development planning study".

The referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended with respect to item number 254 by striking "Greater Community Council in Louisville, Kentucky for construction of a facility for low-income, disabled persons" and inserting "Portland Promise, Inc., in Louisville, Kentucky for a multi-purpose facility".

The referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended with respect to item number 10 with respect to amounts made available to the St. Stephen Family Life Center in Louisville, Kentucky by striking "renovation" and inserting "construction".

The referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended with respect to item number 584 with respect to amounts made available for Queens Borough Public Library in Queens, New York by striking "for facilities rehabilitation and expansion of the Parsons Boulevard complex" and inserting "for facilities construction and renovations".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 198 by striking "$160,000 for the Pine Mountain Beautification and Economic Development project in Harris County, Georgia for streetscape improvements" and inserting "$60,000 for the Beautification and Economic Development project in Harris County, Georgia for construction; and $100,000 for the Beautification and Economic Development project in the Town of Pine Mountain, Georgia for streetscape improvements".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 96 with respect to amounts made available for the City of Corona, California by striking "construction" and inserting "rehabilitation and conversion".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 257 with respect to amounts made available for Fort Dodge, Iowa by inserting "planning, design and" before the word "facilities".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 776 with respect to amounts made available for

Rice University by inserting "planning, design and" before the word "construction".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 535 by striking "facilities renovation, expansion and buildout for the D'Youville College Library Improvement project" and inserting "Administration building renovation".

The referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended with respect to item number 215 by striking "construction of a fieldhouse located at 39th and Cottage Grove" and inserting "costs associated with construction of a LULA lift at Ogden Park".

The referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended with respect to item number 831 by striking "Bread and Rose in Olympia, Washington for renovations to a homeless shelter" and inserting "Catholic Community Services in Olympia, Washington for construction of a homeless shelter".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 303 by striking "Maine Environmental" and inserting "Marine Environmental".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 163 by striking "a special needs evacuation, senior, multipurpose center" and inserting "for Lakefront improvements to Lake Toho".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 499 by striking "relocation of and renovations to the Wolcott Carriage House" and inserting "facilities improvements to Erie Canal parks".

The referenced statement of the managers under this heading in title II of Public Law 107–73; H. Rept. 107–272 is deemed to be amended by striking "Southern New Mexico Fair and Rodeo in Dona Ana County for infrastructure improvements and to build a multipurpose event center;" and inserting the following: "Dona Ana County, New Mexico, for the Southern New Mexico State Fair to make infrastructure improvements and to build a multipurpose event center;".

The referenced statement of the managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108–199; H. Rept. 108–401) is deemed to be amended with respect to item 218 by striking "construction" and inserting "planning and design".

The statement of managers accompanying Public Law 106–74, as amended by chapter 8 of title II of the Emergency Supplemental Act, 2000 (Public Law 106–246), is further amended by inserting ", to remain available to be expended until September 30, 2007," after "$25,000,000".

The referenced statement of managers under the heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108–199; H. Rept. 108–401) is deemed to be amended with respect to numbers 418 and 423 by striking both specified grants and inserting "418. $900,000 to Northland Neighborhoods, Inc., in Clay County, Missouri for the expansion

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of the current Home Repair Program to provide home repairs to low- to moderate-income neighborhoods;".

The referenced statement of managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108–199; H. Rept. 108–401) is deemed to be amended with respect to item 791 by inserting "for planning and design" after "Texas".

The referenced statement of managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108–199; H. Rept. 108–401) is deemed to be amended with respect to item 218 by striking "construction" and inserting "planning and design".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 169 by striking "for renovation of an aviation high technology facility" and inserting the following: "for a feasibility study of a facilities improvement to the Airco Complex and surrounding properties".

The referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended with respect to item number 740 by striking "for facilities renovation and construction" and inserting "for development and continuation of the National Medal of Honor Museum of Military History".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 163 by striking "for a special needs evacuation, senior, multipurpose center" and inserting "for construction at the Lakefront Improvement Project".

The referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended with respect to item number 54 by striking "for renovation of facilities" and inserting "for the Screen Education Center".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 104 by striking "to Sonoma State University in California for construction of the Green Music Center" and inserting "to Center Point, Inc., to acquire and renovate a facility for the adolescent residential treatment center".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 4 by striking "for renovation of the old Uniontown Middle School" and inserting "for enhancements to facilities for industrial development".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 583 by striking "$200,000 to the North Carolina Museum of Natural Sciences for construction of the Nature Research Center" and inserting "$200,000 to the Friends of the North Carolina Museum of Natural Sciences for construction of the Nature Research Center".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 469 by striking "to Rutgers University in New Jersey land acquisition for LEAP University High School" and inserting "to the LEAP Academy University Charter High School in Camden City, New Jersey for facilities construction, renovation, and buildout".

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The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 575 by striking "construction" and inserting "acquisition, renovation".

The referenced statement of the managers under this heading in Public Law 108–199 is deemed to be amended with respect to item number 683 by striking "for construction related to Bailey Park and downtown streetscape, beautification, building renovation and restoration" and inserting "for master plan development, building acquisition, demolition, renovation and restoration".

Section 167 of division H of Public Law 108–199 is amended by allocating the funding made available under the heading "Community Development Fund for project number 177 (House Report 108–235) to the Chicago Children's Choir Academy in Illinois for facility design and construction".

The referenced statement of the managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108–199; H. Rept. 108–401) is deemed to be amended with respect to item 24 by striking "Tuscaloosa County Commission for Community Development in Tuscaloosa County, Alabama;" and inserting "City of Tuscaloosa for community development in Tuscaloosa, Alabama;".

The referenced statement of the managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108–199; H. Rept. 108–401) is deemed to be amended with respect to item 796 by striking "Community Center" and inserting "Convention Center".

COMMUNITY DEVELOPMENT LOAN GUARANTEES PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, $6,000,000, to remain available until September 30, 2006, as authorized by section 108 of the Housing and Community Development Act of 1974, as amended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $275,000,000, notwithstanding any aggregate limitation on outstanding obligations guaranteed in section 108(k) of the Housing and Community Development Act of 1974, as amended.

In addition, for administrative expenses to carry out the guaranteed loan program, $1,000,000, which shall be transferred to and merged with the appropriation for "Salaries and expenses".

BROWNFIELDS REDEVELOPMENT

For competitive economic development grants, as authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended, for Brownfields redevelopment projects, $24,000,000, to remain available until September 30, 2006.

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HOME INVESTMENT PARTNERSHIPS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, $1,865,000,000, to remain available until September 30, 2007: *Provided,* That of the total amount provided in this paragraph, up to $42,000,000 shall be available for housing counseling under section 106 of the Housing and Urban Development Act of 1968, and $2,000,000 shall be transferred to the Working Capital Fund.

In addition to amounts otherwise made available under this heading, $50,000,000, to remain available until September 30, 2007, for assistance to homebuyers as authorized under title I of the American Dream Downpayment Act.

HOMELESS ASSISTANCE GRANTS

(INCLUDING TRANSFER OF FUNDS)

For the emergency shelter grants program as authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, as amended; the supportive housing program as authorized under subtitle C of title IV of such Act; the section 8 moderate rehabilitation single room occupancy program as authorized under the United States Housing Act of 1937, as amended, to assist homeless individuals pursuant to section 441 of the McKinney-Vento Homeless Assistance Act; and the shelter plus care program as authorized under subtitle F of title IV of such Act, $1,250,515,000, of which $1,230,515,000 shall remain available until September 30, 2007, and of which $20,000,000 shall remain available until expended: *Provided,* That not less than 30 percent of funds made available, excluding amounts provided for renewals under the shelter plus care program, shall be used for permanent housing: *Provided further,* That all funds awarded for services shall be matched by 25 percent in funding by each grantee: *Provided further,* That the Secretary shall renew on an annual basis expiring contracts or amendments to contracts funded under the shelter plus care program if the program is determined to be needed under the applicable continuum of care and meets appropriate program requirements and financial standards, as determined by the Secretary: *Provided further,* That all awards of assistance under this heading shall be required to coordinate and integrate homeless programs with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health and Substance Abuse Block Grant, Workforce Investment Act, and the Welfare-to-Work grant program: *Provided further,* That up to $11,500,000 of the funds appropriated under this heading shall be available for the national homeless data analysis project and technical assistance: *Provided further,* That $2,500,000 of the funds appropriated under this heading shall be transferred to the Working Capital Fund: *Provided further,* That all balances for Shelter Plus Care renewals previously funded from the Shelter Plus Care Renewal

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account shall be transferred to this account, to be available for Shelter Plus Care renewals in fiscal year 2005.

HOUSING PROGRAMS

HOUSING FOR THE ELDERLY

(INCLUDING TRANSFER OF FUNDS)

For capital advances, including amendments to capital advance contracts, for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for project rental assistance for the elderly under section 202(c)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing, $747,000,000, to remain available until September 30, 2008, of which amount $50,000,000 shall be for service coordinators and the continuation of existing congregate service grants for residents of assisted housing projects, and of which amount up to $25,000,000 shall be for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) for conversion of eligible projects under such section to assisted living or related use and for emergency capital repairs as determined by the Secretary: *Provided,* That of the amount made available under this heading, $18,000,000 shall be available to the Secretary of Housing and Urban Development only for making competitive grants to private nonprofit organizations and consumer cooperatives for covering costs of architectural and engineering work, site control, and other planning relating to the development of supportive housing for the elderly that is eligible for assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q): *Provided further,* That $450,000 shall be transferred to the Working Capital Fund: *Provided further,* That the Secretary may waive the provisions of section 202 governing the terms and conditions of project rental assistance, except that the initial contract term for such assistance shall not exceed 5 years in duration.

Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004, is amended under this heading by striking the fourth proviso.

HOUSING FOR PERSONS WITH DISABILITIES

(INCLUDING TRANSFER OF FUNDS)

For capital advance contracts, including amendments to capital advance contracts, for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act, for project rental assistance for supportive housing for persons with disabilities under section 811(d)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing for persons with disabilities as authorized by section 811(b)(1) of such Act, and for tenant-based rental assistance contracts entered into pursuant to section 811 of such Act, $240,000,000: *Provided*, That $450,000 shall be transferred to the

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Working Capital Fund: *Provided further*, That, of the amount provided under this heading $28,890,000 shall be for amendments to existing tenant-based assistance contracts entered into prior to fiscal year 2004 (only one amendment authorized for any such contract): *Provided further,* That of the amount provided under this heading, the Secretary may make available up to $10,000,000 for incremental tenant-based rental assistance, as authorized by section 811 of such Act (which assistance is 5 years in duration): *Provided further,* That all tenant-based assistance made available under this heading shall continue to remain available only to persons with disabilities: *Provided further*, That the Secretary may waive the provisions of section 811 governing the terms and conditions of project rental assistance and tenant-based assistance, except that the initial contract term for such assistance shall not exceed 5 years in duration.

Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004, is amended under this heading by striking the fourth proviso and inserting "*Provided further*, That all section 811 balances outstanding, as of September 30, 2003, shall be transferred to the appropriation under this heading.".

FLEXIBLE SUBSIDY FUND

(TRANSFER OF FUNDS)

From the Rental Housing Assistance Fund, all uncommitted balances of excess rental charges as of September 30, 2004, and any collections made during fiscal year 2005 and all subsequent fiscal years, shall be transferred to the Flexible Subsidy Fund, as authorized by section 236(g) of the National Housing Act, as amended.

MANUFACTURED HOUSING FEES TRUST FUND

For necessary expenses as authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5401 et seq.), up to $13,000,000 to remain available until expended, to be derived from the Manufactured Housing Fees Trust Fund: *Provided,* That not to exceed the total amount appropriated under this heading shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund pursuant to section 620 of such Act: *Provided further,* That the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than $0 and fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year 2005 appropriation.

FEDERAL HOUSING ADMINISTRATION

MUTUAL MORTGAGE INSURANCE PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

During fiscal year 2005, commitments to guarantee loans to carry out the purposes of section 203(b) of the National Housing

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Act, as amended, shall not exceed a loan principal of $185,000,000,000.

During fiscal year 2005, obligations to make direct loans to carry out the purposes of section 204(g) of the National Housing Act, as amended, shall not exceed $50,000,000: *Provided,* That the foregoing amount shall be for loans to nonprofit and governmental entities in connection with sales of single family real properties owned by the Secretary and formerly insured under the Mutual Mortgage Insurance Fund.

For administrative expenses necessary to carry out the guaranteed and direct loan program, $356,906,000, of which not to exceed $352,906,000 shall be transferred to the appropriation for "Salaries and expenses"; and not to exceed $4,000,000 shall be transferred to the appropriation for "Office of Inspector General". In addition, for administrative contract expenses, $78,000,000, of which $15,000,000 shall be transferred to the Working Capital Fund: *Provided,* That to the extent guaranteed loan commitments exceed $65,500,000,000 on or before April 1, 2005, an additional $1,400 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed loan commitments (including a pro rata amount for any amount below $1,000,000), but in no case shall funds made available by this proviso exceed $30,000,000.

GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost of guaranteed loans, as authorized by sections 238 and 519 of the National Housing Act (12 U.S.C. 1715z–3 and 1735c), including the cost of loan guarantee modifications, as that term is defined in section 502 of the Congressional Budget Act of 1974, as amended, $10,000,000, to remain available until expended: *Provided,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, of up to $35,000,000,000.

Gross obligations for the principal amount of direct loans, as authorized by sections 204(g), 207(l), 238, and 519(a) of the National Housing Act, shall not exceed $50,000,000, of which not to exceed $30,000,000 shall be for bridge financing in connection with the sale of multifamily real properties owned by the Secretary and formerly insured under such Act; and of which not to exceed $20,000,000 shall be for loans to nonprofit and governmental entities in connection with the sale of single-family real properties owned by the Secretary and formerly insured under such Act. In addition, for administrative expenses necessary to carry out the guaranteed and direct loan programs, $227,767,000, of which $207,767,000 shall be transferred to the appropriation for "Salaries and expenses"; and of which $20,000,000 shall be transferred to the appropriation for "Office of Inspector General".

In addition, for administrative contract expenses necessary to carry out the guaranteed and direct loan programs, $86,000,000, of which $9,600,000 shall be transferred to the Working Capital Fund: *Provided,* That to the extent guaranteed loan commitments exceed $8,426,000,000 on or before April 1, 2005, an additional $1,980 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed loan commitments over $8,426,000,000 (including a pro rata amount for any increment

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below $1,000,000), but in no case shall funds made available by this proviso exceed $14,400,000.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

GUARANTEES OF MORTGAGE-BACKED SECURITIES LOAN GUARANTEE PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

New commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721(g)), shall not exceed $200,000,000,000, to remain available until September 30, 2006.

For administrative expenses necessary to carry out the guaranteed mortgage-backed securities program, $10,695,000, to be derived from the GNMA guarantees of mortgage-backed securities guaranteed loan receipt account, of which not to exceed $10,695,000, shall be transferred to the appropriation for "Salaries and expenses".

POLICY DEVELOPMENT AND RESEARCH

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. 1701z–1 et seq.), including carrying out the functions of the Secretary under section 1(a)(1)(i) of Reorganization Plan No. 2 of 1968, $45,500,000, to remain available until September 30, 2006: *Provided*, That of the total amount provided under this heading, $7,000,000 shall be for the Partnership for Advancing Technology in Housing (PATH) Initiative: *Provided further*, That of the amounts made available for PATH under this heading, $3,500,000 shall not be subject to the requirements of section 205 of this title.

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ACTIVITIES

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and section 561 of the Housing and Community Development Act of 1987, as amended, $46,500,000, to remain available until September 30, 2006, of which $20,000,000 shall be to carry out activities pursuant to such section 561: *Provided,* That no funds made available under this heading shall be used to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan.

OFFICE OF LEAD HAZARD CONTROL

LEAD HAZARD REDUCTION

For the Lead Hazard Reduction Program, as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, $168,000,000, to remain available until September

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30, 2006, of which $9,900,000 shall be for the Healthy Homes Initiative, pursuant to sections 501 and 502 of the Housing and Urban Development Act of 1970 that shall include research, studies, testing, and demonstration efforts, including education and outreach concerning lead-based paint poisoning and other housing-related diseases and hazards: *Provided,* That for purposes of environmental review, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act, a grant under the Healthy Homes Initiative, Operation Lead Elimination Action Plan (LEAP), or the Lead Technical Studies program under this heading or under prior appropriations Acts for such purposes under this heading, shall be considered to be funds for a special project for purposes of section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994: *Provided further,* That of the total amount made available under this heading, $47,000,000 shall be made available on a competitive basis for areas with the highest lead paint abatement needs, as identified by the Secretary as having: (1) the highest number of occupied pre-1940 units of rental housing; and (2) a disproportionately high number of documented cases of lead-poisoned children: *Provided further,* That each grantee receiving funds under the previous proviso shall target those privately owned units and multifamily buildings that are occupied by low-income families as defined under section 3(b)(2) of the United States Housing Act of 1937: *Provided further,* That not less than 90 percent of the funds made available under this paragraph shall be used exclusively for abatement, inspections, risk assessments, temporary relocations and interim control of lead-based hazards as defined by 42 U.S.C. 4851: *Provided further,* That each recipient of funds provided under the first proviso shall make a matching contribution in an amount not less than 25 percent: *Provided further,* That each applicant shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary to carry out the proposed use of funds pursuant to a Notice of Funding Availability.

MANAGEMENT AND ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary administrative and non-administrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed $25,000 for official reception and representation expenses, $1,120,000,000, of which $560,673,000 shall be provided from the various funds of the Federal Housing Administration, $10,695,000 shall be provided from funds of the Government National Mortgage Association, $1,000,000 shall be provided from the "Community development loan guarantees program" account, $150,000 shall be provided by transfer from the "Native American housing block grants" account, $250,000 shall be provided by transfer from the "Indian housing loan guarantee fund program" account and $35,000 shall be transferred from the "Native Hawaiian housing loan guarantee fund" account: *Provided,* That funds made available under

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this heading shall only be allocated in the manner specified in the report accompanying this Act unless the Committees on Appropriations of both the House of Representatives and the Senate are notified of any changes in an operating plan or reprogramming: *Provided further,* That no official or employee of the Department shall be designated as an allotment holder unless the Office of the Chief Financial Officer (OCFO) has determined that such allotment holder has implemented an adequate system of funds control and has received training in funds control procedures and directives: *Provided further,* That the Chief Financial Officer shall establish positive control of and maintain adequate systems of accounting for appropriations and other available funds as required by 31 U.S.C. 1514: *Provided further,* That for purposes of funds control and determining whether a violation exists under the Anti-Deficiency Act (31 U.S.C. 1341 et seq.), the point of obligation shall be the executed agreement or contract, except with respect to insurance and guarantee programs, certain types of salaries and expenses funding, and incremental funding that is authorized under an executed agreement or contract, and shall be designated in the approved funds control plan: *Provided further,* That the Chief Financial Officer shall: (1) appoint qualified personnel to conduct investigations of potential or actual violations; (2) establish minimum training requirements and other qualifications for personnel that may be appointed to conduct investigations; (3) establish guidelines and timeframes for the conduct and completion of investigations; (4) prescribe the content, format and other requirements for the submission of final reports on violations; and (5) prescribe such additional policies and procedures as may be required for conducting investigations of, and administering, processing, and reporting on, potential and actual violations of the Anti-Deficiency Act and all other statutes and regulations governing the obligation and expenditure of funds made available in this or any other Act: *Provided further,* That up to $20,000,000 may be transferred to the Working Capital Fund: *Provided further,* That the Secretary shall fill 7 out of 10 vacancies at the GS–14 and GS–15 levels until the total number of GS–14 and GS–15 positions in the Department has been reduced from the number of GS–14 and GS–15 positions on the date of enactment of Public Law 106–377 by 2½ percent.

WORKING CAPITAL FUND

For additional capital for the Working Capital Fund (42 U.S.C. 3535) for the development of, modifications to, and infrastructure for Department-wide information technology systems, for the continuing operation of both Department-wide and program-specific information systems, and for program-related development activities, $270,000,000, to remain available until September 30, 2006: *Provided,* That any amounts transferred to this Fund under this Act shall remain available until expended: *Provided further,* That any amounts transferred to this Fund from amounts appropriated by previously enacted appropriations Acts or from within this Act may be used only for the purposes specified under this Fund, in addition to the purposes for which such amounts were appropriated.

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OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $104,000,000, of which $24,000,000 shall be provided from the various funds of the Federal Housing Administration: *Provided,* That the Inspector General shall have independent authority over all personnel issues within this office: *Provided further,* That $300,000 shall be transferred to the Working Capital Fund.

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For carrying out the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, including not to exceed $500 for official reception and representation expenses, $59,209,000, to remain available until expended, to be derived from the Federal Housing Enterprises Oversight Fund: *Provided,* That of the amount made available under this heading, $5,000,000 is for litigation and to continue ongoing special investigations of the Federal housing enterprises: *Provided further,* That the Director shall submit a spending plan for the amounts provided under this heading no later than January 15, 2005: *Provided further,* That not less than 80 percent of total amount made available under this heading shall be used only for examination, supervision, and capital oversight of the enterprises (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502)) to ensure that the enterprises are operating in a financially safe and sound manner and complying with the capital requirements under Subtitle B of such Act: *Provided further,* That not to exceed the amount provided herein shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: *Provided further,* That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $0.

PUBLIC AND INDIAN HOUSING

HOUSING CERTIFICATE FUND

(RESCISSION)

Of the unobligated balances, including recaptures and carryover, remaining from funds appropriated to the Department of Housing and Urban Development under this heading or the heading "Annual contributions for assisted housing" or any other heading for fiscal year 2004 and prior years, $1,557,000,000 is rescinded, to be effected by the Secretary no later than September 30, 2005: *Provided,* That any such balances governed by reallocation provisions under the statute authorizing the program for which the funds were originally appropriated shall be available for the rescission: *Provided further,* That any obligated balances of contract

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authority from fiscal year 1974 and prior that have been terminated shall be cancelled: *Provided further,* That no amounts recaptured from amounts appropriated in prior years under this heading or the heading "Annual contributions for assisted housing" and no carryover of such appropriated amounts for project-based assistance shall be available for the calendar year 2005 funding cycle for activities provided for under the heading "Tenant-based rental assistance": *Provided further,* That amounts recaptured under this heading or the heading "Annual contributions for assisted housing" from amounts appropriated for project-based section 8 activities may be used for amendments to section 8 project-based subsidy contracts or for performance-based contract administrators, notwithstanding the purposes for which such amounts were appropriated.

DRUG ELIMINATION GRANTS FOR LOW-INCOME HOUSING

(RESCISSION)

Of the unobligated balances remaining from funds appropriated in fiscal year 2001 and prior years under the heading "Drug elimination grants for low-income housing", $5,000,000 are rescinded.

NATIVE AMERICAN HOUSING BLOCK GRANTS

(RESCISSION)

Of the unobligated balances remaining from funds appropriated in fiscal year 2004 and prior years under the heading "Native American housing block grants" for activities related to title VI of NAHASDA, $21,000,000 are rescinded.

INDIAN HOUSING LOAN GUARANTEE PROGRAM ACCOUNT

(RESCISSION)

Of the unobligated balances remaining from funds appropriated in fiscal year 2004 and prior years under the heading "Indian housing loan guarantee fund program account" for activities related to the cost of guaranteed loans, $33,000,000 are rescinded.

HOUSING PROGRAMS

RENTAL HOUSING ASSISTANCE

(RESCISSION)

Of the amounts made available under the heading "Rent Supplement" in Public Law 98–63 for amendments to contracts under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) and section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z–1) in State-aided, non-insured rental housing projects, up to $675,000,000 is cancelled.

FEDERAL HOUSING ADMINISTRATION

GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

(RESCISSION)

Of the unobligated balances remaining from credit subsidy appropriated in fiscal year 2004 and prior years under the heading

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"General and special risk program account", $30,000,000 are rescinded.

ADMINISTRATIVE PROVISIONS

SEC. 201. Fifty percent of the amounts of budget authority, or in lieu thereof 50 percent of the cash amounts associated with such budget authority, that are recaptured from projects described in section 1012(a) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 1437 note) shall be rescinded, or in the case of cash, shall be remitted to the Treasury, and such amounts of budget authority or cash recaptured and not rescinded or remitted to the Treasury shall be used by State housing finance agencies or local governments or local housing agencies with projects approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992, in accordance with such section. Notwithstanding the previous sentence, the Secretary may award up to 15 percent of the budget authority or cash recaptured and not rescinded or remitted to the Treasury to provide project owners with incentives to refinance their project at a lower interest rate.

SEC. 202. None of the amounts made available under this Act may be used during fiscal year 2005 to investigate or prosecute under the Fair Housing Act any otherwise lawful activity engaged in by one or more persons, including the filing or maintaining of a non-frivolous legal action, that is engaged in solely for the purpose of achieving or preventing action by a Government official or entity, or a court of competent jurisdiction.

SEC. 203. (a) Notwithstanding section 854(c)(1)(A) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)(1)(A)), from any amounts made available under this title for fiscal year 2005 that are allocated under such section, the Secretary of Housing and Urban Development shall allocate and make a grant, in the amount determined under subsection (b), for any State that—

(1) received an allocation in a prior fiscal year under clause (ii) of such section; and

(2) is not otherwise eligible for an allocation for fiscal year 2005 under such clause (ii) because the areas in the State outside of the metropolitan statistical areas that qualify under clause (i) in fiscal year 2005 do not have the number of cases of acquired immunodeficiency syndrome (AIDS) required under such clause.

(b) The amount of the allocation and grant for any State described in subsection (a) shall be an amount based on the cumulative number of AIDS cases in the areas of that State that are outside of metropolitan statistical areas that qualify under clause (i) of such section 854(c)(1)(A) in fiscal year 2005, in proportion to AIDS cases among cities and States that qualify under clauses (i) and (ii) of such section and States deemed eligible under subsection (a).

(c) Notwithstanding any other provision of law, the amount allocated for fiscal year 2005 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), to the City of New York, New York, on behalf of the New York-Wayne-White Plains, New York-New Jersey Metropolitan Division (hereafter "metropolitan division") of the New York-Newark-Edison, NY-NJ-PA Metropolitan Statistical Area, shall be adjusted by the Secretary of

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Housing and Urban Development by: (1) allocating to the City of Jersey City, New Jersey, the proportion of the metropolitan area's or division's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan area or division that is located in Hudson County, New Jersey, and adjusting for the proportion of the metropolitan division's high incidence bonus if this area in New Jersey also has a higher than average per capita incidence of AIDS; and (2) allocating to the City of Paterson, New Jersey, the proportion of the metropolitan area's or division's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan area or division that is located in Bergen County and Passaic County, New Jersey, and adjusting for the proportion of the metropolitan division's high incidence bonus if this area in New Jersey also has a higher than average per capita incidence of AIDS. The recipient cities shall use amounts allocated under this subsection to carry out eligible activities under section 855 of the AIDS Housing Opportunity Act (42 U.S.C. 12904) in their respective portions of the metropolitan division that is located in New Jersey.

SEC. 204. (a) During fiscal year 2005, in the provision of rental assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) in connection with a program to demonstrate the economy and effectiveness of providing such assistance for use in assisted living facilities that is carried out in the counties of the State of Michigan specified in subsection (b) of this section, notwithstanding paragraphs (3) and (18)(B)(iii) of such section 8(o), a family residing in an assisted living facility in any such county, on behalf of which a public housing agency provides assistance pursuant to section 8(o)(18) of such Act, may be required, at the time the family initially receives such assistance, to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such a percentage or amount as the Secretary of Housing and Urban Development determines to be appropriate.

(b) The counties specified in this subsection are Oakland County, Macomb County, Wayne County, and Washtenaw County, in the State of Michigan.

SEC. 205. Except as explicitly provided in law, any grant, cooperative agreement or other assistance made pursuant to title II of this Act shall be made on a competitive basis and in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989.

SEC. 206. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Federal Reserve banks or any member thereof, Federal Home Loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811–1831).

SEC. 207. Unless otherwise provided for in this Act or through a reprogramming of funds, no part of any appropriation for the Department of Housing and Urban Development shall be available for any program, project or activity in excess of amounts set forth in the budget estimates submitted to Congress.

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SEC. 208. Corporations and agencies of the Department of Housing and Urban Development which are subject to the Government Corporation Control Act, as amended, are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of such Act as may be necessary in carrying out the programs set forth in the budget for 2005 for such corporation or agency except as hereinafter provided: *Provided,* That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriations Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.

SEC. 209. None of the funds provided in this title for technical assistance, training, or management improvements may be obligated or expended unless HUD provides to the Committees on Appropriations a description of each proposed activity and a detailed budget estimate of the costs associated with each program, project or activity as part of the Budget Justifications. For fiscal year 2005, HUD shall transmit this information to the Committees by March 15, 2005 for 30 days of review.

SEC. 210. The Secretary of Housing and Urban Development shall provide quarterly reports to the House and Senate Committees on Appropriations regarding all uncommitted, unobligated, recaptured and excess funds in each program and activity within the jurisdiction of the Department and shall submit additional, updated budget information to these Committees upon request.

SEC. 211. Notwithstanding any other provision of law, in fiscal year 2005, in managing and disposing of any multifamily property that is owned or held by the Secretary and is occupied primarily by elderly or disabled families, the Secretary of Housing and Urban Development shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 that are attached to any dwelling units in the property. To the extent the Secretary determines that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties or provide other rental assistance.

SEC. 212. (a) Notwithstanding any other provision of law, the amount allocated for fiscal year 2005 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), to the City of Wilmington, Delaware, on behalf of the Wilmington, Delaware-Maryland-New Jersey Metropolitan Division (hereafter "metropolitan division"), shall be adjusted by the Secretary of Housing and Urban Development by allocating to the State of New Jersey the proportion of the metropolitan division's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan division that is located in New Jersey. The State of New Jersey shall use amounts allocated to the State under this subsection to carry out eligible activities under section 855 of the

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AIDS Housing Opportunity Act (42 U.S.C. 12904) in the portion of the metropolitan division that is located in New Jersey.

(b) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall allocate to Wake County, North Carolina, the amounts that otherwise would be allocated for fiscal year 2005 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to the City of Raleigh, North Carolina, on behalf of the Raleigh-Cary, North Carolina Metropolitan Statistical Area. Any amounts allocated to Wake County shall be used to carry out eligible activities under section 855 of such Act (42 U.S.C. 12904) within such metropolitan statistical area.

(c) Notwithstanding section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), the Secretary of Housing and Urban Development may adjust the allocation of the amounts that otherwise would be allocated for fiscal year 2005 under section 854(c) of such Act, upon the written request of an applicant, in conjunction with the State(s), for a formula allocation on behalf of a metropolitan statistical area, to designate the State or States in which the metropolitan statistical area is located as the eligible grantee(s) of the allocation. In the case that a metropolitan statistical area involves more than one State, such amounts allocated to each State shall be in proportion to the number of cases of AIDS reported in the portion of the metropolitan statistical area located in that State. Any amounts allocated to a State under this section shall be used to carry out eligible activities within the portion of the metropolitan statistical area located in that State.

SEC. 213. Notwithstanding any other provision of law, for this fiscal year and every fiscal year thereafter, funds appropriated for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act, shall be available for the cost of maintaining and disposing of such properties that are acquired or otherwise become the responsibility of the Department.

SEC. 214. The Secretary of Housing and Urban Development shall submit an annual report no later than August 30, 2005 and annually thereafter to the House and Senate Committees on Appropriations regarding the number of Federally assisted units under lease and the per unit cost of these units to the Department of Housing and Urban Development.

SEC. 215. The Department of Housing and Urban Development shall submit the Department's fiscal year 2006 congressional budget justifications to the Committees on Appropriations of the House of Representatives and the Senate using the identical structure provided under this Act and only in accordance with the direction specified in the report accompanying this Act.

SEC. 216. That incremental voucher previously made available under the heading "Housing Certificate Fund" for non-elderly disabled families shall, to the extent practicable, continue to be provided to non-elderly disabled families upon turnover.

SEC. 217. The installment contract between the Village of Hanna City, Illinois and the General Services Administration is in the nature of a purchase money mortgage which will be paid off at initial closing. The Department of Housing and Urban Development shall accept the Village of Hanna City, Illinois' holding

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of equitable title to this property as sufficient for the purposes of the section 202 housing program.

SEC. 218. A public housing agency or such other entity that administers Federal housing assistance in the States of Alaska, Iowa, and Mississippi shall not be required to include a resident of public housing or a recipient of assistance provided under section 8 of the United States Housing Act of 1937 on the board of directors or a similar governing board of such agency or entity as required under section (2)(b) of such Act. Each public housing agency or other entity that administers Federal housing assistance under section 8 in the States of Alaska, Iowa and Mississippi shall establish an advisory board of not less than 6 residents of public housing or recipients of section 8 assistance to provide advice and comment to the public housing agency or other administering entity on issues related to public housing and section 8. Such advisory board shall meet not less than quarterly.

SEC. 219. (a) Section 536(b)(1) of the National Housing Act (12 U.S.C. 1735f–14(b)(1)) is amended by adding the following new subparagraph at the end:

"(J) Failure to perform a required physical inspection of the mortgaged property.".

(b) Section 537(c)(1)(B)(ii) of such Act (12 U.S.C. 1735f–15(c)(1)(B)(ii)) is amended by inserting after "rents," the following: "other revenues, or contract rights,".

(c) Section 537(c)(1)(B)(x) of such Act (12 U.S.C. 1735f–15(c)(1)(B)(x)) is amended to read as follows:

"(x) Failure to furnish the Secretary, by the expiration of the 90-day period beginning on the first day after the completion of each fiscal year (unless the Secretary has approved an extension of the 90-day period in writing), with a complete annual financial report, in accordance with requirements prescribed by the Secretary, including requirements that the report be—

"(I) based upon an examination of the books and records of the mortgagor;

"(II) prepared and certified to by an independent public accountant or a certified public accountant (unless the Secretary has waived this requirement in writing); and

"(III) certified to by the mortgagor or an authorized representative of the mortgagor.

"The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this clause is due to events beyond the control of the mortgagor.".

SEC. 220. Section 421 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715z–4a) is amended—

(1) in subsection (a)(1)(A), by inserting after "project" the following: ", nursing home, intermediate care facility, board and care home, assisted living facility, or hospital";

(2) in subsection (a)(1)(B), by inserting after "is" the following: "or, at the time of the violations, was";

(3) in the second sentence of subsection(a)(1), by striking "project" and inserting "property";

(4) in subsection (a)(2) by striking "which" and all that follows through "any owner" and inserting the following: "that

owns or operates a property, as identified in the regulatory agreement, including but not limited to—

"(A) any stockholder holding 25 percent or more interest of a corporation that owns that property;

"(B) any beneficial owner of the property under any business or trust;

"(C) any officer, director, or partner of an entity owning or controlling the property;

"(D) any nursing home lessee or operator;

"(E) any hospital lessee or operator;

"(F) any other person or entity that controls the property regardless of that person or entity's official relationship to the property; and

"(G) any heir, assignee, successor in interest, or agent of any person or entity described in the preceding subparagraphs";

(5) in subsection (c), by striking "project" the first two places it appears and inserting "property"; and

(6) in subsection (d), by striking "project" and inserting "a property's".

SEC. 221. Section 204(h) of the National Housing Act (12 U.S.C. 1710(h)) is amended—

(1) in paragraph (2)—

(A) by striking "following assets of the Secretary" and inserting "following categories of assets of the Secretary, unless the Secretary determines at any time that the asset property is economically or otherwise infeasible to rehabilitate or that the best use of the asset property is as open space (including park land)";

(B) in subparagraph (B)(ii), by inserting after "Act" the following: "except for mortgages insured under or made pursuant to sections 235, 247, or 255"; and

(C) by striking subparagraph (C);

(2) in the second sentence of paragraph (3), by inserting after "government" the following: ", States, and Indian tribes";

(3) in paragraph (4)—

(A) in subparagraph (A)(i), by inserting after "government" the following: ", State, or Indian tribe";

(B) by revising subparagraph (B)(ii) to read as follows:

"(ii) purchases all assets of the Secretary in the category or categories of eligible assets set forth in the sale agreement required under paragraph (7) that, at any time during the period which shall be set forth in the sale agreement—

"(I) are or become eligible for purchase under this subsection; and

"(II) are located in the asset control area of the purchaser; and"; and

(C) in subparagraph (C), by striking "purchase of eligible assets under" and inserting "purchase of the category or categories of eligible assets set forth in the sale agreement under";

(4) in paragraph (6)—

(A) by revising subparagraph (C) to read as follows:

"(C) DISCOUNTS.—The Secretary, in the sole discretion of the Secretary, shall establish the discount under this

paragraph for an eligible asset. In determining the discount, the Secretary may consider the condition of the asset property, the extent of resources available to the preferred purchaser, the comprehensive revitalization plan undertaken by such purchaser, the financial safety and soundness of the Mutual Mortgage Insurance Fund, and any other circumstances the Secretary considers appropriate"; and

(B) by striking subparagraph (D);

(5) in paragraph (7)(A), by striking "eligible assets to be purchased and the interests sold" and inserting "category or categories of eligible assets to be purchased and, based on the purchaser's capacity to manage and dispose of assets, the maximum number of assets owned by the Secretary at the time the sale agreement is executed that shall be sold to the purchaser"; and

(6) in paragraph (8)—

(A) in subparagraph (F), by inserting after "State" the following: ", and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the jurisdiction with regard to the provisions of this subsection"; and

(B) by adding the following new subparagraphs at the end:

"(G) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to provisions of this subjection.

"(H) INDIAN TRIBE.—The term 'Indian tribe' has the same meaning as in section 248(i)(I) of this Act.".

SEC. 222. Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)), as amended, is further amended in paragraph (1) by striking "subsections (n) and (k)" and inserting "subsection (n)" and striking "or (k)".

SEC. 223. Section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)) is amended in the last sentence after "subparagraph" by inserting the following: ", provided that the mortgagor refinances the unpaid principal obligation under title II of this Act". This provision shall apply to loans that become insured on or after date of enactment of this Act.

SEC. 224. The portion of any athletic scholarship assistance that is available for housing costs shall be considered adjusted income for purposes of section 3(b)(5) of the United States Housing Act of 1937. The Secretary of Housing and Urban Development shall by notice establish criteria under which persons who receive athletic scholarship assistance may be denied housing assistance under the United States Housing Act of 1937.

SEC. 225. The funds made available for Native Alaskans under the heading "Native American Housing Block Grants" in title II of this Act shall be allocated to the same Native Alaskan housing block grant recipients that received funds in fiscal year 2004.

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TITLE III—INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; not to exceed $7,500 for official reception and representation expenses; and insurance of official motor vehicles in foreign countries, when required by law of such countries, $41,100,000, to remain available until expended.

FOREIGN CURRENCY FLUCTUATIONS ACCOUNT

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, $12,000,000, to remain available until expended, for purposes authorized by 36 U.S.C. 2109.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

SALARIES AND EXPENSES

For necessary expenses in carrying out activities pursuant to section 112(r)(6) of the Clean Air Act, as amended, including hire of passenger vehicles, uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902, and for services authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376, $9,100,000: *Provided,* That the Chemical Safety and Hazard Investigation Board (Board) shall have not more than three career Senior Executive Service positions: *Provided further,* That notwithstanding any other provision of law, the individual appointed to the position of Inspector General of the Environmental Protection Agency (EPA) shall, by virtue of such appointment, also hold the position of Inspector General of the Board: *Provided further,* That notwithstanding any other provision of law, the Inspector General of the Board shall utilize personnel of the Office of Inspector General of EPA in performing the duties of the Inspector General of the Board, and shall not appoint any individuals to positions within the Board.

EMERGENCY FUND

For necessary expenses of the Chemical Safety and Hazard Investigation Board for accident investigations not otherwise provided for, $400,000, to remain available until expended.

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DEPARTMENT OF THE TREASURY

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT

To carry out the Community Development Banking and Financial Institutions Act of 1994, including services authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for ES–3, $55,522,000, to remain available until September 30, 2006, of which $4,000,000 shall be for financial assistance, technical assistance, training and outreach programs designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers, and up to $14,900,000 may be used for administrative expenses, including administration of the New Markets Tax Credit, up to $6,000,000 may be used for the cost of direct loans, and up to $250,000 may be used for administrative expenses to carry out the direct loan program: *Provided,* That the cost of direct loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $11,000,000.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable under 5 U.S.C. 5376, purchase of nominal awards to recognize non-Federal officials' contributions to Commission activities, and not to exceed $500 for official reception and representation expenses, $62,650,000.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

NATIONAL AND COMMUNITY SERVICE PROGRAMS OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Corporation for National and Community Service (the "Corporation") in carrying out programs, activities, and initiatives under the National and Community Service Act of 1990 (the "Act") (42 U.S.C. 12501 et seq.), $545,884,000, to remain available until September 30, 2006: *Provided,* That not more than $290,000,000 of the amount provided under this heading shall be available for grants under the National Service Trust Program authorized under subtitle C of title I of the Act (42 U.S.C. 12571 et seq.) (relating to activities of the AmeriCorps program), including grants to organizations operating projects under the AmeriCorps Education Awards Program (without

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regard to the requirements of sections 121(d) and (e), section 131(e), section 132, and sections 140(a), (d), and (e) of the Act): *Provided further,* That not less than $144,000,000 of the amount provided under this heading, to remain available without fiscal year limitation, shall be transferred to the National Service Trust for educational awards authorized under subtitle D of title I of the Act (42 U.S.C. 12601), of which up to $3,900,000 shall be available to support national service scholarships for high school students performing community service, and of which $13,000,000 shall be held in reserve as defined in Public Law 108–45: *Provided further,* That in addition to amounts otherwise provided to the National Service Trust under the second proviso, the Corporation may transfer funds from the amount provided under the first proviso, to the National Service Trust authorized under subtitle D of title I of the Act (42 U.S.C. 12601) upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to Congress: *Provided further,* That of the amount provided under this heading for grants under the National Service Trust program authorized under subtitle C of title I of the Act, not more than $55,000,000 may be used to administer, reimburse, or support any national service program authorized under section 121(d)(2) of such Act (42 U.S.C. 12581(d)(2)): *Provided further,* That not more than $13,334,000 shall be available for quality and innovation activities authorized under subtitle H of title I of the Act (42 U.S.C. 12853 et seq.), of which $4,000,000 shall be available for challenge grants to nonprofit organizations: *Provided further,* That notwithstanding subtitle H of title I of the Act (42 U.S.C. 12853), none of the funds provided under the previous proviso shall be used to support salaries and related expenses (including travel) attributable to Corporation employees: *Provided further,* That to the maximum extent feasible, funds appropriated under subtitle C of title I of the Act shall be provided in a manner that is consistent with the recommendations of peer review panels in order to ensure that priority is given to programs that demonstrate quality, innovation, replicability, and sustainability: *Provided further,* That $25,500,000 of the funds made available under this heading shall be available for the Civilian Community Corps authorized under subtitle E of title I of the Act (42 U.S.C. 12611 et seq.): *Provided further,* That $43,000,000 shall be available for school-based and community-based service-learning programs authorized under subtitle B of title I of the Act (42 U.S.C. 12521 et seq.): *Provided further,* That $3,550,000 shall be available for audits and other evaluations authorized under section 179 of the Act (42 U.S.C. 12639): *Provided further,* That $10,000,000 of the funds made available under this heading shall be made available for the Points of Light Foundation for activities authorized under title III of the Act (42 U.S.C. 12661 et seq.), of which not more than $2,500,000 may be used to support an endowment fund, the corpus of which shall remain intact and the interest income from which shall be used to support activities described in title III of the Act, provided that the Foundation may invest the corpus and income in federally insured bank savings accounts or comparable interest bearing accounts, certificates of deposit, money market funds, mutual funds, obligations of the United States, and other market instruments and securities but not in real estate investments: *Provided further,* That no funds shall be available for national service programs run by Federal

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agencies authorized under section 121(b) of such Act (42 U.S.C. 12571(b)): *Provided further,* That $4,500,000 of the funds made available under this heading shall be made available to America's Promise—The Alliance for Youth, Inc.: *Provided further,* That to the maximum extent practicable, the Corporation shall increase significantly the level of matching funds and in-kind contributions provided by the private sector, and shall reduce the total Federal costs per participant in all programs.

SALARIES AND EXPENSES

For necessary expenses of administration as provided under section 501(a)(4) of the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, the employment of experts and consultants authorized under 5 U.S.C. 3109, and not to exceed $2,500 for official reception and representation expenses, $26,000,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $6,000,000, to remain available until September 30, 2006.

ADMINISTRATIVE PROVISIONS

Notwithstanding any other provision of law, the term "qualified student loan" with respect to national service education awards shall mean any loan determined by an institution of higher education to be necessary to cover a student's cost of attendance at such institution and made, insured, or guaranteed directly to a student by a State agency, in addition to other meanings under section 148(b)(7) of the National and Community Service Act.

Notwithstanding any other provision of law, funds made available under section 129(d)(5)(B) of the National and Community Service Act to assist entities in placing applicants who are individuals with disabilities may be provided to any entity that receives a grant under section 121 of the Act.

The Inspector General of the Corporation for National and Community Service shall conduct random audits of the grantees that administer activities under the AmeriCorps programs and shall levy sanctions in accordance with standard Inspector General audit resolution procedures which include, but are not limited to, debarment of any grantee (or successor in interest or any entity with substantially the same person or persons in control) that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs, including any grantee that has been determined to have violated the prohibition of using Federal funds to lobby the Congress: *Provided,* That the Inspector General shall obtain reimbursements in the amount of any misused funds from any grantee that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs.

For fiscal year 2005, the Corporation shall make any significant changes to program requirements or policy only through public notice and comment rulemaking. For fiscal year 2005, during any

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grant selection process, no officer or employee of the Corporation shall knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of the Corporation that is authorized by the Corporation to receive such information.

U.S. Court of Appeals for Veterans Claims

SALARIES AND EXPENSES

For necessary expenses for the operation of the United States Court of Appeals for Veterans Claims as authorized by 38 U.S.C. 7251–7298, $17,250,000, of which $1,100,000 shall be available for the purpose of providing financial assistance as described, and in accordance with the process and reporting procedures set forth, under this heading in Public Law 102–229.

Department of Defense—Civil

Cemeterial Expenses, Army

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase of one passenger motor vehicle for replacement only, and not to exceed $1,000 for official reception and representation expenses, $29,600,000, to remain available until expended.

Department of Health and Human Services

National Institutes of Health

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For necessary expenses for the National Institute of Environmental Health Sciences in carrying out activities set forth in section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and section 126(g) of the Superfund Amendments and Reauthorization Act of 1986, $80,486,000.

Agency for Toxic Substances and Disease Registry

TOXIC SUBSTANCES AND ENVIRONMENTAL PUBLIC HEALTH

For necessary expenses for the Agency for Toxic Substances and Disease Registry (ATSDR) in carrying out activities set forth in sections 104(i), 111(c)(4), and 111(c)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended; section 118(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended; and section 3019 of the Solid Waste Disposal Act, as amended, $76,654,000: *Provided,* That notwithstanding any other provision of law, in lieu of performing a health assessment under section 104(i)(6) of CERCLA, the Administrator of ATSDR may conduct other appropriate health studies, evaluations, or activities,

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including, without limitation, biomedical testing, clinical evaluations, medical monitoring, and referral to accredited health care providers: *Provided further,* That in performing any such health assessment or health study, evaluation, or activity, the Administrator of ATSDR shall not be bound by the deadlines in section 104(i)(6)(A) of CERCLA: *Provided further,* That none of the funds appropriated under this heading shall be available for ATSDR to issue in excess of 40 toxicological profiles pursuant to section 104(i) of CERCLA during fiscal year 2005, and existing profiles may be updated as necessary.

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE AND TECHNOLOGY

(INCLUDING TRANSFER OF FUNDS)

For science and technology, including research and development activities, which shall include research and development activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; necessary expenses for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; procurement of laboratory equipment and supplies; other operating expenses in support of research and development; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $85,000 per project, $750,061,000, which shall remain available until September 30, 2006: *Provided*, That of the amounts made available under this heading $1,000,000 shall be transferred to the Office of Environmental Quality Management fund.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

For environmental programs and management, including necessary expenses, not otherwise provided for, for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $85,000 per project; and not to exceed $9,000 for official reception and representation expenses, $2,313,409,000, which shall remain available until September 30, 2006, including administrative costs of the brownfields program under the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, and for construction, alteration, repair, rehabilitation,

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and renovation of facilities, not to exceed $85,000 per project, $38,000,000, to remain available until September 30, 2006.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of, or for use by, the Environmental Protection Agency, $39,000,000, to remain available until expended.

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including sections 111(c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $85,000 per project; $1,257,537,000, to remain available until expended, consisting of such sums as are available in the Trust Fund upon the date of enactment of this Act as authorized by section 517(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and up to $1,257,537,000 as a payment from general revenues to the Hazardous Substance Superfund for purposes as authorized by section 517(b) of SARA, as amended: *Provided,* That funds appropriated under this heading may be allocated to other Federal agencies in accordance with section 111(a) of CERCLA: *Provided further,* That of the funds appropriated under this heading, $13,000,000 shall be transferred to the "Office of Inspector General" appropriation to remain available until September 30, 2006, and $36,097,000 shall be transferred to the "Science and technology" appropriation to remain available until September 30, 2006.

LEAKING UNDERGROUND STORAGE TANK PROGRAM

For necessary expenses to carry out leaking underground storage tank cleanup activities authorized by section 205 of the Superfund Amendments and Reauthorization Act of 1986, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $85,000 per project, $70,000,000, to remain available until expended.

OIL SPILL RESPONSE

For expenses necessary to carry out the Environmental Protection Agency's responsibilities under the Oil Pollution Act of 1990, $16,000,000, to be derived from the Oil Spill Liability trust fund, to remain available until expended.

STATE AND TRIBAL ASSISTANCE GRANTS

For environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance partnership grants, $3,604,182,000, to remain available until expended, of which $1,100,000,000 shall be for making capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended (the "Act"), of which up to $50,000,000 shall be available for loans, including interest free loans as authorized by 33 U.S.C.

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1383(d)(1)(A), to municipal, inter-municipal, interstate, or State agencies or nonprofit entities for projects that provide treatment for or that minimize sewage or stormwater discharges using one or more approaches which include, but are not limited to, decentralized or distributed stormwater controls, decentralized wastewater treatment, low-impact development practices, conservation easements, stream buffers, or wetlands restoration; $850,000,000 shall be for capitalization grants for the Drinking Water State Revolving Funds under section 1452 of the Safe Drinking Water Act, as amended, except that, notwithstanding section 1452(n) of the Safe Drinking Water Act, as amended, none of the funds made available under this heading in this Act, or in previous appropriations Acts, shall be reserved by the Administrator for health effects studies on drinking water contaminants; $50,000,000 shall be for architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission; $45,000,000 shall be for grants to the State of Alaska to address drinking water and waste infrastructure needs of rural and Alaska Native Villages: *Provided,* That, of these funds: (1) the State of Alaska shall provide a match of 25 percent; (2) no more than 5 percent of the funds may be used for administrative and overhead expenses; and (3) not later than October 1, 2005 the State of Alaska shall make awards consistent with the State-wide priority list established in 2004 for all water, sewer, waste disposal, and similar projects carried out by the State of Alaska that are funded under section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) or the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) which shall allocate not less than 25 percent of the funds provided for projects in regional hub communities; $4,000,000 shall be for remediation of above ground leaking fuel tanks pursuant to Public Law 106–554; $309,925,000 shall be for making grants for the construction of drinking water, wastewater and storm water infrastructure and for water quality protection in accordance with the terms and conditions specified for such grants in the joint explanatory statement of the managers accompanying this Act, and, for purposes of these grants, each grantee shall contribute not less than 45 percent of the cost of the project unless the grantee is approved for a waiver by the Agency; $90,000,000 shall be to carry out section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including grants, interagency agreements, and associated program support costs; $7,500,000 for a cost-shared grant program to school districts for necessary upgrades of their diesel bus fleets; and $1,145,757,000 shall be for grants, including associated program support costs, to States, federally recognized tribes, interstate agencies, tribal consortia, and air pollution control agencies for multi-media or single media pollution prevention, control and abatement and related activities, including activities pursuant to the provisions set forth under this heading in Public Law 104–134, and for making grants under section 103 of the Clean Air Act for particulate matter monitoring and data collection activities of which and subject to terms and conditions specified by the Administrator, of which $50,000,000 shall be for carrying out section 128 of CERCLA, as amended, and $19,500,000 shall be for Environmental Information Exchange Network grants,

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including associated program support costs, and $18,000,000 shall be for making competitive targeted watershed grants: *Provided further*, That for fiscal year 2005, State authority under section 302(a) of Public Law 104–182 shall remain in effect: *Provided further*, That notwithstanding section 603(d)(7) of the Act, the limitation on the amounts in a State water pollution control revolving fund that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in fiscal year 2005 and prior years where such amounts represent costs of administering the fund to the extent that such amounts are or were deemed reasonable by the Administrator, accounted for separately from other assets in the fund, and used for eligible purposes of the fund, including administration: *Provided further,* That for fiscal year 2005, and notwithstanding section 518(f) of the Act, the Administrator is authorized to use the amounts appropriated for any fiscal year under section 319 of that Act to make grants to Indian tribes pursuant to sections 319(h) and 518(e) of that Act: *Provided further,* That for fiscal year 2005, notwithstanding the limitation on amounts in section 518(c) of the Act, up to a total of 1½ percent of the funds appropriated for State Revolving Funds under title VI of that Act may be reserved by the Administrator for grants under section 518(c) of such Act: *Provided further,* That no funds provided by this legislation to address the water, wastewater and other critical infrastructure needs of the colonias in the United States along the United States-Mexico border shall be made available to a county or municipal government unless that government has established an enforceable local ordinance, or other zoning rule, which prevents in that jurisdiction the development or construction of any additional colonia areas, or the development within an existing colonia the construction of any new home, business, or other structure which lacks water, wastewater, or other necessary infrastructure: *Provided further,* That the referenced statement of the managers under this heading in Public Law 108–7, in reference to item number 471, is deemed to be amended by striking everything after "for" and inserting the following: "for water infrastructure improvements": *Provided further*, That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 22, is deemed to be amended by striking everything after "22." and inserting the following: "$200,000 to Jackson County, Alabama, for water system improvements and $200,000 to the City of Muscle Shoals, Alabama, for water and sewer infrastructure improvements": *Provided further*, That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 158, is deemed to be amended by inserting "water and" after "for": *Provided further*, That the referenced statement of the managers under this heading in Public Law 107–73 is deemed to be amended by striking "Southeast" in reference to item 9 and inserting "Southwest": *Provided further*, That the referenced statement of the managers under this heading in Public Law 107–73, in reference to item number 103, is deemed to be amended by striking everything after the word "for", and adding, "the City of Chicago, Illinois for water infrastructure improvements at the Thomas Jefferson and Lakeview Pumping Stations": *Provided further,* That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 484, is deemed to be amended by striking "City of Norfolk" and inserting

"Portsmouth Virginia": *Provided further,* That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 283, is deemed to be amended by striking "City of Kalispell, Montana" and inserting "Flathead County Water and Sewer District No. 1—Evergreen": *Provided further,* That the referenced statement of managers under this heading in Public Law 108–7, in reference to item number 139, is deemed to be amended by striking "State of Hawaii Health Department" and inserting "County of Hawaii": *Provided further,* That the referenced statement of managers under this heading in Public Law 108–199, in reference to item number 148, is deemed to be amended by striking everything after the word "for" and inserting "the replacement of cesspools in Hawaii, $250,000 to the City and County of Honolulu for Varona Village, $500,000 to the County of Hawaii and the remainder to the Housing and Community Development Corporation of Hawaii;": *Provided further,* That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 388, is deemed to be amended by striking everything after the word "for" and inserting "the Southeast Water Treatment Plant in Lawton, Oklahoma for water and wastewater infrastructure improvements;": *Provided further,* That the referenced statement of the managers under this heading in Public Law 106–377, in reference to item number 46, is deemed to be amended by striking "to construct pump stations, force mains, storage lagoons and spray irrigation facility", and inserting "for wastewater treatment improvements": *Provided further*, That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 409, is deemed to be amended by striking "City of" and "Pennsylvania": *Provided further,* That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 265, is deemed to be amended by striking "Franklin County", and inserting "Okhissa Lake Sewer District": *Provided further,* That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 322, is deemed to be amended by inserting "and water" after "wastewater": *Provided further,* That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 173, is deemed to be amended by inserting "planning, design and" prior to "construction": *Provided further,* notwithstanding any other provision of law, the Environmental Protection Agency and the New York State Department of Environmental Conservation are authorized to award a $2,000,000 grant to the Town of Wheatfield, Niagara County, New York for the construction of sanitary collector sewers from funds realloted to the State of New York under title II of the Clean Water Act: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108–199, in reference to item number 184, is deemed to be amended by striking "be divided equally between" and by striking "and" and inserting in place of "and", "or".

ADMINISTRATIVE PROVISIONS

For fiscal year 2005, notwithstanding 31 U.S.C. 6303(1) and 6305(1), the Administrator of the Environmental Protection Agency, in carrying out the Agency's function to implement directly Federal environmental programs required or authorized by law in the absence of an acceptable tribal program, may award cooperative

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agreements to federally-recognized Indian Tribes or Intertribal consortia, if authorized by their member Tribes, to assist the Administrator in implementing Federal environmental programs for Indian Tribes required or authorized by law, except that no such cooperative agreements may be awarded from funds designated for State financial assistance agreements.

The Administrator of the Environmental Protection Agency is authorized to collect and obligate pesticide registration service fees in accordance with section 33 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by subsection (f)(2) of the Pesticide Registration Improvement Act of 2003), as amended.

Notwithstanding CERCLA 104(k)(4)(B)(i)(IV), appropriated funds for fiscal year 2005 may be used to award grants or loans under section 104(k) of CERCLA to eligible entities that satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was prior to the date of enactment of the Small Business Liability Relief and Brownfield Revitalization Act of 2001.

The Administrator may hereafter receive and use funds contributed by a non-Federal sponsor as its share of the cost of a project to carry out a project under paragraph (c)(12) of section 118 of the Federal Water Pollution Control Act, as amended.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, not to exceed $2,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, $6,379,000.

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses to continue functions assigned to the Council on Environmental Quality and Office of Environmental Quality pursuant to the National Environmental Policy Act of 1969, the Environmental Quality Improvement Act of 1970, and Reorganization Plan No. 1 of 1977, and not to exceed $750 for official reception and representation expenses, $3,284,000: *Provided,* That notwithstanding section 202 of the National Environmental Policy Act of 1970, the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $30,125,000, to be derived from the Bank Insurance

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Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund.

GENERAL SERVICES ADMINISTRATION

FEDERAL CITIZEN INFORMATION CENTER FUND

For necessary expenses of the Federal Citizen Information Center, including services authorized by 5 U.S.C. 3109, $14,907,000, to be deposited into the Federal Citizen Information Center Fund: *Provided,* That the appropriations, revenues, and collections deposited into the Fund shall be available for necessary expenses of Federal Citizen Information Center activities in the aggregate amount not to exceed $27,000,000. Appropriations, revenues, and collections accruing to this Fund during fiscal year 2005 in excess of such amount shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS

OPERATING EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms, and the employment of experts and consultants under section 3109 of title 5, United States Code) of the United States Interagency Council on Homelessness in carrying out the functions pursuant to title II of the McKinney-Vento Homeless Assistance Act, as amended, $1,500,000.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SCIENCE, AERONAUTICS AND EXPLORATION

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of science, aeronautics and exploration research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $7,742,550,000, to remain available until September 30, 2006, of which amounts as determined by the Administrator for salaries and benefits; training, travel and awards; facility and related costs; information technology services; science, engineering, fabricating and testing services; and other administrative services may be transferred to "Exploration

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capabilities" in accordance with section 312(b) of the National Aeronautics and Space Act of 1958, as amended by Public Law 106–377.

EXPLORATION CAPABILITIES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of exploration capabilities research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $8,425,850,000, to remain available until September 30, 2006, of which amounts as determined by the Administrator for salaries and benefits; training, travel and awards; facility and related costs; information technology services; science, engineering, fabricating and testing services; and other administrative services may be transferred to "Science, aeronautics and exploration" in accordance with section 312(b) of the National Aeronautics and Space Act of 1958, as amended by Public Law 106–377.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $31,600,000.

ADMINISTRATIVE PROVISIONS

Notwithstanding the limitation on the availability of funds appropriated for "Science, aeronautics and exploration", or "Exploration capabilities" by this appropriations Act, when any activity has been initiated by the incurrence of obligations for construction of facilities or environmental compliance and restoration activities as authorized by law, such amount available for such activity shall remain available until expended. This provision does not apply to the amounts appropriated for institutional minor revitalization and construction of facilities, and institutional facility planning and design.

Notwithstanding the limitation on the availability of funds appropriated for "Science, aeronautics and exploration", or "Exploration capabilities" by this appropriations Act, the amounts appropriated for construction of facilities shall remain available until September 30, 2007.

The unexpired balances of prior appropriations to NASA for activities for which funds are provided under this Act may be transferred to the new account established for the appropriation

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that provides such activity under this Act. Balances so transferred may be merged with funds in the newly established account and thereafter may be accounted for as one fund under the same terms and conditions but shall remain available for the same period of time as originally appropriated.

From amounts made available in this Act for these activities, subject to the operating plan procedures of the House and Senate Committees on Appropriations, the Administrator may transfer amounts between the "Science, aeronautics, and exploration" account and the "Exploration capabilities" account.

Funds for announced prizes otherwise authorized shall remain available, without fiscal year limitation, until the prize is claimed or the offer is withdrawn. Funding shall not be made available for Centennial Challenges unless authorized.

Funding made available under the headings "Exploration capabilities" and "Science, aeronautics, and exploration" in this Act shall be governed by the terms and conditions specified in the statement of managers except to the extent changes are made in accordance with the operating plan procedures of the House and Senate Committees on Appropriations.

NATIONAL CREDIT UNION ADMINISTRATION

CENTRAL LIQUIDITY FACILITY

During fiscal year 2005, gross obligations of the Central Liquidity Facility for the principal amount of new direct loans to member credit unions, as authorized by 12 U.S.C. 1795 et seq., shall not exceed $1,500,000,000: *Provided,* That administrative expenses of the Central Liquidity Facility in fiscal year 2005 shall not exceed $310,000.

COMMUNITY DEVELOPMENT REVOLVING LOAN FUND

For the Community Development Revolving Loan Fund program as authorized by 42 U.S.C. 9812, 9822, and 9910, $1,000,000 shall be available: *Provided*, That of this amount $200,000, together with amounts of principal and interest on loans repaid, is available until expended for loans to community development credit unions, and $800,000 is available until September 30, 2006, for technical assistance to low-income and community development credit unions.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For necessary expenses in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881); services as authorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; acquisition of aircraft; $4,254,593,000, of which not to exceed $350,000,000 shall remain available until expended for Polar research and operations support, and for reimbursement to other Federal agencies for operational and science support and logistical and other related activities for the United States Antarctic program; the balance to remain available until September 30, 2006: *Provided,* That receipts for scientific support services and materials furnished by the National Research Centers and other National Science

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Foundation supported research facilities may be credited to this appropriation: *Provided further,* That to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: *Provided further,* That $95,000,000 of the funds available under this heading shall be made available for a comprehensive research initiative on plant genomes for economically significant crops: *Provided further,* That, not to exceed $25,954,000 of these funds shall be for all costs, direct and indirect, associated with personnel assignments under the Intergovernmental Personnel Act.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For necessary expenses for the acquisition, construction, commissioning, and upgrading of major research equipment, facilities, and other such capital assets pursuant to the National Science Foundation Act of 1950, as amended, including authorized travel, $175,050,000, to remain available until expended.

EDUCATION AND HUMAN RESOURCES

For necessary expenses in carrying out science and engineering education and human resources programs and activities pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), including services as authorized by 5 U.S.C. 3109, and rental of conference rooms in the District of Columbia, $848,207,000, to remain available until September 30, 2006: *Provided,* That to the extent that the amount of this appropriation is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: *Provided further,* That not to exceed $5,500,000 of these funds shall be for all costs, direct and indirect, associated with personnel assignments under the Intergovernmental Personnel Act.

SALARIES AND EXPENSES

For salaries and expenses necessary in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875); services authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed $9,000 for official reception and representation expenses; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; rental of conference rooms in the District of Columbia; and reimbursement of the General Services Administration for security guard services; $225,000,000: *Provided,* That contracts may be entered into under "Salaries and expenses" in fiscal year 2005 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year.

OFFICE OF THE NATIONAL SCIENCE BOARD

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code)

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involved in carrying out section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) and Public Law 86–209 (42 U.S.C. 1880 et seq.), $4,000,000: *Provided,* That not more than $9,000 shall be available for official reception and representation expenses.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General as authorized by the Inspector General Act of 1978, as amended, $10,110,000, to remain available until September 30, 2006.

NEIGHBORHOOD REINVESTMENT CORPORATION

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107), $115,000,000, of which $5,000,000 shall be for a multi-family rental housing program.

SELECTIVE SERVICE SYSTEM

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by 5 U.S.C. 4101–4118 for civilian employees; purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed $750 for official reception and representation expenses; $26,300,000: *Provided,* That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever the President deems such action to be necessary in the interest of national defense: *Provided further,* That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States.

WHITE HOUSE COMMISSION ON THE NATIONAL MOMENT OF REMEMBRANCE

For necessary expenses of the White House Commission on the National Moment of Remembrance, $250,000.

TITLE IV—GENERAL PROVISIONS

SEC. 401. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 402. No funds appropriated by this Act may be expended—

(1) pursuant to a certification of an officer or employee of the United States unless—

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made; or

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(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Officer or is specifically exempt by law from such audit.

SEC. 403. None of the funds provided in this Act to any department or agency may be obligated or expended for: (1) the transportation of any officer or employee of such department or agency between the domicile and the place of employment of the officer or employee, with the exception of an officer or employee authorized such transportation under 31 U.S.C. 1344 or 5 U.S.C. 7905; or (2) to provide a cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

SEC. 404. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals not specifically solicited by the Government: *Provided,* That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

SEC. 405. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

SEC. 406. None of the funds provided in this Act may be used to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings. Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.).

SEC. 407. Except as otherwise provided under existing law, or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are: (1) a matter of public record and available for public inspection; and (2) thereafter included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

SEC. 408. None of the funds appropriated in this Act may be used to implement any cap on reimbursements to grantees for indirect costs, except as published in Office of Management and Budget Circular A–21.

SEC. 409. Such sums as may be necessary for fiscal year 2005 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

SEC. 410. (a) It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act,

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the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by Congress.

SEC. 411. None of the funds made available in this Act may be used for any program, project, or activity, when it is made known to the Federal entity or official to which the funds are made available that the program, project, or activity is not in compliance with any Federal law relating to risk assessment, the protection of private property rights, or unfunded mandates.

SEC. 412. Except in the case of entities that are funded solely with Federal funds or any natural persons that are funded under this Act, none of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties to lobby or litigate in respect to adjudicatory proceedings funded in this Act. A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

SEC. 413. No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before Congress, except in presentation to Congress itself.

SEC. 414. All departments and agencies funded under this Act are encouraged, within the limits of the existing statutory authorities and funding, to expand their use of "E-Commerce" technologies and procedures in the conduct of their business practices and public service activities.

SEC. 415. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 416. None of the funds provided in this Act to any department or agency shall be obligated or expended to procure passenger automobiles as defined in 15 U.S.C. 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

SEC. 417. Section 313 of the National Aeronautics and Space Act of 1958, as amended, is further amended in subsection (a)—

(1) by striking "2004" and inserting "2005"; and

(2) by striking "Space flight capabilities" and inserting "Exploration capabilities".

SEC. 418. None of the funds made available in this Act may be used to implement any policy prohibiting the Directors of the Veterans Integrated Service Networks from conducting outreach or marketing to enroll new veterans within their respective Networks.

SEC. 419. It is the sense of Congress that no veteran should wait more than 30 days for an initial doctor's appointment.

SEC. 420. None of the funds made available to NASA in this Act may be used for voluntary separation incentive payments as provided for in subchapter II of chapter 35 of title 5, United States Code, unless the Administrator of NASA has first certified to Congress that such payments would not result in the loss of skills

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related to the safety of the Space Shuttle or the International Space Station or to the conduct of independent safety oversight in the National Aeronautics and Space Administration.

SEC. 421. (a) TREATMENT OF PIONEER HOMES IN ALASKA AS STATE HOME FOR VETERANS.—For this fiscal year and each fiscal year hereafter, the Secretary of Veterans Affairs may—

(1) treat the Pioneer Homes in the State of Alaska collectively as a single State home for veterans for purposes of section 1741 of title 38, United States Code; and

(2) make per diem payments to the State of Alaska for care provided to veterans in the Pioneer Homes in accordance with the provisions of that section.

(b) TREATMENT NOTWITHSTANDING NON-VETERAN RESIDENCY.—The Secretary may treat the Pioneer Homes as a State home under subsection (a) notwithstanding the residency of non-veterans in one or more of the Pioneer Homes.

(c) PIONEER HOMES DEFINED.—In this section, the term "Pioneer Homes" means the six regional homes in the State of Alaska known as Pioneer Homes, which are located in the following:

(1) Anchorage, Alaska.
(2) Fairbanks, Alaska.
(3) Juneau, Alaska.
(4) Ketchikan, Alaska.
(5) Palmer, Alaska.
(6) Sitka, Alaska.

(d) LIMITATION.—The number of beds occupied by veterans collectively in the six Pioneer Homes listed under subsection (c) for which per diem would be paid under this authority shall not exceed the number of veterans in State beds that otherwise would be permitted in Alaska under the Department of Veterans Affairs State home regulations governing the number of beds per veteran population.

SEC. 422. Of the amounts available to the National Aeronautics and Space Administration, such sums as may be necessary for the benefit of the families of the astronauts who died on board the Space Shuttle Columbia on February 1, 2003, are available under the terms of section 203(c)(13) of the National Aeronautics and Space Act of 1958, as amended, independent of the limitations established therein.

SEC. 423. Section 428 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004 is amended—

(1) in subsection (c), by inserting "new" before "spark ignition engines"; and

(2) in subsection (d), by striking "The prohibition in subsection (e)" and inserting "The prohibition in subsection (c)".

SEC. 424. In addition to the amounts otherwise provided in this or any other Act for fiscal year 2005, for "Department of Housing and Urban Development, Community Development Fund", $31,000,000 to remain available until expended for a grant to The Hudson River Park Trust for planning, design and reconstruction of Pier 86 in New York City.

SEC. 425. From within funds available to the Secretary of Veterans Affairs, $200,000 shall be made available until expended to Eric and Brian Simon of Minneapolis, Minnesota, to be divided evenly between the individuals.

SEC. 426. (a) WAIVER OF REQUIREMENTS.—Subject to subsection (b), the limitation on the release of funds in section 104(g)(2) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304) shall not apply to the Village of Chickasaw Sewer Collection and Treatment System, located in the Village of Chickasaw, Mercer County, Ohio.

(b) APPLICABILITY.—Subsection (a) only applies to the grant that was awarded to the Village of Chickasaw (Ohio Small Cities CDBG Grant # C–W–03–283–1), for the period beginning September 1, 2003, and ending October 31, 2005, and in the amount of $600,000.

(c) ENVIRONMENTAL REVIEWS.—Notwithstanding the provisions of this section, the Village of Chickasaw must complete all appropriate environment reviews in a timely manner and to the satisfaction of the State of Ohio.

This division may be cited as the "Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2005".

DIVISION J—OTHER MATTERS

TITLE I—MISCELLANEOUS PROVISIONS AND OFFSETS

SEC. 101. For an additional amount for the Department of Energy for the weatherization assistance program pursuant to 42 U.S.C. 6861 et seq. and notwithstanding section 3003(d)(2) of Public Law 99–509, $230,000,000, to remain available until expended.

SEC. 102. Section 1201(a) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) is amended by striking "$300,000,000" in the matter preceding paragraph (1) and inserting "$500,000,000".

SEC. 103. (a) The District of Columbia Appropriations Act, 2005 (Public Law 108–335) is amended as follows:

(1) The paragraph under the heading "CAPITAL OUTLAY" is amended by striking "For construction projects, an increase of $1,087,649,000, of which $839,898,000 shall be from local funds, $38,542,000 from Highway Trust funds, $37,000,000 from the Rights-of-way funds, $172,209,000 from Federal grant funds, and a rescission of $361,763,000 from local funds appropriated under this heading in prior fiscal years, for a net amount of $725,886,000, to remain available until expended;" and inserting "For construction projects, an increase of $1,102,039,000, of which $839,898,000 shall be from local funds, $38,542,000 from Highway Trust funds, $51,390,000 from the Rights-of-way funds, $172,209,000 from Federal grant funds, and a rescission of $361,763,000 from local funds appropriated under this heading in prior fiscal years, for a net amount of $740,276,000, to remain available until expended;".

(2) Section 340(a) is amended to read as follows:

"(a) Section 603(e)(3)(E) of the Student Loan Marketing Association Reorganization Act of 1996 (20 U.S.C. 1155(e)(3)(E)) is amended—

"(1) by striking 'and' at the end of subclause (II);

"(2) by striking the period at the end of subclause (III) and inserting '; and'; and

"(3) by adding at the end the following new subclause:

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" '(IV) obtaining lease guarantees (in accordance with regulations promulgated by the Office of Public Charter School Financing).'.".

(3) Section 342 is amended to read as follows:

"SEC. 342. PUBLIC SCHOOL SERVICES TO CHARTER SCHOOLS. Section 2209(b) of the District of Columbia School Reform Act of 1995 (sec. 38–1802.09(b), D.C. Official Code) is amended as follows:

"(1) In paragraph (1)—

"(A) by amending subparagraph (A) to read as follows:

" '(A) IN GENERAL.—Notwithstanding any other provision of law, regulation, or order relating to the disposition of a facility or property described in subparagraph (B), the Mayor and the District of Columbia government shall give a right of first offer with respect to any facility or property described in subparagraph (B) not previously purchased, leased, or transferred, or under contract to be purchased, leased, or transferred, or the subject of a previously proposed resolution submitted by the Mayor on or before December 1, 2004, to the Council of the District of Columbia seeking authority for disposition of such facility or property, or under an Exclusive Rights Agreement executed on or before December 1, 2004, to an eligible applicant whose petition to establish a public charter school has been conditionally approved under section 2203(d)(2), or a Board of Trustees, with respect to the purchase, lease, transfer, or use of a facility or property described in subparagraph (B).';

"(B) by amending subparagraph (B)(iii) to read as follows:

" '(iii) with respect to which—

" '(I) the Board of Education has transferred jurisdiction to the Mayor and over which the Mayor has jurisdiction on the effective date of this subclause; or

" '(II) over which the Mayor or any successor agency gains jurisdiction after the effective date of this subclause.'; and

"(C) by adding at the end the following new subparagraph:

" '(C) TERMS OF PURCHASE OR LEASE.—The terms of purchase or lease of a facility or property described in subparagraph (B) shall—

" '(i) be negotiated by the Mayor in accordance with written rules or regulations as determined by the Mayor, and published in the District of Columbia Register;

" '(ii) include rent or an acquisition price, as applicable, that is at the appraised value of the property based on use of the property for school purposes; and

" '(iii) include a lease period, if the property is to be leased, of not less than 25 years, and renewable for additional 25-year periods as long as the eligible applicant or Board of Trustees maintains its charter.'.

"(2) In paragraph (2)(A), by striking 'first preference' and inserting 'a right of first offer'.

"(3) By adding at the end the following new paragraph:

" '(3) CONVERSION PUBLIC CHARTER SCHOOLS.—Any District of Columbia public school that was approved to become a conversion public charter school under section 2201 before the effective date of this subsection or is approved to become a conversion public charter school after the effective date of this subsection, shall have the right to exclusively occupy the facilities the school occupied as a District of Columbia public school under a lease for a period of not less than 25 years, renewable for additional 25-year periods as long as the school maintains its charter at the appraised value of the property based on use of the property for school purposes.'.".

(4) Section 347 is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) by striking subsection (f) and inserting the following:

" '(f) AUDIT.—The Board shall maintain its accounts according to Generally Accepted Accounting Principles. The Board shall provide for an audit of the financial statements of the Board by an independent certified public accountant in accordance with Government auditing standards for financial audits issued by the Comptroller General. The findings and recommendations of any such audit shall be forwarded to the Mayor, the Council of the District of Columbia, and the Office of the Chief Financial Officer of the District of Columbia.'; and

"(2) by adding at the end the following new subsection:

" '(h) CONTRACTING AND PROCUREMENT.—The Board shall have the authority to solicit, award, and execute contracts independently of the Office of Contracting and Procurement and the Chief Procurement Officer.'.".

(b) The amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005.

SEC. 104. The Secretary of the Department of Homeland Security shall transfer up to $40,000,000 from funds appropriated to the Coast Guard's "Acquisition, Construction, and Improvements" account in fiscal year 2005 from the Rescue 21 project to the HH–65 re-engining project, subject to 15-day advance notification to the House and Senate Committees on Appropriations.

SEC. 105. Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C 5133(m)) is amended by striking "December 31, 2004" and inserting "December 31, 2005".

SEC. 106. Notwithstanding the amounts in the detailed funding table included in House Report 108–774, the appropriation for "Transportation Security Administration, Maritime and Land Security" shall include the following: "Credentialing, $5,000,000; TWIC, $15,000,000; Hazardous materials truck tracking, $2,000,000; Hazardous materials safety, $17,000,000; Enterprise staffing, $24,000,000; Rail security, $12,000,000; Offsetting collections, ¥$27,000,000".

SEC. 107. The matter under the heading "Military Construction, Navy and Marine Corps" in the Military Construction Appropriations Act, 2005 (division A of Public Law 108–324), is amended by striking "$1,069,947,000" and inserting "$1,065,597,000" and the matter under the heading "Military Construction, Naval Reserve" in such Act is amended by striking "$44,246,000" and inserting "$48,596,000".

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SEC. 108. Notwithstanding any other provision of law, in addition to amounts otherwise made available in the Department of Defense Appropriations Act, 2005 (Public Law 108–287), an additional $2,000,000 is hereby appropriated and shall be made available under the heading "Shipbuilding and Conversion, Navy", only for the Secretary of the Navy for the purpose of acquiring a vessel with the Coast Guard registration number 225115: *Provided*, That the Secretary of the Navy shall provide for the transportation of the vessel from its present location: *Provided further*, That the Secretary of the Navy may lend, give, or otherwise dispose of the vessel at his election pursuant to 10 U.S.C. 2572, 7545, or 7306, or using such procedures as the Secretary deems appropriate, and to such recipient as the Secretary deems appropriate, without regard to these provisions.

SEC. 109. DESIGNATION OF NATIONAL TREE.

(a) DESIGNATION.—Chapter 3 of title 36, United States Code, is amended by adding at the end the following:

"§ 305. National tree

"The tree genus Quercus, commonly known as the oak tree, is the national tree.".

(b) CONFORMING AMENDMENTS.—Such title is amended—

(1) in the table of contents for part A of subtitle I, by striking "**, and March**" and inserting "**March, and Tree**";

(2) in the chapter heading for chapter 3, by striking ", AND MARCH" and inserting "MARCH, AND TREE"; and

(3) in the table of sections for chapter 3, by adding at the end the following:

"305. National tree.".

SEC. 110. Section 204(g) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1054(g)) shall not apply at any time, whether before or after the enactment of this section, to an amendment adopted prior to June 7, 2004, by a (multiemployer) pension plan covering primarily employees working in the State of Alaska, to the extent that such amendment—

(1) provides for the suspension of the payment of benefits, modifies the conditions under which the payment of benefits is suspended, or suspends actuarial adjustments in benefit payments in accordance with section 203(a)(3)(B) of said Act (29 U.S.C. 1053(a)(3)(B)) and applicable regulations; and

(2) applies to participants who have not retired before the adoption of such amendment.

SEC. 111. (a) The head of each Federal agency or department shall—

(1) provide each new employee of the agency or department with educational and training materials concerning the United States Constitution as part of the orientation materials provided to the new employee; and

(2) provide educational and training materials concerning the United States Constitution to each employee of the agency or department on September 17 of each year.

(b) Each educational institution that receives Federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution.

(c) Title 36 of the United States Code, is amended—

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(1) in section 106—

(A) in the heading, by inserting "Constitution Day and" before "Citizenship Day";

(B) in subsection (a), by striking "is Citizenship Day." and inserting "is designated as Constitution Day and Citizenship Day.";

(C) in subsection (b)—

(i) by inserting "Constitution Day and" before "Citizenship Day";

(ii) by striking "commemorates" and inserting "commemorate"; and

(iii) by striking "recognizes" and inserting "recognize";

(D) in subsection (c), by inserting "Constitution Day and" before "Citizenship Day" both places such term appears; and

(E) in subsection (d), by inserting "Constitution Day and" before "Citizenship Day"; and

(2) in the item relating to section 106 of the table of contents, by inserting "Constitution Day and" before "Citizenship Day".

(d) This section shall be without fiscal year limitation.

SEC. 112. (a) Notwithstanding any other provision of law or any contract: (1) the rates in effect on November 15, 2004, under the tariff (the "tariff") required by FCC 94–116 (reduced three percent annually starting January 1, 2006) shall apply beginning 45 days after the date of enactment of this Act through December 31, 2009, to the sale and purchase of interstate switched wholesale service elements offered by any provider originating or terminating anywhere in the area (the "market") described in section 4.7 of the tariff (collectively the "covered services"); (2) beginning April 1, 2005, through December 31, 2009, no provider of covered services may provide, and no purchaser of such services may obtain, covered services in the same contract with services other than those that originate or terminate in the market, if the covered services in the contract represent more than 5 percent of such contract's total value; and (3) revenues collected hereunder (less costs) for calendar years 2005 through 2009 shall be used to support and expand the network in the market.

(b) Effective on the date of enactment of this Act: (1) the conditions described in FCC 95–334 and the related conditions imposed in FCC 94–116, FCC 95–427, and FCC 96–485; and (2) all pending proceedings relating to the tariff, shall terminate. Thereafter, the State regulatory commission with jurisdiction over the market shall treat all interexchange carriers serving the market the same with respect to the provision of intrastate services, with the goal of reducing regulation, and shall not require such carriers to file reports based on the Uniform System of Accounts.

(c) Any provider may file to enforce this section (including damages and injunctive relief) before the FCC (whose final order may be appealed under 47 U.S.C. 402(a)) or under 47 U.S.C. 207 if the FCC fails to issue a final order within 90 days of a filing. Nothing herein shall affect rate integration, carrier-of-last-resort obligations of any carrier or its successor, or the purchase of covered services by any rural telephone company (as defined in 47 U.S.C. 153(37)), or an affiliate under its control, for its provision of retail interstate interexchange services originating in the market.

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SEC. 113. Direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents may be made available for or in Libya, notwithstanding section 507 or similar provisions in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, or prior acts making appropriations for foreign operations, export financing, and related programs, if the President determines that to do so is important to the national security interests of the United States.

SEC. 114. (a) Section 146 of Public Law 108–199 is amended—

(1) by striking "section 386 of the Energy Policy Act of 2003" and inserting "section 116 of division C of Public Law 108–324";

(2) by striking ", except that upon that Act becoming law, section 386 is amended through this Act:" and inserting "and section 116 of division C of Public Law 108–324 is amended:";

(3) by striking "paragraph 386(b)(1)" and inserting "paragraph (b)(1) of section 116 of division C of Public Law 108–324";

(4) by striking "paragraph 386(c)(2)" and inserting "paragraph (a)(2) of section 116 of division C of Public Law 108–324"; and

(5) by striking "paragraph 386(g)(4)" and inserting "paragraph (g)(4) of section 116 of division C of Public Law 108–324.

(b) Section 116 (b) of division C of Public Law 108–324, the Military Construction bill, is amended by adding a new paragraph as follows:

"(4) Such loan guarantee may be utilized only by the project chosen by the Federal Energy Regulatory Commission as the qualified project.".

SEC. 115. Any unobligated amount appropriated pursuant to section 353(b) of the Department of the Interior and Related Agencies Appropriations Act, 1999 (Public Law 105–277; 112 Stat. 2681–303), shall be made available to complete the project described in section 353(a) of that Act.

SEC. 116. (a) DESIGNATION OF NATIONAL VETERANS MEMORIAL.—The Mt. Soledad Veterans Memorial located within the Soledad Natural Park in San Diego, California, which consists of a 29 foot-tall cross and surrounding granite memorial walls containing plaques engraved with the names and photographs of veterans of the United States Armed Forces, is hereby designated as a national memorial honoring veterans of the United States Armed Forces.

(b) ACQUISITION AND ADMINISTRATION BY UNITED STATES.—Not later than 90 days after the date on which the City of San Diego, California, offers to donate the Mt. Soledad Veterans Memorial to the United States, the Secretary of the Interior shall accept, on behalf of the United States, all right, title, and interest of the City in and to the Mt. Soledad Veterans Memorial.

(c) ADMINISTRATION OF MEMORIAL.—Upon acquisition of the Mt. Soledad Veterans Memorial by the United States, the Secretary of the Interior shall administer the Mt. Soledad Veterans Memorial as a unit of the National Park System, except that the Secretary shall enter into a memorandum of understanding with the Mt. Soledad Memorial Association for the continued maintenance by the Association of the cross and surrounding granite memorial walls and plaques of the Memorial.

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(d) LEGAL DESCRIPTION.—The Mt. Soledad Veterans Memorial referred to in this section is all that portion of Pueblo lot 1265 of the Pueblo Lands of San Diego in the City and County of San Diego, California, according to the map thereof prepared by James Pascoe in 1879, a copy of which was filed in the office of the County Recorder of San Diego County on November 14, 1921, and is known as miscellaneous map NO. 36, more particularly described as follows: The area bounded by the back of the existing inner sidewalk on top of Mt. Soledad, being also a circle with a radius of 84 feet, the center of which circle is located as follows: Beginning at the Southwesterly corner of such Pueblo Lot 1265, such corner being South 17 degrees 14'33" East (Record South 17 degrees 14'09" East) 607.21 feet distant along the westerly line of such Pueblo lot 1265 from the intersection with the North line of La Jolla Scenic Drive South as described and dedicated as parcel 2 of City Council Resolution NO. 216644 adopted August 25, 1976; thence North 39 degrees 59'24" East 1147.62 feet to the center of such circle. The exact boundaries and legal description of the Mt. Soledad Veterans Memorial shall be determined by a survey prepared jointly by the City of San Diego and the Secretary of the Interior. Upon acquisition of the Mt. Soledad Veterans Memorial by the United States, the boundaries of the Memorial may not be expanded.

SEC. 117. Notwithstanding any other provision of law, except section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, $80,000,000 of the funds appropriated for the Department of Defense for fiscal year 2005 may be transferred with the concurrence of the Secretary of Defense to the Department of State under "Peacekeeping Operations".

SEC. 118. In addition, for construction and related expenses of a facility for the United States Institute of Peace, $100,000,000, to remain available until expended.

SEC. 119. Notwithstanding any other provision of law, in addition to amounts otherwise provided in this or any other Act for fiscal year 2005, the following amounts are appropriated: $2,000,000 for the Helen Keller National Center for Deaf-Blind Youths and Adults for activities authorized under the Helen Keller National Center Act; and for the Department of Health and Human Services, Health Resources and Services Administration, $1,000,000 for the Hospital for Special Surgery to establish a National Center for Musculoskeletal Research, New York, New York, for facilities and equipment; and for the Department of Health and Human Services, Health Resources and Services Administration, $1,000,000 for the Jesse Helms Nursing Center at Union Regional Medical Center, Union County, North Carolina for facilities and equipment.

SEC. 120. In addition to any amounts provided in this or any other Act for fiscal year 2005, $1,000,000 is appropriated for necessary expenses of the Benjamin A. Gilman Institute for Political and International Studies program at the State University of New York's Orange County Community College in Orange, New York.

SEC. 121. WEIGHT LIMITATIONS.

The next to the last sentence of section 127(a) of title 23, United States Code, is amended by striking "Interstate Route 95" and inserting "Interstate Routes 89, 93, and 95".

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SEC. 122. (a) ACROSS-THE-BOARD RESCISSIONS.—There is hereby rescinded an amount equal to 0.80 percent of—

(1) the budget authority provided (or obligation limitation imposed) for fiscal year 2005 for any discretionary account in divisions A through J of this Act and in any other fiscal year 2005 appropriation Act (except any fiscal year 2005 supplemental appropriation Act, the Department of Homeland Security Appropriations Act, 2005, the Department of Defense Appropriations Act, 2005, or the Military Construction Appropriations Act, 2005);

(2) the budget authority provided in any advance appropriation for fiscal year 2005 for any discretionary account in any prior fiscal year appropriation Act; and

(3) the contract authority provided in fiscal year 2005 for any program subject to limitation contained in any division or appropriation Act subject to paragraph (1).

(b) PROPORTIONATE APPLICATION.—Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in such subsection; and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

This title may be cited as the "Miscellaneous Appropriations and Offsets Act, 2005".

TITLE II—225TH ANNIVERSARY OF THE AMERICAN REVOLUTION COMMEMORATION ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "225th Anniversary of the American Revolution Commemoration Act".

SEC. 202. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The American Revolution, inspired by the spirit of liberty and independence among the inhabitants of the original 13 colonies of Great Britain, was an event of global significance having a profound and lasting effect upon American Government, laws, culture, society, and values.

(2) The years 2000 through 2008 mark the 225th anniversary of the Revolutionary War.

(3) Every generation of American citizens should have an opportunity to understand and appreciate the continuing legacy of the American Revolution.

(4) This 225th anniversary provides an opportunity to enhance public awareness and understanding of the impact of the American Revolution's legacy on the lives of citizens today.

(5) Although the National Park Service administers battlefields, historical parks, historic sites, and programs that address elements of the story of the American Revolution, there is a need to establish partnerships that link sites and programs

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administered by the National Park Service with those of other Federal and non-Federal entities in order to place the story of the American Revolution in the broad context of its causes, consequences, and meanings.

(6) The story and significance of the American Revolution can best engage the American people through a national program of the National Park Service that links historic structures and sites, routes, activities, community projects, exhibits, and multimedia materials, in a manner that is both unified and flexible.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To recognize the enduring importance of the American Revolution in the lives of American citizens today.

(2) To authorize the National Park Service to coordinate, connect, and facilitate Federal and non-Federal activities to commemorate, honor, and interpret the history of the American Revolution, its significance, and its relevance to the shape and spirit of American Government and society.

SEC. 203. 225TH ANNIVERSARY OF THE AMERICAN REVOLUTION COMMEMORATION PROGRAM.

(a) IN GENERAL.—The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall establish a program to be known as the "225th Anniversary of the American Revolution Commemoration" (hereinafter in this Act referred to as the "225th Anniversary"). In administering the 225th Anniversary, the Secretary shall—

(1) produce and disseminate to appropriate persons educational materials, such as handbooks, maps, interpretive guides, or electronic information related to the 225th Anniversary and the American Revolution;

(2) enter into appropriate cooperative agreements and memoranda of understanding to provide technical assistance under subsection (c);

(3) assist in the protection of resources associated with the American Revolution;

(4) enhance communications, connections, and collaboration among the National Park Service units and programs related to the Revolutionary War;

(5) expand the research base for American Revolution interpretation and education; and

(6) create and adopt an official, uniform symbol or device for the theme "Lighting Freedom's Flame: American Revolution, 225th Anniversary" and issue regulations for its use.

(b) ELEMENTS.—The 225th Anniversary shall encompass the following elements:

(1) All units and programs of the National Park Service determined by the Secretary to pertain to the American Revolution.

(2) Other governmental and nongovernmental sites, facilities, and programs of an educational, research, or interpretive nature that are documented to be directly related to the American Revolution.

(3) Through the Secretary of State, the participation of the Governments of the United Kingdom, France, the Netherlands, Spain, and Canada.

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(c) COOPERATIVE AGREEMENTS AND MEMORANDA OF UNDERSTANDING.—To achieve the purposes of this Act and to ensure effective coordination of the Federal and non-Federal elements of the 225th Anniversary with National Park Service units and programs, the Secretary may enter into cooperative agreements and memoranda of understanding with, and provide technical assistance to, the following:

(1) The heads of other Federal agencies, States, units of local government, and private entities.

(2) In cooperation with the Secretary of State, the Governments of the United Kingdom, France, the Netherlands, Spain, and Canada.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this Act $500,000 for each of fiscal years 2004 through 2009.

TITLE III—RURAL AIR SERVICE IMPROVEMENTS

SEC. 301. (a) SHORT TITLE.—This title may be cited as the "Rural Air Service Improvement Act of 2004".

(b) FURTHER AMENDMENTS.—The amendments made by this section are further amendments to section 5402 of title 39, United States Code, including the amendments made by section 3002 of the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States (Public Law 107–206) to that section of title 39, United States Code.

(c) EXISTING MAINLINE CARRIERS.—Section 5402(a)(10) of title 39, United States Code, is amended by striking subparagraph (C) and inserting the following:

"(C) actually engaged in the carriage, on scheduled service within the State of Alaska, of mainline nonpriority bypass mail tendered to it under its designator code.".

(d) NONPRIORITY BYPASS MAIL.—Section 5402(g) of title 39, United States Code, is amended by striking the matter preceding paragraph (2) and inserting the following:

"(g)(1)(A) The Postal Service, in selecting carriers of nonpriority bypass mail to any point served by more than 1 carrier in the State of Alaska, shall adhere to an equitable tender policy within a qualified group of carriers, in accordance with the regulations of the Postal Service, and shall, at a minimum, require that any such carrier—

"(i) hold a certificate of public convenience and necessity issued under section 41102(a) of title 49;

"(ii) operate at least to such point at least the number of scheduled flights each week established under subparagraph (B)(i);

"(iii) exhibit an adherence to such scheduled flights; and

"(iv) have provided scheduled service with at least the number of scheduled noncontract flights each week established under subparagraph (B)(ii) between 2 points within the State of Alaska for at least 12 consecutive months with aircraft—

"(I) up to 7,500 pounds payload capacity before being selected as a carrier of nonpriority bypass mail at an applicable intra-Alaska bush service mail rate; and

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"(II) over 7,500 pounds payload capacity before being selected as a carrier of nonpriority bypass mail at the intra-Alaska mainline service mail rate.

"(B)(i) For purposes of subparagraph (A)(ii)—

"(I) for aircraft described under subparagraph (A)(iv)(I) the number is 3; and

"(II) for aircraft described under subparagraph (A)(iv)(II), the number is 2, except as may be provided under subparagraph (C).

"(ii) For purposes of subparagraph (A)(iv)—

"(I) for aircraft described under subparagraph (A)(iv)(I), the number is 3; and

"(II) for aircraft described under subparagraph (A)(iv)(II), for any week in any month before the effective date of the Rural Air Service Improvement Act of 2004, the number is 3, and after such date, the number is 2.

"(C) The Postal Service, after consultation with affected carriers, may establish for service by aircraft described under subparagraph (A)(iv)(II)—

"(i) a larger number of flights than required under subparagraph (B)(i); or

"(ii) the days that service will operate.".

(e) SUBCONTRACTS BY EXISTING MAINLINE CARRIERS.—Section 5402(g)(4) of title 39, United States Code, is amended by adding at the end the following:

"(C) A providing carrier selected under subparagraph (A) may subcontract the transportation of nonpriority bypass mail to another existing mainline carrier when additional or substitute aircraft are temporarily needed to meet the delivery schedule of the Postal Service or the carrier's operating requirements. The providing carrier shall remain responsible for the mail from origin through destination.".

(f) AIRCRAFT PREFERENCES FOR OTHER POSTAL PRODUCTS.—Section 5402(g) of title 39, United States Code, is amended by adding at the end the following:

"(7) Nothing in this section shall preclude the Postal Service from establishing by regulation aircraft preferences for the dispatch of postal products other than nonpriority bypass mail.".

TITLE IV—VISA REFORM

SEC. 401. SHORT TITLE.

This title may be cited as the "L–1 Visa and H–1B Visa Reform Act".

Subtitle A—L–1 Visa Reform

SEC. 411. SHORT TITLE.

This subtitle may be cited as the "L–1 Visa (Intracompany Transferee) Reform Act of 2004".

SEC. 412. NONIMMIGRANT L–1 VISA CATEGORY.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—

"(i) the alien will be controlled and supervised principally by such unaffiliated employer; or

"(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to petitions filed on or after the effective date of this subtitle, whether for initial, extended, or amended classification.

SEC. 413. REQUIREMENT FOR PRIOR CONTINUOUS EMPLOYMENT FOR CERTAIN INTRACOMPANY TRANSFEREES.

(a) IN GENERAL.—Section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)) is amended by striking the last sentence (relating to reduction of the 1-year period of continuous employment abroad to 6 months).

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only to petitions for initial classification filed on or after the effective date of this subtitle.

SEC. 414. MAINTENANCE OF STATISTICS BY THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—The Department of Homeland Security shall maintain statistics regarding petitions filed, approved, extended, and amended with respect to nonimmigrants described in section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)), including the number of such nonimmigrants who are classified on the basis of specialized knowledge and the number of nonimmigrants who are classified on the basis of specialized knowledge in order to work primarily at offsite locations.

(b) APPLICABILITY.—Subsection (a) shall apply to petitions filed on or after the effective date of this subtitle.

SEC. 415. INSPECTOR GENERAL REPORT ON L VISA PROGRAM.

Not later than 6 months after the date of enactment of this Act, the Inspector General of the Department of Homeland Security shall, consistent with the authority granted the Department under section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236), examine and report to the Committees on the Judiciary of the House of Representatives and the Senate on the vulnerabilities and potential abuses in the visa program carried out under section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) with respect to nonimmigrants described in section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)).

SEC. 416. ESTABLISHMENT OF TASK FORCE.

(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, there shall be established an L Visa Interagency Task Force that consists of representatives from the Department of Homeland Security, the Department of Justice, and

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the Department of State. The Secretaries of each Department and each relevant bureau of the Department of Homeland Security shall appoint designees to the L Visa Interagency Task Force. The L Visa Interagency Task Force shall consult with other agencies deemed appropriate.

(b) REPORT.—Not later than 6 months after the submission of the report by the Inspector General of the Department of Homeland Security in accordance with section 6, the L Visa Interagency Task Force shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the efforts to implement the recommendations set forth by the Inspector General's report. The L Visa Interagency Task Force shall note specific areas of agreement and disagreement, and make recommendations to Congress on the findings of the Task Force, including any suggestions for legislation. The Task Force shall also review other additional issues as may be raised by the Inspector General's report or by the Task Force's own deliberations regarding the policies and purposes of the visa program relative to national goals and transnational commerce.

SEC. 417. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—H–1B Visa Reform

SEC. 421. SHORT TITLE.

This subtitle may be cited as the "H–1B Visa Reform Act of 2004".

SEC. 422. TEMPORARY WORKER PROVISIONS.

(a) ATTESTATION REQUIREMENTS FOR H–1B WORKERS.—Section 212(n)(1)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking "October 1, 2003,".

(b) H–1B EMPLOYER PETITIONS.—Section 214(c)(9) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(9)) is amended—

(1) in subparagraph (A), by striking "October 1, 2003";

(2) in subparagraph (B), by striking "$1,000" and inserting "$1,500"; and

(3) in subparagraph (B), by inserting before the period "except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer)".

SEC. 423. H–1B PREVAILING WAGE LEVEL.

Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended by adding at the end the following:

"(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant to those sections.

"(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision.

Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.".

SEC. 424. DEPARTMENT OF LABOR INVESTIGATIVE AUTHORITIES.

(a) SECRETARY OF LABOR INVESTIGATIVE AUTHORITY.—

(1) IN GENERAL.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended by inserting after subparagraph (F) the following:

"(G)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(i)(b) if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of disability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for reasons other than completeness and obvious inaccuracies by the employer in complying with this subsection.

"(ii) If the Secretary of Labor receives specific credible information from a source who is likely to have knowledge of an employer's practices or employment conditions, or an employer's compliance with the employer's labor condition application under paragraph (1), and whose identity is known to the Secretary of Labor, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor may conduct an investigation into the alleged failure or failures. The Secretary of Labor may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

"(iii) The Secretary of Labor shall establish a procedure for any person desiring to provide to the Secretary of Labor information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Labor and completed by or on behalf of the person. The person may not be an officer or employee of the Department of Labor, unless the information satisfies the requirement of clause (iv)(II) (although an officer or employee of the Department of Labor may complete the form on behalf of the person).

"(iv) Any investigation initiated or approved by the Secretary of Labor under clause (ii) shall be based on information that satisfies the requirements of such clause and that—

"(I) originates from a source other than an officer or employee of the Department of Labor; or

"(II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this Act of any other Act.

"(v) The receipt by the Secretary of Labor of information submitted by an employer to the Attorney General or the Secretary of Labor for purposes of securing the employment of a nonimmigrant described in section 101(a)(15)(H)(i)(b) shall not be considered a receipt of information for purposes of clause (ii).

"(vi) No investigation described in clause (ii) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months after the date of the alleged failure.

"(vii) The Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause to initiate an investigation described in clauses (i) or (ii), prior to the commencement of an investigation under such clauses, of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary of Labor is not required to comply with this clause if the Secretary of Labor determines that to do so would interfere with an effort by the Secretary of Labor to secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary of Labor under this clause.

"(viii) An investigation under clauses (i) or (ii) may be conducted for a period of up to 60 days. If the Secretary of Labor determines after such an investigation that a reasonable basis exists to make a finding that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, within 120 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 120 days after the date of the hearing.".

(2) RETROACTIVE.—The amendment made by paragraph (1) shall take effect as if enacted on October 1, 2003.

(b) GOOD FAITH COMPLIANCE OR CONFORMITY.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (H) as subparagraph (I); and

(2) by inserting after subparagraph (G), as added by subsection (a)(1), the following:

"(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

"(ii) Clause (i) shall not apply if—

"(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

"(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure; and

"(III) the person or entity has not corrected the failure voluntarily within such period.

"(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

"(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this subsection.".

(c) SECRETARY OF LABOR REPORT.—Not later than January 31 of each year, the Secretary of Labor shall report to the Committees on the Judiciary of the Senate and the House of Representatives on the investigations undertaken based on—

(1) the authorities described in clauses (i) and (ii) of section 212(n)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(G)(i) and (ii)); and

(2) the expenditures by the Secretary of Labor described in section 286(v)(2)(D) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(D)).

SEC. 425. EXEMPTION OF CERTAIN ALIENS FROM NUMERICAL LIMITATIONS ON H–1B NONIMMIGRANTS.

(a) IN GENERAL.—Section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) is amended—

(1) in the matter preceding subparagraph (A), by striking "is employed (or has received an offer of employment) at";

(2) in subparagraph (A)—

(A) by inserting "is employed (or has received an offer of employment) at" before "an institution"; and

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

(3) in subparagraph (B)—

(A) by inserting "is employed (or has received an offer of employment) at" before "a nonprofit"; and

(B) by striking the period and inserting "; or"; and

(4) by adding at the end the following:

"(C) has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.".

(b) STATISTICS.—Beginning on the date of enactment of this Act, the Secretary of Homeland Security shall maintain statistical information on the country of origin and occupation of, educational level maintained by, and compensation paid to, each alien who is issued a visa or otherwise provided nonimmigrant status and is exempt under section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) for each fiscal year. The statistical information shall be included in the annual report to Congress under section 416(c) of the American Competitiveness and Workforce Improvement Act of 1998 (Public Law 105–277; 112 Stat. 2681–655).

SEC. 426. FRAUD PREVENTION AND DETECTION FEE.

(a) IMPOSITION OF FEE.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

"(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1)—

"(i) initially to grant an alien nonimmigrant status described in subparagraph (H)(i)(b) or (L) of section 101(a)(15); or

"(ii) to obtain authorization for an alien having such status to change employers.

"(B) In addition to any other fees authorized by law, the Secretary of State shall impose a fraud prevention and detection fee on an alien filing an application abroad for a visa authorizing admission to the United States as a nonimmigrant described in section 101(a)(15)(L), if the alien is covered under a blanket petition described in paragraph (2)(A).

"(C) The amount of the fee imposed under subparagraph (A) or (B) shall be $500.

"(D) The fee imposed under subparagraph (A) or (B) shall only apply to principal aliens and not to the spouses or children who are accompanying or following to join such principal aliens.

"(E) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(v).".

(b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

"(v) H–1B AND L FRAUD PREVENTION AND DETECTION ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H–1B and L Fraud Prevention and Detection Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(12).

"(2) USE OF FEES TO COMBAT FRAUD.—

"(A) SECRETARY OF STATE.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of State until expended for programs and activities at United States embassies and consulates abroad—

"(i) to increase the number diplomatic security personnel assigned exclusively to the function of preventing and detecting fraud by applicants for visas described in subparagraph (H)(i) or (L) of section 101(a)(15);

"(ii) otherwise to prevent and detect such fraud pursuant to the terms of a memorandum of understanding or other cooperative agreement between the Secretary of State and the Secretary of Homeland Security; and

"(iii) upon request by the Secretary of Homeland Security, to assist such Secretary in carrying out the fraud prevention and detection programs and activities described in subparagraph (B).

"(B) SECRETARY OF HOMELAND SECURITY.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in subparagraph (H)(i) or (L) of section 101(a)(15).

"(C) SECRETARY OF LABOR.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for enforcement programs and activities described in section 212(n).

"(D) CONSULTATION.—The Secretary of State, the Secretary of Homeland Security, and the Secretary of Labor shall consult one another with respect to the use of the funds in the H–1B and L Fraud Prevention and Detection Account.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, and the fees imposed under such amendments shall apply to petitions under section 214(c) of the Immigration and Nationality Act, and applications for nonimmigrant visas under section 222 of such Act, filed on or after the date that is 90 days after the date of the enactment of this Act.

SEC. 427. CHANGE OF FEE FORMULA.

Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended—

(1) in paragraph (2), by striking "55 percent" and inserting "50 percent";

(2) in paragraph (3), by striking "22 percent" and inserting "30 percent";

(3) in paragraph (4)(A), by striking "15 percent" and inserting "10 percent";

(4) in paragraph (5)—

(A) by striking "4 percent" and inserting "5 percent"; and

(B) by striking "Attorney General" each place that term appears and inserting "Secretary of Homeland Security"; and

(5) in paragraph (6), by striking "Beginning with fiscal year 2000," and all that follows through "within a 7-day period." and inserting "Beginning with fiscal year 2000, 5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 212(n)(1).".

SEC. 428. GRANTS FOR JOB TRAINING FOR EMPLOYMENT IN HIGH GROWTH INDUSTRIES.

Section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (112 Stat. 2681–653) is amended to read as follows:

"(c) JOB TRAINING GRANTS.—

"(1) IN GENERAL.—The Secretary of Labor shall use funds available under section 286(s)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(2)) to award grants to eligible

entities to provide job training and related activities for workers to assist them in obtaining or upgrading employment in industries and economic sectors identified pursuant to paragraph (4) that are projected to experience significant growth and ensure that job training and related activities funded by such grants are coordinated with the public workforce investment system.

"(2) USE OF FUNDS.—

"(A) TRAINING PROVIDED.—Funds under this subsection may be used to provide job training services and related activities that are designed to assist workers (including unemployed and employed workers) in gaining the skills and competencies needed to obtain or upgrade career ladder employment positions in the industries and economic sectors identified pursuant to paragraph (4).

"(B) ENHANCED TRAINING PROGRAMS AND INFORMATION.—In order to facilitate the provision of job training services described in subparagraph (A), funds under this subsection may be used to assist in the development and implementation of model activities such as developing appropriate curricula to build core competencies and train workers, identifying and disseminating career and skill information, and increasing the integration of community and technical college activities with activities of businesses and the public workforce investment system to meet the training needs for the industries and economic sectors identified pursuant to paragraph (4).

"(3) ELIGIBLE ENTITIES.—Grants under this subsection may be awarded to partnerships of private and public sector entities, which may include—

"(A) businesses or business-related nonprofit organizations, such as trade associations;

"(B) education and training providers, including community colleges and other community-based organizations; and

"(C) entities involved in administering the workforce investment system established under title I of the Workforce Investment Act of 1998, and economic development agencies.

"(4) HIGH GROWTH INDUSTRIES AND ECONOMIC SECTORS.—For purposes of this subsection, the Secretary of Labor, in consultation with State workforce investment boards, shall identify industries and economic sectors that are projected to experience significant growth, taking into account appropriate factors, such as the industries and sectors that—

"(A) are projected to add substantial numbers of new jobs to the economy;

"(B) are being transformed by technology and innovation requiring new skill sets for workers;

"(C) are new and emerging businesses that are projected to grow; or

"(D) have a significant impact on the economy overall or on the growth of other industries and economic sectors.

"(5) EQUITABLE DISTRIBUTION.—In awarding grants under this subsection, the Secretary of Labor shall ensure an equitable distribution of such grants across geographically diverse areas.

"(6) LEVERAGING OF RESOURCES AND AUTHORITY TO REQUIRE MATCH.—

"(A) LEVERAGING OF RESOURCES.—In awarding grants under this subsection, the Secretary of Labor shall take into account, in addition to other factors the Secretary determines are appropriate—

"(i) the extent to which resources other than the funds provided under this subsection will be made available by the eligible entities applying for grants to support the activities carried out under this subsection; and

"(ii) the ability of such entities to continue to carry out and expand such activities after the expiration of the grants.

"(B) AUTHORITY TO REQUIRE MATCH.—The Secretary of Labor may require the provision of specified levels of a matching share of cash or noncash resources from resources other than the funds provided under this subsection for projects funded under this subsection.

"(7) PERFORMANCE ACCOUNTABILITY.—The Secretary of Labor shall require grantees to report on the employment outcomes obtained by workers receiving training under this subsection using indicators of performance that are consistent with other indicators used for employment and training programs administered by the Secretary, such as entry into employment, retention in employment, and increases in earnings. The Secretary of Labor may also require grantees to participate in evaluations of projects carried out under this subsection.".

SEC. 429. NATIONAL SCIENCE FOUNDATION LOW-INCOME SCHOLARSHIP PROGRAM.

(a) EXPANSION OF ELIGIBILITY.—Section 414(d)(2)(A)(iii) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(2)(A)(iii)) is amended by striking "or computer science." and inserting "computer science, or other technology and science programs designated by the Director.".

(b) INCREASE IN AWARD AMOUNT.—Section 414(d)(3) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(3)) is amended by striking "$3,125 per year" and inserting "$10,000 per year".

(c) FUNDS.—Section 414(d)(4) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(4)) is amended by adding at the end the following: "The Director may use no more than 50 percent of such funds for undergraduate programs for curriculum development, professional and workforce development, and to advance technological education. Funds for these other programs may be used for purposes other than scholarships.".

(d) PUBLICATION OF ELIGIBLE PROGRAMS.—Section 414(d) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)) is amended by adding at the end the following:

"(5) FEDERAL REGISTER.—Not later than 60 days after the date of enactment of the L–1 Visa and H–1B Visa Reform Act, the Director shall publish in the Federal Register a list of eligible programs of study.".

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SEC. 430. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect 90 days after the date of enactment of this Act.

(b) EXCEPTIONS.—The amendments made by sections 422(b), 426(a), and 427 shall take effect upon the date of enactment of this Act.

TITLE V—NATIONAL AVIATION HERITAGE AREA

SEC. 501. SHORT TITLE.

This title may be cited as the "National Aviation Heritage Area Act".

SEC. 502. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Few technological advances have transformed the world or our Nation's economy, society, culture, and national character as the development of powered flight.

(2) The industrial, cultural, and natural heritage legacies of the aviation and aerospace industry in the State of Ohio are nationally significant.

(3) Dayton, Ohio, and other defined areas where the development of the airplane and aerospace technology established our Nation's leadership in both civil and military aeronautics and astronautics set the foundation for the 20th Century to be an American Century.

(4) Wright-Patterson Air Force Base in Dayton, Ohio, is the birthplace, the home, and an integral part of the future of aerospace.

(5) The economic strength of our Nation is connected integrally to the vitality of the aviation and aerospace industry, which is responsible for an estimated 11,200,000 American jobs.

(6) The industrial and cultural heritage of the aviation and aerospace industry in the State of Ohio includes the social history and living cultural traditions of several generations.

(7) The Department of the Interior is responsible for protecting and interpreting the Nation's cultural and historic resources, and there are significant examples of these resources within Ohio to merit the involvement of the Federal Government to develop programs and projects in cooperation with the Aviation Heritage Foundation, Incorporated, the State of Ohio, and other local and governmental entities to adequately conserve, protect, and interpret this heritage for the educational and recreational benefit of this and future generations of Americans, while providing opportunities for education and revitalization.

(8) Since the enactment of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), partnerships among the Federal, State, and local governments and the private sector have greatly assisted the development and preservation of the historic aviation resources in the Miami Valley.

(9) An aviation heritage area centered in Southwest Ohio is a suitable and feasible management option to increase

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collaboration, promote heritage tourism, and build on the established partnerships among Ohio's historic aviation resources and related sites.

(10) A critical level of collaboration among the historic aviation resources in Southwest Ohio cannot be achieved without a congressionally established national heritage area and the support of the National Park Service and other Federal agencies which own significant historic aviation-related sites in Ohio.

(11) The Aviation Heritage Foundation, Incorporated, would be an appropriate management entity to oversee the development of the National Aviation Heritage Area.

(12) Five National Park Service and Dayton Aviation Heritage Commission studies and planning documents: "Study of Alternatives: Dayton's Aviation Heritage", "Dayton Aviation Heritage National Historical Park Suitability/Feasibility Study", "Dayton Aviation Heritage General Management Plan", "Dayton Historic Resources Preservation and Development Plan", and Heritage Area Concept Study, demonstrated that sufficient historical resources exist to establish the National Aviation Heritage Area.

(13) With the advent of the 100th anniversary of the first powered flight in 2003, it is recognized that the preservation of properties nationally significant in the history of aviation is an important goal for the future education of Americans.

(14) Local governments, the State of Ohio, and private sector interests have embraced the heritage area concept and desire to enter into a partnership with the Federal Government to preserve, protect, and develop the Heritage Area for public benefit.

(15) The National Aviation Heritage Area would complement and enhance the aviation-related resources within the National Park Service, especially the Dayton Aviation Heritage National Historical Park, Ohio.

(b) PURPOSE.—The purpose of this title is to establish the Heritage Area to—

(1) encourage and facilitate collaboration among the facilities, sites, organizations, governmental entities, and educational institutions within the Heritage Area to promote heritage tourism and to develop educational and cultural programs for the public;

(2) preserve and interpret for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, structures, facilities, and sites within the National Aviation Heritage Area;

(3) encourage within the National Aviation Heritage Area a broad range of economic opportunities enhancing the quality of life for present and future generations;

(4) provide a management framework to assist the State of Ohio, its political subdivisions, other areas, and private organizations, or combinations thereof, in preparing and implementing an integrated Management Plan to conserve their aviation heritage and in developing policies and programs that will preserve, enhance, and interpret the cultural, historical, natural, recreation, and scenic resources of the Heritage Area; and

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(5) authorize the Secretary to provide financial and technical assistance to the State of Ohio, its political subdivisions, and private organizations, or combinations thereof, in preparing and implementing the private Management Plan.

SEC. 503. DEFINITIONS.

For purposes of this title:

(1) BOARD.—The term "Board" means the Board of Directors of the Foundation.

(2) FINANCIAL ASSISTANCE.—The term "financial assistance" means funds appropriated by Congress and made available to the management entity for the purpose of preparing and implementing the Management Plan.

(3) HERITAGE AREA.—The term "Heritage Area" means the National Aviation Heritage Area established by section 104 to receive, distribute, and account for Federal funds appropriated for the purpose of this title.

(4) MANAGEMENT PLAN.—The term "Management Plan" means the management plan for the Heritage Area developed under section 106.

(5) MANAGEMENT ENTITY.—The term "management entity" means the Aviation Heritage Foundation, Incorporated (a nonprofit corporation established under the laws of the State of Ohio).

(6) PARTNER.—The term "partner" means a Federal, State, or local governmental entity, organization, private industry, educational institution, or individual involved in promoting the conservation and preservation of the cultural and natural resources of the Heritage Area.

(7) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(8) TECHNICAL ASSISTANCE.—The term "technical assistance" means any guidance, advice, help, or aid, other than financial assistance, provided by the Secretary.

SEC. 504. NATIONAL AVIATION HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the States of Ohio and Indiana, the National Aviation Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall include the following:

(1) A core area consisting of resources in Montgomery, Greene, Warren, Miami, Clark, Champaign, Shelby, and Auglaize Counties in Ohio.

(2) The Neil Armstrong Air & Space Museum, Wapakoneta, Ohio.

(3) Sites, buildings, and districts within the core area recommended by the Management Plan.

(c) MAP.—A map of the Heritage Area shall be included in the Management Plan. The map shall be on file in the appropriate offices of the National Park Service, Department of the Interior.

(d) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Aviation Heritage Foundation.

SEC. 505. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—For purposes of implementing the Management Plan, the management entity may use Federal funds made available through this title to—

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(1) make grants to, and enter into cooperative agreements with, the State of Ohio and political subdivisions of that State, private organizations, or any person;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—The management entity shall—

(1) develop and submit to the Secretary for approval the proposed Management Plan in accordance with section 106;

(2) give priority to implementing actions set forth in the Management Plan, including taking steps to assist units of government and nonprofit organizations in preserving resources within the Heritage Area;

(3) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area in developing and implementing the Management Plan;

(4) maintain a collaboration among the partners to promote heritage tourism and to assist partners to develop educational and cultural programs for the public;

(5) encourage economic viability in the Heritage Area consistent with the goals of the Management Plan;

(6) assist units of government and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the historical, natural, and architectural resources and sites in the Heritage Area; and

(D) restoring historic buildings that relate to the purposes of the Heritage Area;

(7) conduct public meetings at least quarterly regarding the implementation of the Management Plan;

(8) submit substantial amendments to the Management Plan to the Secretary for the approval of the Secretary; and

(9) for any year in which Federal funds have been received under this title—

(A) submit an annual report to the Secretary that sets forth the accomplishments of the management entity and its expenses and income;

(B) make available to the Secretary for audit all records relating to the expenditure of such funds and any matching funds; and

(C) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of such funds.

(c) USE OF FEDERAL FUNDS.—

(1) IN GENERAL.—The management entity shall not use Federal funds received under this title to acquire real property or an interest in real property.

(2) OTHER SOURCES.—Nothing in this title precludes the management entity from using Federal funds from other sources for authorized purposes.

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SEC. 506. MANAGEMENT PLAN.

(a) PREPARATION OF PLAN.—Not later than 3 years after the date of the enactment of this title, the management entity shall submit to the Secretary for approval a proposed Management Plan that shall take into consideration State and local plans and involve residents, public agencies, and private organizations in the Heritage Area.

(b) CONTENTS.—The Management Plan shall incorporate an integrated and cooperative approach for the protection, enhancement, and interpretation of the natural, cultural, historic, scenic, and recreational resources of the Heritage Area and shall include the following:

(1) An inventory of the resources contained in the core area of the Heritage Area, including the Dayton Aviation Heritage Historical Park, the sites, buildings, and districts listed in section 202 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), and any other property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, or maintained because of its significance.

(2) An assessment of cultural landscapes within the Heritage Area.

(3) Provisions for the protection, interpretation, and enjoyment of the resources of the Heritage Area consistent with the purposes of this title.

(4) An interpretation plan for the Heritage Area.

(5) A program for implementation of the Management Plan by the management entity, including the following:

(A) Facilitating ongoing collaboration among the partners to promote heritage tourism and to develop educational and cultural programs for the public.

(B) Assisting partners planning for restoration and construction.

(C) Specific commitments of the partners for the first 5 years of operation.

(6) The identification of sources of funding for implementing the plan.

(7) A description and evaluation of the management entity, including its membership and organizational structure.

(c) DISQUALIFICATION FROM FUNDING.—If a proposed Management Plan is not submitted to the Secretary within 3 years of the date of the enactment of this title, the management entity shall be ineligible to receive additional funding under this title until the date on which the Secretary receives the proposed Management Plan.

(d) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—The Secretary, in consultation with the State of Ohio, shall approve or disapprove the proposed Management Plan submitted under this title not later than 90 days after receiving such proposed Management Plan.

(e) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a proposed Management Plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions to the proposed Management Plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

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(f) APPROVAL OF AMENDMENTS.—The Secretary shall review and approve substantial amendments to the Management Plan. Funds appropriated under this title may not be expended to implement any changes made by such amendment until the Secretary approves the amendment.

SEC. 507. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—Upon the request of the management entity, the Secretary may provide technical assistance, on a reimbursable or nonreimbursable basis, and financial assistance to the Heritage Area to develop and implement the management plan. The Secretary is authorized to enter into cooperative agreements with the management entity and other public or private entities for this purpose. In assisting the Heritage Area, the Secretary shall give priority to actions that in general assist in—

(1) conserving the significant natural, historic, cultural, and scenic resources of the Heritage Area; and

(2) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(b) DUTIES OF OTHER FEDERAL AGENCIES.—Any Federal agency conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title;

(3) to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(4) to the maximum extent practicable, conduct or support such activities in a manner which the management entity determines will not have an adverse effect on the Heritage Area.

SEC. 508. COORDINATION BETWEEN THE SECRETARY AND THE SECRETARY OF DEFENSE AND THE ADMINISTRATOR OF NASA.

The decisions concerning the execution of this title as it applies to properties under the control of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration shall be made by such Secretary or such Administrator, in consultation with the Secretary of the Interior.

SEC. 509. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.

(a) NOTIFICATION AND CONSENT OF PROPERTY OWNERS REQUIRED.—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) LANDOWNER WITHDRAW.—Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

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SEC. 510. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this title shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) LIABILITY.—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this title shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN HERITAGE AREA.—Nothing in this title shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) EFFECT OF ESTABLISHMENT.—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this title may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexisting regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

SEC. 511. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—To carry out this title there is authorized to be appropriated $10,000,000, except that not more than $1,000,000 may be appropriated to carry out this title for any fiscal year.

(b) FIFTY PERCENT MATCH.—The Federal share of the cost of activities carried out using any assistance or grant under this title shall not exceed 50 percent.

SEC. 512. SUNSET PROVISION.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date that funds are first made available for this title.

SEC. 513. WRIGHT COMPANY FACTORY STUDY AND REPORT.

(a) STUDY.—

(1) IN GENERAL.—The Secretary shall conduct a special resource study updating the study required under section 104 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419) and detailing alternatives for incorporating the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park.

(2) CONTENTS.—The study shall include an analysis of alternatives for including the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park that detail management and development options and costs.

(3) CONSULTATION.—In conducting the study, the Secretary shall consult with the Delphi Corporation, the Aviation Heritage Foundation, State and local agencies, and other interested parties in the area.

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(b) REPORT.—Not later than 3 years after funds are first made available for this section, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the results of the study conducted under this section.

TITLE VI—OIL REGION NATIONAL HERITAGE AREA

SEC. 601. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Oil Region National Heritage Area Act".

(b) DEFINITIONS.—For the purposes of this title, the following definitions shall apply:

(1) HERITAGE AREA.—The term "Heritage Area" means the Oil Region National Heritage Area established in section 603(a).

(2) MANAGEMENT ENTITY.—The term "management entity" means the Oil Heritage Region, Inc., or its successor entity.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 602. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Oil Region of Northwestern Pennsylvania, with numerous sites and districts listed on the National Register of Historic Places, and designated by the Governor of Pennsylvania as one of the State Heritage Park Areas, is a region with tremendous physical and natural resources and possesses a story of State, national, and international significance.

(2) The single event of Colonel Edwin Drake's drilling of the world's first successful oil well in 1859 has affected the industrial, natural, social, and political structures of the modern world.

(3) Six national historic districts are located within the State Heritage Park boundary, in Emlenton, Franklin, Oil City, and Titusville, as well as 17 separate National Register sites.

(4) The Allegheny River, which was designated as a component of the national wild and scenic rivers system in 1992 by Public Law 102–271, traverses the Oil Region and connects several of its major sites, as do some of the river's tributaries such as Oil Creek, French Creek, and Sandy Creek.

(5) The unspoiled rural character of the Oil Region provides many natural and recreational resources, scenic vistas, and excellent water quality for people throughout the United States to enjoy.

(6) Remnants of the oil industry, visible on the landscape to this day, provide a direct link to the past for visitors, as do the historic valley settlements, riverbed settlements, plateau developments, farmlands, and industrial landscapes.

(7) The Oil Region also represents a cross section of American history associated with Native Americans, frontier settlements, the French and Indian War, African Americans and the Underground Railroad, and immigration of Swedish and Polish individuals, among others.

(8) Involvement by the Federal Government shall serve to enhance the efforts of the Commonwealth of Pennsylvania,

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volunteer organizations, and private businesses, to promote the cultural, national, and recreational resources of the region in order to fulfill their full potential.

(b) PURPOSE.—The purpose of this title is to enhance a cooperative management framework to assist the Commonwealth of Pennsylvania, its units of local government, and area citizens in conserving, enhancing, and interpreting the significant features of the lands, water, and structures of the Oil Region, in a manner consistent with compatible economic development for the benefit and inspiration of present and future generations in the Commonwealth of Pennsylvania and the United States.

SEC. 603. OIL REGION NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is hereby established the Oil Region National Heritage Area.

(b) BOUNDARIES.—The boundaries of the Heritage Area shall include all of those lands depicted on a map entitled "Oil Region National Heritage Area", numbered OIRE/20,000 and dated October 2000. The map shall be on file in the appropriate offices of the National Park Service. The Secretary of the Interior shall publish in the Federal Register, as soon as practical after the date of the enactment of this Act, a detailed description and map of the boundaries established under this subsection.

(c) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Oil Heritage Region, Inc., the locally based private, nonprofit management corporation which shall oversee the development of a management plan in accordance with section 605(b).

SEC. 604. COMPACT.

To carry out the purposes of this title, the Secretary shall enter into a compact with the management entity. The compact shall include information relating to the objectives and management of the area, including a discussion of the goals and objectives of the Heritage Area, including an explanation of the proposed approach to conservation and interpretation and a general outline of the protection measures committed to by the Secretary and management entity.

SEC. 605. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

(a) AUTHORITIES OF THE MANAGEMENT ENTITY.—The management entity may use funds made available under this title for purposes of preparing, updating, and implementing the management plan developed under subsection (b). Such purposes may include—

(1) making grants to, and entering into cooperative agreements with, States and their political subdivisions, private organizations, or any other person;

(2) hiring and compensating staff; and

(3) undertaking initiatives that advance the purposes of the Heritage Area.

(b) MANAGEMENT PLAN.—The management entity shall develop a management plan for the Heritage Area that—

(1) presents comprehensive strategies and recommendations for conservation, funding, management, and development of the Heritage Area;

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(2) takes into consideration existing State, county, and local plans and involves residents, public agencies, and private organizations working in the Heritage Area;

(3) includes a description of actions that units of government and private organizations have agreed to take to protect the resources of the Heritage Area;

(4) specifies the existing and potential sources of funding to protect, manage, and develop the Heritage Area;

(5) includes an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historic, recreational, or scenic significance;

(6) describes a program for implementation of the management plan by the management entity, including plans for restoration and construction, and specific commitments for that implementation that have been made by the management entity and any other persons for the first 5 years of implementation;

(7) lists any revisions to the boundaries of the Heritage Area proposed by the management entity and requested by the affected local government; and

(8) includes an interpretation plan for the Heritage Area.

(c) DEADLINE; TERMINATION OF FUNDING.—

(1) DEADLINE.—The management entity shall submit the management plan to the Secretary within 2 years after the funds are made available for this title.

(2) TERMINATION OF FUNDING.—If a management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for Federal assistance under this title.

(d) DUTIES OF MANAGEMENT ENTITY.—The management entity shall—

(1) give priority to implementing actions set forth in the compact and management plan;

(2) assist units of government, regional planning organizations, and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the natural, historical, and architectural resources and sites in the Heritage Area;

(D) the restoration of any historic building relating to the themes of the Heritage Area;

(E) ensuring that clear signs identifying access points and sites of interest are put in place throughout the Heritage Area; and

(F) carrying out other actions that the management entity determines to be advisable to fulfill the purposes of this title;

(3) encourage by appropriate means economic viability in the Heritage Area consistent with the goals of the management plan;

(4) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area; and

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(5) for any year in which Federal funds have been provided to implement the management plan under subsection (b)—

(A) conduct public meetings at least annually regarding the implementation of the management plan;

(B) submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each person to which any grant was made by the management entity in the year for which the report is made; and

(C) require, for all agreements entered into by the management entity authorizing expenditure of Federal funds by any other person, that the person making the expenditure make available to the management entity for audit all records pertaining to the expenditure of such funds.

(e) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity may not use Federal funds received under this title to acquire real property or an interest in real property.

SEC. 606. DUTIES AND AUTHORITIES OF THE SECRETARY.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—

(A) OVERALL ASSISTANCE.—The Secretary may, upon the request of the management entity, and subject to the availability of appropriations, provide technical and financial assistance to the management entity to carry out its duties under this title, including updating and implementing a management plan that is submitted under section 605(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives.

(B) OTHER ASSISTANCE.—If the Secretary has the resources available to provide technical assistance to the management entity to carry out its duties under this title (including updating and implementing a management plan that is submitted under section 605(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives), upon the request of the management entity the Secretary shall provide such assistance on a reimbursable basis. This subparagraph does not preclude the Secretary from providing nonreimbursable assistance under subparagraph (A).

(2) PRIORITY.—In assisting the management entity, the Secretary shall give priority to actions that assist in the—

(A) implementation of the management plan;

(B) provision of educational assistance and advice regarding land and water management techniques to conserve the significant natural resources of the region;

(C) development and application of techniques promoting the preservation of cultural and historic properties;

(D) preservation, restoration, and reuse of publicly and privately owned historic buildings;

(E) design and fabrication of a wide range of interpretive materials based on the management plan, including guide brochures, visitor displays, audio-visual and interactive exhibits, and educational curriculum materials for public education; and

(F) implementation of initiatives prior to approval of the management plan.

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(3) DOCUMENTATION OF STRUCTURES.—The Secretary, acting through the Historic American Building Survey and the Historic American Engineering Record, shall conduct studies necessary to document the industrial, engineering, building, and architectural history of the Heritage Area.

(b) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLANS.—The Secretary, in consultation with the Governor of Pennsylvania, shall approve or disapprove a management plan submitted under this title not later than 90 days after receiving such plan. In approving the plan, the Secretary shall take into consideration the following criteria:

(1) The extent to which the management plan adequately preserves and protects the natural, cultural, and historical resources of the Heritage Area.

(2) The level of public participation in the development of the management plan.

(3) The extent to which the board of directors of the management entity is representative of the local government and a wide range of interested organizations and citizens.

(c) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions in the management plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(d) APPROVING CHANGES.—The Secretary shall review and approve amendments to the management plan under section 605(b) that make substantial changes. Funds appropriated under this title may not be expended to implement such changes until the Secretary approves the amendments.

(e) EFFECT OF INACTION.—If the Secretary does not approve or disapprove a management plan, revision, or change within 90 days after it is submitted to the Secretary, then such management plan, revision, or change shall be deemed to have been approved by the Secretary.

SEC. 607. DUTIES OF OTHER FEDERAL ENTITIES.

Any Federal entity conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or support such activities in a manner that the management entity determines shall not have an adverse effect on the Heritage Area.

SEC. 608. SUNSET.

The Secretary may not make any grant or provide any assistance under this title after the expiration of the 15-year period beginning on the date that funds are first made available for this title.

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SEC. 609. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.

(a) NOTIFICATION AND CONSENT OF PROPERTY OWNERS REQUIRED.—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) LANDOWNER WITHDRAW.—Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

SEC. 610. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this title shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) LIABILITY.—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this title shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN HERITAGE AREA.—Nothing in this title shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) EFFECT OF ESTABLISHMENT.—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this title may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexisting regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

SEC. 611. USE OF FEDERAL FUNDS FROM OTHER SOURCES.

Nothing in this title shall preclude the management entity from using Federal funds available under Acts other than this title for the purposes for which those funds were authorized.

SEC. 612. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

(1) not more than $1,000,000 for any fiscal year; and

(2) not more than a total of $10,000,000.

(b) 50 PERCENT MATCH.—Financial assistance provided under this title may not be used to pay more than 50 percent of the total cost of any activity carried out with that assistance.

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TITLE VII—MISSISSIPPI GULF COAST NATIONAL HERITAGE AREA ACT

SEC. 701. SHORT TITLE.

This title may be cited as the "Mississippi Gulf Coast National Heritage Area Act".

SEC. 702. CONGRESSIONAL FINDINGS.

Congress finds that—

(1) the 6-county area in southern Mississippi located on the Gulf of Mexico and in the Mississippi Coastal Plain has a unique identity that is shaped by—

(A) the coastal and riverine environment; and

(B) the diverse cultures that have settled in the area;

(2) the area is rich with diverse cultural and historical significance, including—

(A) early Native American settlements; and

(B) Spanish, French, and English settlements originating in the 1600s;

(3) the area includes spectacular natural, scenic, and recreational resources;

(4) there is broad support from local governments and other interested individuals for the establishment of the Mississippi Gulf Coast National Heritage Area to coordinate and assist in the preservation and interpretation of those resources;

(5) the Comprehensive Resource Management Plan, coordinated by the Mississippi Department of Marine Resources—

(A) is a collaborative effort of the Federal Government and State and local governments in the area; and

(B) is a natural foundation on which to establish the Heritage Area; and

(6) establishment of the Heritage Area would assist local communities and residents in preserving the unique cultural, historical, and natural resources of the area.

SEC. 703. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term "Heritage Area" means the Mississippi Gulf Coast National Heritage Area established by section 4(a).

(2) COORDINATING ENTITY.—The term "coordinating entity" means the coordinating entity for the Heritage Area designated by section 4(c).

(3) MANAGEMENT PLAN.—The term "management plan" means the management plan for the Heritage Area developed under section 5.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) STATE.—The term "State" means the State of Mississippi.

SEC. 704. MISSISSIPPI GULF COAST NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State the Mississippi Gulf Coast National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall consist of the counties of Pearl River, Stone, George, Hancock, Harrison, and Jackson in the State.

(c) COORDINATING ENTITY.—

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(1) IN GENERAL.—The Mississippi Department of Marine Resources, in consultation with the Mississippi Department of Archives and History, shall serve as the coordinating entity for the Heritage Area.

(2) OVERSIGHT COMMITTEE.—The coordinating entity shall ensure that each of the 6 counties included in the Heritage Area is appropriately represented on any oversight committee.

SEC. 705. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the coordinating entity shall develop and submit to the Secretary a management plan for the Heritage Area.

(b) REQUIREMENTS.—The management plan shall—

(1) provide recommendations for the conservation, funding, management, interpretation, and development of the cultural, historical, archaeological, natural, and recreational resources of the Heritage Area;

(2) identify sources of funding for the Heritage Area;

(3) include—

(A) an inventory of the cultural, historical, archaeological, natural, and recreational resources of the Heritage Area; and

(B) an analysis of ways in which Federal, State, tribal, and local programs may best be coordinated to promote the purposes of this Act;

(4) provide recommendations for educational and interpretive programs to inform the public about the resources of the Heritage Area; and

(5) involve residents of affected communities and tribal and local governments.

(c) FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in subsection (a), the Secretary shall not provide any additional funding under this Act until a management plan for the Heritage Area is submitted to the Secretary.

(d) APPROVAL OR DISAPPROVAL OF THE MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after receipt of the management plan under subsection (a), the Secretary shall approve or disapprove the management plan.

(2) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan under paragraph (1), the Secretary shall—

(A) advise the coordinating entity in writing of the reasons for disapproval;

(B) make recommendations for revision of the management plan; and

(C) allow the coordinating entity to submit to the Secretary revisions to the management plan.

(e) REVISION.—After approval by the Secretary of the management plan, the coordinating entity shall periodically—

(1) review the management plan; and

(2) submit to the Secretary, for review and approval by the Secretary, any recommendations for revisions to the management plan.

SEC. 706. AUTHORITIES AND DUTIES OF COORDINATING ENTITY.

(a) AUTHORITIES.—For purposes of developing and implementing the management plan and otherwise carrying out this

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Act, the coordinating entity may make grants to and provide technical assistance to tribal and local governments, and other public and private entities.

(b) DUTIES.—In addition to developing the management plan under section 5, in carrying out this Act, the coordinating entity shall—

(1) implement the management plan; and

(2) assist local and tribal governments and non-profit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of, and appreciation for, the cultural, historical, archaeological, and natural resources of the Heritage Area;

(D) restoring historic structures that relate to the Heritage Area; and

(E) carrying out any other activity that the coordinating entity determines to be appropriate to carry out this Act, consistent with the management plan;

(3) conduct public meetings at least annually regarding the implementation of the management plan; and

(4) for any fiscal year for which Federal funds are made available under section 9—

(A) submit to the Secretary a report that describes, for the fiscal year, the actions of the coordinating entity in carrying out this Act;

(B) make available to the Secretary for audit all records relating to the expenditure of funds and any matching funds; and

(C) require, for all agreements authorizing the expenditure of Federal funds by any entity, that the receiving entity make available to the Secretary for audit all records relating to the expenditure of the funds.

(c) PROHIBITION ON ACQUISITION OF REAL PROPERTY.—The coordinating entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

SEC. 707. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) IN GENERAL.—On the request of the coordinating entity, the Secretary may provide technical and financial assistance to the coordinating entity for use in the development and implementation of the management plan.

(b) PROHIBITION OF CERTAIN REQUIREMENTS.—The Secretary may not, as a condition of the provision of technical or financial assistance under this section, require any recipient of the assistance to impose or modify any land use restriction or zoning ordinance.

SEC. 708. EFFECT OF ACT.

Nothing in this Act—

(1) affects or authorizes the coordinating entity to interfere with—

(A) the right of any person with respect to private property; or

(B) any local zoning ordinance or land use plan;

(2) restricts an Indian tribe from protecting cultural or religious sites on tribal land;

(3) modifies, enlarges, or diminishes the authority of any State, tribal, or local government to regulate any use of land under any other law (including regulations);

(4)(A) modifies, enlarges, or diminishes the authority of the State to manage fish and wildlife in the Heritage Area, including the regulation of fishing and hunting; or

(B) authorizes the coordinating entity to assume any management authorities over such lands; or

(5) diminishes the trust responsibilities or government- to-government obligations of the United States to any federally recognized Indian tribe.

SEC. 709. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this Act shall be not more than 50 percent.

VIII—FEDERAL LANDS RECREATION ENHANCEMENT ACT

SEC. 801. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Federal Lands Recreation Enhancement Act".

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

Sec. 801. Short title and table of contents.
Sec. 802. Definitions.
Sec. 803. Recreation fee authority.
Sec. 804. Public participation.
Sec. 805. Recreation passes.
Sec. 806. Cooperative agreements.
Sec. 807. Special account and distribution of fees and revenues.
Sec. 808. Expenditures.
Sec. 809. Reports.
Sec. 810. Sunset provision.
Sec. 811. Volunteers.
Sec. 812. Enforcement and protection of receipts.
Sec. 813. Repeal of superseded admission and use fee authorities.
Sec. 814. Relation to other laws and fee collection authorities.
Sec. 815. Limitation on use of fees for employee bonuses.

SEC. 802. DEFINITIONS.

In this Act:

(1) STANDARD AMENITY RECREATION FEE.—The term "standard amenity recreation fee" means the recreation fee authorized by section 3(f).

(2) EXPANDED AMENITY RECREATION FEE.—The term "expanded amenity recreation fee" means the recreation fee authorized by section 3(g).

(3) ENTRANCE FEE.—The term "entrance fee" means the recreation fee authorized to be charged to enter onto lands managed by the National Park Service or the United States Fish and Wildlife Service.

(4) FEDERAL LAND MANAGEMENT AGENCY.—The term "Federal land management agency" means the National Park Service, the United States Fish and Wildlife Service, the Bureau

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of Land Management, the Bureau of Reclamation, or the Forest Service.

(5) FEDERAL RECREATIONAL LANDS AND WATERS.—The term "Federal recreational lands and waters" means lands or waters managed by a Federal land management agency.

(6) NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS PASS.—The term "National Parks and Federal Recreational Lands Pass" means the interagency national pass authorized by section 5.

(7) PASSHOLDER.—The term "passholder" means the person who is issued a recreation pass.

(8) RECREATION FEE.—The term "recreation fee" means an entrance fee, standard amenity recreation fee, expanded amenity recreation fee, or special recreation permit fee.

(9) RECREATION PASS.—The term "recreation pass" means the National Parks and Federal Recreational Lands Pass or one of the other recreation passes available as authorized by section 5.

(10) SECRETARY.—The term "Secretary" means—

(A) the Secretary of the Interior, with respect to a Federal land management agency (other than the Forest Service); and

(B) the Secretary of Agriculture, with respect to the Forest Service.

(11) SECRETARIES.—The term "Secretaries" means the Secretary of the Interior and the Secretary of Agriculture acting jointly.

(12) SPECIAL ACCOUNT.—The term "special account" means the special account established in the Treasury under section 7 for a Federal land management agency.

(13) SPECIAL RECREATION PERMIT FEE.—The term "special recreation permit fee" means the fee authorized by section 3(h).

SEC. 803. RECREATION FEE AUTHORITY.

(a) AUTHORITY OF SECRETARY.—Beginning in fiscal year 2005 and thereafter, the Secretary may establish, modify, charge, and collect recreation fees at Federal recreational lands and waters as provided for in this section.

(b) BASIS FOR RECREATION FEES.—Recreation fees shall be established in a manner consistent with the following criteria:

(1) The amount of the recreation fee shall be commensurate with the benefits and services provided to the visitor.

(2) The Secretary shall consider the aggregate effect of recreation fees on recreation users and recreation service providers.

(3) The Secretary shall consider comparable fees charged elsewhere and by other public agencies and by nearby private sector operators.

(4) The Secretary shall consider the public policy or management objectives served by the recreation fee.

(5) The Secretary shall obtain input from the appropriate Recreation Resource Advisory Committee, as provided in section 4(d).

(6) The Secretary shall consider such other factors or criteria as determined appropriate by the Secretary.

(c) SPECIAL CONSIDERATIONS.—The Secretary shall establish the minimum number of recreation fees and shall avoid the collection of multiple or layered recreation fees for similar uses, activities, or programs.

(d) LIMITATIONS ON RECREATION FEES.—

(1) PROHIBITION ON FEES FOR CERTAIN ACTIVITIES OR SERVICES.—The Secretary shall not charge any standard amenity recreation fee or expanded amenity recreation fee for Federal recreational lands and waters administered by the Bureau of Land Management, the Forest Service, or the Bureau of Reclamation under this Act for any of the following:

(A) Solely for parking, undesignated parking, or picnicking along roads or trailsides.

(B) For general access unless specifically authorized under this section.

(C) For dispersed areas with low or no investment unless specifically authorized under this section.

(D) For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services.

(E) For camping at undeveloped sites that do not provide a minimum number of facilities and services as described in subsection (g)(2)(A).

(F) For use of overlooks or scenic pullouts.

(G) For travel by private, noncommercial vehicle over any national parkway or any road or highway established as a part of the Federal-aid System, as defined in section 101 of title 23, United States Code, which is commonly used by the public as a means of travel between two places either or both of which are outside any unit or area at which recreation fees are charged under this Act.

(H) For travel by private, noncommercial vehicle, boat, or aircraft over any road or highway, waterway, or airway to any land in which such person has any property right if such land is within any unit or area at which recreation fees are charged under this Act.

(I) For any person who has a right of access for hunting or fishing privileges under a specific provision of law or treaty.

(J) For any person who is engaged in the conduct of official Federal, State, Tribal, or local government business.

(K) For special attention or extra services necessary to meet the needs of the disabled.

(2) RELATION TO FEES FOR USE OF HIGHWAYS OR ROADS.—An entity that pays a special recreation permit fee or similar permit fee shall not be subject to a road cost-sharing fee or a fee for the use of highways or roads that are open to private, noncommercial use within the boundaries of any Federal recreational lands or waters, as authorized under section 6 of Public Law 88–657 (16 U.S.C. 537; commonly known as the Forest Roads and Trails Act).

(3) PROHIBITION ON FEES FOR CERTAIN PERSONS OR PLACES.—The Secretary shall not charge an entrance fee or standard amenity recreation fee for the following:

(A) Any person under 16 years of age.

(B) Outings conducted for noncommercial educational purposes by schools or bona fide academic institutions.

(C) The U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the National Park System within the District of Columbia, or Arlington House-Robert E. Lee National Memorial.

(D) The Flight 93 National Memorial.

(E) Entrance on other routes into the Great Smoky Mountains National Park or any part thereof unless fees are charged for entrance into that park on main highways and thoroughfares.

(F) Entrance on units of the National Park System containing deed restrictions on charging fees.

(G) An area or unit covered under section 203 of the Alaska National Interest Lands Conservation Act (Public Law 96–487; 16 U.S.C. 410hh–2), with the exception of Denali National Park and Preserve.

(H) A unit of the National Wildlife Refuge System created, expanded, or modified by the Alaska National Interest Lands Conservation Act (Public Law 96–487).

(I) Any person who visits a unit or area under the jurisdiction of the United States Fish and Wildlife Service and who has been issued a valid migratory bird hunting and conservation stamp issued under section 2 of the Act of March 16, 1934 (16 U.S.C. 718b; commonly known as the Duck Stamp Act).

(J) Any person engaged in a nonrecreational activity authorized under a valid permit issued under any other Act, including a valid grazing permit.

(4) NO RESTRICTION ON RECREATION OPPORTUNITIES.—Nothing in this Act shall limit the use of recreation opportunities only to areas designated for collection of recreation fees.

(e) ENTRANCE FEE.—

(1) AUTHORIZED SITES FOR ENTRANCE FEES.—The Secretary of the Interior may charge an entrance fee for a unit of the National Park System, including a national monument administered by the National Park Service, or for a unit of the National Wildlife Refuge System.

(2) PROHIBITED SITES.—The Secretary shall not charge an entrance fee for Federal recreational lands and waters managed by the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service.

(f) STANDARD AMENITY RECREATION FEE.—Except as limited by subsection (d), the Secretary may charge a standard amenity recreation fee for Federal recreational lands and waters under the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service, but only at the following:

(1) A National Conservation Area.

(2) A National Volcanic Monument.

(3) A destination visitor or interpretive center that provides a broad range of interpretive services, programs, and media.

(4) An area—

(A) that provides significant opportunities for outdoor recreation;

(B) that has substantial Federal investments;

(C) where fees can be efficiently collected; and

(D) that contains all of the following amenities:

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(i) Designated developed parking.
(ii) A permanent toilet facility.
(iii) A permanent trash receptacle.
(iv) Interpretive sign, exhibit, or kiosk.
(v) Picnic tables.
(vi) Security services.

(g) EXPANDED AMENITY RECREATION FEE.—

(1) NPS AND USFWS AUTHORITY.—Except as limited by subsection (d), the Secretary of the Interior may charge an expanded amenity recreation fee, either in addition to an entrance fee or by itself, at Federal recreational lands and waters under the jurisdiction of the National Park Service or the United States Fish and Wildlife Service when the Secretary of the Interior determines that the visitor uses a specific or specialized facility, equipment, or service.

(2) OTHER FEDERAL LAND MANAGEMENT AGENCIES.—Except as limited by subsection (d), the Secretary may charge an expanded amenity recreation fee, either in addition to a standard amenity fee or by itself, at Federal recreational lands and waters under the jurisdiction of the Forest Service, the Bureau of Land Management, or the Bureau of Reclamation, but only for the following facilities or services:

(A) Use of developed campgrounds that provide at least a majority of the following:
(i) Tent or trailer spaces.
(ii) Picnic tables.
(iii) Drinking water.
(iv) Access roads.
(v) The collection of the fee by an employee or agent of the Federal land management agency.
(vi) Reasonable visitor protection.
(vii) Refuse containers.
(viii) Toilet facilities.
(ix) Simple devices for containing a campfire.

(B) Use of highly developed boat launches with specialized facilities or services such as mechanical or hydraulic boat lifts or facilities, multi-lane paved ramps, paved parking, restrooms and other improvements such as boarding floats, loading ramps, or fish cleaning stations.

(C) Rental of cabins, boats, stock animals, lookouts, historic structures, group day-use or overnight sites, audio tour devices, portable sanitation devices, binoculars or other equipment.

(D) Use of hookups for electricity, cable, or sewer.

(E) Use of sanitary dump stations.

(F) Participation in an enhanced interpretive program or special tour.

(G) Use of reservation services.

(H) Use of transportation services.

(I) Use of areas where emergency medical or first-aid services are administered from facilities staffed by public employees or employees under a contract or reciprocal agreement with the Federal Government.

(J) Use of developed swimming sites that provide at least a majority of the following:
(i) Bathhouse with showers and flush toilets.
(ii) Refuse containers.

(iii) Picnic areas.
(iv) Paved parking.
(v) Attendants, including lifeguards.
(vi) Floats encompassing the swimming area.
(vii) Swimming deck.

(h) SPECIAL RECREATION PERMIT FEE.—The Secretary may issue a special recreation permit, and charge a special recreation permit fee in connection with the issuance of the permit, for specialized recreation uses of Federal recreational lands and waters, such as group activities, recreation events, motorized recreational vehicle use.

SEC. 804. PUBLIC PARTICIPATION.

(a) IN GENERAL.—As required in this section, the Secretary shall provide the public with opportunities to participate in the development of or changing of a recreation fee established under this Act.

(b) ADVANCE NOTICE.—The Secretary shall publish a notice in the Federal Register of the establishment of a new recreation fee area for each agency 6 months before establishment. The Secretary shall publish notice of a new recreation fee or a change to an existing recreation fee established under this Act in local newspapers and publications located near the site at which the recreation fee would be established or changed.

(c) PUBLIC INVOLVEMENT.—Before establishing any new recreation fee area, the Secretary shall provide opportunity for public involvement by—

(1) establishing guidelines for public involvement;

(2) establishing guidelines on how agencies will demonstrate on an annual basis how they have provided information to the public on the use of recreation fee revenues; and

(3) publishing the guidelines in paragraphs (1) and (2) in the Federal Register.

(d) RECREATION RESOURCE ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—

(A) AUTHORITY TO ESTABLISH.—Except as provided in subparagraphs (C) and (D), the Secretary or the Secretaries shall establish a Recreation Resource Advisory Committee in each State or region for Federal recreational lands and waters managed by the Forest Service or the Bureau of Land Management to perform the duties described in paragraph (2).

(B) NUMBER OF COMMITTEES.—The Secretary may have as many additional Recreation Resource Advisory Committees in a State or region as the Secretary considers necessary for the effective operation of this Act.

(C) EXCEPTION.—The Secretary shall not establish a Recreation Resource Advisory Committee in a State if the Secretary determines, in consultation with the Governor of the State, that sufficient interest does not exist to ensure that participation on the Committee is balanced in terms of the points of view represented and the functions to be performed.

(D) USE OF OTHER ENTITIES.—In lieu of establishing a Recreation Resource Advisory Committee under subparagraph (A), the Secretary may use a Resource Advisory Committee established pursuant to another provision of

law and in accordance with that law or a recreation fee advisory board otherwise established by the Secretary to perform the duties specified in paragraph (2).

(2) DUTIES.—In accordance with the procedures required by paragraph (9), a Recreation Resource Advisory Committee may make recommendations to the Secretary regarding a standard amenity recreation fee or an expanded amenity recreation fee, whenever the recommendations relate to public concerns in the State or region covered by the Committee regarding—

(A) the implementation of a standard amenity recreation fee or an expanded amenity recreation fee or the establishment of a specific recreation fee site;

(B) the elimination of a standard amenity recreation fee or an expanded amenity recreation fee; or

(C) the expansion or limitation of the recreation fee program.

(3) MEETINGS.—A Recreation Resource Advisory Committee shall meet at least annually, but may, at the discretion of the Secretary, meet as often as needed to deal with citizen concerns about the recreation fee program in a timely manner.

(4) NOTICE OF REJECTION.—If the Secretary rejects the recommendation of a Recreation Resource Advisory Committee, the Secretary shall issue a notice that identifies the reasons for rejecting the recommendation to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than 30 days before the Secretary implements a decision pertaining to that recommendation.

(5) COMPOSITION OF THE ADVISORY COMMITTEE.—

(A) NUMBER.—A Recreation Resource Advisory Committee shall be comprised of 11 members.

(B) NOMINATIONS.—The Governor and the designated county official from each county in the relevant State or Region may submit a list of nominations in the categories described under subparagraph (D).

(C) APPOINTMENT.—The Secretary may appoint members of the Recreation Resource Advisory Committee from the list as provided in subparagraph (B).

(D) BROAD AND BALANCED REPRESENTATION.—In appointing the members of a Recreation Resource Advisory Committee, the Secretary shall provide for a balanced and broad representation from the recreation community that shall include the following:

(i) Five persons who represent recreation users and that include, as appropriate, persons representing the following:

(I) Winter motorized recreation, such as snowmobiling.

(II) Winter non-motorized recreation, such as snowshoeing, cross country and down hill skiing, and snowboarding.

(III) Summer motorized recreation, such as motorcycles, boaters, and off-highway vehicles.

(IV) Summer nonmotorized recreation, such as backpacking, horseback riding, mountain biking, canoeing, and rafting.

(V) Hunting and fishing.

(ii) Three persons who represent interest groups that include, as appropriate, the following:

(I) Motorized outfitters and guides.

(II) Non-motorized outfitters and guides.

(III) Local environmental groups.

(iii) Three persons, as follows:

(I) State tourism official to represent the State.

(II) A person who represents affected Indian tribes.

(III) A person who represents affected local government interests.

(6) TERM.—

(A) LENGTH OF TERM.—The Secretary shall appoint the members of a Recreation Resource Advisory Committee for staggered terms of 2 and 3 years beginning on the date that the members are first appointed. The Secretary may reappoint members to subsequent 2- or 3-year terms.

(B) EFFECT OF VACANCY.—The Secretary shall make appointments to fill a vacancy on a Recreation Resource Advisory Committee as soon as practicable after the vacancy has occurred.

(C) EFFECT OF UNEXPECTED VACANCY.—Where an unexpected vacancy occurs, the Governor and the designated county officials from each county in the relevant State shall provide the Secretary with a list of nominations in the relevant category, as described under paragraph (5)(D), not later than two months after notification of the vacancy. To the extent possible, a vacancy shall be filled in the same category and term in which the original appointment was made.

(7) CHAIRPERSON.—The chairperson of a Recreation Resource Advisory Committee shall be selected by the majority vote of the members of the Committee.

(8) QUORUM.—Eight members shall constitute a quorum. A quorum must be present to constitute an official meeting of a Recreation Resource Advisory Committee.

(9) APPROVAL PROCEDURES.—A Recreation Resource Advisory Committee shall establish procedures for making recommendations to the Secretary. A recommendation may be submitted to the Secretary only if the recommendation is approved by a majority of the members of the Committee from each of the categories specified in paragraph (5)(D) and general public support for the recommendation is documented.

(10) COMPENSATION.—Members of the Recreation Resource Advisory Committee shall not receive any compensation.

(11) PUBLIC PARTICIPATION IN THE RECREATION RESOURCE ADVISORY COMMITTEE.—

(A) NOTICE OF MEETINGS.—All meetings of a Recreation Resource Advisory Committee shall be announced at least one week in advance in a local newspaper of record and the Federal Register, and shall be open to the public.

(B) RECORDS.—A Recreation Resource Advisory Committee shall maintain records of the meetings of the Recreation Resource Advisory Committee and make the records available for public inspection.

(12) FEDERAL ADVISORY COMMITTEE ACT.—A Recreation Resource Advisory Committee is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) MISCELLANEOUS ADMINISTRATIVE PROVISIONS REGARDING RECREATION FEES AND RECREATION PASSES.—

(1) NOTICE OF ENTRANCE FEES, STANDARD AMENITY RECREATION FEES, AND PASSES.—The Secretary shall post clear notice of any entrance fee, standard amenity recreation fee, and available recreation passes at appropriate locations in each unit or area of a Federal land management agency where an entrance fee or a standard amenity recreation fee is charged. The Secretary shall include such notice in publications distributed at the unit or area.

(2) NOTICE OF RECREATION FEE PROJECTS.—To the extent practicable, the Secretary shall post clear notice of locations where work is performed using recreation fee or recreation pass revenues collected under this Act.

SEC. 805. RECREATION PASSES.

(a) AMERICA THE BEAUTIFUL—THE NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS PASS.—

(1) AVAILABILITY AND USE.—The Secretaries shall establish, and may charge a fee for, an interagency national pass to be known as the "America the Beautiful—the National Parks and Federal Recreational Lands Pass", which shall cover the entrance fee and standard amenity recreation fee for all Federal recreational lands and waters for which an entrance fee or a standard amenity recreation fee is charged.

(2) IMAGE COMPETITION FOR RECREATION PASS.—The Secretaries shall hold an annual competition to select the image to be used on the National Parks and Federal Recreational Lands Pass for a year. The competition shall be open to the public and used as a means to educate the American people about Federal recreational lands and waters.

(3) NOTICE OF ESTABLISHMENT.—The Secretaries shall publish a notice in the Federal Register when the National Parks and Federal Recreational Lands Pass is first established and available for purchase.

(4) DURATION.—The National Parks and Federal Recreational Lands Pass shall be valid for a period of 12 months from the date of the issuance of the recreation pass to a passholder, except in the case of the age and disability discounted passes issued under subsection (b).

(5) PRICE.—The Secretaries shall establish the price at which the National Parks and Federal Recreational Lands Pass will be sold to the public.

(6) SALES LOCATIONS AND MARKETING.—

(A) IN GENERAL.—The Secretary shall sell the National Parks and Federal Recreational Lands Pass at all Federal recreational lands and waters at which an entrance fee or a standard amenity recreation fee is charged and at such other locations as the Secretaries consider appropriate and feasible.

(B) USE OF VENDORS.—The Secretary may enter into fee management agreements as provided in section 6.

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(C) MARKETING.—The Secretaries shall take such actions as are appropriate to provide for the active marketing of the National Parks and Federal Recreational Lands Pass.

(7) ADMINISTRATIVE GUIDELINES.—The Secretaries shall issue guidelines on administration of the National Parks and Federal Recreational Lands Pass, which shall include agreement on price, the distribution of revenues between the Federal land management agencies, the sharing of costs, benefits provided, marketing and design, adequate documentation for age and disability discounts under subsection (b), and the issuance of that recreation pass to volunteers. The Secretaries shall take into consideration all relevant visitor and sales data available in establishing the guidelines.

(8) DEVELOPMENT AND IMPLEMENTATION AGREEMENTS.—The Secretaries may enter into cooperative agreements with governmental and nongovernmental entities for the development and implementation of the National Parks and Federal Recreational Lands Pass Program.

(9) PROHIBITION ON OTHER NATIONAL RECREATION PASSES.—The Secretary may not establish any national recreation pass, except as provided in this section.

(b) DISCOUNTED PASSES.—

(1) AGE DISCOUNT.—The Secretary shall make the National Parks and Federal Recreational Lands Pass available, at a cost of $10.00, to any United States citizen or person domiciled in the United States who is 62 years of age or older, if the citizen or person provides adequate proof of such age and such citizenship or residency. The National Parks and Federal Recreational Lands Pass made available under this subsection shall be valid for the lifetime of the pass holder.

(2) DISABILITY DISCOUNT.—The Secretary shall make the National Parks and Federal Recreational Lands Pass available, without charge, to any United States citizen or person domiciled in the United States who has been medically determined to be permanently disabled for purposes of section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(B)(i)), if the citizen or person provides adequate proof of the disability and such citizenship or residency. The National Parks and Federal Recreational Lands Pass made available under this subsection shall be valid for the lifetime of the passholder.

(c) SITE-SPECIFIC AGENCY PASSES.—The Secretary may establish and charge a fee for a site-specific pass that will cover the entrance fee or standard amenity recreation fee for particular Federal recreational lands and waters for a specified period not to exceed 12 months.

(d) REGIONAL MULTIENTITY PASSES.—

(1) PASSES AUTHORIZED.—The Secretary may establish and charge a fee for a regional multientity pass that will be accepted by one or more Federal land management agencies or by one or more governmental or nongovernmental entities for a specified period not to exceed 12 months. To include a Federal land management agency or governmental or nongovernmental entity over which the Secretary does not have jurisdiction, the Secretary shall obtain the consent of the head of such agency or entity.

(2) REGIONAL MULTIENTITY PASS AGREEMENT.—In order to establish a regional multientity pass under this subsection, the Secretary shall enter into a regional multientity pass agreement with all the participating agencies or entities on price, the distribution of revenues between participating agencies or entities, the sharing of costs, benefits provided, marketing and design, and the issuance of the pass to volunteers. The Secretary shall take into consideration all relevant visitor and sales data available when entering into this agreement.

(e) DISCOUNTED OR FREE ADMISSION DAYS OR USE.—The Secretary may provide for a discounted or free admission day or use of Federal recreational lands and waters.

(f) EFFECT ON EXISTING PASSPORTS AND PERMITS.—

(1) EXISTING PASSPORTS.—A passport issued under section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a) or title VI of the National Parks Omnibus Management Act of 1998 (Public Law 105–391; 16 U.S.C. 5991–5995), such as the Golden Eagle Passport, the Golden Age Passport, the Golden Access Passport, and the National Parks Passport, that was valid on the day before the publication of the Federal Register notice required under subsection (a)(3) shall be valid in accordance with the terms agreed to at the time of issuance of the passport, to the extent practicable, and remain in effect until expired, lost, or stolen.

(2) PERMITS.—A permit issued under section 4 of the Land and Water Conservation Fund Act of 1965 that was valid on the day before the date of the enactment of this Act shall be valid and remain in effect until expired, revoked, or suspended.

SEC. 806. COOPERATIVE AGREEMENTS.

(a) FEE MANAGEMENT AGREEMENT.—Notwithstanding chapter 63 of title 31, United States Code, the Secretary may enter into a fee management agreement, including a contract, which may provide for a reasonable commission, reimbursement, or discount, with the following entities for the following purposes:

(1) With any governmental or nongovernmental entity, including those in a gateway community, for the purpose of obtaining fee collection and processing services, including visitor reservation services.

(2) With any governmental or nongovernmental entity, including those in a gateway community, for the purpose of obtaining emergency medical services.

(3) With any governmental entity, including those in a gateway community, to obtain law enforcement services.

(b) REVENUE SHARING.—A State or legal subdivision of a State that enters into an agreement with the Secretary under subsection (a) may share in a percentage of the revenues collected at the site in accordance with that fee management agreement.

(c) COUNTY PROPOSALS.—The Secretary shall consider any proposal submitted by a county to provide services described in subsection (a). If the Secretary decides not to enter into a fee management agreement with the county under subsection (a), the Secretary shall notify the county in writing of the decision, identifying the reasons for the decision. The fee management agreement may include cooperative site planning and management provisions.

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SEC. 807. SPECIAL ACCOUNT AND DISTRIBUTION OF FEES AND REVENUES.

(a) SPECIAL ACCOUNT.—The Secretary of the Treasury shall establish a special account in the Treasury for each Federal land management agency.

(b) DEPOSITS.—Subject to subsections (c), (d), and (e), revenues collected by each Federal land management agency under this Act shall—

(1) be deposited in its special account; and

(2) remain available for expenditure, without further appropriation, until expended.

(c) DISTRIBUTION OF RECREATION FEES AND SINGLE-SITE AGENCY PASS REVENUES.—

(1) LOCAL DISTRIBUTION OF FUNDS.—

(A) RETENTION OF REVENUES.—Not less than 80 percent of the recreation fees and site-specific agency pass revenues collected at a specific unit or area of a Federal land management agency shall remain available for expenditure, without further appropriation, until expended at that unit or area.

(B) REDUCTION.—The Secretary may reduce the percentage allocation otherwise applicable under subparagraph (A) to a unit or area of a Federal land management agency, but not below 60 percent, for a fiscal year if the Secretary determines that the revenues collected at the unit or area exceed the reasonable needs of the unit or area for which expenditures may be made for that fiscal year.

(2) AGENCY-WIDE DISTRIBUTION OF FUNDS.—The balance of the recreation fees and site-specific agency pass revenues collected at a specific unit or area of a Federal land management and not distributed in accordance with paragraph (1) shall remain available to that Federal land management agency for expenditure on an agency-wide basis, without further appropriation, until expended.

(3) OTHER AMOUNTS.—Other amounts collected at other locations, including recreation fees collected by other entities or for a reservation service, shall remain available, without further appropriation, until expended in accordance with guidelines established by the Secretary.

(d) DISTRIBUTION OF NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS PASS REVENUES.—Revenues collected from the sale of the National Parks and Federal Recreational Lands Pass shall be deposited in the special accounts established for the Federal land management agencies in accordance with the guidelines issued under section 5(a)(7).

(e) DISTRIBUTION OF REGIONAL MULTIENTITY PASS REVENUES.—Revenues collected from the sale of a regional multientity pass authorized under section 5(d) shall be deposited in each participating Federal land management agency's special account in accordance with the terms of the region multientity pass agreement for the regional multientity pass.

SEC. 808. EXPENDITURES.

(a) USE OF FEES AT SPECIFIC SITE OR AREA.—Amounts available for expenditure at a specific site or area—

(1) shall be accounted for separately from the amounts collected;

(2) may be distributed agency-wide; and

(3) shall be used only for—

(A) repair, maintenance, and facility enhancement related directly to visitor enjoyment, visitor access, and health and safety;

(B) interpretation, visitor information, visitor service, visitor needs assessments, and signs;

(C) habitat restoration directly related to wildlife-dependent recreation that is limited to hunting, fishing, wildlife observation, or photography;

(D) law enforcement related to public use and recreation;

(E) direct operating or capital costs associated with the recreation fee program; and

(F) a fee management agreement established under section 6(a) or a visitor reservation service.

(b) LIMITATION ON USE OF FEES.—The Secretary may not use any recreation fees for biological monitoring on Federal recreational lands and waters under the Endangered Species Act of 1973 for listed or candidate species.

(c) ADMINISTRATION, OVERHEAD, AND INDIRECT COSTS.—The Secretary may use not more than an average of 15 percent of total revenues collected under this Act for administration, overhead, and indirect costs related to the recreation fee program by that Secretary.

(d) TRANSITIONAL EXCEPTION.—Notwithstanding any other provision of this Act, the Secretary may use amounts available in the special account of a Federal land management agency to supplement administration and marketing costs associated with—

(1) the National Parks and Federal Recreational Lands Pass during the 5-year period beginning on the date the joint guidelines are issued under section 5(a)(7); and

(2) a regional multientity pass authorized section 5(d) during the 5-year period beginning on the date the regional multientity pass agreement for that recreation pass takes effect.

SEC. 809. REPORTS.

Not later than May 1, 2006, and every 3 years thereafter, the Secretary shall submit to Congress a report detailing the status of the recreation fee program conducted for Federal recreational lands and waters, including an evaluation of the recreation fee program, examples of projects that were funded using such fees, and future projects and programs for funding with fees, and containing any recommendations for changes in the overall fee system.

SEC. 810. SUNSET PROVISION.

The authority of the Secretary to carry out this Act shall terminate 10 years after the date of the enactment of this Act.

SEC. 811. VOLUNTEERS.

(a) AUTHORITY TO USE VOLUNTEERS.—The Secretary may use volunteers, as appropriate, to collect recreation fees and sell recreation passes.

(b) WAIVER OR DISCOUNT OF FEES; SITE-SPECIFIC AGENCY PASS.—In exchange for volunteer services, the Secretary may waive or discount an entrance fee, standard amenity recreation fee, or

an expanded amenity recreation fee that would otherwise apply to the volunteer or issue to the volunteer a site-specific agency pass authorized under section 5(c).

(c) NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS PASS.—In accordance with the guidelines issued under section 5(a)(7), the Secretaries may issue a National Parks and Federal Recreational Lands Pass to a volunteer in exchange for significant volunteer services performed by the volunteer.

(d) REGIONAL MULTIENTITY PASSES.—The Secretary may issue a regional multientity pass authorized under section 5(d) to a volunteer in exchange for significant volunteer services performed by the volunteer, if the regional multientity pass agreement under which the regional multientity pass was established provides for the issuance of the pass to volunteers.

SEC. 812. ENFORCEMENT AND PROTECTION OF RECEIPTS.

(a) ENFORCEMENT AUTHORITY.—The Secretary concerned shall enforce payment of the recreation fees authorized by this Act.

(b) EVIDENCE OF NONPAYMENT.—If the display of proof of payment of a recreation fee, or the payment of a recreation fee within a certain time period is required, failure to display such proof as required or to pay the recreation fee within the time period specified shall constitute nonpayment.

(c) JOINT LIABILITY.—The registered owner and any occupant of a vehicle charged with a nonpayment violation involving the vehicle shall be jointly liable for penalties imposed under this section, unless the registered owner can show that the vehicle was used without the registered owner's express or implied permission.

(d) LIMITATION ON PENALTIES.—The failure to pay a recreation fee established under this Act shall be punishable as a Class A or Class B misdemeanor, except that in the case of a first offense of nonpayment, the fine imposed may not exceed $100, notwithstanding section 3571(e) of title 18, United States Code.

SEC. 813. REPEAL OF SUPERSEDED ADMISSION AND USE FEE AUTHORITIES.

(a) LAND AND WATER CONSERVATION FUND ACT.—Subsections (a), (b), (c), (d), (e), (f), (g), and (i) of section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a et seq.) are repealed, except that the Secretary may continue to issue Golden Eagle Passports, Golden Age Passports, and Golden Access Passports under such section until the date the notice required by section 5(a)(3) is published in the Federal Register regarding the establishment of the National Parks and Federal Recreational Lands Pass.

(b) RECREATIONAL FEE DEMONSTRATION PROGRAM.—Section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 16 U.S.C. 460l–6a), is repealed.

(c) ADMISSION PERMITS FOR REFUGE UNITS.—Section 201 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3911) is repealed.

(d) NATIONAL PARK PASSPORT, GOLDEN EAGLE PASSPORT, GOLDEN AGE PASSPORT, AND GOLDEN ACCESS PASSPORT.—Effective on the date the notice required by section 5(a)(3) is published in the Federal Register, the following provisions of law authorizing the establishment of a national park passport program or the

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establishment and sale of a national park passport, Golden Eagle Passport, Golden Age Passport, or Golden Access Passport are repealed:

(1) Section 502 of the National Parks Omnibus Management Act of 1998 (Public Law 105–391; 16 U.S.C. 5982).

(2) Title VI of the National Parks Omnibus Management Act of 1998 (Public Law 105–391; 16 U.S.C. 5991–5995).

(e) TREATMENT OF UNOBLIGATED FUNDS.—

(1) LAND AND WATER CONSERVATION FUND SPECIAL ACCOUNTS.—Amounts in the special accounts established under section 4(i)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(i)(1)) for Federal land management agencies that are unobligated on the date of the enactment of this Act shall be transferred to the appropriate special account established under section 7 and shall be available to the Secretary in accordance with this Act. A special account established under section 4(i)(1) of the Land and Water Conservation Fund Act of 1965 for a Federal agency that is not a Federal land management area, and the use of such special account, is not affected by the repeal of section 4 of the Land and Water Conservation Fund Act of 1965 by subsection (a) of this section.

(2) NATIONAL PARKS PASSPORT.—Any funds collected under title VI of the National Parks Omnibus Management Act of 1998 (Public Law 105–391; 16 U.S.C. 5991–5995) that are unobligated on the day before the publication of the Federal Register notice required under section 5(a)(3) shall be transferred to the special account of the National Park Service for use in accordance with this Act. The Secretary of the Interior may use amounts available in that special account to pay any outstanding administration, marketing, or close-out costs associated with the national parks passport.

(3) RECREATIONAL FEE DEMONSTRATION PROGRAM.—Any funds collected in accordance with section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 16 U.S.C. 460l–6a), that are unobligated on the day before the date of the enactment of this Act shall be transferred to the appropriate special account and shall be available to the Secretary in accordance with this Act.

(4) ADMISSION PERMITS FOR REFUGE UNITS.—Any funds collected in accordance with section 201 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3911) that are available as provided in subsection (c)(A) of such section and are unobligated on the day before the date of the enactment of this Act shall be transferred to the special account of the United States Fish and Wildlife Service for use in accordance with this Act.

(f) EFFECT OF REGULATIONS.—A regulation or policy issued under a provision of law repealed by this section shall remain in effect to the extent such a regulation or policy is consistent with the provisions of this Act until the Secretary issues a regulation, guideline, or policy under this Act that supersedes the earlier regulation.

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SEC. 814. RELATION TO OTHER LAWS AND FEE COLLECTION AUTHORITIES.

(a) FEDERAL AND STATE LAWS UNAFFECTED.—Nothing in this Act shall authorize Federal hunting or fishing licenses or fees or charges for commercial or other activities not related to recreation, affect any rights or authority of the States with respect to fish and wildlife, or repeal or modify any provision of law that permits States or political subdivisions of States to share in the revenues from Federal lands or, except as provided in subsection (b), any provision of law that provides that any fees or charges collected at particular Federal areas be used for or credited to specific purposes or special funds as authorized by that provision of law.

(b) RELATION TO REVENUE ALLOCATION LAWS.—Amounts collected under this Act, and the existence of a fee management agreement with a governmental entity under section 6(a), may not be taken into account for the purposes of any of the following laws:

(1) The sixth paragraph under the heading "FOREST SERVICE" in the Act of May 23, 1908 (16 U.S.C. 500).

(2) Section 13 of the Act of March 1, 1911 (16 U.S.C. 500; commonly known as the Weeks Act).

(3) The fourteenth paragraph under the heading "FOREST SERVICE" in the Act of March 4, 1913 (16 U.S.C. 501).

(4) Section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012).

(5) Title II of the Act of August 8, 1937, and the Act of May 24, 1939 (43 U.S.C. 1181f et seq.).

(6) Section 6 of the Act of June 14, 1926 (43 U.S.C. 869–4).

(7) Chapter 69 of title 31, United States Code.

(8) Section 401 of the Act of June 15, 1935 (16 U.S.C. 715s; commonly known as the Refuge Revenue Sharing Act).

(9) The Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393; 16 U.S.C. 500 note), except that the exception made for such Act by this subsection is unique and is not intended to be construed as precedent for amounts collected from the use of Federal lands under any other provision of law.

(10) Section 2 of the Boulder Canyon Project Adjustment Act (43 U.S.C. 618a).

(11) The Federal Water Project Recreation Act (16 U.S.C. 460l–12 et seq.).

(12) The first section of the Act of June 17, 1902, as amended or supplemented (43 U.S.C. 391).

(13) The Act of February 25, 1920 (30 U.S.C. 181 et seq.; commonly known as the Mineral Leasing Act).

(14) Section 4(e) of the Southern Nevada Public Land Management Act of 1998 (Public Law 105–263; 31 U.S.C. 6901 note).

(15) Section 5(a) of the Lincoln County Land Act of 2000 (Public Law 106–298; 114 Stat. 1047).

(16) Any other provision of law relating to revenue allocation.

(c) CONSIDERATION OF OTHER FUNDS COLLECTED.—Amounts collected under any other law may not be disbursed under this Act.

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(d) SOLE RECREATION FEE AUTHORITY.—Recreation fees charged under this Act shall be in lieu of fees charged for the same purposes under any other provision of law.

(e) FEES CHARGED BY THIRD PARTIES.—Notwithstanding any other provision of this Act, a third party may charge a fee for providing a good or service to a visitor of a unit or area of the Federal land management agencies in accordance with any other applicable law or regulation.

(f) MIGRATORY BIRD HUNTING STAMP ACT.—Revenues from the stamp established under the Act of March 16, 1934 (16 U.S.C. 718 et seq.; commonly known as the Migratory Bird Hunting Stamp Act or Duck Stamp Act), shall not be covered by this Act.

SEC. 815. LIMITATION ON USE OF FEES FOR EMPLOYEE BONUSES.

Notwithstanding any other provision of law, fees collected under the authorities of the Act may not be used for employee bonuses.

TITLE IX—SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT OF 2004

SECTION 1. SHORT TITLES; TABLE OF CONTENTS.

(a) SHORT TITLES.—This title may be cited as the "Satellite Home Viewer Extension and Reauthorization Act of 2004" or the "W. J. (Billy) Tauzin Satellite Television Act of 2004".

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

Sec. 1. Short titles; table of contents.

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

Sec. 101. Extension of authority.
Sec. 102. Reporting of subscribers; significantly viewed and other signals; technical amendments.
Sec. 103. Statutory license for satellite carriers outside local markets.
Sec. 104. Statutory license for satellite retransmission of low power television stations.
Sec. 105. Definitions.
Sec. 106. Effect on certain proceedings.
Sec. 107. Statutory license for satellite carriers retransmitting superstation signals to commercial establishments.
Sec. 108. Expedited consideration of voluntary agreements to provide satellite secondary transmissions to local markets.
Sec. 109. Study.
Sec. 110. Additional study.
Sec. 111. Special rules.
Sec. 112. Technical amendment.

TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS

Sec. 201. Extension of retransmission consent exemption.
Sec. 202. Cable/satellite comparability.
Sec. 203. Carriage of local stations on a single dish.
Sec. 204. Replacement of distant signals with local signals.
Sec. 205. Additional notices to subscribers, networks, and stations concerning signal carriage.
Sec. 206. Privacy rights of satellite subscribers.
Sec. 207. Reciprocal bargaining obligations.
Sec. 208. Study of impact on cable television service.
Sec. 209. Reduction of required tests.
Sec. 210. Satellite carriage of television stations in noncontiguous States.
Sec. 211. Carriage of television signals to certain subscribers.
Sec. 212. Digital transition savings provision.
Sec. 213. Authorizing broadcast service in unserved areas of Alaska.

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TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

SEC. 101. EXTENSION OF AUTHORITY.

(a) IN GENERAL.—Section 4(a) of the Satellite Home Viewer Act of 1994 (17 U.S.C. 119 note; Public Law 103–369; 108 Stat. 3481) is amended by striking "December 31, 2004" and inserting "December 31, 2009".

(b) EXTENSION FOR CERTAIN SUBSCRIBERS.—Section 119(e) of title 17, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2009".

SEC. 102. REPORTING OF SUBSCRIBERS; SIGNIFICANTLY VIEWED AND OTHER SIGNALS; TECHNICAL AMENDMENTS.

Section 119(a) of title 17, United States Code, is amended—

(1) in paragraph (1)—

(A) in the paragraph heading, by striking "AND PBS SATELLITE FEED";

(B) in the first sentence, by striking "(3), (4), and (6)" and inserting "(5), (6), and (8)";

(C) in the first sentence, by striking "or by the Public Broadcasting Service satellite feed"; and

(D) by striking the second sentence;

(2) in paragraph (2)—

(A) in subparagraph (A), by striking "(3), (4), (5), and (6)" and inserting "(5), (6), (7), and (8)"; and

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

"(C) EXCEPTIONS.—

"(i) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmission of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 CFR 76.51).

"(ii) STATES WITH ALL NETWORK STATIONS AND SUPERSTATIONS IN SAME LOCAL MARKET.—In a State in which all network stations and superstations licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all counties of that State, the statutory license provided under subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of title 47 of the Code of Federal Regulations).

"(iii) ADDITIONAL STATIONS.—In the case of that State in which are located 4 counties that—

"(I) on January 1, 2004, were in local markets principally comprised of counties in another State, and

"(II) had a combined total of 41,340 television households, according to the U.S. Television Household Estimates by Nielsen Media Research for 2004,

the statutory license provided under subparagraph (A) shall apply to secondary transmissions by a satellite carrier to subscribers in any such county of the primary transmissions of any network station located in that State, if the satellite carrier was making such secondary transmissions to any subscribers in that county on January 1, 2004.

"(iv) CERTAIN ADDITIONAL STATIONS.—If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

"(I) the 2 counties are located in a local market that is in the top 100 markets for the year 2003 according to Nielsen Media Research; and

"(II) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

"(v) APPLICABILITY OF ROYALTY RATES.—The royalty rates under subsection (b)(1)(B) apply to the secondary transmissions to which the statutory license under subparagraph (A) applies under clauses (i), (ii), (iii), and (iv).

"(D) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

"(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

"(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households; and

"(II) a separate list, aggregated by designated market area (as defined in section 122(j)) (by name and address, including street or rural route number, city, State, and zip code), which shall indicate those subscribers being served pursuant to paragraph (3), relating to significantly viewed stations.

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"(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), on the 15th of each month, the satellite carrier shall submit to the network—

"(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the last submission under clause (i); and

"(II) a separate list, aggregated by designated market area (by name and street address, including street or rural route number, city, State, and zip code), identifying those subscribers whose service pursuant to paragraph (3), relating to significantly viewed stations, has been added or dropped.

"(iii) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

"(iv) APPLICABILITY.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to which the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.";

(3) by striking paragraph (8);

(4) by redesignating paragraphs (9) through (12) as paragraphs (10) through (13), respectively;

(5) by redesignating paragraphs (3) through (7) as paragraphs (5) through (9), respectively;

(6) by inserting after paragraph (2) the following:

"(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

"(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation to a subscriber who resides outside the station's local market (as defined in section 122(j)) but within a community in which the signal has been determined by the Federal Communications Commission, to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

"(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of the primary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122.

"(C) WAIVER.—

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"(i) IN GENERAL.—A subscriber who is denied the secondary transmission of the primary transmission of a network station under subparagraph (B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

"(ii) SUNSET.—The authority under clause (i) to grant waivers shall terminate on December 31, 2008, and any such waiver in effect shall terminate on that date.";

(7) in paragraph (2)(B)(i), by adding at the end the following new sentence: "The limitation in this clause shall not apply to secondary transmissions under paragraph (3).".

SEC. 103. STATUTORY LICENSE FOR SATELLITE CARRIERS OUTSIDE LOCAL MARKETS.

Section 119 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended by inserting after paragraph (3), as added by section 102 of this Act, the following:

"(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

"(A) RULES FOR SUBSCRIBERS TO ANALOG SIGNALS UNDER SUBSECTION (e).—

"(i) FOR THOSE RECEIVING DISTANT ANALOG SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary analog transmission of a network station solely by reason of subsection (e) (in this subparagraph referred to as a 'distant analog signal'), and who, as of October 1, 2004, is receiving the distant analog signal of that network station, the following shall apply:

"(I) In a case in which the satellite carrier makes available to the subscriber the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same television network—

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"(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of the Communications Act of 1934, the subscriber elects to retain the distant analog signal; but

"(bb) only until such time as the subscriber elects to receive such local analog signal.

"(II) Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply with respect to any subscriber who is eligible to receive the distant analog signal of a television network station solely by reason of subsection (e), unless the satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

"(aa) identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber; and

"(bb) states, to the best of the satellite carrier's knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant analog signals.

"(ii) FOR THOSE NOT RECEIVING DISTANT ANALOG SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant analog signal of a network station solely by reason of subsection (e) and who did not receive a distant analog signal of a station affiliated with the same network on October 1, 2004, the statutory license under paragraph (2) shall not apply to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same network.

"(B) RULES FOR OTHER SUBSCRIBERS.—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary analog transmission of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as a 'distant analog signal'), other than subscribers to whom subparagraph (A) applies, the following shall apply:

"(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same television network if the subscriber's satellite

carrier, not later than March 1, 2005, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber.

"(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant analog signal of a station affiliated with the same network to that subscriber if—

"(I) that subscriber seeks to subscribe to such distant analog signal before the date on which such carrier commences to provide pursuant to the statutory license under section 122 the secondary transmissions of the primary analog transmission of stations from the local market of such local network station; and

"(II) the satellite carrier, within 60 days after such date, submits to each television network a list that identifies each subscriber in that local market provided such an analog signal by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber.

"(C) FUTURE APPLICABILITY.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of a primary analog transmission of a network station to a person who—

"(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

"(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, and such secondary transmission of such primary transmission can reach such person.

"(D) SPECIAL RULES FOR DISTANT DIGITAL SIGNALS.—The statutory license under paragraph (2) shall apply to secondary transmissions by a satellite carrier to a subscriber of primary digital transmissions of network stations if such secondary transmissions to such subscriber are permitted under section 339(a)(2)(D) of the Communications Act of 1934, as in effect on the day after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, except that the reference

to section 73.683(a) of title 47, Code of Federal Regulations, referred to in section 339(a)(2)(D)(i)(I) shall refer to such section as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

"(E) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to unserved households included under paragraph (12).

"(F) WAIVER.—A subscriber who is denied the secondary transmission of a network station under subparagraph (C) or (D) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

"(G) AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes available a secondary transmission of the primary transmission of a local station to a subscriber or person if the satellite carrier offers that secondary transmission to other subscribers who reside in the same zip code as that subscriber or person.".

(2) Subsection (a) is amended by adding at the end the following:

"(14) WAIVERS.—A subscriber who is denied the secondary transmission of a signal of a network station under subsection (a)(2)(B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station asserting that the secondary transmission is prohibited. The network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request. If a television network station fails to accept or reject a subscriber's request for a waiver within the 30-day period after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934, and that was in effect on such date of enactment, shall constitute a waiver for purposes of this paragraph.".

(3) Subsection (b)(1) is amended by striking subparagraph (B) and inserting the following:

"(B) a royalty fee for that 6-month period, computed by multiplying the total number of subscribers receiving

each secondary transmission of each superstation or network station during each calendar month by the appropriate rate in effect under this section.".

(4) Subsection (b)(1) is further amended by adding at the end the following flush sentence: "Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a subscriber under paragraph (3) of such subsection.".

(5) Subsection (c) is amended to read as follows:

"(c) ADJUSTMENT OF ROYALTY FEES.—

"(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR ANALOG SIGNALS.—

"(A) INITIAL FEE.—The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the primary analog transmissions of network stations and superstations shall be the appropriate fee set forth in part 258 of title 37, Code of Federal Regulations, as in effect on July 1, 2004, as modified under this paragraph.

"(B) FEE SET BY VOLUNTARY NEGOTIATION.—On or before January 2, 2005, the Librarian of Congress shall cause to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers for the secondary transmission of the primary analog transmission of network stations and superstations under subsection (b)(1)(B).

"(C) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or agreements for the payment of royalty fees. Any such satellite carriers, distributors and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Librarian of Congress shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the cost thereof.

"(D) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS; PUBLIC NOTICE.—(i) Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that a parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

"(ii)(I) Within 10 days after publication in the Federal Register of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding pursuant to subparagraph (E).

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"(II) Upon receiving a request under subclause (I), the Librarian of Congress shall immediately provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.

"(III) The Librarian shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding unless a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).

"(E) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 2009, or in accordance with the terms of the agreement, whichever is later.

"(F) FEE SET BY COMPULSORY ARBITRATION.—

"(i) NOTICE OF INITIATION OF PROCEEDINGS.—On or before May 1, 2005, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining the royalty fee to be paid for the secondary transmission of primary analog transmission of network stations and superstations under subsection (b)(1)(B) by satellite carriers and distributors

"(I) in the absence of a voluntary agreement filed in accordance with subparagraph (D) that establishes royalty fees to be paid by all satellite carriers and distributors; or

"(II) if an objection to the fees from a voluntary agreement submitted for adoption by the Librarian of Congress to apply to all satellite carriers, distributors, and copyright owners is received under subparagraph (D) from a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding.

Such arbitrary proceeding shall be conducted under chapter 8 as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004.

"(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this subparagraph, the copyright arbitration royalty panel appointed under chapter 8, as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004 shall establish fees for the secondary transmissions of the primary analog transmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions, except that the Librarian of Congress and any copyright arbitration royalty panel shall adjust those fees to account for the obligations of the parties under

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any applicable voluntary agreement filed with the Copyright Office pursuant to subparagraph (D). In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

"(I) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

"(II) the economic impact of such fees on copyright owners and satellite carriers; and

"(III) the impact on the continued availability of secondary transmissions to the public.

"(iii) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

"(I) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004; or

"(II) is established by the Librarian under section 802(f) as in effect on the day before such date of enactment shall be effective as of January 1, 2005.

"(iv) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in (iii) shall be binding on all satellite carriers, distributors and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under subparagraph (D).

"(2) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR DIGITAL SIGNALS.—The process and requirements for establishing the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary digital transmissions of network stations and superstations shall be the same as that set forth in paragraph (1) for the secondary transmission of the primary analog transmission of network stations and superstations, except that—

"(A) the initial fee under paragraph (1)(A) shall be the rates set forth in section 298.3(b)(1) and (2) of title 37, Code of Federal Regulations, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, reduced by 22.5 percent;

"(B) the notice of initiation of arbitration proceedings required in paragraph (1)(F)(i) shall be published on or before December 31, 2005; and

"(C) the royalty fees that are established for the secondary transmission of the primary digital transmission of network stations and superstations in accordance with to the procedures set forth in paragraph (1)(F)(iii) and are payable under subsection (b)(1)(B)—

"(i) shall be reduced by 22.5 percent; and

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"(ii) shall be adjusted by the Librarian of Congress on January 1, 2007, and on January 1 of each year thereafter, to reflect any changes occurring during the preceding 12 months in the cost of living as determined by the most recent Consumer Price Index (for all consumers and items) published by the Secretary of Labor.".

(6) Subsection (a)(7), as redesignated by section 102(5) of this Act, is amended—

(A) in subparagraph (A), by striking "who does not reside in an unserved household" and inserting "who is not eligible to receive the transmission under this section";

(B) in subparagraph (B), by striking "who do not reside in unserved households" and inserting "who are not eligible to receive the transmission under this section"; and

(C) in subparagraph (D), by striking "is for private home viewing to an unserved household" and inserting "is to a subscriber who is eligible to receive the secondary transmission under this section".

SEC. 104. STATUTORY LICENSE FOR SATELLITE RETRANSMISSION OF LOW POWER TELEVISION STATIONS.

(a) IN GENERAL.—Section 119(a) of title 17, United States Code (as amended by sections 102 and 103 of this Act), is further amended by adding at the end the following:

"(15) CARRIAGE OF LOW POWER TELEVISION STATIONS.—

"(A) IN GENERAL.—Notwithstanding paragraph (2)(B), and subject to subparagraphs (B) through (F) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation that is licensed as a low power television station, to a subscriber who resides within the same local market.

"(B) GEOGRAPHIC LIMITATION.—

"(i) NETWORK STATIONS.—With respect to network stations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who—

"(I) reside in the same local market as the station originating the signal; and

"(II) reside within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20.

"(ii) SUPERSTATIONS.—With respect to superstations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who reside in the same local market as the station originating the signal.

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"(C) NO APPLICABILITY TO REPEATERS AND TRANSLATORS.—Secondary transmissions provided for in subparagraph (A) shall not apply to any low power television station that retransmits the programs and signals of another television station for more than 2 hours each day.

"(D) ROYALTY FEES.—Notwithstanding subsection (b)(1)(B), a satellite carrier whose secondary transmissions of the primary transmissions of a low power television station are subject to statutory licensing under this section shall have no royalty obligation for secondary transmissions to a subscriber who resides within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20. Carriage of a superstation that is a low power television station within the station's local market, but outside of the 35-mile or 20-mile radius described in the preceding sentence, shall be subject to royalty payments under subsection (b)(1)(B).

"(E) LIMITATION TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—Secondary transmissions provided for in subparagraph (A) may be made only to subscribers who receive secondary transmissions of primary transmissions from that satellite carrier pursuant to the statutory license under section 122, and only in conformity with the requirements under 340(b) of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.".

SEC. 105. DEFINITIONS.

Section 119(d) of title 17, United States Code, is amended—

(1) in paragraph (2)(A), by striking "a television broadcast station" and inserting "a television station licensed by the Federal Communications Commission";

(2) by amending paragraph (9) to read as follows:

"(9) SUPERSTATION.—The term 'superstation' means a television station, other than a network station, licensed by the Federal Communications Commission, that is secondarily transmitted by a satellite carrier.";

(3) in paragraph (10)—

(A) in subparagraph (B), by striking "granted under regulations established under section 339(c)(2) of the Communications Act of 1934" and inserting "that meets the standards of subsection (a)(14) whether or not the waiver was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004"; and

(B) in subparagraph (D), by striking "(a)(11)" and inserting "(a)(12)"; and

(4) by striking paragraphs (11) and (12) and inserting the following:

"(11) LOCAL MARKET.—The term 'local market' has the meaning given such term under section 122(j), except that with respect to a low power television station, the term 'local

market' means the designated market area in which the station is located.

"(12) LOW POWER TELEVISION STATION.—The term 'low power television station' means a low power television as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term 'low power television station' includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

"(13) COMMERCIAL ESTABLISHMENT.—The term 'commercial establishment'—

"(A) means an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area; and

"(B) does not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison.".

SEC. 106. EFFECT ON CERTAIN PROCEEDINGS.

Nothing in this title shall modify any remedy imposed on a party that is required by the judgment of a court in any action that was brought before May 1, 2004, against that party for a violation of section 119 of title 17, United States Code.

SEC. 107. STATUTORY LICENSE FOR SATELLITE CARRIERS RETRANSMITTING SUPERSTATION SIGNALS TO COMMERCIAL ESTABLISHMENTS.

(a) IN GENERAL.—Section 119 of title 17, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by inserting "or for viewing in a commercial establishment" after "for private home viewing" each place it appears; and

(B) by striking "household" and inserting "subscriber";

(2) in subsection (b), by striking "for private home viewing" each place it appears;

(3) in subsection (d)(1)—

(A) by striking "for private home viewing"; and

(B) by inserting "in accordance with the provisions of this section" before the period;

(4) in subsection (d)(6), by inserting "pursuant to this section" before the period; and

(5) in subsection (d)(8)—

(A) by striking "who" and inserting "or entity that";

(B) by striking "for private home viewing"; and

(C) by inserting "in accordance with the provisions of this section" before the period.

(b) CONFORMING AMENDMENTS.—Subsections (a)(4) and (d)(1)(A) of section 111 of title 17, United States Code, are each amended by striking "for private home viewing".

SEC. 108. EXPEDITED CONSIDERATION OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.

Section 119 of title 17, United States Code, is amended by adding at the end the following:

"(f) EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.—

"(1) IN GENERAL.—In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

"(2) DEFINITION.—For purposes of this subsection, the term 'antitrust laws'—

"(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

"(B) includes any State law similar to the laws referred to in paragraph (1).".

SEC. 109. STUDY.

No later than June 30, 2008, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register's findings and recommendations on the operation and revision of the statutory licenses under sections 111, 119, and 122 of title 17, United States Code. The report shall include, but not be limited to, the following:

(1) A comparison of the royalties paid by licensees under such sections, including historical rates of increases in these royalties, a comparison between the royalties under each such section and the prices paid in the marketplace for comparable programming.

(2) An analysis of the differences in the terms and conditions of the licenses under such sections, an analysis of whether these differences are required or justified by historical, technological, or regulatory differences that affect the satellite and cable industries, and an analysis of whether the cable or satellite industry is placed in a competitive disadvantage due to these terms and conditions.

(3) An analysis of whether the licenses under such sections are still justified by the bases upon which they were originally created.

(4) An analysis of the correlation, if any, between the royalties, or lack thereof, under such sections and the fees

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charged to cable and satellite subscribers, addressing whether cable and satellite companies have passed to subscribers any savings realized as a result of the royalty structure and amounts under such sections.

(5) An analysis of issues that may arise with respect to the application of the licenses under such sections to the secondary transmissions of the primary transmissions of network stations and superstations that originate as digital signals, including issues that relate to the application of the unserved household limitations under section 119 of title 17, United States Code, and to the determination of royalties of cable systems and satellite carriers.

SEC. 110. ADDITIONAL STUDY.

No later than December 31, 2005, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register's findings and recommendations on the following:

(1) The extent to which the unserved household limitation for network stations contained in section 119 of title 17, United States Code, has operated efficiently and effectively and has forwarded the goal of title 17, United States Code, to protect copyright owners of over-the-air television programming, including what amendments, if any, are necessary to effectively identify the application of the limitation to individual households to receive secondary transmissions of primary digital transmissions of network stations.

(2) The extent to which secondary transmissions of primary transmissions of network stations and superstations under section 119 of title 17, United States Code, harm copyright owners of broadcast programming throughout the United States and the effect, if any, of the statutory license under section 122 of title 17, United States Code, in reducing such harm.

SEC. 111. SPECIAL RULES.

(a) RESTRICTIONS ON TRANSMISSION OF DISTANT TELEVISION STATIONS IN AREAS OF ALASKA WHERE LOCAL-INTO-LOCAL SERVICE IS AVAILABLE.—Section 119(a) of title 17, United States Code, is amended by adding at the end thereof the following:

"(16) RESTRICTED TRANSMISSION OF OUT-OF-STATE DISTANT NETWORK SIGNALS INTO CERTAIN MARKETS.—

"(A) OUT-OF-STATE NETWORK AFFILIATES.—Notwithstanding any other provision of this title, the statutory license in this subsection and subsection (b) shall not apply to any secondary transmission of the primary transmission of a network station located outside of the State of Alaska to any subscriber in that State to whom the secondary transmission of the primary transmission of a television station located in that State is made available by the satellite carrier pursuant to section 122.

"(B) EXCEPTION.—The limitation in subparagraph (A) shall not apply to the secondary transmission of the primary transmission of a digital signal of a network station located outside of the State of Alaska if at the time that the secondary transmission is made, no television station licensed to a community in the State and affiliated with the same network makes primary transmissions of a digital signal.".

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(b) EXTRA DMA DEEMED LOCAL.—Section 122(j)(2) of title 17, United States Code, is amended by adding at the end thereof the following:

"(D) CERTAIN AREAS OUTSIDE OF ANY DESIGNATED MARKET AREA.—Any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area.".

SEC. 112. TECHNICAL AMENDMENT.

Section 803(b)(1)(A)(i)(V) of title 17, United States Code, as amended by the Copyright Royalty and Distribution Reform Act of 2004, is amended by inserting before the period at the end the following: ", except that in the case of proceedings under section 111 that are scheduled to commence in 2005, such notice may not be published.

TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS

SEC. 201. EXTENSION OF RETRANSMISSION CONSENT EXEMPTION.

Section 325(b)(2)(C) of the Communications Act of 1934 (47 U.S.C. 325(b)(2)(C)) is amended by striking "December 31, 2004" and inserting "December 31, 2009".

SEC. 202. CABLE/SATELLITE COMPARABILITY.

(a) AMENDMENT.—Part I of title III of the Communications Act of 1934 is amended by inserting after section 339 (47 U.S.C. 339) the following new section:

"SEC. 340. SIGNIFICANTLY VIEWED SIGNALS PERMITTED TO BE CARRIED.

"(a) SIGNIFICANTLY VIEWED STATIONS.—In addition to the broadcast signals that subscribers may receive under section 338 and 339, a satellite carrier is also authorized to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal—

"(1) has, before the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules; or

"(2) is, after such date of enactment, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable

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under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.

"(b) LIMITATIONS.—

"(1) ANALOG SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338.

"(2) DIGITAL SERVICE LIMITATIONS.—With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—

"(A) the subscriber receives from the satellite carrier pursuant to section 338 the retransmission of the digital signal of a network station in the subscriber's local market that is affiliated with the same television network; and

"(B) either—

"(i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or

"(ii) the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station.

"(3) LIMITATION NOT APPLICABLE WHERE NO NETWORK AFFILIATES.—The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

"(4) AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.—Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

"(c) PUBLICATION AND MODIFICATIONS OF LISTS; REGULATIONS.—

"(1) IN GENERAL.—The Commission shall—

"(A) within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004—

"(i) publish a list of the stations that are eligible for retransmission under subsection (a)(1) and the communities in which such stations are eligible for such retransmission; and

"(ii) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking;

"(B) adopt rules pursuant to such rulemaking within 1 year after such date of enactment.

"(2) PUBLIC AVAILABILITY OF LIST.—The Commission shall make readily available to the public in electronic form, on the Internet website of the Commission or other comparable

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facility, a list of the stations that are eligible for retransmission under subsection (a) and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities.

"(3) MODIFICATIONS.—In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders—

"(A) by which stations may be added to those that are eligible for retransmission under subsection (a), and by which communities may be added in which such stations are eligible for such retransmission; and

"(B) by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e).

"(d) EFFECT ON OTHER OBLIGATIONS AND RIGHTS.—

"(1) NO EFFECT ON CARRIAGE OBLIGATIONS.—Carriage of a signal under this section is not mandatory, and any right of a station licensee to have the signal of such station carried under section 338 is not affected by the eligibility of such station to be carried under this section.

"(2) RETRANSMISSION CONSENT RIGHTS NOT AFFECTED.—The eligibility of the signal of a station to be carried under this section does not affect any right of the licensee of such station to grant (or withhold) retransmission consent under section 325(b)(1).

"(e) NETWORK NONDUPLICATION AND SYNDICATED EXCLUSIVITY.—

"(1) NOT APPLICABLE EXCEPT AS PROVIDED BY COMMISSION REGULATIONS.—Signals eligible to be carried under this section are not subject to the Commission's regulations concerning network nonduplication or syndicated exclusivity unless, pursuant to regulations adopted by the Commission, the Commission determines to permit network nonduplication or syndicated exclusivity to apply within the appropriate zone of protection.

"(2) LIMITATION.—Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclusivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under section 119(a)(2)(A) or (B) of title 17, United States Code, with respect to persons who reside in unserved households, under 119(a)(4)(A), or under section 119(a)(12), of such title.

"(f) ENFORCEMENT.—

"(1) ORDERS AND DAMAGES.—Upon complaint, the Commission shall issue a cease and desist order to any satellite carrier found to have violated this section in carrying any television broadcast station. Such order may, if a complaining station requests damages—

"(A) provide for the award of damages to a complaining station that establishes that the violation was committed in bad faith, in an amount up to $50 per subscriber, per station, per day of the violation; and

"(B) provide for the award of damages to a prevailing satellite carrier if the Commission determines that the

complaint was frivolous, in an amount up to $50 per subscriber alleged to be in violation, per station alleged, per day of the alleged violation.

"(2) COMMISSION DECISION.—The Commission shall issue a final determination resolving a complaint brought under this subsection not later than 180 days after the submission of a complaint under this subsection. The Commission may hear witnesses if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

"(3) REMEDIES IN ADDITION.—The remedies under this subsection are in addition to any remedies available under title 17, United States Code.

"(4) NO EFFECT ON COPYRIGHT PROCEEDINGS.—Any determination, action, or failure to act of the Commission under this subsection shall have no effect on any proceeding under title 17, United States Code, and shall not be introduced in evidence in any proceeding under that title. In no instance shall a Commission enforcement proceeding under this subsection be required as a predicate to the pursuit of a remedy available under title 17.

"(g) NOTICES CONCERNING SIGNIFICANTLY VIEWED STATIONS.—Each satellite carrier that proposes to commence the retransmission of a station pursuant to this section in any local market shall—

"(1) not less than 60 days before commencing such retransmission, provide a written notice to any television broadcast station in such local market of such proposal; and

"(2) designate on such carrier's website all significantly viewed signals carried pursuant to section 340 and the communities in which the signals are carried.

"(h) ADDITIONAL CORRESPONDING CHANGES IN REGULATIONS.—

"(1) COMMUNITY-BY-COMMUNITY ELECTIONS.—The Commission shall, no later than October 30, 2005, revise section 76.66 of its regulations (47 CFR 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325) a television broadcast station that is located in a local market into which a satellite carrier retransmits a television broadcast station pursuant to section 338, to elect, with respect to such satellite carrier, between retransmission consent pursuant to such section 325 and mandatory carriage pursuant to section 338 separately for each county within such station's local market, if—

"(A) the satellite carrier has notified the station, pursuant to paragraph (3), that it intends to carry another affiliate of the same network pursuant to this section during the relevant election period in the station's local market; or

"(B) on the date notification under paragraph (3) was due, the satellite carrier was retransmitting into the station's local market pursuant to this section an affiliate of the same television network.

"(2) UNIFIED NEGOTIATIONS.—In revising its regulations as required by paragraph (1), the Commission shall provide that any such station shall conduct a unified negotiation for the

entire portion of its local market for which retransmission consent is elected.

"(3) ADDITIONAL PROVISIONS.—The Commission shall, no later than October 30, 2005, revise its regulations to provide the following:

"(A) NOTIFICATIONS BY SATELLITE CARRIER.—A satellite carrier's retransmission of television broadcast stations pursuant to this section shall be subject to the following limitations:

"(i) In any local market in which the satellite carrier provides service pursuant to section 338 on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of—

"(I) each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market pursuant to this section during the next election cycle under such section of such regulations; and

"(II) for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions.

"(ii) In any local market in which the satellite carrier commences service pursuant to section 338 after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a station in that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle under such section of such regulations.

"(iii) Beginning with the 2005 election cycle, a satellite carrier may only retransmit pursuant to this section during the pertinent election period a signal—

"(I) as to which it has provided the notifications set forth in clauses (i) and (ii); or

"(II) that it was retransmitting into the local market under this section as of the date such notifications were due.

"(B) HARMONIZATION OF ELECTIONS AND RETRANSMISSION CONSENT AGREEMENTS.—If a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

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"(i) DEFINITIONS.—As used in this section:

"(1) LOCAL MARKET; SATELLITE CARRIER; SUBSCRIBER; TELEVISION BROADCAST STATION.—The terms 'local market', 'satellite carrier', 'subscriber', and 'television broadcast station' have the meanings given such terms in section 338(k).

"(2) NETWORK STATION; TELEVISION NETWORK.—The terms 'network station' and 'television network' have the meanings given such terms in section 339(d).

"(3) COMMUNITY.—The term 'community' means—

"(A) a county or a cable community, as determined under the rules, regulations, and authorizations of the Commission applicable to determining with respect to a cable system whether signals are significantly viewed; or

"(B) a satellite community, as determined under such rules, regulations, and authorizations (or revisions thereof) as the Commission may prescribe in implementing the requirements of this section.

"(4) BANDWIDTH.—The terms 'equivalent bandwidth' and 'entire bandwidth' shall be defined by the Commission by regulation, except that this paragraph shall not be construed—

"(A) to prevent a satellite operator from using compression technology;

"(B) to require a satellite operator to use the identical bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting;

"(C) to require a satellite operator to use the identical bandwidth or bit rate for a local network station as it does for a distant network station;

"(D) to affect a satellite operator's obligations under subsection (a)(1); or

"(E) to affect the definitions of 'program related' and 'primary video'.".

SEC. 203. CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.

(a) AMENDMENTS.—Section 338 of the Communications Act of 1934 (47 U.S.C. 338(d)) is amended—

(1) by redesignating subsections (g) and (h) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (f) the following new subsection:

"(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.—

"(1) SINGLE DISH.—Each satellite carrier that retransmits the analog signals of local television broadcast stations in a local market shall retransmit such analog signals in such market by means of a single reception antenna and associated equipment.

"(2) EXCEPTION.—If the carrier retransmits signals in the digital television service, the carrier shall retransmit such digital signals in such market by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used for analog television service signals.

"(3) EFFECTIVE DATE.—The requirements of paragraphs (1) and (2) of this subsection shall apply on and after 18 months after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

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"(4) NOTICE OF DISRUPTIONS.—A carrier that is providing signals of a local television broadcast station in a local market under this section on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 shall, not later than 15 months after such date of enactment, provide to the licensees for such stations and the carrier's subscribers in such local market a notice that displays prominently and conspicuously a clear statement of—

"(A) any reallocation of signals between different reception antennas and associated equipment that the carrier intends to make in order to comply with the requirements of this subsection;

"(B) the need, if any, for subscribers to obtain an additional reception antenna and associated equipment to receive such signals; and

"(C) any cessation of carriage or other material change in the carriage of signals as a consequence of the requirements of this paragraph.".

(b) CONFORMING AMENDMENTS: COMMISSION ENFORCEMENT OF SECTION; LOW POWER TELEVISION STATIONS.—

(1) Section 338(a) of such Act is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) IN GENERAL.—Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b).

"(2) REMEDIES FOR FAILURE TO CARRY.—In addition to the remedies available to television broadcast stations under section 501(f) of title 17, United States Code, the Commission may use the Commission's authority under this Act to assure compliance with the obligations of this subsection, but in no instance shall a Commission enforcement proceeding be required as a predicate to the pursuit of a remedy available under such section 501(f).

"(3) LOW POWER STATION CARRIAGE OPTIONAL.—No low power television station whose signals are provided under section 119(a)(14) of title 17, United States Code, shall be entitled to insist on carriage under this section, regardless of whether the satellite carrier provides secondary transmissions of the primary transmissions of other stations in the same local market pursuant to section 122 of such title, nor shall any such carriage be considered in connection with the requirements of subsection (c) of this section.".

(2) Section 338(c)(1) of such Act is amended by striking "subsection (a)" and inserting "subsection (a)(1)".

(3) Section 338(k) of such Act (as redesignated by subsection (a)(1)) is amended—

(A) by redesignating paragraphs (4) through (7) as paragraphs (5) through (8), respectively; and

(B) by inserting after paragraph (3) the following new paragraph:

"(4) LOW POWER TELEVISION STATION.—The term 'low power television station' means a low power television station as defined under section 74.701(f) of title 47, Code of Federal

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Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term 'low power television station' includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.".

SEC. 204. REPLACEMENT OF DISTANT SIGNALS WITH LOCAL SIGNALS.

(a) REPLACEMENT.—Section 339(a) of the Communications Act of 1934 (47 U.S.C. 339(a)) is amended—

(1) in paragraph (1), by adding at the end the following new sentence: "Such two network stations may be comprised of both the analog signal and digital signal of not more than two network stations.";

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

(3) by inserting after paragraph (1) the following new paragraph:

"(2) REPLACEMENT OF DISTANT SIGNALS WITH LOCAL SIGNALS.—Notwithstanding any other provision of paragraph (1), the following rules shall apply after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004:

"(A) RULES FOR GRANDFATHERED SUBSCRIBERS TO ANALOG SIGNALS.—

"(i) FOR THOSE RECEIVING DISTANT ANALOG SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the analog signal of a network station solely by reason of section 119(e) of title 17, United States Code (in this subparagraph referred to as a 'distant analog signal'), and who, as of October 1, 2004, is receiving the distant analog signal of that network station, the following shall apply:

"(I) In a case in which the satellite carrier makes available to the subscriber the analog signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber—

"(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of this Act, the subscriber elects to retain the distant analog signal; but

"(bb) only until such time as the subscriber elects to receive such local analog signal.

"(II) Notwithstanding subclause (I), the carrier may not retransmit the distant analog signal to any subscriber who is eligible to receive the analog signal of a network station solely by reason of section 119(e) of title 17, United States Code, unless such carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network the list and statement required by subparagraph (F)(i).

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"(ii) FOR THOSE NOT RECEIVING DISTANT ANALOG SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant analog signal of a network station solely by reason of section 119(e) of title 17, United States Code, and who did not receive a distant analog signal of a station affiliated with the same network on October 1, 2004, the carrier may not provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber.

"(B) RULES FOR OTHER SUBSCRIBERS TO ANALOG SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the analog signal of a network station under this section (in this subparagraph referred to as a 'distant analog signal'), other than subscribers to whom subparagraph (A) applies, the following shall apply:

"(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the analog signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliate with the same network to that subscriber if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network the list and statement required by subparagraph (F)(i).

"(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the analog signal of a local network station pursuant to section 338, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber if—

"(I) that subscriber seeks to subscribe to such distant analog signal before the date on which such carrier commences to carry pursuant to section 338 the analog signals of stations from the local market of such local network station; and

"(II) the satellite carrier, within 60 days after such date, submits to each television network the list and statement required by subparagraph (F)(ii).

"(C) FUTURE APPLICABILITY.—A satellite carrier may not provide a distant analog signal (within the meaning of subparagraph (A) or (B)) to a person who—

"(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

"(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the analog signal of a local network station affiliated with the same television network pursuant to section 338, and the retransmission of such signal by such carrier can reach such subscriber.

"(D) SPECIAL RULES FOR DISTANT DIGITAL SIGNALS.—

"(i) ELIGIBILITY.—In the case of a subscriber of a satellite carrier who, with respect to a local network station—

"(I) is a subscriber whose household is located outside the coverage area of the analog signal of such station as predicted by the model specified in subsection (c)(3) of this section for the signal intensity required under section 73.683(a) of title 47 of the Code of Federal Regulations, or a successor regulation;

"(II) is in an unserved household as determined under section 119(d)(1)(A) of title 17, United States Code; or

"(III) is, after the date on which the conditions required by clause (vii) are met with respect to such station, determined under clause (vi) of this subparagraph to be unable to receive a digital signal of such local network station that exceeds the signal intensity standard specified in such clause;

such subscriber is eligible to receive the digital signal of a distant network station affiliated with the same network under this section (in this subparagraph referred to as a 'distant digital signal') subject to the provisions of this subparagraph.

"(ii) PRE-ENACTMENT DISTANT DIGITAL SIGNAL SUBSCRIBERS.—Any eligible subscriber under this subparagraph who is a lawful subscriber to such a distant digital signal as of the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 may continue to receive such distant digital signal, whether or not such subscriber elects to subscribe to local digital signals.

"(iii) LOCAL-TO-LOCAL ANALOG MARKETS.—In a case in which the satellite carrier makes available to an eligible subscriber under this subparagraph the analog signal of a local network station pursuant to section 338, the carrier may only provide the distant digital signal of a station affiliated with the same network to that subscriber if—

"(I) in the case of any local market in the 48 contiguous States of the United States, the distant digital signal is the secondary transmission of a station whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market;

"(II) in any local market, the retransmission of the distant digital signal of the distant station occupies at least the equivalent bandwidth (as such term is defined by the Commission under section 340(h)(4)) as the digital signal broadcast by such station; and

"(III) the subscriber subscribes to the analog signal of such local network station within 60 days after such signal is made available by the satellite

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carrier, and adds to or replaces such analog signal with the digital signal from such local network station within 60 days after such signal is made available by the satellite carrier, except that such distant digital signal may continue to be provided to a subscriber who cannot be reached by the satellite transmission of the local digital signal.

"(iv) LOCAL-TO-LOCAL DIGITAL MARKETS.—After the date on which a satellite carrier makes available the digital signal of a local network station, the carrier may not offer the distant digital signal of a network station affiliated with the same television network to any new subscriber to such distant digital signal after such date, except that such distant digital signal may be provided to a new subscriber who cannot be reached by the satellite transmission of the local digital signal.

"(v) NON-LOCAL-TO-LOCAL MARKETS.—After the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, if the satellite carrier does not make available the digital signal of a local network station in a local market, the satellite carrier may offer a new subscriber after such date who is eligible under this subparagraph a distant digital signal from a station affiliated with the same network and, in the case of any local market in the 48 contiguous States of the United States, whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market, except that—

"(I) such carrier may continue to provide such distant digital signal to such a subscriber after the date on which the carrier makes available the digital signal of a local network station affiliated with such network only if such subscriber subscribes to the digital signal from such local network station; and

"(II) the limitation contained in subclause (I) of this clause shall not apply to a subscriber that cannot be reached by the satellite transmission of the local digital signal.

"(vi) SIGNAL TESTING FOR DIGITAL SIGNALS.—

"(I) A subscriber shall be eligible for a distant digital signal under clause (i)(III) if such subscriber is determined, based on a test conducted in accordance with section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, not to be able to receive a signal that exceeds the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, as in effect on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

"(II) Such test shall be conducted, upon written request for a digital signal strength test by the subscriber to the satellite carrier, within 30 days after the date the subscriber submits such

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request for the test. Such test shall be conducted by a qualified and independent person selected by the satellite carrier and the network station or stations, or who has been previously approved by the satellite carrier and by each affected network station but not previously disapproved. A tester may not be so disapproved for a test after the tester has commenced such test.

"(III) Unless the satellite carrier and the network station or stations otherwise agree, the costs of conducting the test shall be borne as follows:

"(aa) If the subscriber is not eligible for a distant digital signal under clause (i)(I) of this subparagraph (by reason of being outside of the coverage area of the analog signal), the satellite carrier may request the station licensee for a waiver.

"(bb) If the licensee agrees to a waiver, or fails to respond to a waiver request within 30 days, the subscriber may receive such distant digital signal.

"(cc) If the licensee refuses to grant a waiver, the subscriber may request the satellite carrier to conduct the test.

"(dd) If the satellite carrier requests the test and—

"(AA) the station's signal is determined to exceed such signal intensity standard, the costs of the test shall be borne by the satellite carrier; and

"(BB) the station's signal is determined to not exceed such signal intensity standard, the costs of the test shall be borne by the licensee.

"(ee) If the satellite carrier does not request the test, or fails to respond within 30 days, the subscriber may request the test be conducted under the supervision of the carrier, and the costs of the test shall be borne by the subscriber in accordance with regulations prescribed by the Commission. Such regulations shall also require the carrier to notify the subscriber of the typical costs of such test.

"(vii) TRIGGER EVENTS FOR USE OF TESTING.—A subscriber shall not be eligible for a distant digital signal under clause (i)(III) pursuant to a test conducted under clause (vii) until—

"(I) in the case of a subscriber whose household is located within the area predicted to be served (by the predictive model for analog signals under subsection (b)(3) of this section) by the signal of a local network station and who is seeking a distant digital signal of a station affiliated with the same network as that local network station—

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"(aa) April 30, 2006, if such local network station is within the top 100 television markets and—

"(AA) has received a tentative digital television service channel designation that is the same as such station's current digital television service channel; or

"(BB) has been found by the Commission to have lost interference protection; or

"(bb) July 15, 2007, for any other local network stations, other than translator stations licensed to broadcast on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; or

"(II) in the case of a translator station, 1 year after the date on which the Commission completes all actions necessary for the allocation and assignment of digital television licenses to television translator stations.

"(viii) TESTING WAIVERS.—Upon request by a local network station, the Commission may grant a waiver with respect to such station to the beginning of testing under clause (vii), and prohibit subscribers from receiving digital signal strength testing with respect to such station. Such a request shall be filed not less than 5 months prior to the implementation deadline specified in such clause, and the Commission shall act on such request by such implementation deadline. Such a waiver shall expire at the end of not more than 6 months, except that a waiver may be renewed upon a proper showing. The Commission may only grant such a request upon submission of clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the following:

"(I) the need for international coordination or approvals;

"(II) clear zoning or environmental legal impediments;

"(III) force majeure;

"(IV) the station experiences a substantial decrease in its digital signal coverage area due to necessity of using side-mounted antenna;

"(V) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or

"(VI) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 in the local market. Under no circumstances may such a waiver be based upon financial exigency.

"(ix) SPECIAL WAIVER PROVISION FOR TRANSLATORS.—Upon request by a television translator station, the Commission may grant, for not more than 3 years, a waiver with respect to such station to the beginning of testing under clause (vii), and prohibit subscribers from receiving digital signal strength testing with respect to such station, if the Commission determines that the translator station is not broadcasting a digital signal due to one or more of the following:

"(I) frequent occurrence of inclement weather; or

"(II) mountainous terrain at the transmitter tower location.

"(x) SAVINGS PROVISION.—Nothing in this subparagraph shall be construed to affect a satellite carrier's obligations under section 338.

"(xi) DEFINITION.—For purposes of clause (viii), the term 'emergency response providers' means Federal, State, or local governmental and nongovernmental emergency public safety, law enforcement, fire, emergency response, emergency medical (including hospital emergency facilities), and related personnel, organizations, agencies, or authorities.

"(E) AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.—This paragraph shall not prohibit a retransmission of a distant analog signal or distant digital signal (within the meaning of subparagraph (A), (B), or (D)) of any distant network station to any subscriber to whom the signal of a local network station affiliated with the same network is available, if and to the extent that such local network station has affirmatively granted a waiver from the requirements of this paragraph to such satellite carrier with respect to retransmission of such distant network station to such subscriber.

"(F) NOTICES TO NETWORKS OF DISTANT SIGNAL SUBSCRIBERS.—

"(i) Within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, each satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (A) or (B)(i) of this paragraph shall submit to each network—

"(I) a list, aggregated by designated market area, identifying each subscriber provided such a signal by—

"(aa) name;

"(bb) address (street or rural route number, city, State, and zip code); and

"(cc) the distant network signal or signals received; and

"(II) a statement that, to the best of the carrier's knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (A) or (B)(i) of this paragraph.

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"(ii) Within 60 days after the date a satellite carrier commences to carry pursuant to section 338 the signals of stations from a local market, such a satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (B)(ii) of this paragraph shall submit to each network—

"(I) a list identifying each subscriber in that local market provided such a signal by—

"(aa) name;

"(bb) address (street or rural route number, city, State, and zip code); and

"(cc) the distant network signal or signals received; and

"(II) a statement that, to the best of the carrier's knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (B)(ii) of this paragraph.

"(G) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the eligibility of a subscriber to receive secondary transmissions under section 340 of this Act or as an unserved household included under section 119(a)(12) of title 17, United States Code.

"(H) AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes available a local signal to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zip code as that subscriber or person."; and

(4) in paragraph (3) (as redesignated by paragraph (2) of this subsection), by adding at the end the following: ", except that paragraph (2)(D) of this subsection, relating to the provision of distant digital signals, shall be enforceable under the provisions of section 340(f)".

(b) STUDY OF DIGITAL STRENGTH TESTING PROCEDURES.—Section 339(c) of such Act (47 U.S.C. 339(c)) is amended by striking paragraph (1) and inserting the following:

"(1) STUDY OF DIGITAL STRENGTH TESTING PROCEDURES.—

"(A) STUDY REQUIRED.—Not later than 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall complete an inquiry regarding whether, for purposes of identifying if a household is unserved by an adequate digital signal under section 119(d)(10) of title 17, United States Code, the digital signal strength standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, or the testing procedures in section 73.686(d) of title 47, Code of Federal Regulations, such statutes or regulations should be revised to take into account the types of antennas that are available to consumers.

"(B) STUDY CONSIDERATIONS.—In conducting the study under this paragraph, the Commission shall consider whether—

"(i) to account for the fact that an antenna can be mounted on a roof or placed in a home and can be fixed or capable of rotating;

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"(ii) section 73.686(d) of title 47, Code of Federal Regulations, should be amended to create different procedures for determining if the requisite digital signal strength is present than for determining if the requisite analog signal strength is present;

"(iii) a standard should be used other than the presence of a signal of a certain strength to ensure that a household can receive a high-quality picture using antennas of reasonable cost and ease of installation;

"(iv) to develop a predictive methodology for determining whether a household is unserved by an adequate digital signal under section 119(d)(10) of title 17, United States Code;

"(v) there is a wide variation in the ability of reasonably priced consumer digital television sets to receive over-the-air signals, such that at a given signal strength some may be able to display high-quality pictures while others cannot, whether such variation is related to the price of the television set, and whether such variation should be factored into setting a standard for determining whether a household is unserved by an adequate digital signal; and

"(vi) to account for factors such as building loss, external interference sources, or undesired signals from both digital television and analog television stations using either the same or adjacent channels in nearby markets, foliage, and man-made clutter.

"(C) REPORT.—Not later than 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

"(i) the results of the study under this paragraph; and

"(ii) recommendations, if any, as to what changes should be made to Federal statutes or regulations.".

SEC. 205. ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.

Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is further amended by inserting after subsection (g) (as added by section 203) the following new subsection:

"(h) ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.—

"(1) NOTICES TO AND ELECTIONS BY SUBSCRIBERS CONCERNING GRANDFATHERED SIGNALS.—Any carrier that provides a distant signal of a network station to a subscriber pursuant section 339(a)(2)(A) shall—

"(A) within 60 days after the local signal of a network station of the same television network is available pursuant to section 338, or within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, whichever is later, send a notice to the subscriber—

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"(i) offering to substitute the local network signal for the duplicating distant network signal; and

"(ii) informing the subscriber that, if the subscriber fails to respond in 60 days, the subscriber will lose the distant network signal but will be permitted to subscribe to the local network signal; and

"(B) if the subscriber—

"(i) elects to substitute such local network signal within such 60 days, switch such subscriber to such local network signal within 10 days after the end of such 60-day period; or

"(ii) fails to respond within such 60 days, terminate the distant network signal within 10 days after the end of such 60-day period.

"(2) NOTICE TO STATION LICENSEES OF COMMENCEMENT OF LOCAL-INTO-LOCAL SERVICE.—

"(A) NOTICE REQUIRED.—Within 180 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall revise the regulations under this section relating to notice to broadcast station licensees to comply with the requirements of this paragraph.

"(B) CONTENTS OF COMMENCEMENT NOTICE.—The notice required by such regulations shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage—

"(i) of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

"(ii) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

"(iii) that such licensee has 30 days from the date of the receipt of such notice to make such election; and

"(iv) that failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

"(C) TRANSMISSION OF NOTICES.—Such regulations shall require that each satellite carrier shall transmit the notices required by such regulation via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.".

SEC. 206. PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.

(a) AMENDMENT.—Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is further amended by inserting after subsection (h) (as added by section 205) the following new subsection:

"(i) PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.—

"(1) NOTICE.—At the time of entering into an agreement to provide any satellite service or other service to a subscriber

and at least once a year thereafter, a satellite carrier shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

"(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

"(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

"(C) the period during which such information will be maintained by the satellite carrier;

"(D) the times and place at which the subscriber may have access to such information in accordance with paragraph (5); and

"(E) the limitations provided by this section with respect to the collection and disclosure of information by a satellite carrier and the right of the subscriber under paragraphs (7) and (9) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this subsection, such notice shall be provided within 180 days of such date and at least once a year thereafter.

"(2) DEFINITIONS.—For purposes of this subsection, other than paragraph (9)—

"(A) the term 'personally identifiable information' does not include any record of aggregate data which does not identify particular persons;

"(B) the term 'other service' includes any wire or radio communications service provided using any of the facilities of a satellite carrier that are used in the provision of satellite service; and

"(C) the term 'satellite carrier' includes, in addition to persons within the definition of satellite carrier, any person who—

"(i) is owned or controlled by, or under common ownership or control with, a satellite carrier; and

"(ii) provides any wire or radio communications service.

"(3) PROHIBITIONS.—

"(A) CONSENT TO COLLECTION.—Except as provided in subparagraph (B), a satellite carrier shall not use any facilities used by the satellite carrier to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

"(B) EXCEPTIONS.—A satellite carrier may use such facilities to collect such information in order to—

"(i) obtain information necessary to render a satellite service or other service provided by the satellite carrier to the subscriber; or

"(ii) detect unauthorized reception of satellite communications.

"(4) DISCLOSURE.—

"(A) CONSENT TO DISCLOSURE.—Except as provided in subparagraph (B), a satellite carrier shall not disclose

personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or satellite carrier.

"(B) EXCEPTIONS.—A satellite carrier may disclose such information if the disclosure is—

"(i) necessary to render, or conduct a legitimate business activity related to, a satellite service or other service provided by the satellite carrier to the subscriber;

"(ii) subject to paragraph (9), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

"(iii) a disclosure of the names and addresses of subscribers to any satellite service or other service, if—

"(I) the satellite carrier has provided the subscriber the opportunity to prohibit or limit such disclosure; and

"(II) the disclosure does not reveal, directly or indirectly, the—

"(aa) extent of any viewing or other use by the subscriber of a satellite service or other service provided by the satellite carrier; or

"(bb) the nature of any transaction made by the subscriber over any facilities used by the satellite carrier; or

"(iv) to a government entity as authorized under chapter 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include records revealing satellite subscriber selection of video programming from a satellite carrier.

"(5) ACCESS BY SUBSCRIBER.—A satellite subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a satellite carrier. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such satellite carrier. A satellite subscriber shall be provided reasonable opportunity to correct any error in such information.

"(6) DESTRUCTION OF INFORMATION.—A satellite carrier shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under paragraph (5) or pursuant to a court order.

"(7) PENALTIES.—Any person aggrieved by any act of a satellite carrier in violation of this section may bring a civil action in a United States district court. The court may award—

"(A) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

"(B) punitive damages; and

"(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

The remedy provided by this subsection shall be in addition to any other lawful remedy available to a satellite subscriber.

"(8) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to prohibit any State from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

"(9) COURT ORDERS.—Except as provided in paragraph (4)(B)(iv), a governmental entity may obtain personally identifiable information concerning a satellite subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

"(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

"(B) the subject of the information is afforded the opportunity to appear and contest such entity's claim.".

(b) EFFECTIVE DATE.—Section 338(i) of the Communications Act of 1934 (47 U.S.C. 338(i)) as amended by subsection (a) of this section shall be effective 60 days after the date of enactment of this Act.

SEC. 207. RECIPROCAL BARGAINING OBLIGATIONS.

(a) AMENDMENTS.—Section 325(b)(3)(C) of the Communications Act of 1934 (47 U.S.C. 325(b)(3)(C)) is amended—

(1) by striking "Within 45 days" and all that follows through "1999, the" and inserting "The";

(2) by striking the second sentence;

(3) by striking "and" at the end of clause (i);

(4) in clause (ii)—

(A) by striking "January 1, 2006" and inserting "January 1, 2010"; and

(B) by striking the period at the end and inserting "; and"; and

(5) by adding at the end the following new clause:

"(iii) until January 1, 2010, prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations.".

(b) DEADLINE.—The Federal Communications Commission shall prescribe regulations to implement the amendment made by subsection (a)(5) within 180 days after the date of enactment of this Act.

SEC. 208. STUDY OF IMPACT ON CABLE TELEVISION SERVICE.

(a) STUDY REQUIRED.—No later than 9 months after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall complete an inquiry regarding the impact on competition in the multichannel video programming distribution market of the current

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retransmission consent, network nonduplication, syndicated exclusivity, and sports blackout rules, including the impact of those rules on the ability of rural cable operators to compete with direct broadcast satellite industry in the provision of digital broadcast television signals to consumers. Such report shall include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate.

(b) REPORT REQUIRED.—The Federal Communications Commission shall submit a report on the results of the inquiry required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 9 months after the date of the enactment of this Act.

SEC. 209. REDUCTION OF REQUIRED TESTS.

Section 339(c)(4) of the Communications Act of 1934 (47 U.S.C. 339(c)(4)) is amended by inserting after subparagraph (C) the following new subparagraphs:

"(D) REDUCTION OF VERIFICATION BURDENS.—Within 1 year after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall by rule exempt from the verification requirements of subparagraph (A) any request for a test made by a subscriber to a satellite carrier to whom the retransmission of the signals of local broadcast stations is available under section 338 from such carrier.

"(E) EXCEPTION.—A satellite carrier may refuse to engage in the testing process. If the carrier does so refuse, a subscriber in a local market in which the satellite carrier does not offer the signals of local broadcast stations under section 338 may, at his or her own expense, authorize a signal intensity test to be performed pursuant to the procedures specified by the Commission in section 73.686(d) of title 47, Code of Federal Regulations, by a tester who is approved by the satellite carrier and by each affected network station, or who has been previously approved by the satellite carrier and by each affected network station but not previously disapproved. A tester may not be so disapproved for a test after the tester has commenced such test. The tester shall give 5 business days advance written notice to the satellite carrier and to the affected network station or stations. A signal intensity test conducted in accordance with this subparagraph shall be determinative of the signal strength received at that household for purposes of determining whether the household is capable of receiving a Grade B intensity signal.".

SEC. 210. SATELLITE CARRIAGE OF TELEVISION STATIONS IN NONCONTIGUOUS STATES.

Section 338(a) of the Communications Act of 1934 (47 U.S.C. 338(a)) is amended by adding at the end the following:

"(4) CARRIAGE OF SIGNALS OF LOCAL STATIONS IN CERTAIN MARKETS.—A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall (A) within 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, retransmit the signals originating as analog signals of each television broadcast station

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located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after such date of enactment retransmit the signals originating as digital signals of each such station. The retransmissions of such stations shall be made available to substantially all of the satellite carrier's subscribers in each station's local market, and the retransmissions of the stations in at least one market in the State shall be made available to substantially all of the satellite carrier's subscribers in areas of the State that are not within a designated market area. The cost to subscribers of such retransmissions shall not exceed the cost of retransmissions of local television stations in other States. Within 1 year after the date of enactment of that Act, the Commission shall promulgate regulations concerning elections by television stations in such State between mandatory carriage pursuant to this section and retransmission consent pursuant to section 325(b), which shall take into account the schedule on which local television stations are made available to viewers in such State.".

SEC. 211. CARRIAGE OF TELEVISION SIGNALS TO CERTAIN SUBSCRIBERS.

Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by inserting after section 339 the following:

"SEC. 341. CARRIAGE OF TELEVISION SIGNALS TO CERTAIN SUBSCRIBERS.

"(a)(1) IN GENERAL.—A cable operator or satellite carrier may elect to retransmit, to subscribers in an eligible county.—

"(A) any television broadcast stations that are located in the State in which the county is located and that any cable operator or satellite carrier was retransmitting to subscribers in the county on January 1, 2004; or

"(B) up to 2 television broadcast stations located in the State in which the county is located, if the number of television broadcast stations that the cable operator or satellite carrier is authorized to carry under paragraph (1) is less than 3.

"(2) DEEMED SIGNIFICANTLY VIEWED.—A station described in subsection (a) is deemed to be significantly viewed in the eligible county within the meaning of section 76.54 of the Commission's regulations (47 CFR 76.54).

"(3) DEFINITION OF ELIGIBLE COUNTY.—For purposes of this section, the term 'eligible county' means any 1 of 4 counties that—

"(A) are all in a single State;

"(B) on January 1, 2004, were each in designated market areas in which the majority of counties were located in another State or States; and

"(C) as a group had a combined total of 41,340 television households according to the U.S. Television Household Estimates by Nielsen Media Research for 2003–2004.

"(4) LIMITATION.—Carriage of a station under this section shall be at the option of the cable operator or satellite carrier.

"(b) CERTAIN MARKETS.—Notwithstanding any other provision of law, a satellite carrier may not carry the signal of a television station into an adjacent local market that is comprised of only a portion of a county, other than to unserved households located in that county.".

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SEC. 212. DIGITAL TRANSITION SAVINGS PROVISION.

Nothing in the dates by which requirements or other provisions are effective under this Act or the amendments made by this Act shall be construed—

(1) to impair the authority of the Federal Communications Commission to take any action with respect to the transition by television broadcasters to the digital television service; or

(2) to require the Commission to take any such action.

SEC. 213. AUTHORIZING BROADCAST SERVICE IN UNSERVED AREAS OF ALASKA.

Title III of the Communications Act of 1934 is amended as follows:

(1) In section 307(c)(3)—

(A) by striking "any hearing" and inserting "any administrative or judicial hearing"; and

(B) by inserting "or section 402" after "section 405".

(2) In section 307, by adding at the end the following new subsection:

"(f) Notwithstanding any other provision of law, (1) any holder of a broadcast license may broadcast to an area of Alaska that otherwise does not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery even if another holder of a broadcast license begins broadcasting to such area, (2) any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such area, and shall not be fined or subject to any other penalty, forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary.".

(3) In section 312(g), by inserting before the period at the end the following: ", except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated".

TITLE X—SNAKE RIVER WATER RIGHTS ACT OF 2004

SECTION 1. SHORT TITLE.

This title may be cited as the "Snake River Water Rights Act of 2004".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to resolve some of the largest outstanding issues with respect to the Snake River Basin Adjudication in Idaho in such a manner as to provide important benefits to the United States, the State of Idaho, the Nez Perce Tribe, the allottees, and citizens of the State;

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(2) to achieve a fair, equitable, and final settlement of all claims of the Nez Perce Tribe, its members, and allottees and the United States on behalf of the Tribe, its members, and allottees to the water of the Snake River Basin within Idaho;

(3) to authorize, ratify, and confirm the Agreement among the parties submitted to the Snake River Basin Adjudication Court and provide all parties with the benefits of the Agreement;

(4) to direct—

(A) the Secretary, acting through the Bureau of Reclamation, the Bureau of Land Management, the Bureau of Indian Affairs, and other agencies; and

(B) the heads of other Federal agencies authorized to execute and perform actions necessary to carry out the Agreement;

to perform all of their obligations under the Agreement and this Act; and

(5) to authorize the actions and appropriations necessary for the United States to meet the obligations of the United States under the Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the document titled "Mediator's Term Sheet" dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03–10022 and SRBA Consolidated Subcase 67–13701, with all appendices to the document.

(2) ALLOTTEE.—The term "allottee" means a person that holds a beneficial real property interest in an Indian allotment that is—

(A) located within the Nez Perce Reservation; and

(B) held in trust by the United States.

(3) CONSUMPTIVE USE RESERVED WATER RIGHT.—The term "consumptive use reserved water right" means the Federal reserved water right of 50,000 acre-feet per year, as described in the Agreement, to be decreed to the United States in trust for the Tribe and the allottees, with a priority date of 1855.

(4) PARTIES.—The term "parties" means the United States, the State, the Tribe, and any other entity or person that submitted, or joined in the submission of, the Agreement to the SRBA Court on April 20, 2004.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) SNAKE RIVER BASIN.—The term "Snake River Basin" means the geographic area in the State described in paragraph 3 of the Commencement Order issued by the SRBA Court on November 19, 1987.

(7) SPRINGS OR FOUNTAINS WATER RIGHT.—The term "springs or fountains water right" means the Tribe's treaty right of access to and use of water from springs or fountains on Federal public land within the area ceded by the Tribe in the Treaty of June 9, 1863 (14 Stat. 647), as recognized under the Agreement.

(8) SRBA.—The term "SRBA" means the Snake River Basin Adjudication litigation before the SRBA Court styled as In re Snake River Basin Adjudication, Case No. 39576.

(9) SRBA COURT.—The term "SRBA Court" means the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls in re Snake River Basin Adjudication.

(10) STATE.—The term "State" means the State of Idaho.

(11) TRIBE.—The term "Tribe" means the Nez Perce Tribe.

SEC. 4. APPROVAL, RATIFICATION, AND CONFIRMATION OF AGREEMENT.

(a) IN GENERAL.—Except to the extent that the Agreement conflicts with the express provisions of this Act, the Agreement is approved, ratified, and confirmed.

(b) EXECUTION AND PERFORMANCE.—The Secretary and the other heads of Federal agencies with obligations under the Agreement shall execute and perform all actions, consistent with this Act, that are necessary to carry out the Agreement.

SEC. 5. BUREAU OF RECLAMATION WATER USE.

(a) IN GENERAL.—As part of the overall implementation of the Agreement, the Secretary shall take such actions consistent with the Agreement, this Act, and water law of the State as are necessary to carry out the Snake River Flow Component of the Agreement.

(b) MITIGATION FOR CHANGE OF USE OF WATER.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $2,000,000 for a 1-time payment to local governments to mitigate for the change of use of water acquired by the Bureau of Reclamation under section III.C.6 of the Agreement.

(2) DISTRIBUTION OF FUNDS.—Funds made available under paragraph (1) shall be distributed by the Secretary to local governments in accordance with a plan provided to the Secretary by the State.

(3) PAYMENTS.—Payments by the Secretary shall be made on a pro rata basis as water rights are acquired by the Bureau of Reclamation.

SEC. 6. BUREAU OF LAND MANAGEMENT LAND TRANSFER.

(a) TRANSFER.—

(1) IN GENERAL.—The Secretary shall transfer land selected by the Tribe under paragraph (2) to the Bureau of Indian Affairs to be held in trust for the Tribe.

(2) LAND SELECTION.—The land transferred shall be selected by the Tribe from a list of parcels of land managed by the Bureau of Land Management that are available for transfer, as depicted on the map entitled "North Idaho BLM Land Eligible for Selection by the Nez Perce Tribe" dated May 2004, on file with the Director of the Bureau of Land Management, not including any parcel designated on the map as being on the Clearwater River or Lolo Creek.

(3) MAXIMUM VALUE.—The land selected by the Tribe for transfer shall be limited to a maximum value in total of not more than $7,000,000, as determined by an independent appraisal of fair market value prepared in accordance with the Uniform Standards of Professional Appraisal Practice and

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the Uniform Appraisal Standards for Federal Land Acquisitions.

(b) EXISTING RIGHTS AND USES.—

(1) IN GENERAL.—On any land selected by the Tribe under subsection (a)(2), any use in existence on the date of transfer under subsection (a) under a lease or permit with the Bureau of Land Management, including grazing, shall remain in effect until the date of expiration of the lease or permit, unless the holder of the lease or permit requests an earlier termination of the lease or permit, in which case the Secretary shall grant the request.

(2) AVAILABILITY OF AMOUNTS.—Amounts that accrue to the United States under a lease or permit described in paragraph (1) from sales, bonuses, royalties, and rentals relating to any land transferred to the Tribe under this section shall be made available to the Tribe by the Secretary in the same manner as amounts received from other land held by the Secretary in trust for the Tribe.

(c) DATE OF TRANSFER.—No land shall be transferred to the Bureau of Indian Affairs to be held in trust for the Tribe under this section until the waivers and releases under section 10(a) take effect.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary $200,000 for 1-time payments to local governments to mitigate for the transfer of land by the Bureau of Land Management to the Tribe under section I.F of the Agreement.

(2) PAYMENTS.—Payments under paragraph (1) shall be made on a pro rata basis as parcels of land are acquired by the Tribe.

SEC. 7. WATER RIGHTS.

(a) HOLDING IN TRUST.—

(1) IN GENERAL.—The consumptive use reserved water right shall—

(A) be held in trust by the United States for the benefit of the Tribe and allottees as set forth in this section; and

(B) be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

(2) SPRINGS OR FOUNTAINS WATER RIGHT.—The springs or fountains water right of the Tribe shall be held in trust by the United States for the benefit of the Tribe.

(3) ALLOTTEES.—Allottees shall be entitled to a just and equitable allocation of the consumptive use reserved water right for irrigation purposes.

(b) WATER CODE.—

(1) ENACTMENT OF WATER CODE.—Not later than 3 years after the date of enactment of this Act, the Tribe shall enact a water code, subject to any applicable provision of law, that—

(A) manages, regulates, and controls the consumptive use reserved water right so as to allocate water for irrigation, domestic, commercial, municipal, industrial, cultural, or other uses; and

(B) includes, subject to approval of the Secretary—

(i) a due process system for the consideration and determination of any request by an allottee, or any successor in interest to an allottee, for an allocation of such water for irrigation purposes on allotted land, including a process for an appeal and adjudication of denied or disputed distribution of water and for resolution of contested administrative decisions; and

(ii) a process to protect the interests of allottees when entering into any lease under subsection (e).

(2) SECRETARIAL APPROVAL.—Any provision of the water code and any amendments to the water code that affect the rights of the allottees shall be subject to approval by the Secretary, and no such provision or amendment shall be valid until approved by the Secretary.

(3) INTERIM ADMINISTRATION.—The Secretary shall administer the consumptive use reserved water right until such date as the water code described in paragraph (2) has been enacted by the Tribe and the Secretary has approved the relevant portions of the water code.

(c) EXHAUSTION OF REMEDIES.—Before asserting any claim against the United States under section 7 of the Act of February 8, 1887 (25 U.S.C. 381) or other applicable law, a claimant shall exhaust remedies available under the Tribe's water code and Tribal law.

(d) PETITION TO THE SECRETARY.—Following exhaustion of remedies in accordance with subsection (c), a claimant may petition the Secretary for relief.

(e) SATISFACTION OF CLAIMS.—

(1) IN GENERAL.—The water rights and other benefits granted or confirmed by the Agreement and this Act shall be in full satisfaction of all claims for water rights and injuries to water rights of the allottees.

(2) SATISFACTION OF ENTITLEMENTS.—Any entitlement to water of any allottee under Federal law shall be satisfied out of the consumptive use reserved water right.

(3) COMPLETE SUBSTITUTION.—The water rights, resources, and other benefits provided by this Act are a complete substitution for any rights that may have been held by, or any claims that may have been asserted by, allottees within the exterior boundaries of the Reservation before the date of enactment of this Act.

(f) ABANDONMENT, FORFEITURE, OR NONUSE.—The consumptive use reserved water right and the springs or fountains water right shall not be subject to loss by abandonment, forfeiture, or nonuse.

(g) LEASE OF WATER.—

(1) IN GENERAL.—Subject to the water code, the Tribe, without further approval of the Secretary, may lease water to which the Tribe is entitled under the consumptive use reserved water right through any State water bank in the same manner and subject to the same rules and requirements that govern any other lessor of water to the water bank.

(2) FUNDS.—Any funds accruing to the Tribe from any lease under paragraph (1) shall be the property of the Tribe, and the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Tribe under any such lease.

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SEC. 8. TRIBAL FUNDS.

(a) DEFINITION OF FUND.—In this section, the term "Fund" means—

(1) the Nez Perce Tribe Water and Fisheries Fund established under subsection (b)(1); and

(2) the Nez Perce Tribe Domestic Water Supply Fund established under subsection (b)(2).

(b) ESTABLISHMENT.—There are established in the Treasury of the United States—

(1) a fund to be known as the "Nez Perce Tribe Water and Fisheries Fund", to be used to pay or reimburse costs incurred by the Tribe in acquiring land and water rights, restoring or improving fish habitat, or for fish production, agricultural development, cultural preservation, water resource development, or fisheries-related projects; and

(2) a fund to be known as the "Nez Perce Domestic Water Supply Fund", to be used to pay the costs for design and construction of water supply and sewer systems for tribal communities, including a water quality testing laboratory.

(c) MANAGEMENT OF THE FUNDS.—The Secretary shall manage the Funds, make investments from the Funds, and make amounts available from the Funds for distribution to the Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), this Act, and the Agreement.

(d) INVESTMENT OF THE FUNDS.—The Secretary shall invest amounts in the Funds in accordance with—

(1) the Act of April 1, 1880 (25 U.S.C. 161; 21 Stat. 70, chapter 41);

(2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a; 52 Stat. 1037, chapter 648); and

(3) subsection (c).

(e) AVAILABILITY OF AMOUNTS FROM THE FUNDS.—Amounts made available under subsection (h) shall be available for expenditure or withdrawal only after the waivers and releases under section 10(a) take effect.

(f) EXPENDITURES AND WITHDRAWAL.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Tribe may withdraw all or part of amounts in the Funds on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(B) REQUIREMENTS.—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that the Tribe spend any amounts withdrawn from the Funds in accordance with the purposes described in subsection (b).

(C) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Funds under the plan are used in accordance with this Act and the Agreement.

(D) LIABILITY.—If the Tribe exercises the right to withdraw amounts from the Funds, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts.

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(2) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts made available under subsection (h) that the Tribe does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts of the Tribe remaining in the Funds will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act and the Agreement.

(D) ANNUAL REPORT.—For each Fund, the Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(g) NO PER CAPITA PAYMENTS.—No part of the principal of the Funds, or of the income accruing in the Funds, shall be distributed to any member of the Tribe on a per capita basis.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to the Nez Perce Tribe Water and Fisheries Fund—

(A) for fiscal year 2007, $7,830,000;

(B) for fiscal year 2008, $4,730,000;

(C) for fiscal year 2009, $7,380,000;

(D) for fiscal year 2010, $10,080,000;

(E) for fiscal year 2011, $11,630,000;

(F) for fiscal year 2012, $9,450,000; and

(G) for fiscal year 2013, $9,000,000; and

(2) to the Nez Perce Tribe Domestic Water Supply Fund—

(A) for fiscal year 2007, $5,100,000;

(B) for fiscal year 2008, $8,200,000;

(C) for fiscal year 2009, $5,550,000;

(D) for fiscal year 2010, $2,850,000; and

(E) for fiscal year 2011, $1,300,000.

SEC. 9. SALMON AND CLEARWATER RIVER BASINS HABITAT FUND.

(a) ESTABLISHMENT OF FUND.—

(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the "Salmon and Clearwater River Basins Habitat Fund" (referred to in this section as the "Fund"), to be administered by the Secretary.

(2) ACCOUNTS.—There is established within the Fund—

(A) an account to be known as the "Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account", which shall be administered by the Secretary for use by the Tribe subject to the same provisions for management, investment, and expenditure as the funds established by section 8; and

(B) an account to be known as the "Idaho Salmon and Clearwater River Basins Habitat Account", which shall be administered by the Secretary and provided to the State as provided in the Agreement and this Act.

(b) USE OF THE FUND.—

(1) IN GENERAL.—The Fund shall be used to supplement amounts made available under any other law for habitat protection and restoration in the Salmon and Clearwater River Basins

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in Idaho, including projects and programs intended to protect and restore listed fish and their habitat in those basins, as specified in the Agreement and this Act.

(2) RELEASE OF FUNDS.—The Secretary shall release funds from the Idaho Salmon and Clearwater River Basins Habitat Account in accordance with section 6(d)(2) of the Endangered Species Act (16 U.S.C. 1535(d)(2)).

(3) NO ALLOCATION REQUIREMENT.—The use of the Fund shall not be subject to the allocation procedures under section 6(d)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1535(d)(1)).

(c) AVAILABILITY OF AMOUNTS IN THE FUND.—Amounts made available under subsection (d) shall be available for expenditure or withdrawal only after the waivers and releases under section 10(a) take effect.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to the Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account, $2,533,334 for each of fiscal years 2007 through 2011; and

(2) to the Idaho Salmon and Clearwater River Basins Habitat Account, $5,066,666 for each of fiscal years 2007 through 2011.

SEC. 10. TRIBAL WAIVER AND RELEASE OF CLAIMS.

(a) WAIVER AND RELEASE OF CLAIMS IN GENERAL.—

(1) CLAIMS TO WATER RIGHTS; CLAIMS FOR INJURIES TO WATER RIGHTS OR TREATY RIGHTS.—Except as otherwise provided in this Act, the United States on behalf of the Tribe and the allottees, and the Tribe, waive and release—

(A) all claims to water rights within the Snake River Basin (as defined in section 3);

(B) all claims for injuries to such water rights; and

(C) all claims for injuries to the treaty rights of the Tribe to the extent that such injuries result or resulted from flow modifications or reductions in the quantity of water available that accrued at any time up to and including the effective date of the settlement, and any continuation thereafter of any such claims, against the State, any agency or political subdivision of the State, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation.

(2) CLAIMS BASED ON REDUCED WATER QUALITY OR REDUCTIONS IN WATER QUANTITY.—The United States on behalf of the Tribe and the allottees, and the Tribe, waive and release any claim, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin against any party to the Agreement.

(3) NO FUTURE ASSERTION OF CLAIMS.—No water right claim that the Tribe or the allottees have asserted or may in the future assert outside the Snake River Basin shall require water to be supplied from the Snake River Basin to satisfy the claim.

(4) EFFECT OF WAIVERS AND RELEASES.—The waivers and releases by the United States and the Tribe under this subsection—

(A) shall be permanent and enforceable; and

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(B) shall survive any subsequent termination of any component of the settlement described in the Agreement or this Act.

(5) EFFECTIVE DATE.—The waivers and releases under this subsection shall take effect on the date on which the Secretary causes to be published in the Federal Register a statement of findings that the actions set forth in section IV.L of the Agreement—

(A) have been completed, including issuance of a judgment and decree by the SRBA court from which no further appeal may be taken; and

(B) have been determined by the United States on behalf of the Tribe and the allottees, the Tribe, and the State of Idaho to be consistent in all material aspects with the Agreement.

(b) WAIVER AND RELEASE OF CLAIMS AGAINST THE UNITED STATES.—

(1) IN GENERAL.—In consideration of performance by the United States of all actions required by the Agreement and this Act, including the appropriation of all funds authorized under sections 8(h) and 9(d)(1), the Tribe shall execute a waiver and release of the United States from—

(A) all claims for water rights within the Snake River Basin, injuries to such water rights, or breach of trust claims for failure to protect, acquire, or develop such water rights that accrued at any time up to and including the effective date determined under paragraph (2);

(B) all claims for injuries to the Tribe's treaty fishing rights, to the extent that such injuries result or resulted from reductions in the quantity of water available in the Snake River Basin;

(C) all claims of breach of trust for failure to protect Nez Perce springs or fountains treaty rights reserved in article VIII of the Treaty of June 9, 1863 (14 Stat. 651); and

(D) all claims of breach of trust arising out of the negotiation of or resulting from the adoption of the Agreement.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The waiver and release contained in this subsection shall take effect on the date on which the amounts authorized under sections 8(h) and 9(d)(1) are appropriated.

(B) PERIODS OF LIMITATION; EQUITABLE CLAIMS.—

(i) IN GENERAL.—All periods of limitation and time-based equitable defenses applicable to the claims set forth in paragraph (1) are tolled for the period between the date of enactment of this Act until the earlier of—

(I) the date on which the amounts authorized under sections 8(h) and 9(d)(1) are appropriated; or

(II) October 1, 2017.

(ii) EFFECT OF SUBPARAGRAPH.—This subparagraph neither revives any claim nor tolls any period of limitation or time-based equitable defense that may have expired before the date of enactment of this Act.

(3) DEFENSE.—The making of the amounts of appropriations authorized under sections 8(h) and 9(d)(1) shall constitute a complete defense to any claim pending in any court of the United States on the date on which the appropriations are made.

(c) RETENTION OF RIGHTS.—

(1) IN GENERAL.—The Tribe shall retain all rights not specifically waived or released in the Agreement or this Act.

(2) DWORSHAK PROJECT.—Nothing in the Agreement or this Act constitutes a waiver by the Tribe of any claim against the United States resulting from the construction and operation of the Dworshak Project (Project PWI 05090), other than those specified in subparagraphs (A) and (B) of subsection (b)(1).

(3) FUTURE ACQUISITION OF WATER RIGHTS.—Nothing in the Agreement or this Act precludes the Tribe or allottees, or the United States as trustee for the Tribe or allottees, from purchasing or otherwise acquiring water rights in the future to the same extent as any other entity in the State.

SEC. 11. MISCELLANEOUS.

(a) GENERAL DISCLAIMER.—The parties expressly reserve all rights not specifically granted, recognized, or relinquished by the settlement described in the Agreement or this Act.

(b) DISCLAIMER REGARDING OTHER AGREEMENTS AND PRECEDENT.—

(1) IN GENERAL.—Subject to section 9(b)(3), nothing in this Act amends, supersedes, or preempts any State law, Federal law, Tribal law, or interstate compact that pertains to the Snake River Basin.

(2) NO ESTABLISHMENT OF STANDARD.—Nothing in this Act—

(A) establishes any standard for the quantification of Federal reserved water rights or any other Indian water claims of any other Indian tribes in any other judicial or administrative proceeding; or

(B) limits the rights of the parties to litigate any issue not resolved by the Agreement or this Act.

(3) NO ADMISSION AGAINST INTEREST.—Nothing in this Act constitutes an admission against interest against any party in any legal proceeding.

(c) TREATY RIGHTS.—Nothing in the Agreement or this Act impairs the treaty fishing, hunting, pasturing, or gathering rights of the Tribe except to the extent expressly provided in the Agreement or this Act.

(d) OTHER CLAIMS.—Nothing in the Agreement or this Act quantifies or otherwise affects the water rights, claims, or entitlements to water, or any other treaty right, of any Indian tribe, band, or community other than the Tribe.

(e) RECREATION ON DWORSHAK RESERVOIR.—

(1) IN GENERAL.—In implementing the provisions of the Agreement and this Act relating to the use of water stored in Dworshak Reservoir for flow augmentation purposes, the heads of the Federal agencies involved in the operational Memorandum of Agreement referred to in the Agreement shall implement a flow augmentation plan beneficial to fish and consistent with the Agreement.

(2) CONTENTS OF PLAN.—The flow augmentation plan may include provisions beneficial to recreational uses of the reservoir through maintenance of the full level of the reservoir for prolonged periods during the summer months.

(f) JURISDICTION.—

(1) NO EFFECT ON SUBJECT MATTER JURISDICTION.—Nothing in the Agreement or this Act restricts, enlarges, or otherwise determines the subject matter jurisdiction of any Federal, State, or Tribal court.

(2) CONSENT TO JURISDICTION.—The United States consents to jurisdiction in a proper forum for purposes of enforcing the provisions of the Agreement.

(3) EFFECT OF SUBSECTION.—Nothing in this subsection confers jurisdiction on any State court to—

(A) enforce Federal environmental laws regarding the duties of the United States; or

(B) conduct judicial review of Federal agency action.

DIVISION K—SMALL BUSINESS

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the "Small Business Reauthorization and Manufacturing Assistance Act of 2004".

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

TITLE I—SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING

Sec. 1. Short title; table of contents.

Subtitle A—Small manufacturers assistance

Sec. 101. Express loans.
Sec. 102. Loan guarantee fees.
Sec. 103. Increase in guarantee amount and institution of associated fee.
Sec. 104. Debenture size.
Sec. 105. Job requirements.
Sec. 106. Report regarding national database of small manufacturers.
Sec. 107. International trade.

Subtitle B—Authorizations

CHAPTER 1—PROGRAM AUTHORIZATION LEVELS AND ADDITIONAL REAUTHORIZATIONS

Sec. 121. Program authorization levels.
Sec. 122. Additional reauthorizations.

CHAPTER 2—PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM AUTHORIZATIONS AND SUNDRY AMENDMENTS

Sec. 123. Paul D. Coverdell drug-free workplace program authorization provisions.
Sec. 124. Grant provisions.
Sec. 125. Drug-free communities coalitions as eligible intermediaries.
Sec. 126. Promotion of effective practices of eligible intermediaries.
Sec. 127. Report to Congress.

Subtitle C—Administration Management

Sec. 131. Lender examination and review fees.
Sec. 132. Gifts and co-sponsorship of events.

Subtitle D—Entrepreneurial development programs

CHAPTER 1—OFFICE OF ENTREPRENEURIAL DEVELOPMENT

Sec. 141. Service Corps of Retired Executives.
Sec. 142. Small business development center program.

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CHAPTER 2—OFFICE OF VETERANS BUSINESS DEVELOPMENT
Sec. 143. Advisory Committee on Veterans Business Affairs.
Sec. 144. Outreach grants for veterans.
Sec. 145. Authorization of appropriations.
Sec. 146. National Veterans Business Development Corporation.
CHAPTER 3—MANUFACTURING AND ENTREPRENEURIAL DEVELOPMENT
Sec. 147. Small Business Manufacturing Task Force.
Subtitle E—HUBZone Program
Sec. 151. Streamlining and revision of HUBZone eligibility requirements.
Sec. 152. Expansion of qualified areas.
Sec. 153. Price evaluation preference.
Sec. 154. HUBZone Authorizations.
Sec. 155. Participation in federally funded projects.
Subtitle F—Small business lending companies
Sec. 161. Supervisory and enforcement authority for small business lending companies.
Sec. 162. Definitions relating to small business lending companies.
TITLE II—MISCELLANEOUS AMENDMENTS
Sec. 201. Amendment to definition of equity capital with respect to issuers of participating securities.
Sec. 202. Investment of excess funds.
Sec. 203. Surety bond amendments.
Sec. 204. Effective date for certain fees.

TITLE I—SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING

Subtitle A—Small Manufacturers Assistance

SEC. 101. EXPRESS LOANS.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

"(31) EXPRESS LOANS.—

"(A) DEFINITIONS.—As used in this paragraph:

"(i) The term 'express lender' means any lender authorized by the Administration to participate in the Express Loan Program.

"(ii) The term 'express loan' means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

"(iii) The term 'Express Loan Program' means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guaranty rate of not more than 50 percent.

"(B) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration. Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.

"(C) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the

Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

"(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is $350,000.

"(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

SEC. 102. LOAN GUARANTEE FEES.

(a) ADDITIONAL GUARANTEE FEE LEVEL.—Section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)) is amended to read as follows:

"(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

"(i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than $150,000.

"(ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

"(iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.

"(iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than $1,000,000.".

(b) CLERICAL AMENDMENT.—Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended by striking subparagraph (C).

(c) YEARLY FEE.—Section 7(a)(23) of the Small Business Act (15 U.S.C. 636(a)(23)) is amended—

(1) in the heading, by striking "ANNUAL" and inserting "YEARLY";

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

"(A) IN GENERAL.—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in an amount established once annually by the Administration in the Administration's annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term 'cost'

has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).";

(3) in subparagraph (B), by striking "annual" and inserting "yearly"; and

(4) by adding at the end the following:

"(C) LOWERING OF BORROWER FEES.—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

"(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

"(ii) fees paid by small business borrowers shall not be increased above the levels in effect on the date of enactment of this subparagraph.".

SEC. 103. INCREASE IN GUARANTEE AMOUNT AND INSTITUTION OF ASSOCIATED FEE.

(a) INCREASE IN AMOUNT PERMITTED TO BE OUTSTANDING AND COMMITTED.—Section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)) is amended by striking "$1,000,000" and inserting "$1,500,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

SEC. 104. DEBENTURE SIZE.

Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended to read as follows:

"(2) MAXIMUM AMOUNT.—

"(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

"(i) $1,500,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in subparagraph (B) or (C);

"(ii) $2,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 501(d)(3); and

"(iii) $4,000,000 for each project of a small manufacturer.

"(B) DEFINITION.—As used in this paragraph, the term 'small manufacturer' means a small business concern—

"(i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

"(ii) all of the production facilities of which are located in the United States.".

SEC. 105. JOB REQUIREMENTS.

Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end the following:

"(e)(1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every $50,000 guaranteed by the Administration, except that the amount is $100,000 in the case of a project of a small manufacturer.

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"(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company's portfolio of outstanding debentures creates or retains one job for every $50,000 guaranteed by the Administration.

"(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company's portfolio may average not more than $75,000 per job created or retained.

"(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

"(5) Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of this subsection (other than paragraph (4)). With respect to any waiver the Administrator is prohibited from adopting a dollar amount that is lower than the amounts set forth in paragraphs (1), (2), and (3).

"(6) As used in this subsection, the term 'small manufacturer' means a small business concern—

"(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

"(B) all of the production facilities of which are located in the United States.".

SEC. 106. REPORT REGARDING NATIONAL DATABASE OF SMALL MANUFACTURERS.

(a) STUDY AND REPORT.—The Administrator, in consultation with the Association of Small Business Development Centers authorized by section 21(k) of the Small Business Act (15 U.S.C. 648(k)), shall—

(1) study the feasibility of creating a national database of small manufacturers that institutions of higher education could access for purposes of meeting procurement needs; and

(2) not later than 1 year after the date of enactment of this Act, submit a report to the Congress regarding the findings and conclusions of such study.

(b) COST ESTIMATE.—The report referred to in subsection (a)(2) shall include an estimate of the cost of creating and maintaining the database described in subsection (a)(1).

(c) DEFINITION.—As used in this section, the term "small manufacturer" means a small business concern—

(1) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(2) all of the production facilities of which are located in the United States.

SEC. 107. INTERNATIONAL TRADE.

(a) IN GENERAL.—Section 7(a)(16) of the Small Business Act (15 U.S.C. 636(a)(16)) is amended to read as follows:

"(16) INTERNATIONAL TRADE.—

"(A) IN GENERAL.—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its

competitive position, the Administrator may make such loan to assist such concern in—

"(i) the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade; or

"(ii) the refinancing of existing indebtedness that is not structured with reasonable terms and conditions.

"(B) SECURITY.—Each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

"(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets.

"(D) ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern—

"(i) is confronting increased competition with foreign firms in the relevant market; and

"(ii) is injured by such competition.

"(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974.".

(b) LIMITATION INCREASE.—Section 7(a)(3)(B) of the Small Business Act (15 U.S.C. 636(a)(3)(B)) is amended—

(1) by striking "$1,250,000" and inserting "$1,750,000"; and

(2) by striking "$750,000" and inserting "$1,250,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

Subtitle B—Authorizations

CHAPTER 1—PROGRAM AUTHORIZATION LEVELS AND ADDITIONAL REAUTHORIZATIONS

SEC. 121. PROGRAM AUTHORIZATION LEVELS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) in subsection (a)(1), by striking "certification" each place it appears in subparagraphs (D) and (E) and inserting "accreditation"; and

(2) by striking subsections (c) through (i) and inserting the following:

"(c) DISASTER MITIGATION PILOT PROGRAM.—The following program levels are authorized for loans under section 7(b)(1)(C):

"(1) $15,000,000 for fiscal year 2005.

"(2) $15,000,000 for fiscal year 2006.

"(d) FISCAL YEAR 2005.—

"(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2005:

"(A) For the programs authorized by this Act, the Administration is authorized to make—

"(i) $75,000,000 in technical assistance grants, as provided in section 7(m); and

"(ii) $105,000,000 in direct loans, as provided in 7(m).

"(B) For the programs authorized by this Act, the Administration is authorized to make $23,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(i) $16,500,000,000 in general business loans, as provided in section 7(a);

"(ii) $6,000,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958;

"(iii) $500,000,000 in loans, as provided in section 7(a)(21); and

"(iv) $50,000,000 in loans, as provided in section 7(m).

"(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

"(i) $4,250,000,000 in purchases of participating securities; and

"(ii) $3,250,000,000 in guarantees of debentures.

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

"(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of $7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2005 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(B) Notwithstanding any other provision of this paragraph, for fiscal year 2005—

"(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

"(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal

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department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $2,000,000.

"(e) FISCAL YEAR 2006.—

"(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2006:

"(A) For the programs authorized by this Act, the Administration is authorized to make—

"(i) $80,000,000 in technical assistance grants, as provided in section 7(m); and

"(ii) $110,000,000 in direct loans, as provided in 7(m).

"(B) For the programs authorized by this Act, the Administration is authorized to make $25,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(i) $17,000,000,000 in general business loans, as provided in section 7(a);

"(ii) $7,500,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958;

"(iii) $500,000,000 in loans, as provided in section 7(a)(21); and

"(iv) $50,000,000 in loans, as provided in section 7(m).

"(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

"(i) $4,500,000,000 in purchases of participating securities; and

"(ii) $3,500,000,000 in guarantees of debentures.

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

"(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of $7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2006 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(B) Notwithstanding any other provision of this paragraph, for fiscal year 2006—

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"(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

"(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $2,000,000.".

SEC. 122. ADDITIONAL REAUTHORIZATIONS.

(a) DRUG-FREE WORKPLACE PROGRAM ASSISTANCE.—Section 21(c)(3)(T) of the Small Business Act (15 U.S.C. 648(c)(3)(T)) is amended by striking "October 1, 2003" and inserting "October 1, 2006".

(b) SMALL BUSINESS DEVELOPMENT CENTERS.—Section 21(a)(4)(C) of the Small Business Act (15 U.S.C. 648(a)(4)(C)) is amended—

(1) by striking clause (vii) and inserting the following:

"(vii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph—

"(I) $130,000,000 for fiscal year 2005; and

"(II) $135,000,000 for fiscal year 2006.";

(2) by redesignating clause (viii) as clause (ix); and

(3) by inserting after clause (vii) the following:

"(viii) LIMITATION.—From the funds appropriated pursuant to clause (vii), the Administration shall reserve not less than $1,000,000 in each fiscal year to develop portable assistance for startup and sustainability nonmatching grant programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility down sizing or closing, which has resulted in the loss of jobs or small business instability. A nonmatching grant under this clause shall not exceed $100,000, and shall be used for small business development center personnel expenses and related small business programs and services.".

CHAPTER 2—PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM AUTHORIZATIONS AND SUNDRY AMENDMENTS

SEC. 123. PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM AUTHORIZATION PROVISIONS.

(a) IN GENERAL.—Section 27(g)(1) of the Small Business Act (15 U.S.C. 654(g)(1)) is amended by striking ", $5,000,000" in the first sentence and all that follows through "subsection" in the second sentence and inserting the following: "(other than subsection (b)(2)), $5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph".

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(b) LIMITATION ON AUTHORIZATION FOR SMALL BUSINESS DEVELOPMENT CENTERS.—Section 27(g)(2) of the Small Business Act (15 U.S.C. 654(g)) is amended by striking "this subsection, not more than the greater of 10 percent or $1,000,000" and inserting "paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or $500,000".

(c) ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE GRANTS.—Section 27(g) of the Small Business Act (15 U.S.C. 654(g)) is amended by adding at the end the following:

"(3) ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE GRANTS.—There are authorized to be appropriated to carry out subsection (b)(2), $1,500,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.".

(d) LIMITATION ON ADMINISTRATIVE COSTS.—Section 27(g) of the Small Business Act (15 U.S.C. 654(g)), as amended by subsection (c), is further amended by adding at the end the following:

"(4) LIMITATION ON ADMINISTRATIVE COSTS.—Not more than 5 percent of the total amount made available under this subsection for any fiscal year shall be used for administrative costs (determined without regard to the administrative costs of eligible intermediaries).".

SEC. 124. GRANT PROVISIONS.

(a) ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.—Section 27(b) of the Small Business Act (15 U.S.C. 654) is amended—

(1) by striking "There is established" and inserting the following:

"(1) IN GENERAL.—There is established"; and

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

"(2) ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.—In addition to grants under paragraph (1), the Administrator may make grants to, or enter into cooperative agreements or contracts with, any grantee for the purpose of providing, in cooperation with one or more small business development centers, technical assistance to small business concerns seeking to establish a drug-free workplace program.".

(b) 2-YEAR GRANTS.—Section 27(b) of the Small Business Act (15 U.S.C. 654(b)), as amended by subsection (a), is further amended by adding at the end the following:

"(3) 2-YEAR GRANTS.—Each grant made under this subsection shall be for a period of 2 years, subject to an annual performance review by the Administrator.".

SEC. 125. DRUG-FREE COMMUNITIES COALITIONS AS ELIGIBLE INTERMEDIARIES.

Section 27(a)(2)(D) of the Small Business Act (15 U.S.C. 654(a)(2)) is amended to read as follows:

"(D)(i) the purpose of which is—

"(I) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services; or

"(II) to provide other forms of assistance and services to small business concerns; or

"(ii) that is eligible to receive a grant under chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.).".

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SEC. 126. PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTERMEDIARIES.

Section 27(c) of the Small Business Act (15 U.S.C. 654(c)) is amended to read as follows:

"(c) PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTERMEDIARIES.—

"(1) TECHNICAL ASSISTANCE AND INFORMATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and information to each eligible intermediary under subsection (b) regarding the most effective practices in establishing and carrying out drug-free workplace programs.

"(2) EVALUATION OF PROGRAM.—

"(A) DATA COLLECTION AND ANALYSIS.—Each eligible intermediary receiving a grant under this section shall establish a system to collect and analyze information regarding the effectiveness of drug-free workplace programs established with assistance provided under this section through the intermediary, including information regarding any increase or decrease among employees in drug use, awareness of the adverse consequences of drug use, and absenteeism, injury, and disciplinary problems related to drug use. Such system shall conform to such requirements as the Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, may prescribe. Not more than 5 percent of the amount of each grant made under subsection (b) shall be used by the eligible intermediary to carry out this paragraph.

"(B) METHOD OF EVALUATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and guidance to each eligible intermediary receiving a grant under subsection (b) regarding the collection and analysis of information to evaluate the effectiveness of drug-free workplace programs established with assistance provided under this section, including the information referred to in paragraph (1). Such assistance shall include the identification of additional information suitable for measuring the benefits of drug-free workplace programs to the small business concern and to the concern's employees and the identification of methods suitable for analyzing such information.".

SEC. 127. REPORT TO CONGRESS.

Not later than March 31, 2006, the Administrator, in consultation with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of National Drug Control Policy, shall submit to Congress a report that—

(1) analyzes the information collected under section 27(c) of the Small Business Act;

(2) identifies trends in such information; and

(3) evaluates the effectiveness of the drug-free workplace programs established with assistance under section 27 of the Small Business Act (15 U.S.C. 654).

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Subtitle C—Administration Management

SEC. 131. LENDER EXAMINATION AND REVIEW FEES.

Section 5(b) of the Small Business Act (15 U.S.C. 634(b)) is amended—

(1) in paragraph (12), by striking "and" at the end;

(2) in paragraph (13), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(14) require any lender authorized to make loans under section 7 of this Act to pay examination and review fees, which shall be deposited in the account for salaries and expenses of the Administration, and shall be available for the costs of examinations, reviews, and other lender oversight activities.".

SEC. 132. GIFTS AND CO-SPONSORSHIP OF EVENTS.

(a) IN GENERAL.—Section 4 of the Small Business Act (15 U.S.C. 633) is amended by adding at the end the following:

"(g) GIFTS.—

"(1) IN GENERAL.—The Administrator may, for purposes of this Act, the Small Business Investment Act of 1954, and title IV of the Women's Business Ownership Act of 1988, solicit, accept, hold, administer, utilize, and dispose of gifts, devises, and bequests of cash, property (including tangible, intangible, real, and personal), subsistence, and services. Notwithstanding any other provision of law, the Administrator may utilize gifts, devises, or bequests for marketing and outreach activities, including the cost of promotional materials and wearing apparel.

"(2) AUDITS.—Any gift, devise, or bequest of cash accepted by the Administrator shall be held in a separate account and shall be subject to semi-annual audits by the Inspector General of the Administration who shall report his findings to the Congress.

"(3) CONFLICTS OF INTEREST.—No gift, devise, or bequest shall be solicited or accepted under the authority of this subsection if such solicitation or acceptance would, in the determination of the General Counsel, create a conflict of interest.

"(4) ACCEPTANCE OF SERVICES AND FACILITIES FOR DISASTER LOAN PROGRAM.—The Administrator may accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 7(b).

"(h) CO-SPONSORSHIP OF EVENTS.—

"(1) AUTHORIZATION.—The Administrator, after consultation with the General Counsel, may provide assistance for the benefit of small business through Administration-sponsored activities, through cosponsored activities with any eligible entity, or through such other activities that the Administrator determines to be appropriate, including recognition events.

"(2) ELIGIBLE ENTITY.—For purposes of this subsection, the term 'eligible entity' means any for-profit or not-for-profit entity, any Federal, State, or local government official, or any Federal, State, or local government entity.

"(3) PROHIBITION ON ENDORSEMENTS.—The Administrator shall ensure that the Administration and any eligible entities that cosponsor activities receive appropriate recognition for such cosponsorship, and that such recognition does not constitute or imply an endorsement by the Administration of any product or service of such entity.

"(4) AUTHORITY TO CHARGE FEES.—Notwithstanding any other provision of law, the Administrator may charge a participant in any activity sponsored or cosponsored by the Administration a minimal fee, and retain and use such fee to cover the costs of such activity.

"(5) LIMITED DELEGATION.—The Administrator may not delegate the authority described in this subsection except to the Deputy Administrator, an Associate Administrator, or an Assistant Administrator.

"(6) REPORT TO CONGRESS.—The Inspector General of the Administration shall report semi-annually to Congress on the Administrator's use of authority under this subsection.

"(7) RULEMAKING.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall promulgate regulations to carry out the provisions of this subsection.".

(b) CONFORMING AMENDMENTS.—Section 8(b)(1)(A) of the Small Business Act (15 U.S.C. 637(b)(1)(A)) is amended—

(1) by striking clause (ii);

(2) by striking "(1)(A) to provide—" and all that follows through "business concerns—" and inserting the following:

"(1)(A) to provide technical, managerial, and informational aids to small business concerns—";

(3) by redesignating subclauses (I) through (IV) as clauses (i) through (iv), respectively;

(4) by redesignating items (aa) and (bb) of clause (ii), as so redesignated by paragraph (3), as subclauses (I) and (II), respectively; and

(5) by striking "; and" at the end of clause (iv), as so redesignated by paragraph (3), and inserting a period.

(c) SUNSET PROVISION.—The amendments made by this section are repealed on October 1, 2006.

Subtitle D—Entrepreneurial Development Programs

CHAPTER 1—OFFICE OF ENTREPRENEURIAL DEVELOPMENT

SEC. 141. SERVICE CORPS OF RETIRED EXECUTIVES.

(a) IN GENERAL.—Section 8(b)(1)(B) of the Small Business Act (15 U.S.C. 637(b)(1)(B)) is amended—

(1) by striking "this Act; and to", and inserting "this Act. To";

(2) by striking "may maintain at its headquarters" and all that follows through "That any" and inserting "shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any"; and

(3) by striking the period at the end and inserting "and the management of the contributions received.".

(b) REGULATIONS.—The Administration shall, not later than 180 days after the date of enactment of this Act, promulgate regulations to carry out the amendments made by subsection (a).

SEC. 142. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

(a) PRIVACY REQUIREMENTS.—Section 21(a) of the Small Business Act (15 U.S.C. 648(a)) is amended by adding at the end the following:

"(7) PRIVACY REQUIREMENTS.—

"(A) IN GENERAL.—A small business development center, consortium of small business development centers, or contractor or agent of a small business development center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

"(i) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

"(ii) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a small business development center, but a disclosure under this clause shall be limited to the information necessary for such audit.

"(B) ADMINISTRATOR USE OF INFORMATION.—This section shall not—

"(i) restrict Administrator access to program activity data; or

"(ii) prevent the Administrator from using client information to conduct client surveys.

"(C) REGULATIONS.—

"(i) IN GENERAL.—The Administrator shall issue regulations to establish standards—

"(I) for disclosures with respect to financial audits under subparagraph (A)(ii); and

"(II) for client surveys under subparagraph (B)(ii), including standards for oversight of such surveys and for dissemination and use of client information.

"(ii) MAXIMUM PRIVACY PROTECTION.—Regulations under this subparagraph, shall, to the extent practicable, provide for the maximum amount of privacy protection.

"(iii) INSPECTOR GENERAL.—Until the effective date of regulations under this subparagraph, any client survey and the use of such information shall be approved by the Inspector General who shall include such approval in his semi-annual report.".

(b) TERM CHANGE.—Section 21(k) of the Small Business Act (15 U.S.C. 648(k)) is amended—

(1) by striking "CERTIFICATION" each place it appears and inserting "ACCREDITATION"; and

(2) by striking "certification" each place it appears and inserting "accreditation".

CHAPTER 2—OFFICE OF VETERANS BUSINESS DEVELOPMENT

SEC. 143. ADVISORY COMMITTEE ON VETERANS BUSINESS AFFAIRS.

(a) RETENTION OF DUTIES.—Section 33(h) of the Small Business Act (15 U.S.C. 657c(h)) is amended by striking "October 1, 2004" and inserting "October 1, 2006".

(b) EXTENSION OF AUTHORITY.—Section 203(h) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (15 U.S.C. 657b note) is amended by striking "September 30, 2004" and inserting "September 30, 2006".

SEC. 144. OUTREACH GRANTS FOR VETERANS.

Section 8(b)(17) of the Small Business Act (15 U.S.C. 637(b)(17)) is amended by inserting before the period at the end the following: ", veterans, and members of a reserve component of the Armed Forces".

SEC. 145. AUTHORIZATION OF APPROPRIATIONS.

Section 32 of the Small Business Act (15 U.S.C. 657b) is amended by adding at the end the following:

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

"(1) $1,500,000 for fiscal year 2005; and

"(2) $2,000,000 for fiscal year 2006.".

SEC. 146. NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION.

Section 33(a) of the Small Business Act (15 U.S.C. 657c(a)) is amended by adding at the end the following: "Notwithstanding any other provision of law, the Corporation is a private entity and is not an agency, instrumentality, authority, entity, or establishment of the United States Government.".

CHAPTER 3—MANUFACTURING AND ENTREPRENEURIAL DEVELOPMENT

SEC. 147. SMALL BUSINESS MANUFACTURING TASK FORCE.

(a) ESTABLISHMENT.—The Administrator of the Small Business Administration (referred to in this subtitle as the "Administrator") shall establish a Small Business Manufacturing Task Force (referred to in this section as the "Task Force") to address the concerns of small manufacturers.

(b) CHAIR.—The Administrator shall assign a member of the Task Force to serve as chair of the Task Force.

(c) DUTIES.—The Task Force shall—

(1) evaluate and identify whether programs and services are sufficient to serve the needs of small manufacturers;

(2) actively promote the programs and services of the Small Business Administration that serve small manufacturers; and

(3) identify and study the unique conditions facing small manufacturers and develop and propose policy initiatives to support and assist small manufacturers.

(d) MEETINGS.—

(1) FREQUENCY.—The Task Force shall meet not less than 4 times per year, and more frequently if necessary to perform its duties.

(2) QUORUM.—A majority of the members of the Task Force shall constitute a quorum to approve recommendations or reports.

(e) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Task Force shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(2) DETAIL OF SBA EMPLOYEES.—Any employee of the Small Business Administration may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Task Force shall submit a report containing the findings and recommendations of the task force to—

(1) the President;

(2) the Committee on Small Business and Entrepreneurship of the Senate; and

(3) the Committee on Small Business of the House of Representatives.

Subtitle E—HUBZone Program

SEC. 151. STREAMLINING AND REVISION OF HUBZONE ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—Section 3(p) of the Small Business Act (15 U.S.C. 632(p)) is amended—

(1) in paragraph (3)—

(A) by amending subparagraph (A) to read as follows:

"(A) a small business concern that is at least 51 percent owned and controlled by United States citizens;"

(B) in subparagraph (C), by striking "or" at the end;

(C) in subparagraph (D)(ii), by striking the period at the end and inserting "; or"; and

(D) by adding at the end the following:

"(E) a small business concern that is—

"(i) a small agricultural cooperative organized or incorporated in the United States;

"(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

"(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens."; and

(2) in paragraph (5)(A)(i)(I)(aa), by striking "or (D)" and inserting "(C), (D), or (E)".

(b) CONFORMING AMENDMENT.—Section 3(j) of the Small Business Act (15 U.S.C. 632(j)) is amended by striking "of section 7(b)(2)".

SEC. 152. EXPANSION OF QUALIFIED AREAS.

(a) TREATMENT OF CERTAIN AREAS AS HUBZONES.—

(1) BASE CLOSURE AREAS.—Section 3(p)(1) of the Small Business Act (15 U.S.C. 632(p)(1)) is amended—

(A) in subparagraph (C), by striking "or" at the end;

(B) in subparagraph (D), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(E) base closure areas.".

(2) HUBZONE STATUS TIME LINE AND COMMENCEMENT.—A base closure area that has undergone final closure shall be treated as a HUBZone for purposes of the Small Business Act for a period of 5 years.

(3) DEFINITION.—Section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) is amended by adding at the end the following:

"(D) BASE CLOSURE AREA.—The term 'base closure area' means lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

"(i) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

"(ii) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

"(iii) section 2687 of title 10, United States Code; or

"(iv) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use.".

(b) QUALIFIED NONMETROPOLITAN COUNTY.—Section 3(p)(4)(B)(ii)(II) of the Small Business Act (15 U.S.C. 632(p)(4)(B)(ii)(II)) is amended to read as follows:

"(II) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor.".

(c) TEMPORARY QUALIFIED AREAS EXTENSION AND QUALIFIED AREAS STUDY.—

(1) REDESIGNATED AREA.—Section 3(p)(4)(C) of the Small Business Act (15 U.S.C. 632(p)(4)(C)) is amended by striking "only for the 3-year period following" and inserting the following: "only until the later of—

"(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

"(ii) 3 years after".

(2) STUDY AND REPORT.—

(A) STUDY.—The Independent Office of Advocacy of the Small Business Administration shall conduct a study of the HUBZone program to measure the effectiveness of the definitions under section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) relating to HUBZone qualified

areas for the purposes of economic impact on small business development and jobs creation.

(B) REPORT.—Not later than May 1, 2008, the Independent Office of Advocacy shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

(i) the results of the study conducted under paragraph (1); and

(ii) any proposed changes to the existing definitions under section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) relating to HUBZone qualified areas.

SEC. 153. PRICE EVALUATION PREFERENCE.

Section 31(b)(3) of the Small Business Act (15 U.S.C. 657a(b)(3)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by adding at the end the following:

"(C) PROCUREMENT OF COMMODITIES FOR INTERNATIONAL FOOD AID EXPORT OPERATIONS.—The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs administered by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single invitation.".

SEC. 154. HUBZONE AUTHORIZATIONS.

Section 31(d) of the Small Business Act (15 U.S.C. 657a(d)) is amended by striking "2001 through 2003" and inserting "2004 through 2006".

SEC. 155. PARTICIPATION IN FEDERALLY FUNDED PROJECTS.

Any small business concern that is certified, or otherwise meets the criteria for participation in any program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), shall not be required by any State, or political subdivision thereof, to meet additional criteria or certification, unrelated to the capability to provide the requested products or services, in order to participate as a small disadvantaged business in any program or project that is funded, in whole or in part, by the Federal Government.

Subtitle F—Small Business Lending Companies

SEC. 161. SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.

Section 23 of the Small Business Act (15 U.S.C. 650) is amended to read as follows:

"SEC. 23. SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.

"(a) IN GENERAL.—The Administrator is authorized—

"(1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;

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"(2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this Act; and

"(3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 7(a) in accordance with the purposes of this Act.

"(b) CAPITAL DIRECTIVE.—

"(1) IN GENERAL.—If the Administrator determines that a small business lending company is being operated in an imprudent manner, the Administrator may, in addition to any other action authorized by law, issue a directive to such company to increase capital to such level as the Administrator determines will result in the safe and sound operation of such company.

"(2) DELEGATION.—The Administrator may not delegate the authority granted under paragraph (1) except to an Associate Deputy Administrator.

"(3) REGULATIONS.—The Administrator shall issue regulations outlining the conditions under which the Administrator may determine the level of capital pursuant to paragraph (1).

"(c) CIVIL ACTION.—If a small business lending company violates this Act, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this Act.

"(d) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

"(1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 7(a) of this Act—

"(A) for false statements knowingly made in any written submission required under this Act;

"(B) for omission of a material fact from any written submission required under this Act;

"(C) for willful or repeated violation of this Act;

"(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this Act; or

"(E) for violation of any cease and desist order of the Administrator under this section.

"(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f). The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

"(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f). If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

"(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority

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of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

"(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed to service their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

"(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge as that term is used in section 3105 of title 5, United States Code, the authority to conduct any hearing required under subsection (f). The Administrator shall base the decision to revoke on the record of the hearing.

"(e) CEASE AND DESIST ORDER.—

"(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this Act or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, the Administrator may order, after the opportunity for hearing pursuant to subsection (f), the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

"(2) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f). If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

"(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this Act.

"(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d).

"(f) PROCEDURE FOR REVOCATION OR SUSPENSION OF LOAN AUTHORITY AND FOR CEASE AND DESIST ORDER.—

"(1) Before revoking or suspending authority under subsection (d) or issuing a cease and desist order under subsection (e), the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5, United

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States Code. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

"(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

"(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5, United States Code. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court.

"(g) REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIAL.—

"(1) DEFINITION.—In this section, the term 'management official' means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company's or lender's activities under section 7(a) of this Act.

"(2) REMOVAL OF MANAGEMENT OFFICIAL.—

"(A) NOTICE.—The Administrator may serve upon any management official a written notice of its intention to remove that management official if, in the opinion of the Administrator, the management official—

"(i) willfully and knowingly commits a substantial violation of—

"(I) this Act;

"(II) any regulation issued under this Act;

"(III) a final cease-and-desist order under this Act; or

"(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this Act; or

"(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

"(B) CONTENTS OF NOTICE.—A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing, conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, will be held thereon.

"(C) HEARING.—

"(i) TIMING.—A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

"(I) the management official, and for good cause shown; or

"(II) the Attorney General.

"(ii) CONSENT.—Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under subparagraph (A).

"(D) ORDER OF REMOVAL.—

"(i) IN GENERAL.—In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

"(ii) EFFECTIVENESS.—An order under clause (i) shall—

"(I) take effect 30 days after the date of service upon the subject small business lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

"(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

"(3) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

"(A) IN GENERAL.—In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official by written notice to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 7(a) of this Act.

"(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A)—

"(i) shall take effect upon service of notice under paragraph (2); and

"(ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—

"(I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and

"(II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

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"(C) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2).

"(4) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

"(A) IN GENERAL.—If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

"(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

"(C) AUTHORITY UPON CONVICTION.—If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

"(D) AUTHORITY UPON DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under subsection (e) or (f).

"(5) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR A NON-FEDERALLY REGULATED LENDER.—Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

"(6) FINAL AGENCY ACTION AND JUDICIAL REVIEW.—

"(A) ISSUANCE OF ORDERS.—After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

"(B) JUDICIAL REVIEW.—An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

"(h) APPOINTMENT OF RECEIVER.—

"(1) In any proceeding under subsection (f)(4) or subsection (g)(6)(C), the court may take exclusive jurisdiction of a small business lending company or a non-Federally regulated lender and appoint a receiver to hold and administer the assets of the company or lender.

"(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

"(i) POSSESSION OF ASSETS.—

"(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h).

"(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h).

"(j) PENALTIES AND FORFEITURES.—

"(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than $5,000 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

"(2) The Administrator may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administrator finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administrator may for the purposes of this section make any alternative requirements appropriate to the situation.".

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SEC. 162. DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following new subsection:

"(r) DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.—As used in section 23 of this Act:

"(1) SMALL BUSINESS LENDING COMPANY.—The term 'small business lending company' means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

"(2) NON-FEDERALLY REGULATED SBA LENDER.—The term 'non-Federally regulated SBA lender' means a business concern if—

"(A) such concern is authorized by the Administrator to make loans under section 7;

"(B) such concern is subject to regulation by a State; and

"(C) the lending activities of such concern are not regulated by any Federal banking authority.".

TITLE II—MISCELLANEOUS AMENDMENTS

SEC. 201. AMENDMENT TO DEFINITION OF EQUITY CAPITAL WITH RESPECT TO ISSUERS OF PARTICIPATING SECURITIES.

Section 303(g)(4) of the Small Business Investment Act of 1958 (15 U.S.C. 683 (g)(4)) is amended—

(1) in the first sentence, by striking "subsection" and inserting "Act"; and

(2) in the second sentence, by striking "contingent upon and limited to the extent of earnings" and inserting "from appropriate sources, as determined by the Administration".

SEC. 202. INVESTMENT OF EXCESS FUNDS.

Section 308(b) of the Small Business Investment Act (15 U.S.C. 687(b)) is amended by striking the last sentence and inserting the following: "Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—

"(1) in direct obligations of, or obligations guaranteed as to principal and interest by, the United States;

"(2) in certificates of deposit or other accounts of federally insured banks or other federally insured depository institutions, if the certificates or other accounts mature or are otherwise fully available not more than 1 year after the date of the investment; or

"(3) in mutual funds, securities, or other instruments that consist of, or represent pooled assets of, investments described in paragraphs (1) or (2).".

SEC. 203. SURETY BOND AMENDMENTS.

(a) CLARIFICATION OF MAXIMUM SURETY BOND GUARANTEE.—Section 411(a)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(1)) is amended by striking "contract up to" and

inserting "total work order or contract amount at the time of bond execution that does not exceed".

(b) AUDIT FREQUENCY.—Section 411(g)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(g)(3)) is amended by striking "each year" and inserting "every three years".

(c) REPEAL.—Section 207 of the Small Business Reauthorization and Amendment Act of 1988 (15 U.S.C. 694b note) is repealed.

SEC. 204. EFFECTIVE DATE FOR CERTAIN FEES.

Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)) is amended by striking ", but" and all that follows through the end and inserting a period.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

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Alternate Wage Source Request: Surveys

Cross-Industry +
Nature of Employer

Quick Review: Survey Guidance

- The survey needs to provide a representation of wages for substantially comparable jobs in the occupational category as the data must be collected across the various industries in the area of intended employment.

- Data must be a random sample selection from within a population of employers employing workers in the occupation, in order to ensure that the wages reported by the survey are a true representation of wages for similarly employed workers in the occupation in the area of intended employment.

Meeting Requirements: Cross-Industry + Nature of Employer

Similar Concepts

- Both the Industry and Nature of the Employer must **not** be limited.
- The survey must **not** target a specific segment of the labor population by sampling employers within only a certain industry or by sampling only employers meeting certain criteria.

Different by Definition

- Industry – an overarching business activity/commercial enterprise, often named by the principal product. *(Auto Industry)*
- Nature of Employer – referring to characteristics and/or distinguishing traits of a particular employer. *(size, professional/organization memberships)*

Cross-Industry Concept

- Specific Industry Examples: Accounting; Architecture; Construction; Hospitality; Plastics; Real Estate; Textile (Others: BLS List of Industries)

- Occupations typically appear in more than one industry. (e.g. an Accountant may work in any of the industries listed above)

Cross-Industry Concept

- What *may* indicate that a survey is **not** cross-industry and, as such, is unacceptable?
  - Survey's title
  - Industry-specific statements in survey's methodology
  - List of Participants/Employers

Nature of Employer Concept

- Specific Employer Characteristics: Number of employees (1-100, 101-500, etc.); Association Memberships; Legal Entity status (Non-profit, Company, Firm); Value/Profit

- Occupations typically appear under many types of employers with varying characteristics.

Nature of Employer Concept

- What *may* indicate that a survey limits the nature of the employer and, as such, is unacceptable?
  - Survey's title
  - Statements in survey's methodology about the requirements for participation in the survey
  - Labels on survey's wage data presentations/tables

Exceptions

- Analysis, reasoning, team discussion are key – exceptions occur & grey areas exist.

- Some occupations may reasonably appear in only one or a limited number of industries. (e.g. Petroleum Engineers/Oil & Gas Industry)

- A limiting factor for employer participation may be reasonable. (e.g. food processing employers that meet FDA regulations)

Employer/Survey Statement	Deny: Not Cross-Industry?	Deny: Limits Nature of Employer?
Companies who manufacture electronics…		
All landscape contractors in the area…		
Members of our association were surveyed.		
In addition to an overall average, there are breaks outs for small (< 20 employees), medium (20 – 100 employees), and large (> 100 employees) employers.		
All businesses licensed to process seafood…		
All medical service providers, as provided by the state oversight board, who do not contract out their information services, were asked to provide wages for their employees with the following job duties:		
Companies and non-profits headquartered in our county were sent the attached survey instrument.		
Non-profit cancer research centers and medical colleges were contacted…		
We contacted all ski resorts in Colorado, both members of our association and non-members, who employ lift operators.		
Firms with sales more than $1,000,000 per year are more likely to respond this survey than those with less.		
Carnegie Classification A&S-F/SGC: Doc/STEM: HU: FT4/MS/HTI: L4/R: RU/H:		

Experience for Job Zones - Below/Low/High/Above

Job Zone	SVP Range	Add 0	Add 1	Add 2	Add 3
1	Below 4.0	short demonstration	Up to 30 days	1 Month to 3 Months	Over 3 Months (4+)
2	4.0 < 6.0	Up to 6 Months (0 – 6)	Over 6 Months Up to 9 Months (7 – 9)	Over 9 Months Up to 1 year (10 – 12)	Over 1 year (13+)
3	6.0 < 7.0	Up to 1 Year (0 – 12)	Over 1 Year Up to 18 Months (13 – 18)	Over 18 Months Up to 2 years (19 – 24)	Over 2 years (25+)
4	7.0 < 8.0	Up to 2 Years (0 – 24)	Over 2 Years Up to 3 Years (25 – 36)	Over 3 Years Up to 4 Years (37 - 48)	Over 4 Years (49+)
5	8.0 +	Up to 4 Years (0 – 48)	Over 4 Years Up to 7 Years (49 – 84)	Over 7 Years Up to 10 Years (85 – 120)	Over 10 Years (121+)

Scenario 1	
Job Duties	Work under the supervision of upper management to **design audit approaches, conduct field audit engagements, and perform complex accounting and auditing of balance sheets and income statements.** Participate in the completion of client annual reports and interact with clients to discuss field audit issues. **Perform accounting and auditing functions on field engagements for major corporate clients, and develop accounting worksheets.** Participate in pre-audit planning for audit engagements, **review client accounting and operating procedures and systems of internal control and conduct audit tests** which are sufficient in scope to support professional opinions as to the fair representation of client financial statements. Participate in the preparation of financial statement reports, **performing analytical reviews of audit documents and preparing the documentation supporting audit opinions.** Perform accounting research to solve issues that arise during the course of audit or compliance engagements.
Initially Determined SOC/Wage Level	13-2011.01 - Accountant Level IV - 4 special skills points for Auditing, IFRS, CPA, & Travel
Revised SOC/Wage Level	13-2011.02 - Auditor Level IV - 3 special skills points for IFRS, CPA, & Travel
Rationale	The main focus of the job duties is to conduct audits. While the duties include "accounting" it seems to be within the scope of examining accounting records or procedures in regards to the auditing. Therefore, as the focus is on conduct audits, the SOC 13-2011.02 - Auditors applies. Special skills points were assigned for *International Financial Reporting Standards (IFRS), Uniform Certified Public Accountant Examination, and Travel.*
O*NET	Auditor: Examine and analyze accounting records to determine financial status of establishment and prepare financial reports concerning operating procedures; Prepare detailed reports on audit findings; and Supervise auditing of establishments, and determine scope of investigation required. Collect and analyze data to detect deficient controls, duplicated effort, extravagance, fraud, or non-compliance with laws, regulations, and management policies.
Things to Consider	An Auditor inspects accounting records and systems. O*NET: The Auditor inspects account books and accounting systems. **Oversee** business processes. Examine financial records or processes. Coordinate regulatory documentation activities.

Scenario 2	
Job Duties	**Prepare financials, payroll, tax & govt. reporting**, auditing, **budgeting, account reconciliation, inventory, equipment recording, and investment recommendations.**
Initially Determined SOC/Wage Level	13-2011.01 - Accountants Level IV - *3 special skills points for payroll, budgeting, and*

	auditing.
Revised SOC/Wage Level	13-2011.01 - Accountants Level II - 1 special skills point for auditing
Rationale	Duties include both accounting and auditing, but are primarily focused on accounting, preparing reports, budgeting, etc. 13-2011.01 - Accountants is appropriate. However, 1 special skills point should be assigned for performing auditing. The special skills point for budgeting and payroll was removed as it may be included in preparing financial reports and/or review financial and budgetary data.
O*NET	Accountant - Prepare, examine, or analyze accounting records, financial statements, or other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards.
Things to Consider	For an Accountant, special skills points are not needed for financial reporting, e.g., payroll, budgeting, etc. While some of these are now supplemental tasks in O*NET, they are still considered normal for the industry and are covered under the six digit SOC definition for 13-2011 - Accountants and Auditors, "Examine, analyze, and interpret accounting records to prepare financial statements, give advice, or audit and evaluate statements prepared by others. Install or advise on systems of recording costs or other financial and budgetary data." If an Accountant is performing auditing duties, then 1 special skills point should be warranted. Contrarily, if they are assisting in the auditing then a special skills point is not warranted.

Scenario 3	
Job Duties	Oversee multiple engagements and is responsible for resolving all legal, regulatory, and accounting issues that arise during the audit engagement; **supervise and manage services to our clients**, which include preparation of audit strategy and business plans, setting budgets, scheduling audits, **selecting staff and assigning workloads**, and financial reporting; develop and maintain client relationships, thus driving clients' satisfaction; research, understand and apply complex accounting concepts and auditing procedures; **develop, motivate and mentor staff by providing training, regular feedback and career guidance while fostering a team environment**; draft and assist in the delivery of proposals for engagements by knowing the range of firm services.
Initially Determined SOC/Wage Level	13-2011.02 - Auditor Level III - 1 point for experience; 1 pt for same level supervision
Revised SOC/Wage Level	11-3031.02 - Financial Managers, Branch and Department Level II - 1 point for experience
Rationale	While the duties include auditing tasks, the duties include managerial tasks beyond the scope of the Auditor occupation. For example, the individual is required to select staff and assign workloads as well as, “develop, motivate and mentor staff providing training, regular feedback and career guidance while fostering a team environment.” These managerial duties are consistent with the Financial Manager occupation.

O*NET	Financial Manager - Oversee training programs; Recruit staff members; Evaluate data pertaining to costs to plan budgets; Prepare operational or risk reports for management analysis
Things to Consider	"Oversee" does not automatically warrant a managerial occupation. In this case, the managerial level occupation was warranted as the duties explicitly included managerial tasks such as hiring staff. A **Financial Manager directs and plans** the overall financial operations. **Workers** primarily engaged in planning and directing is classified in management occupations in **Major 11-0000. Duties of these workers may include supervision.**

Scenario 4	
Job Duties	Oversee multiple engagements and is **responsible for resolving all legal, regulatory, and accounting issues that arise during the audit engagement;** manage services to our clients, which include **preparation of audit strategy,** business plans and financial reporting; develop and maintain client relationships, thus driving clients' satisfaction; research, understand and apply complex **accounting concepts and auditing procedures**; provide regular feedback to staff. Must have completed educational requirement for eligibility to sit for CPA exam.
Initially Determined SOC/Wage Level	11-3031.02 - Financial Manager, Branch and Department Level III - 1 point for experience; 1 point for CPA eligibility
Revised SOC/Wage Level	13 - 2011.02 - Auditor Level II - 1 point for experience
Rationale	Duties focus on resolving issues that come about during an accounting audit as well as developing the audit strategies. While the duties include "overseeing" audit engagements, the duties do not include any managerial or supervisory tasks.
O*NET	Auditor - Prepare detailed reports on audit findings; Supervise auditing of establishments, and determine scope of investigation required; O*NET: supervising auditing establishments is supervising the process, not supervising people.
Things to Consider	**"Oversee"** does not automatically warrant a managerial occupation. In this case, **overseeing** audit engagements is consistent with O*NET and there are no managerial or supervisory duties included in the job description. • Also, for this example send an RFI asking what tasks are being performed during oversight. • The employer's response would lead us to either a supervision point if it is directing the work of people or a special skill point if it is really a form of project management.

Scenario 5	
Job Duties	**Provide accounting support** as part of the Finance team during the month end close; **prepare budgets and forecasts; prepare detailed financial analyses for project initiatives;** support business partners with development of cost models in support of potential new business opportunities; document procedures and monitor compliance with internal controls and SOX standards; and serve as a subject matter expert for the financial systems, including Hyperion and Oracle Business Intelligence (OBI).
Initially Determined SOC/Wage Level	11-3031.01 - Financial Managers - Treasurers and Controllers Level II - 1 special skills point for travel.
Revised SOC/Wage Level	13-2011.01 - Accountants Level III - 1 point for education; 1 special skills point travel.
Rationale	The duties do not include managerial level tasks. The job duties focus on supporting the accounting function by preparing reports and analysis of internal financials, such as budgets, expenditures, and month end close.
O*NET	Accountant - Analyze financial information and prepare financial reports to determine or maintain record of assets, liabilities, profit and loss, tax liability, or other financial activities within an organization.
Things to Consider	O*NET: Report to management regarding the finances of establishment. Assisting with the process.

PERM/LCA OES 15-0000 Computer and Mathematical Occupations

- **15-1100 Computer Occupations**
- **15-2000 Mathematical Science Occupations**

15-1100 Computer Occupations

- 15-1121 Computer Systems Analysts
- 15-1131 Computer Programmers
- 15-1132 Software Developers, Applications
- 15-1133 Software Developers, Systems Software
- 15-1134 Web Developers
- 15-1141 Database Administrators
- 15-1142 Network and Computer Systems Administrators
- 15-1143 Computer Network Architects
- 15-1122 Information Security Analysts
- 15-1111 Computer and Information Research Scientists
- 15-1199 Computer Occupations, All Other
- 11-3021 Computer and Information Systems Managers

Computer Systems Analyst (15-1121)

- Analyze science, engineering, business, and other data processing problems to implement and improve computer systems. Analyze user requirements, procedures, and problems to automate or improve existing systems and review computer system capabilities, workflow, and scheduling limitations.
  - May analyze, configure and set up commercial off the shelf application such as SAP.
  - Determine computer software or hardware needed to set up or alter system.
  - Key Words: analysis, design, implement, design modules, configure modules, design security, coordinate, business and technical consulting, automated test procedures, modify existing software, IT auditing, conduct studies, software systems performance, technology risk, model validation, reporting tools, third party software

Computer Systems Analyst (15-1121)

- How should I code when the job duties seem to be those of 15-1121, but the employer requires knowledge of common programming languages?
  - It is not uncommon for 15-1121 to be familiar with programming languages. If the job duties or special requirements include knowledge of programming languages, but does not specifically require the use of those languages to carry out the duties, then the job would be more in line with 15-1121.
  - If the job duties or special requirements indicate that the programming languages will be **used** to carry out the job duties, then consider coding as 15-1132.

Sample CSA (15-1121) Job Duties

- Convert business requirements into technical specifications. document business, functional or non-functional requirements, DW process. Data mining, ad-hoc analysis, meta-data repositories, BI reporting. Utilize Informatica, business objects, Microstrategy, datastage, cognos, sqlserver, Teradata, Oracle, java, SAP R/3, DB2, asp.net, unix, windows.

Software Developers, Applications (15-1132)

- Develop, create, and modify general computer applications software or specialized utility programs. Analyze user needs and develop software solutions. Design software or customize software for client use with the aim of optimizing operational efficiency.
  - May perform many of the duties of a CSA.
  - Develop and direct software system testing and validation procedures, programming, and documentation.
  - Use mathematical modeling to predict design outcome.
  - Determine software performance characteristics

Computer Systems Analyst (15-1121) vs. Software Developers, Applications (15-1132)

- What level of design is normal for 15-1121 vs. 15-1132?
  - 15-1121 performs what is called “High-level” design, which provides an overview of an entire system, identifying all its elements at some level of abstraction. It describes overall goals and systemic features, and is typically more concerned with the system as a whole, or larger components of it.
    - Such an overview is important in a multi-project development to make sure that each supporting component design will be compatible with its neighboring designs and with the big picture.
    - A high-level design document will usually include a high-level architecture diagram depicting the components, interfaces and networks that need to be further specified or developed.

15-1121 vs. 15-1132

- 15-1132 performs “Low-level” design which describes individual components and provides detail as to how the High-level design concepts will be executed. During the Low-level design phase, the view of the application developed during the high level design is broken down into modules and programs. It defines the actual logic for each and every component of the system.
  - An example of Low-level design is an application program interface (API), which is a set of routines, protocols, and tools for building software applications. The API specifies how software components should interact and are used when programming graphical user interface (GUI) components.
- 15-1132 may perform all of the design work normal for 15-1121.
- When it is unclear what level of design is being performed, look for clues such as whether the job duties include the use of common programming languages or whether the overall job seems to focus on outlining systems versus designing specifically how systems will operate
  - When job duties are vague, send an RFI to determine the type of products, projects or services being designed or developed, and the tasks associated with those duties.

Software Developers, Systems Software (15-1133)

- Research, design, develop, and test operating systems-level software, compilers, and network distribution software for medical, industrial, military, communications, aerospace, business, scientific, and general computing applications. Set operational specifications and formulate and analyze software requirements. May design embedded systems software.
  - This includes operating systems, network software, server to server communication, drivers, and sometimes firmware.
  - Analyze information to determine, recommend, and plan installation of a new system or modification of an existing system.

Software Developers, Applications (15-1132) VS. Software Developers, Software Systems (15-1133)

- Can15-1132 program or develop at application back-end or sub-systems level?
- Yes, they can. Back-end or subsystems does not always indicate duties should be coded as 15-1133 SD,SS. The front end faces the user, and the back end launches the programs of the operating system in response. Every application has a back-end where it connects with the network and operating systems. Application developers may perform back-end development as it relates to creating user facing software which can interact and function on a given network or OS because that is part of developing usable applications. When developers are working on aspects of software that effect how it will be processed by the OS or a network, the job should be coded as a SD,SS.

Computer Programmers (15-1131)

- Create, modify, and test the code, forms, and script that allow computer applications to run. Work from specifications drawn up by software developers or other individuals. May assist software developers by analyzing user needs and designing software solutions. May develop and write computer programs to store, locate, and retrieve specific documents, data, and information.
  - Does not analyze requirements or design independently
  - May correct errors or rewrite programs, document programs.
  - May code applications or operating systems level software

Computer Programmers (15-1131) vs. Software Developers, Applications (15-1132)

- A common question is how to distinguish between 15-1131 and 15-1132. Below is the official guidance for choosing between the two occupations.
  - Duties do not include any indicators of designing software or analyzing customer requirements. Employee will write/develop code. No indicator on the form that the coding is based on specifications provided by SD or CSA. Code as 15-1132 in the assumption that this person is also doing the design/writing the specifications.
  - Job duties are copied from ONet or modifies in way that makes no difference – code as 15-1131
  - Based on the above coding as 15-1131 will likely be rare.

15-1131 vs 15-1132

- Statement to be included in analyst note: No indication that the coding is being performed at the direction of a developer, so 15-1131 is not the correct SOC.

- NOTE: While a Computer Programmer could code systems level software, employers do not historically request 15-1131 for systems level software development

15-1134.00 - Web Developers

- Design, create, and modify Web sites. Analyze user needs to implement Web site content, graphics, performance, and capacity. May integrate Web sites with other computer applications. May convert written, graphic, audio, and video components to compatible Web formats by using software designed to facilitate the creation of Web and multimedia content.

- If job duties include software application development code as 15-1132. The SD,A may perform website development duties, but the Web Developer does not develop applications.

- Job duties are focused on web site design.

15-1141.00 - Database Administrators

- Administer, test, and implement computer databases, applying knowledge of database management systems. Coordinate changes to computer databases. May plan, coordinate, and implement security measures to safeguard computer databases.

- May perform some database design/development, in addition to administration.

- May code at the database development level.

- May administer the servers on which the database sits.

Database Architect VS Database Administrator

- 15-1199.06: Database architect designs a database's architecture to meet an employer's needs. Using flow charts, a database architect develops modeling strategies to ensure that the database is secure, scalable and performs reliably. Also called database programmer which are responsible for coding the queries and use of the database infrastructure. Selection of data types and table design.

- 15-1141: Database administrator ensures that a database is running efficiently and securely. This person specialized maintains each user's information, assigns accessibility for users and monitors usage. Database administrators use scripting languages to program databases to meet the needs of their users -- often referred to as performance tuning.

Network and Computer Systems Administrators (15-1142)

- Install, configure, and support an organization's local area network (LAN), wide area network (WAN), and Internet systems or a segment of a network system. Monitor network to ensure network availability to all system users and may perform necessary maintenance to support network availability. May monitor and test Web site performance to ensure Web sites operate correctly and without interruption.
  - Diagnose, troubleshoot, and resolve hardware, software, or other network and system problems, and replace defective components when necessary.
  - Monitor network performance

Computer Network Architects (15-1143)

- Design and implement computer and information networks, such as local area networks (LAN), wide area networks (WAN), intranets, extranets, and other data communications networks. Perform network modeling, analysis, and planning. May also design network and computer security measures. May research and recommend network and data communications hardware and software.

- Key Words: design, analysis and testing of networks-little to no administration

15-1143 – Computer Network Architects

- Participate as a member of the IP network engineering team for the **design, engineering, and implementation of a nationwide IP network**. Assist in business, regulatory, marketing, product, technical, and deployment requirements gathering and developing technical solutions. Assist with the development of the System Design Document (SDD). Assist with the preparation of RFI/RFQ for equipment procurement, and lead the equipment/platform selection process**. Work with internal customers to determine how to integrate their solutions onto T-Mobile's network. Articulate the business drivers and drive those requirements into a detailed network design.**

- JD are focused on network design. Onet states **15-1143.00 - Computer Network Architects: Design, build, or operate equipment configuration prototypes, including network hardware, software, servers, or server operation systems. Coordinate network operations, maintenance, repairs, or upgrades. Adjust network sizes to meet volume or capacity demands.**

Network and Computer Systems Administrators (15-1142) vs. Computer Network Architects (15-1143)

- What is the difference between the duties of 15-1142 and 15-1143?
  - 15-1142 focuses on the administration and upgrading of computer networks. They may assist with the design of computer networks.
  - 15-1143 is a more highly skilled occupation focused on modeling, designing and configuring computer networks. It is permitted to perform incidental network administration.
  - Much like 15-1132 and 15-1133, 15-1143 can perform the duties of 15-1142, but not vice versa

15-1142 vs. 15-1143 Cont'd

- Rule of thumb: When trying to decide between 15-1142 and 15-1143, pay special attention to the kind of experience being required. Network support experience would tend to imply that the job is more support focused as that experience would not generally provide the skill level necessary to model and design networks. Previous experience as a Network Architect or Network Designer would tend to imply that the job is more design focused.

15-1122.00 - Information Security Analysts

Plan, implement, upgrade, or monitor security measures for the protection of computer networks and information. May ensure appropriate security controls are in place that will safeguard digital files and vital electronic infrastructure. May respond to computer security breaches and viruses.

The job duties are focused on internal security controls improvement.

Please add special skill points for relevant IT security certifications.
e.g. (CISA, CISSP)

15-1111.00 - Computer and Information Research Scientists

- Conduct research into fundamental computer and information science as theorists, designers, or inventors.
- Develop solutions to problems in the field of computer hardware and software.
- Analyze problems to develop solutions involving computer hardware and software.
- Apply theoretical expertise and innovation to create or apply new technology, such as adapting principles for applying computers to new uses.

When to use Computer and Information Research Scientists (15-1111)

- It should only be used in **rare** instances and extremely careful consideration of other SOCs should be made prior to assigning it.
- Four things to consider
  - Performs research leading to the creation of entirely new computer science or information technology products
  - Creates novel uses for existing products
  - Performs research leading to publication in professional journals and/or presentations at professional conferences
  - Does **not** create enhancements for existing technologies

15-1111Cont.

- If the job duties are cut and pasted from O*NET and there is no other indication that the job is something other than 15-1111, such as a degree in a totally unrelated field, the job should be coded as 15-1111.
- One additional consideration is that a Ph.D. is the normal education for the occupation. While not determinative, the lack of a Ph.D. does weigh against the likelihood that the job is 15-1111.

Testing and Software Quality Assurance Engineers and Testers

15-1199.01 - Software Quality Assurance Engineers and Testers

- SOC definition: Develop and execute software test plans in order to identify software problems and their causes.
- S:\CO Use\Occupation Specific Information\15-0000 Computer and Mathematical Occupations\Software testing (3).docx
- S:\TekPro\CPA Training\15 series\testing.doc

Software Quality Assurance Engineers and Testers Tasks

- Design test plans, scenarios, scripts, or procedures.
- Design or develop automated testing tools.
- Document defects: program function, output, online screen, or content.
- Participate in design review
- Conduct initial debugging: configuration files, logs, or code pieces to determine breakdown source.

Software Quality Assurance Engineers and Testers Tasks - continued

- Types of testing
  - database impacts, software scenarios, regression testing, negative testing, error or bug retests, or usability.
  - Test system modifications to prepare for implementation.

Indicators that SQAE Testers may not be the appropriate SOC

- Computer system testing
- Debugging/correcting the software – 15-1199.01 may identify source of breakdown
- Design or develop software – 15-1199.01 may participate in design review
- Test hardware or electronic components
- Perform data verification testing for databases

Justifying 15-1199.01 Software Quality Assurance Engineers and Testers

- Case note should include a discussion of how the duties fit with 15-1199.01 and how they do not fit with other potential SOCs
- Other potential SOCs include IT SOCs or any other appropriate SOC

Justifying 15-1199.01 Software Quality Assurance Engineers and Testers

- Case note must affirmatively state
- No computer system testing
- No software debugging duties
- No hardware or electronic component testing
- No database verification testing
- No software development duties

Sample Case

- P-100-16035-616373
- Analyze business and systems requirement documents; Develop and execute test cases and test plans; Perform regression, functional, smoke, production, black box, Perform web services testing using SOAP UI; Perform automated regression testing using QTP; Manage test scripts in Test Plan and test runs in Test Lab using QC and ALM; Maintain requirement traceability matrix; Require: Bachelor's degree in Computer Science, an Engineering discipline or a closely related field with two years of experience in the job offered or as a QA Analyst;

Sample Case Notes

- P-100-16035-616373
- Worker will write and execute software tests to verify software meets specs. Duties include developing test frameworks, automation, root cause analysis and defect tracking. Those duties indicate the testing is to determine the functionality of the software. This is supported by the requirements which only include software testing programs and experience in software testing. O*NET tasks for 15-1199.01 include testing to identify software problems and their causes, developing automated testing tools and documenting software defects. 15-1132 may also test software, but these duties don't include any software design or development tasks and are most appropriately coded as 15-1199.01. JD also indicate worker will lead testing activities. I considered that normal for an experienced tester (WL 4). No indication of supervision. No indication of computer system testing, software debugging, hardware/component testing, database verification or software development duties.

15-1199.06 - Database Architects

- Design strategies for enterprise database systems and set standards for operations, programming, and security. Design and construct large relational databases. Integrate new systems with existing warehouse structure and refine system performance and functionality.

- A special skills point should be assigned for database administration duties.

15-1199.11 - Video Game Designers

- Design core features of video games. Specify innovative game and role-play mechanics, story lines, and character biographies. Create and maintain design documentation. Guide and collaborate with production staff to produce games as designed.

- Game developers, more specifically known as video game designers, are software developers and engineers who create video games.

- Game developers may be involved in various aspects of a game's creation from concept and story writing to the coding and programming.AILA Doc. No. 18010230. (Posted 1/2/18)

IT Project Management
&
11-3021.00 - Computer and Information Systems Managers

Project management

- Project management can be applied to almost any type of project and is widely used to control the complex processes of software development projects.

Project Management
The Process

- The project manager must decide which process model is most appropriate based on:

- The customers who have requested the product and the people who will do the work.
- The project environment in which the software team works.
- The characteristics of the product itself.

- Once a process model is selected, a preliminary project plan is established based on the process framework activities.

15-1199.09 - Information Technology Project Managers

O*NET: Plan, initiate, and manage information technology (IT) projects. Lead and guide the work of technical staff. Serve as liaison between business and technical aspects of projects. Plan project stages and assess business implications for each stage. Monitor progress to assure deadlines, standards, and cost targets are met.

Tool use to assist in coding ITPM.

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15-1199.09
Context Words/Phrases

Who are their Subordinates:

- Lead the project team.

Who do they Report to:

- Report to CIS Manager.

Budget:

- Review the budget and the budget for each deliverable.

Personnel Tasks (Hire/ Fire, Review):

- limited personnel tasks/responsibilities, since according to O*Net they may "**coordinate recruitment or selection of project personnel**" and "**Assign duties, responsibilities**, and spans of authority to project personnel." No hiring/firing responsibilities

Project Oversight Tasks:

- Identify where a project is in its life cycle.
- Reports, and refines objectives, scope, and other project parameters.
- Performs Risk assessment/Identifies risks and resolve issues. Issues may relate to: deliverables, schedule, budget, risks, and so forth, that are reported to IT Manager
- Make recommendations to management.

Hands On Tasks:

- Clarify process structure (for example, life cycle sub phases, milestones, and decision gates) for the implementation phase of the project life cycle.
- Set the control period and level of detail.
- Report and reach a common understanding of objectives, deliverables, organization structure, and other key parameters.
- Develop product structure by listing major components and subcomponents.
- Work with team members as a group to systematically review the project analysis

ATLA Doc. No. 18010230 (Posted 1/2/18)

11-3021 - Computer and Information Systems Managers

O*NET: Plan, direct, or coordinate activities in such fields as electronic data processing, information systems, systems analysis, and computer programming.

PWRA: Direct/coordinate/lead/guide/supervise teams and projects.

- IT project managers may perform some hands-on IT tasks while mainly focused on managerial duties.
- Structure tasks from pre determine sources to new products; develop services for internal and external clients, and implement organizational/company change.
- Identify end-of-projects objectives and deliverables.
- Develop and Review the overall budget and the budget for each deliverable.
- Manages IT risk.
- Ensure company follow IT compliance and regulatory rules, but does not conduct or direct the internal investigation of IT compliance issues.

11-3021- Context Words/Phrases

Who are their Subordinates:
- Manage employees (Number of supervised is an indicator)
- Supervise/Lead/Direct/Coordinate "Projects" and "Teams"

Who do they Report To:
- Report to IT Director

Budgeting Duties:
- Develop and Review the overall budget and the budget(s) for each deliverable.

Personnel Tasks (Hire/ Fire, Review):
- Hire/Fire/recruit employees
- Conduct performance appraisals

Project Oversight Tasks:
- Manages and oversees large, long range, or multiple complex projects.
- Performs strategic planning
- Structures tasks to convert sources to new products; develop services for internal and external clients, and implement organizational/company change.

Hands On Tasks:
- Performs some hands-on IT tasks while mainly focused on managerial duties.

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Sample Case

- P-100-15096-721418
- Manage projects and development of detailed design specifications in connection with the development and implementation processes for Manhattan's supply chain products and services. Exercise discretion to determine optimal and efficient designs for multiple areas of the software system. Project manage development and unit testing of assigned software areas following R&D development processes. Ensure projects are on schedule and within budget. Oversee the facilitation of technology and skills knowledge transfer.

Sample Case Notes

- P-100-15096-721418
- The primary differences between 15-1199.09 v 11-3021: the description mentions “within budget” rather than setting a budget; lead/guide project personnel v hire/supervise staff. I am interpreting it as the goal of the project he/she is managing is to reduce costs. For example, managing a project to develop new software that will make a process more efficient which in turn reduces costs.

Sample Case

- P-100-16083-031469

- **The employee will be responsible for the oversight of the technical design, implementation, testing, application maintenance and enhancement of the complex applications used by Wellington's trading business teams. Manage relationships with the business owners. Recruitment, supervision, and development of staff, including managing a team consisting of 2 Lead Software Engineers and 2 Senior Software Engineers.**

Sample Case Notes

- P-100-16083-031469 was coded and determined as 11-3021.
- The job duties go beyond the scope of a CSA are managerial and directly in line with 11-3021. The employee will engage in the "Recruitment, supervision, and development of staff, including managing a team consisting of 2 Lead Software Engineers and 2 Senior Software Engineers." As such, the duties, experience and overall requirements point directly to 11-3021. Onet: Plan, direct, or coordinate activities in such fields as electronic data processing, information systems, systems analysis, and computer programming.

15-2000

- **Mathematical Science Occupations**

2010 SOC codes
15-2100 Mathematical Science Occupations

- 15-2011.00 - Actuaries
- 15-2021.00 - Mathematicians
- 15-2031.00 - Operations Research Analysts
- 15-2041.00 - Statisticians

15-2011- Actuaries

- Analyze statistical data, such as **mortality, accident, sickness, disability, and retirement rates** and construct probability tables to forecast risk and liability for payment of future benefits. May ascertain insurance rates required and cash reserves necessary to ensure payment of future benefits.
  - Design, review and help administer insurance, annuity and pension plans, determining financial soundness and calculating premiums.

When to use Actuaries (15-2011)

- Actuaries analyze the financial costs of risk and uncertainty. They use mathematics, statistics, and financial theory to assess the risk that an event will occur and help businesses and clients develop policies that minimize the cost of that risk.
- Actuaries create dynamic predictive models which are used to analyze risk.
- Actuaries and statisticians must both have strong quantitative and mathematical skills. Actuaries specialize in risk assessment and help companies maximize their return. Actuarial analysts determine the probability that an event will occur and assign the price of financial recovery for that event. Like statisticians, actuaries gather numerical data on events -- in their case, accidents, natural disasters and the like. Unlike statisticians, they determine the odds of it happening and the financial impact when it does.
- There are a series of exams which lead to a professional certification such as FSA, CAS or SOA. One point is assigned either for any number of exams leading to certification or for the actual certification, but not more than one point should be assigned for any one certification or series of tests leading to that certification.

15-2041 - Statisticians

- Develop or apply mathematical or statistical theory and methods to collect, organize, interpret, and summarize numerical data to provide usable information. May specialize in fields such as bio-statistics, agricultural statistics, business statistics, or economic statistics. Includes mathematical and survey statisticians.
  - Process large amounts of data for statistical modeling and graphic analysis, using computers.
  - Evaluate the statistical methods and procedures used to obtain data to ensure validity, applicability, efficiency, and accuracy.

When to use Statisticians (15-2041)

- This is a widely used occupation which uses statistical analysis tools to turn raw data into useable data sets.
- They may perform programming and develop applications specifically for use in statistical analysis.
  - Note: 15-1132 may not perform statistical analysis
- The Statistician may perform statistical analysis of data used by the ORA (Operations Research Analysts) to create predictive models and perform operational analysis, but they do not create predictive models, nor do they perform operational analysis.
- Common tools include: SAS; SPSS; and MathWorks

15-2041.01 – Biostatisticians

- Develop and apply biostatistical theory and methods to the study of life sciences.
- Biostatisticians devise studies in order to determine risk factors for certain things, deciding which elements should be discarded and which should be included.
- They review the data that was collected and issue papers or reports to various agencies or employers on the findings of the data.
- They will sometimes be asked to determine the factors involved in certain medical problems and how much, if any, risk exists for certain treatments for those problems.
- Using mathematics, they may determine a probable cause for the biological or medical situation that they are being asked to study.
- Statisticians who focus on life sciences research such as clinical trials or medical research.

15-2031- Operations Research Analysts

- Formulate and apply mathematical modeling and other optimizing methods to develop and interpret information that assists management with decision making, policy formulation, or other managerial functions. May collect and analyze data and develop decision support software, service, or products.
  - Define data requirements and gather and validate information, applying judgment and statistical tests.
  - It's important to note that although ORAs are trained/use complex mathematical analysis, the occupation is used in a multitude of industries. The educational requirements can overlap with engineers and computer science occupations. However, ORAs provide advanced analytical methods (i.e. mathematical analysis) to help make decisions. The techniques take comprehensive math to provide simulations, probability and statistics to optimize output.

When to use Operations Research Analysts (15-2031)

- It should only be used in rare instances and extremely careful consideration of other SOCs should be made prior to assigning it.
- Things to consider
  - Providing mathematical modeling of operations
  - Projections of possible outcomes supported by mathematical analysis.
  - Master's Degree or higher with a solid grounding in statistics, probability, calculus, linear algebra, other advanced mathematics, and economics.
  - Because the field relies so heavily on computers, an understanding of how they work is essential. And familiarity with software such as AMPL, LINDO, CPLEX, and SAS

When to use Operations Research Analysts - Continued

- Send an RFI when the employer requests 15-2031 and the job duties might arguably be regarded as the duties of Operations Research Analysts, but the employer does not require knowledge of or experience with the high-level mathematical tools normally used by an ORA.

  - Standard language: Please provide additional information about the job description which would enable the appropriate occupational code to be assigned for this position. Specifically, elaborate on the mathematical and statistical modeling techniques expected to be applied, and how the required education and experience prepares the applicant to use the required techniques. Once the requested information has been received, the application will be processed.

When to use Mathematicians (15-2021)

- The work of Mathematicians is varied, and may take the form of abstract research or it may take the form of applying mathematical concepts to solve real world problems.
- It is a rarely used occupation. It is most frequently assigned in the following situations:
  - Creating algorithms and formulas to be used by financial analysts and traders. 15-2021 is only applied to financial occupations when the duties are limited to designing algorithms and formulas (and testing them), but when the formulas are used to perform financial analysis or modeling, a financial occupation should be applied.
  - Performing mathematical research at universities

Questions?

29-1000 Health Diagnosing and Treating Practitioners

Overview of 29 Series

- Physicians
- Chiropractors
- Dentists
- Pharmacists
- Optometrists
- Therapists
- Nurses

Topics to Discuss

- Training and Experience
- Board Certification/Eligibility and Training
- General Coding Notes
- Incomplete Residencies/Fellowships
- Case Scenarios
- Physician Occupations
  - 29-1069 - Physicians and Surgeons, All Other
  - 29-1067 - Surgeons
  - Additional Physician Specialists
- Teaching Physicians
- Health Diagnosing and Treating Practitioners, All Other

Training and Experience for Physician Occupations

- On the Form ETA-9141, in Section E.b.3a, employers will indicate the number of months of training required for the offered physician occupation.
- Although the Center evaluates the number of months of training to ensure that the Board Certification requirement has been met, the training months are not documented on the wage level worksheet or checklist. (see next slide)
- Experience requirements are rarely listed. However, if listed, please assign the appropriate experience points if applicable.

Case Notes Documentation Example

B. Minimum Job Requirements

1. Education: minimum U.S. diploma/degree required *
None ○ High School/GED ○ Associate's ○ Bachelor's
Master's ○ Doctorate (PhD) ◉ Other degree (JD, MD, etc.)

1a. If "Other degree" in question 1, specify the diploma/degree required §	1b. Indicate the major(s) and/or field(s) of study required § (May list more than one related major and more than one field)
Medical degree	Medicine

2. Does the employer require a second U.S. diploma/degree? * ○ Yes ◉ No

2a. If "Yes" in question 2, indicate the second U.S. diploma/degree and the major(s) and/or field(s) of study required §

3. Is training for the job opportunity required? * ◉ Yes ○ No

3a. If "Yes" in question 3, specify the number of months of training required §	3b. Indicate the field(s)/name(s) of training required § (May list more than one related field and more than one type)
36	Internal Medicine Residency

4. Employment experience required? * ○ Yes ◉ No

4a. If "Yes" in question 4, specify the number of months of experience required §	4b. Indicate the occupation required §

5. Special Requirements - List specific skills, licenses/certificates/certifications, and requirements of the job opportunity. *
North Dakota state medical license

Alerts

Form Errors - none
Data Entry Exceptions - none
Missing Pages/Steps - none

Checklist

Occupation:	1
Experience:	0
Education:	0
Training:	0
Special Skills/Other Requirements:	0
Supervisor Duties:	0
Wage Level Calculation:	**Level 1**

Wage Level Worksheet
SOC Code: 29-1063.00 - SOC Title: Internists, General
* Exp. & Train: 49-120 - 0 - Below, 0
* Education: Prof Deg - Prof Deg - Equal, 0
* Supervision: Limited - None - Below, 0
* Special Skills: 0
Travel: 0
Frequency: Incidental - Incidental, O
Area: National - Local, O
License: No, 0
Language: No, 0
Other Special: No, 0

Board Certification/Eligibility and Training for Physician Occupations

- A single Board Certification/Board Eligibility (BC/BE) is normal for all physicians.
- A single residency is normal for all physicians.
- Additional BCs/BEs will result in additional points for each additional BC/BE.
- Additional residencies/fellowships will result in additional points for each additional residency/fellowship.
- Since a residency/fellowship leads to the BC/BE, do not give a point for both.

**Note: Some fellowships may be a combined/dual requirement. Therefore, only one point will be assigned.*

General Coding Notes

- Do not assign points for a specialty based on job duties alone. Only assign points if the employer includes the required credentials. If the credentials are not listed, send an RFI for clarification.
  - Example: If the job duties indicate the position is an Endocrinologist (Internal Medicine Subspecialty), only assign points if Endocrinology credentials are specified; i.e., the employer states that an Endocrinology residency, fellowship, or BC/BE is required.

- If an additional fellowship has not been completed (based on the number of months listed), do not assign a point for the additional fellowship. An RFI will be sent for clarification. Use the Residency/Fellowship spreadsheet as a guide to determine the required number of months for training. The spreadsheet is located on the S drive in the Healthcare Practitioners occupation folder.
  - Example: Training states 48 months Internal/Pulmonary Medicine. Normal completion of the Internal Medicine residency is 36 months and 24 months for Pulmonary Medicine. Thus, the employee would need at least 60 months to have completed both residencies/fellowships. Since the employer lists only 48 months, an RFI will be sent for clarification.

- No additional point should be added for physician positions that require DEA certification. This is a normal requirement of the occupation.

Incomplete Residencies/Fellowships

- If the training requirements provided on the ETA Form-9141 do not equate to the number of months for the completed fellowship, an RFI will be sent for clarification.
- The RFI language can be found in the PWRA "General Reference" Section under Topic "Physicians" and Sub Topic "Residency/Fellowship."
- If the employer's RFI response indicates that a completed fellowship is not required, then we will evaluate those training months as experience on the wage level checklist. The Center will also add an "Additional Note" to indicate the same.
- The "Additional Note" language can be found in the PWRA "General Reference" Section under Topic "Physicians" and Sub Topic "Residency/Fellowship."

Case Scenarios

Employer's Requirements	Result
BC/BE in Internal Medicine and BC/BE in Sleep Medicine	1 special skills point for the additional BC/BE in Sleep Medicine
Residency in Internal Medicine and BC/BE in Internal Medicine	No points. The residency leads to the BC/BE
E.b.3a (training) Pediatrics and E.b.4a (experience) Pediatrics	No points for training. Assign points for experience based on the number of months.
Residency in Internal Medicine and Fellowship in Infectious Diseases	1 special skills point for the additional fellowship in Infectious Diseases
E.b.3a (training) 72 months; E.b.3b Internal Medicine and Hematology/Oncology; E.b.5 BC/BE in Internal Medicine; Hematology/Oncology fellowship	1 special skills point for the additional Hematology/Oncology fellowship as it is a combined/dual fellowship program. (36 months for Internal Medicine and 36 months for Hematology/Oncology fellowship = 72 months)
E.b.3a (training) 40 months; E.b.3b Pediatrics and Sleep Medicine; E.b.5 BC/BE in Pediatrics; Sleep Medicine fellowship	Normal completion of the Pediatrics residency is 36 months and 12 months for Sleep Medicine. Thus, the employee would need at least 48 months to have completed both residencies/fellowships. Since the employer indicates 40 months, an RFI will be sent for clarification.

29-1069 - Physicians and Surgeons, All Other

- Per the 2010 SOC Direct Match Title File, the following physicians should be coded as 29-1069 - Physicians and Surgeons, All Other:
  - Cardiologist
  - Dermatologist
  - Emergency Medicine Specialist
  - Gastroenterologist
  - Immunologist
  - Neonatal Doctor
  - Neonatologist
  - Nephrologist
  - Ophthalmologist
  - Pathologist
  - Pulmonary Physician
  - Radiologist

- The above list is not all inclusive, for the complete list see the PW Reference Application or the Direct Medical Title Match spreadsheet located on the S drive in the Healthcare Practitioners occupation folder.

29-1069 - Physicians and Surgeons, All Other

- The following physicians are not listed in the 2010 SOC Direct Match Title File, but should continue to be coded as 29-1069 - Physicians and Surgeons, All Other:
  - 29-1069.05 Nuclear Medicine Physicians
  - 29-1069.08 Physical Medicine and Rehabilitation Physicians
  - 29-1069.11 Sports Medicine Physicians

Hospitalists

- When the employer indicates the job title is a Hospitalist, the job description must be thoroughly reviewed to determine if the position is actually performing the duties of a Hospitalist. Hospitalists can be coded as Internists, General if the residency is not specified or if Internal Medicine is specified as the residency. If an alternative residency is specified, select the SOC based on the residency.

29-1067 - Surgeons

- The following occupations should be coded as 29-1067 - Surgeons based on the 2010 SOC Direct Match Title File:
  - Cardiac Surgeon
  - Orthopedic Surgeons
  - Cardiovascular Surgeons
  - Neurological Surgeon
  - Neurosurgeon
- The above list is not all inclusive, for the complete list see the PW Reference Application or the Direct Medical spreadsheet located on the S drive in the Healthcare Practitioners occupation folder.
- If the position is solely performing cardiovascular surgery, the case should be coded as a Surgeon. If the position involves non-surgical treatment for cardiovascular issues, the case should be coded as Physicians and Surgeons, All Other. If the position involves both non-surgical and surgical treatment, the case should be coded as a Surgeon at this time.
- Minor surgery is normal in most non-surgeon physician occupations (excluding Psychiatrists).

Additional Physician Specialists

- 29-1061 Anesthesiologists
- 29-1062 Family and General Practitioners
- 29-1063 Internists, General
- 29-1064 Obstetricians and Gynecologists
- 29-1065 Pediatricians, General
- 29-1066 Psychiatrists

Teaching Physician Duties

- If the employer job duties indicate the employee will teach residents/medical students AND provide patient care, a combination of occupations of the physician and teacher is appropriate.
  - Example: Employee will provide didactic training to residents and provide clinical care treatment for diseases and injuries of internal organ systems. Duties would be a combination of 29-1063 - Internists, General and 25-1071 - Health Specialties Teachers, Postsecondary.
- If additional residencies/fellowships are required, please assign two points: (1) combo point and (2) residency/fellowship point.
- The majority of the employers are ACWIA eligible. Therefore, if the physician occupation does not have an ACWIA wage, please use the appropriate ACWIA –No Wage Combination note found the in the PWRA.

29-1199 Health Diagnosing and Treating Practitioners, All Other

- The following occupations should be coded as 29-1199 - Health Diagnosing and Treating Practitioners, All Other based on the 2010 SOC Direct Match Title File
  - Acupuncturists
  - Medical Physicists
  - Naturopathic Physician
  - Orthoptists

Resources

- S:\Common\Occupation Specific Information\29-0000 Healthcare Practitioners and Technical Occupations\29-1000 Health Diagnosing and Treating Practitioners

- S:\Common\Occupation Specific Information\29-0000 Healthcare Practitioners and Technical Occupations\29-1000 Health Diagnosing and Treating Practitioners\Residency and Fellowships.xls

Questions?

NPWC Guidance on Determining Skill Level for Job Opportunities that Include Skill Level Indicator Words in the Job Title

Effective August 1, 2016/RJA

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I. BACKGROUND & STATEMENT OF PURPOSE

The purpose of this policy directive is to instruct NPWC analysts on the method by which to determine whether an additional wage/skill level point should be added to a job opportunity that includes a skill level indicator such as "lead," "senior," "managing," "head," etc. in the job title for the position. Prior policy, explained in detail in Appendix B below, required analysts to add a wage/skill level point in cases where the description of duties, special requirements, and vocational experience requirements listed in the employer's application indicated the job opportunity was entry level (level I), but the job title included a word that indicated the job required more experience, knowledge, or skill. In these cases, the analyst would have issued a level II wage for the position, in most cases without issuing an RFI to obtain clarifying information.

NPWC is issuing this directive to outline its new policy whereby analysts will issue a template RFI in all cases where the job title includes a skill level indicator and the job opportunity is one for which the NPWC would otherwise issue a level I wage. For example, if the employer requests a prevailing wage for a "Senior Applications Developer" and all other information in the ETA-9141 indicates the job is a level I position, the analyst will issue the template RFI included in Appendix A below. Depending on the employer's responses to the RFI questions, the analyst will either add a wage/skill level point or will determine the skill level indicated by the initial information included in the application is correct and will not add a skill level point. Section III below provides guidance on how to determine whether an RFI response warrants adding a skill level point. If no additional skill point is required, the analyst will include in his or her worksheet notes in iCert to explain that the analyst considered adding a skill point due to a skill level indicator in the job title, but determined the job only required an entry level worker. The analyst's note will state the reason(s) for determining the job only requires an entry level worker. Instructions for the worksheet note are included in section IV below.

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II. SAMPLE RFI LANGUAGE

1. The deficiency is: **The employer's job title is <Senior Software Developer> but the job duties/tasks provided in the job description do not appear to be <Senior> level duties/tasks. Please describe the <Senior/Lead/etc.> level duties/tasks the worker will perform.**

III. DETERMINING THE WAGE LEVEL USING RFI RESPONSES

Depending on the response received through RFI, the analyst will perform the following action(s):

If the RFI response indicates:	The analyst will:
• More complex job duties	• Determine whether the additional complexity rises to the level of requiring a worker with "a good understanding of the occupation" and constitutes "moderately complex tasks" (level II duties), as opposed to a "basic understanding" and "routine tasks" (level I duties). If so, add a skill level point and a Wage Level Worksheet note explaining the job requires more complex duties that require a level II worker
• Duties that require leading, reviewing, guiding and/or coordinating work of a team or similar terms	• Refer to the supervision guidance's instructions. These are considered supervision and may warrant a supervision point.
• Duties to manage, coordinate, plan, or oversee personal or team projects or assignments	• Add a skill level point and a Wage Level Worksheet note explaining the duty requires a worker with more skill, occupational understanding, and ability to exercise independent judgment than an entry level worker
• Additional special skills, education, or training not included in the initial ETA-9141	• Void the application for impermissible post-submission modification
• Required licenses, certification, or training not included in the initial ETA-9141	• Void the application for impermissible post-submission modification
• Experience requirements with occupation-specific tools, software, concepts, etc. not included in the initial ETA-9141	• If the employer requires additional, quantifiable experience (IE 24 months) with a tool or technology, void the application. • Do not void the application if the employer requires non-quantifiable experience that is or most reasonably may be construed as a

	requirement of ability to use a tool/technology necessary to perform the job duties (IE, "worker must have knowledge of Java" for a Software Developer position).
• None of the above	• Assign an entry-level (level I) wage.

IV. WAGE LEVEL WORKSHEET NOTE INSTRUCTIONS TO ANALYSTS

Once you have processed the RFI response and rendered a final determination, explain your reasoning in a brief and clear Wage Level Worksheet note. If no point is added, briefly note that you considered the RFI response to determine if a level II worker was required for the job, but careful consideration indicated the position requires only an entry level worker.

A. Examples of Wage Level Worksheet Notes:

- If **no additional point** is required, please explain your reason for determining no point is necessary. For example: The title of the employer's job opportunity, <Senior/lead/etc. developer/CSA/etc.>, indicates the job may not be entry level. However, thorough review of the job requirements and nature of tasks to be performed indicates the employer's job only requires a worker with the occupational knowledge, abilities, and skills commensurate with an entry level <developer/CSA/etc.>. The job appears to require a basic or perquisite level of specific vocational experience and training in the occupation and performance of relatively simple and routine job duties that require limited judgment and a rudimentary level of occupational understanding to perform the duties competently.

- If an additional point is required for **more complex duties**: After review of the employer's RFI response, an additional point was added for duties that are more complex than those required of entry level employees. The duty to <perform X> requires a better understanding of the occupation (and/or) a level of autonomy (and/or) independent judgment (and/or) is more complex than the "routine tasks" entry level employees can perform.

- If an additional point is required for **supervisory/management duties**: After review of the employer's RFI responses, an additional point was added for <X management (and/or) supervisory duties>, pursuant to NPWC supervision policy guidance. The duty to supervise others requires a better understanding of the occupation (and/or) a level of autonomy (and/or) independent judgment (and/or) is more complex than the "routine tasks" entry level employees can perform.

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- If an additional point is required for **project management duties**: After review of the employer's RFI responses, an additional point was added for duties to <perform X type of project management (and/or) coordination>. This duty is not normally required for entry level employees in the occupation, given these employees perform routine tasks under close supervision.

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APPENDIX A: FULL TEMPLATE RFI

To: Requestor Name
Address
City, ST xxxxx

Re: Case Number: P-400-xxxxx-xxxxxx Received: Date 20, 2016

Dear Sir/ Madam:

The Department of Labor (Department) is unable to render a decision on your Application for Prevailing Wage Determination, Form ETA-9141, of [Date 20, 2016] covering the [PERM] visa classification for the position of Employer's Job Title.

The Department has completed an initial review of your application and is issuing this Request for Further Information (RFI) in order to obtain additional information related to your application.

1. The deficiencies are: **The employer's job title is <Senior Software Developer> but the job duties/tasks provided in the job description do not appear to be <Senior> level duties/tasks. Please describe the <Senior/Lead/etc.> level duties/tasks the worker will perform.**

The employer must fully provide the information listed above within 7 calendar days of the date of this e-mail.

If the National Prevailing Wage Center does not receive the response within 7 calendar days, it will void the application.

2. Use "Response to RFI P-400-xxxxxx-xxxxxx" as the subject for the e-mail.

3. In addition, indicate that the National Prevailing Wage Center has permission to correct your ETA-9141 with the information you provide in your response.

You must send the information requested to the following address:
flc.pwd@dol.gov

With your response, please reference the following information:
- The PW Case Tracking Number,
- The legal business name of the employer, and
- The requestor contact name, telephone number and email address.

Sincerely,

National Prevailing Wage Center,
Office of Foreign Labor Certification

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Appendix B: Prior Policy Position (For Reference & Background)

Below is a description of the policy that this directive replaced, which can be used as a point of reference in the future, should the NPWC reconsider the new policy herein or should it require knowledge of prior policy to respond to stakeholder inquiries.

The NPWC's prior policy, issued in March 2015, instructed analysts to add a special skill point in all cases in which the job title indicated the job was not entry level, but all other information in the application indicated the job was entry level.[1] For example, where the employer's job duties and requirements result in a level I wage but the job title includes words such as Senior, Lead, Chief, Head et al, the analyst would issue a level II wage for the job by addition of a special skill point. The justification for the policy was that it best protected worker wages, promoted processing efficiency by avoiding issuance of an RFI in most cases, and promoted consistency by issuing a level II wage for all otherwise level I jobs for which the job title contained one of several skill level indicators. In support of this policy, the NPWC pointed to language in its 2009 Prevailing Wage Guidance that stated "key words in the job title can be used as indicators that an employer's job offer is for an experienced worker."[2] However, the NPWC did not issue a wage at level III (experienced) in these cases, but instead added a special skill point that bumped a level I (entry-level) job to a level II (qualified) job.

[1] Senior and Lead in Job Titles and Level I Requirements. Available on the "Shared" ('S') drive at S:/CO Use/Guidance Work Area

[2] Prevailing Wage Determination Policy Guidance - Nonagricultural Immigration Programs, p. 7, (Revised November, 2009), available on the shared drive at S:/CO Use/Guidance Work Area

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APPENDIX C: JUSTIFICATION FOR THE POLICY CHANGE

The NPWC has received comments from stakeholders explaining that many job titles are the product of internal norms and do not in fact reflect any particular level of skill is required for the position. The NPWC has determined that its prior policy that assumed a job required more skill than entry level based only on certain words in the job title was presumptuous and may not have produced a wage level representative of the employer's job opportunity in all cases. Instead, the NPWC has determined it should issue a detailed RFI in every such case in order to provide the employer an opportunity to explain the reason for the discrepancy between the job title for the opportunity and the requirements listed in the ETA-9141 application form. Issuance of an RFI provides the NPWC an opportunity to determine whether a job that would otherwise be issued a level I wage should instead be issued a level II wage based on job title skill level indicators and the employer's response to the corresponding RFI. The NPWC believes the new policy described herein is more consistent with policy guidance included in the 2009 Prevailing Wage Policy Guidance document and that additional information provided through RFIs will permit the NPWC to better fulfill its policy goal of ensuring every prevailing wage determination is accurate and will adequately protect the interests of U.S. workers, while balancing the interests of employers by providing them an opportunity to explain the apparent inconsistency.

While this RFI policy will result in a slightly less efficient process, the NPWC has determined the impact will be minor, given the relatively low number of applications for which this policy will be invoked. Initially, the NPWC will assess the administrative impact and effectiveness of issuing RFIs in cases limited to those that would otherwise be issued a wage level 1, absent the skill level indicator in the title. This will result in the NPWC sending approximately 100 additional RFIs per month, which will represent a decrease of approximately 35 cases produced, a relatively negligible impact. Depending on the feedback received by analysts and data regarding the final outcome of RFIs in these PWD cases, the NPWC will assess whether it is a necessary and effective use of resources to begin issuing RFIs in cases in which the job would otherwise be issued a level II wage level, absent the skill level indicator in the job title. If the NPWC adopts this expansion of the policy and sends RFIs for both wage level I and wage level II, an additional 700 RFIs would be sent per month, which will result in a decrease of approximately 246 cases produced or .25FTE.

The NPWC Prevailing Wage Policy Guidance document provides thorough guidance detailing how it will determine the wage and skill level for a particular job opportunity. It also provides a definition of the four skill levels that will correspond to the wage level ultimately assigned to a job. The definition of what constitutes the skill levels one through four is perhaps the single most important feature of NPWC policy because the fundamental task of an analyst is to ensure the wage assigned to each job opportunity corresponds with the skill level required to perform the job so that the wage of similarly employed U.S. workers is not undercut by NPWC wage determinations. In cases where an employer's job title indicates the job opportunity is above level I, but the experience and other requirements listed in its application contradict this indication, the analyst will require more information to determine which skill level definition fits the level of skill required to perform the employer's job. Skill levels I and II, as defined in the guidance, are most important in these cases.

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Level I (entry level) wage levels "are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment." The routine tasks these workers perform are largely meant to "provide experience and familiarization with the employer's methods, practices, and programs" and, as such, they are closely supervised or must be performed according to specific instructions provided by a more experienced worker.

Level II (qualified) wage rates are "assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment."

In a typical case, NPWC analysts will be able to determine the job is level I or II by comparing the employer's job duties, requirement for years of education and experience or special skill, travel, and supervision duties, as applicable, with those that are generally required in the occupation, as described in the O*NET occupational descriptions or noted in the Prevailing Wage Reference Application (PWRA). In some cases, however, the employer's job title will include an indication that a job requires a level of skill greater than what the employer explicitly states is required in the rest of its ETA-9141 application form. In these cases, the NPWC analyst must request more information from the employer and subsequently must rely on sound judgment to apply a wage that is commensurate with all information available.

In response to these atypical cases, the 2009 PWD Guidance makes clear that the five-step process it provides in Section Two to determine the skill level required for the employer's job opportunity is flexible to allow the analyst to make decisions that do not rigidly interpret and apply the five-step wage leveling procedure, where such deviation will result in a more accurate prevailing wage that better serves the Agency's directive to treat like workers equally and fairly and avoid adversely affecting U.S. workers. More specifically, the final paragraph of that section states: "The process described above should not be implemented in an automated fashion. The NPWC must exercise judgment when making prevailing wage determinations. The wage level should be commensurate with the complexity of tasks, independent judgment required, and amount of close supervision received as described in the employer's job opportunity." The guidance does state that "key words in the job title can be used as indicators that an employer's job offer is for [a **Level III**] experienced worker. Words such as 'lead' (lead analyst), 'senior' (senior programmer), 'head' (head nurse), 'chief' (crew chief), or 'journeyman' (journeyman plumber) would be indicators that a Level III wage should be considered." However, the analyst should take these words as *indicative* of a requirement for a certain level of skill, not as *determinative*. The process of issuing an RFI to obtain more specific information from the employer regarding job duties and skill requirements will permit the analyst to holistically view all information and make a sound judgment regarding the skill level that is actually required for the position.

A level II wage should never be assigned on the basis of a job title alone without providing the employer an opportunity to explain the reason the job title does not match the apparently entry level

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requirements of the job. The job title of the employer's opportunity is one indicator among many that the job may require more skill than a level I employee possesses, but the analyst must consider the application holistically and cannot rely merely on the job title to assign a level II wage where the job does not require either the vocational experience or some atypical requirement to indicate the employer's job requires a more knowledgeable and capable employee or merits a higher wage level. In this scenario, the analyst should mentally note that the application includes a job title that indicates a level II employee is required and issue an RFI to the employer in an effort to obtain information that will more clearly define the contours of the job and permit the analyst to exercise judgment and determine the level of skill and competency that is required for the employer's job. An RFI will help to provide context for the duties and tasks stated and determine whether there are additional duties or tasks that were omitted from or incorrectly stated on the application. This will, hopefully, provide information on the level of independence from supervision or autonomy in work assignments for the employee, as well as the level of knowledge, judgment, and problem solving ability required for the position, all of which will help determine if the job is a level II.

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Employment and Training Administration
Prevailing Wage Determination Policy Guidance
Nonagricultural Immigration Programs
Revised November 2009

The publication of the H-2B regulation in December 2008 and the corresponding changes to PERM, H-1B, H-1B1, H-1C and E-3 regulations governing temporary professional, non-agricultural or registered nursing programs changed the roles of the SWAs and NPCs in the prevailing wage determination process and necessitated the issuance of policy and procedural guidance to be used by the National Prevailing Wage and Helpdesk Center (NPWHC).

The H-2B regulation became effective on January 19, 2009. Pursuant to that Final Rule, the transition of the prevailing wage function from the State Workforce Agencies will be completed by December 31, 2009. As of January 1, 2010, the NPWHC will receive and make prevailing wage determinations for all non-agricultural temporary and permanent programs.

The major changes affecting prevailing wage determinations that became effective as a result of the H-2B Final Rule include:

1. Federalizing PWDs. Employers will now file requests and obtain PWDs directly with NPWHC.
2. Use of standard Prevailing Wage Request Form 9141 for all non-agricultural prevailing wage requests.

The PERM regulation lists professional O*NET-SOC occupations and their designated education and training categories. Those education and training categories shall be used when considering the education and training generally required for performance in that occupation (see Appendix D). This guidance has been divided into several sections for easy reference:

I. Policy Guidance

A. Background
B. Prevailing Wage Factors

II. Making Determinations

A. Wage Rates Covered by Collective Bargaining Agreements
B. Wage Determinations Using BLS OES Wage Data
   1. OES Wage Levels
   2. Process for Determining Wage Level
   3. Foreign Labor Certification Data Center On-line Wage Library
C. Wage Determinations Using Employer-Provided Wage Surveys

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III. Procedures

A. Filing
B. NPWHC Response
C. NPWHC Responsibilities

IV. Challenges to NPWHC Determinations

Appendices

A. OES Prevailing Wage Guidance
B. Check Sheet for Use in Determining OES Wage Level
C. Worksheet for Use in Determining OES Wage Level
D. Professional Occupations - Education and Training Categories
E. Specific Vocational Preparation (SVP)
F. Check Sheet for Employer-Provided Wage Surveys
G. Prevailing Wage Determination Request Form

I. Policy Guidance

A. Background

The Department of Labor, Bureau of Labor Statistics (BLS) has provided wage data collected under the Occupational Employment Statistics (OES) Program for use in the Foreign Labor Certification process since 1998. Occupational wage data collected under that program is now available at the four levels required by the H-1B Visa Reform Act for state and sub-state geographic areas for the purpose of making prevailing wage determinations. The wage data is now available on the Foreign Labor Certification Data Center On-Line Wage Library (OWL), found on the Division's website at http://www.flcdatacenter.com/.

Since September 1999, the Standard Occupational Classification (SOC) has been used by the OES program to classify occupational wage information. The SOC provides a common language for categorizing occupations. The SOC also serves as the framework for information being gathered through the Department of Labor's Occupational Information Network (O*NET®) which supersedes the Dictionary of Occupational Titles (DOT) as the resource to be consulted for occupational information for the Foreign Labor Certification process. Developed by the Department of Labor, the O*NET system provides the general public information on skills, abilities, knowledge, tasks, work activities, and the specific vocational preparation levels associated with occupations. The O*NET information can be found at http://online.onetcenter.org. Wage data from the OES survey and occupational information in O*NET are both classified by the SOC, reducing the need to use crosswalks to connect wages to occupational requirements.

B. Prevailing Wage Factors

The regulatory scheme at 20 CFR 655.10/11 or 20 CFR 656.40/41 must be followed in determining the prevailing wage. The same policies and procedures shall be followed for the permanent labor certification program, the nonimmigrant program pertaining to H-1B or H-1B1 professionals in specialty occupations or as fashion models, and the H-2B temporary nonagricultural labor certification program.

The step-by-step process described in Section II. B. represents the approach for determining the appropriate prevailing wage. All prevailing wage determinations shall start with an entry level wage and progress to a wage that is commensurate with that of a qualified, experienced, or fully competent worker only after considering the experience, education, and skill requirements of an employer's job description (opportunity).

Under § 656.40, the relevant factors in determining a prevailing wage rate are the nature of the job offer, the area of intended employment, and jobs duties for workers that are similarly employed.

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"*Nature of the Job Offer*"

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification. The NPWHC can identify the appropriate O*NET occupation using O*NET OnLine (http://online.onetcenter.org/) and entering the employer's job title to search for the appropriate O*NET-SOC occupation and code.

If the employer's prevailing wage request contains only a code from the Dictionary of Occupational Titles (DOT) rather than a job title, the DOT to O*NET-SOC crosswalk found on the On-Line Wage Library shall be used to identify the related O*NET-SOC code.

If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the NPWHC should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

"*Area of Intended Employment*"

The definition of "area of intended employment" at 20 CFR 656.3 states: *Area of intended employment* means the area within normal commuting distance of the place (address) of intended employment. The On-Line Wage Library has been developed to account for these requirements. A more detailed explanation is provided in section II C. 2. for use in making prevailing wage determinations that are based on employer-provided surveys.

"*Similarly Employed*"

Section 656.40 defines "*similarly employed*" as having:

- substantially comparable jobs in the occupational category in the area of intended employment, except that if no such workers are employed by employers other than the employer applicant in the area of intended employment, it means:
- jobs requiring a substantially similar level of skill within the area of intended employment; or
- substantially comparable jobs in the occupational category as employers outside of the area of intended employment if there are no substantially comparable jobs in the area of intended employment.

In computing the prevailing wage for a job opportunity in an occupational classification in an area of intended employment for an employee of:

- an institution of higher education;
- an affiliated or related nonprofit entity;
- a nonprofit research organization; or
- a governmental research organization;

the prevailing wage level should take into account the wage levels of employees only at such institutions and organizations found in the area of intended employment (see General Administration Letter No. 1-00).

II. Making Determinations

The NPWHC shall make prevailing wage determinations as follows:

A. If the NPWHC determines the job opportunity is covered by a collective bargaining agreement negotiated at arm's length and a wage rate has been negotiated under the agreement as evidenced by information provided by the employer, that wage rate shall be controlling.

B. In the absence of a wage determined under a collective bargaining agreement, NPWHC is to determine prevailing wage rates using wage surveys conducted under the wage component of the OES program.

C. If in the absence of a wage rate determined under a collective bargaining agreement, the employer provides the NPWHC with a survey, whether public or private, which meets the requirements of the regulations, that rate shall be used by the NPWHC as the prevailing wage determination in response to that particular request. In addition, an employer can elect to use a current wage rate in the area of intended employment under the Davis-Bacon or the McNamara Service Contract Acts.

The NPWHC shall specify the validity period of the prevailing wage which shall not be ***less than 90 days or more than 1 year*** from the determination date (see Federal Register Vol. 65 No. 245 Page 80196).

A. Wage Rates Covered by Collective Bargaining Agreements

If the job opportunity is in an occupation covered by a collective bargaining agreement (CBA) negotiated between a union and the employer, the wage rate in the agreement shall be considered the prevailing wage in making prevailing wage determinations.

If the job opportunity is for a professional athlete and is covered by a sports league's rules or regulations, the wage rate set forth in those rules or regulations including union agreements shall be considered the prevailing wage.

B. Wage Determinations Using BLS OES Wage Data

If the job offer is for an occupation not covered by a collective bargaining agreement and the employer does not choose to provide a survey or request use of a current wage determination in the area under the Davis-Bacon or McNamara-O'Hara Service Contract Acts, the wage component of the BLS OES survey shall be used to determine the prevailing wage for an employer's job offer. The OES survey is a national survey managed by the Bureau of Labor Statistics which provides a large enough sample to allow BLS to determine a prevailing wage for most occupations in every area of intended employment in the United States.

The OES wage data is made available at the state and sub-state areas so the NPWHC can select the geographic area of intended employment. The On-Line Wage Library has been developed to account for these requirements. The NPWHC should select the state and sub-state area that represents the area for the employer's job offer.

1. OES Wage Levels

The new requirements specify that determinations using a government survey shall be made available for each occupation at 4 levels of wages commensurate with experience, education, and the level of supervision. The NPWHC shall make a prevailing wage determination selecting one of the four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation.

It is important to remember that wage levels are determined only after selecting the most relevant O*NET-SOC occupational code classification. The selection of the O*NET-SOC code should not be based solely on the title of the employer's job offer. The NPWHC should consider the particulars of the employer's job offer and compare the full description to the tasks, knowledge, and work activities generally associated with an O*NET-SOC occupation to insure the most relevant occupational code has been selected.

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. Words such as 'lead' (lead analyst), 'senior' (senior programmer), 'head' (head nurse), 'chief' (crew chief), or 'journeyman' (journeyman plumber) would be indicators that a Level III wage should be considered.

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

2. Process for Determining Wage Level

The NPWHC shall use O*NET information to identify the tasks, work activities, knowledge, and skills generally required for performance in an occupation. A comparison between the particulars of the employer's job offer to the requirements for similar (O*NET) occupations shall be used to determine the appropriate wage level. It

is important, therefore, that the job description included in an employer's request for a prevailing wage determination include sufficient information to determine the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. NPWHC may need to contact employers for additional information to obtain this information, if needed.

Information contained in the O*NET Job Zones provides guidance in determining whether the job offer is for an entry level, qualified, experienced, or fully competent employee for making the determination of wage level. Employer requirements in a job offer that are at the upper range of the requirements and preparation generally required for performance in an occupation are indicators that a prevailing wage determination at a higher level should be considered. The O*NET Job Zones were developed to transition from the Specific Vocational Preparation (SVP), as shown in the Dictionary of Occupational Titles (DOT), to measures of experience, education, and job training included in the O*NET database. A listing of SVPs and their definitions can be found in Appendix E of this document.

A step-by-step process for arriving at the appropriate wage level is described below. Points are awarded based on the comparison of an employer's job offer requirements to the general requirements for similar occupations. The points are entered on a worksheet then added to arrive at the wage level. NPWHC should follow the step-by-step process while completing the worksheet.

The appendices section of this document provides several guides that can be used for reference during the process:

Appendix A: OES Prevailing Wage Guidance repeats the step-by-step process and can be used as a reference guide.

Appendix B: Check Sheet for Use in Determining OES Wage Level has been provided to track the process.

Appendix C: Worksheet for Use in Determining OES Wage Level provides an example of a worksheet that NPWHC might use for determining the appropriate wage level.

All employer applications for a prevailing wage determination shall initially be considered an entry level or Level I wage. The employer's requirements for experience, education, training, and special skills shall be compared to those generally required for an occupation as described in O*NET and shall be used as indicators that the job opportunity is for an experienced (Level II), qualified (Level III), or fully competent (Level IV) worker and warrants a prevailing wage determination at a higher wage level.

All prevailing wage determinations start with a Level I determination; therefore, the check sheet and worksheet have a 1 entered in the Wage Level Column.

Step 1 – Enter the O*NET Requirements on the Worksheet

- Use the O*NET OnLine 'Find Occupations' feature (http://online.onetcenter.org) to determine the appropriate O*NET-SOC code based on the job title provided on the prevailing wage determination request form.

- Enter the job title from the employer's job offer into the Quick Search box and click on Go.

- Select the O*NET occupation that most closely matches the employer's request from the resulting list of occupations.

- Review the Tasks, Knowledge, Work Activities, and Job Zone information contained in the O*NET summary report to gain an understanding of what is generally required for vocational preparation and performance in that occupation.

Enter the O*NET education and experience requirements on the Worksheet.

Step 2 – Complete the Experience Section of the Worksheet

Compare the overall experience described in the O*NET Job Zone to the years of experience required by the employer on the prevailing wage determination request form.

For occupations contained in Job Zone 1, if the employer's experience requirement is equivalent to that described in an:

- SVP of 1 (experience requirement of a short duration), enter a 0 in the Wage Level Column.

- SVP of 2 (experience requirement of anything beyond short duration and up to 1 month), enter a 1 in the Wage Level Column.

- SVP of 3 (experience requirement of over 1 month up to and including 3 months), enter a 2 in the Wage Level Column.

- SVP of 4 (experience requirement of over 3 months up to and including 6 months), enter a 3 in the Wage Level Column.

Refer to Appendix E: Specific Vocational Preparation (SVP) for an explanation of the experience requirements related to an SVP level.

For occupations in Job Zones 2 through 5, if the employer's experience requirement is:

- At or below the level of experience and SVP range, make no entry in the Wage Level Column.

- In the low end of the experience and SVP range, enter a 1 in the Wage Level Column.

- In the high end of the experience and SVP range, enter a 2 in the Wage Level Column.

- Greater than the experience and SVP range, enter a 3 in the Wage Level Column.

Points should be added for the amount of experience only if the required work experience is above the starting point of the O*NET job zone range. ***Education required for the job is addressed in Step 3 of the worksheet, and therefore the years of education required should not be considered in Step 2. However, if education is considered as an equivalent amount of experience in Step 2, it should not also be considered in Step 3.***

Step 3 – Complete the Education Section of the Worksheet

Compare the education requirement generally required for an occupation to the education requirement in the employer's job offer.

Determine if the level required by the employer's job offer is greater than what is generally required.

Professional Occupations by O*NET-SOC category and the related education and training category code are listed in Appendix A to the Preamble of the PERM regulations. The education and training categories assigned to those occupations shall be considered the usual education and training required when considering the education level for prevailing wage determinations. A listing of occupations designated as professional occupations and the related education and training category can be found in Appendix D of this document.

For professional occupations:

- If the education required on the prevailing wage determination request form is equal to or less than the usual education contained in Appendix D, make no entry in the Wage Level Column.

- If the education required on the prevailing wage determination request form is more than the usual education contained in Appendix D by one category, enter a 1 on the worksheet in the Wage Level Column.

- If the education required is more than the usual education contained in Appendix D by more than one category, enter a 2 on the worksheet in the Wage Level Column.

Example: If the occupation generally requires a Bachelor's degree and the employer's job offer requires a Master's degree, enter a 1; if the job offer requires a Ph.D., enter a 2.

For all other occupations, use the education level for what 'most of these occupations' require or 'these occupations usually require' described in the O*NET Job Zone for that occupation.

- If the education or training is equal to or less than what 'most occupations require' or the level that these occupations 'usually' require, make no entry in the Wage Level Column.

- If the education or training is more than what 'most occupations require' or the level that these occupations 'usually' require, enter a 1 on the worksheet in the Wage Level Column.

- If the education or training required on the prevailing wage determination request form is more than the level described by what 'some may require,' enter a 2 on the worksheet in the Wage Column.

Experience required for the job is addressed in Step 2 of the worksheet, and therefore the years of experience required should not be considered in Step 3.

Step 4 – Complete the Special Skills and Other Requirements Section of the Worksheet

- Review the job title, job description (duties), and special requirements on the prevailing wage determination request form to identify the tasks, work activities, knowledge, and skills required. An employer's requirement for an occupational license and/or certification should be evaluated to determine if they are indicators of a requirement for special skills warranting the award of a point or points on the worksheet. They may not necessarily be such an indicator.

- Make note of machines, equipment, tools, or computer software used. Consider how the employer's requirements compare to the O*NET Tasks, Work Activities, Knowledge, and Job Zone Examples. Consider whether the employer's requirements indicate the need for skills beyond those of an entry-level worker.

- In situations where the employer's requirements are not listed in the O*NET Tasks, Work Activities, Knowledge, and Job Zone Examples for the selected occupation, then the requirements should be evaluated to determine if they represent special skills. The requirement of a specific skill not listed in the

O*NET does not necessitate that a point be added. If the specific skills required for the job are generally encompassed by the O*NET description for the position, no point should be added. However, if it is determined that the requirements are indicators of skills that are beyond those of an entry level worker, consider whether a point should be entered on the worksheet in the Wage Level Column.

Note: A language requirement other than English in an employer's job offer shall generally be considered a special skill for all occupations, with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers, and a point should be entered on the worksheet.

It is recognized, however, that there may be circumstances where a foreign language is required for the job, but that requirement does not sufficiently increase the seniority and complexity of the position such that a point must be added for the foreign language requirement (e.g. Specialty Cooks).

- If the employer's job opportunity requires the possession of a license or certification, the NPWHC must give careful consideration to the occupation in question and the education, training, and experience requirements of the license or certification to evaluate whether possession of a license or certification is an indicator that the offer of employment is for an experienced worker.

- An employer's requirement for the possession of an occupational license or certification does not constitute a situation where a point must automatically be awarded. The NPWHC should look at the employer's job description and stated requirements to evaluate, along with other factors, whether the position is closely supervised, involves only moderately complex duties, and allows limited exercise of independent judgment. If the license or certification is a normal requirement to perform the job duties as an entry level worker, no point should be added on the worksheet in the Wage Column, e.g., attorney, teacher, registered nurse.

- Some occupations have more than one license and the requirements of the license provide an indicator of the level of independent judgment and complexity of tasks required of the licensee, e.g., Journeyman Plumber or Master Plumber. The NPWHC must consider the education, training, and experience requirements of the license or certification to determine when points should be entered on the worksheet in the Wage Column.

If a substantial amount of work experience, education, or training is required to obtain a license or certification and this results in the total amount of necessary work experience being on the high end of the O*NET job zone range, ***a point could be added either in Step 2 for the work experience, or in Step 3 for the education or training, or in Step 4 for the license. A point or points should not be added in every step***.
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Step 5 – Complete the Supervisory Duties Section of the Worksheet

- Review the prevailing wage determination request form to determine the number or range of people to be supervised to determine if there is a supervisory requirement; and

- If the number is greater than 0, then enter a 1 on the worksheet in the Wage Level Column.

Exception: If supervision is a customary duty for the O*NET occupation (e.g., First-line Supervisors/Managers occupations), do not enter a 1 on the worksheet in the Wage Level Column.

Note: Previous guidance suggested that an employer's job offer that included supervisory duties should be assigned the higher of the two previous wage levels. In this new guidance, an employer's job requirement for supervisory duties will not automatically warrant a determination of the highest wage level because the wages for supervisory occupations already account for the supervision of employees. The guidance contained above for evaluating education, experience, and skills required in an employer's job offer should be used to determine the appropriate wage level for supervisory occupations.

Determine the wage level by summing the numbers in the Wage Level Column of the worksheet. The sum total shall equal the wage for the prevailing wage determination. If the sum total is greater than 4, then the wage level shall be Level 4.

The process described above should not be implemented in an automated fashion. The NPWHC must exercise judgment when making prevailing wage determinations. The wage level should be commensurate with the complexity of tasks, independent judgment required, and amount of close supervision received as described in the employer's job opportunity.

3. Foreign Labor Certification Data Center On-line Wage Library

Use the On-line Wage Library (OWL) found on the Foreign Labor Certification Data Center website (http://www.flcdatacenter.com/) to select the prevailing wage for the occupation.

Use the OES Search Wizard to:

- Select the state and geographic area from the drop-down lists.
- Select the occupation using the first 6 digits of the O*NET-SOC code, OR
- Select the occupation from the drop-down list or enter the title in the key word search box.
- Select a data year.
- Select a data source.

- Click on search.

C. Wage Determinations Using Employer-Provided Wage Surveys

If the job opportunity is in an occupation not covered by a collective bargaining agreement, the NPWHC shall also consider wage data that has been furnished by the employer; i.e., wage data contained in a published wage survey that has been provided by the employer, or wage data contained in a survey that has been conducted or funded by the employer. The employer can elect to use a current wage determination in the area of intended employment under the Davis-Bacon or McNamara-O'Hara Service Contract Acts. An employer survey can be submitted either initially or after the NPWHC issues a prevailing wage determination. If the employer provides a wage survey after the NPWHC makes a prevailing wage determination, the new wage data from the employer-provided survey shall be considered a new prevailing wage request.

The use of such employer-provided wage data is an employer option. However, in each case where the employer submits wage data for consideration, it will be incumbent upon the employer to make a written showing that the survey or other wage data meet the criteria outlined below. The employer must provide the NPWHC with enough information about the survey methodology (e.g., sample size and source, sample selection procedures, survey job descriptions) to allow the NPWHC to make a determination with regard to the adequacy of the data provided and the validity of the statistical methodology used in conducting the survey.

Criteria for Employer-Provided Surveys

(1) The survey must be recent.

If the employer submits a published survey, that survey must:

- have been published within 24 months of the date of submission of the prevailing wage request;
- be the most current edition of the survey; and
- be based on data collected within 24 months of the date of the publication of the survey.

If the employer submits a survey conducted by the employer, the survey must be based on data collected within 24 months of the date of submission of the prevailing wage request.

(2) The wage data submitted by the employer must reflect the area of intended employment.

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Area of intended employment means the area within normal commuting distance of the place (address) of intended employment.

- If the place of intended employment is within a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA), any place within the MSA or PMSA is deemed to be within the normal commuting distance of the place of intended employment.

- All locations within a Consolidated Metropolitan Statistical Area (CMSA) will not automatically be deemed to be within normal commuting distances for prevailing wage purposes.

- The borders of PMSAs, MSAs, or CMSAs are not controlling in the identification of the normal commuting area; an employer location just outside of the PMSA, MSA, or CMSA boundary may still be considered within normal commuting distance.

The terminology CMSAs and PMSAs are being replaced by the Office of Management and Budget (OMB); however, ETA will continue to recognize the use of these area concepts as well as their replacements.

(3) The job description applicable to wage data submitted by the employer must be adequate to determine that the data represents workers who are similarly employed. *Similarly employed* means jobs requiring substantially similar levels of skills.
(4) The wage data must have been collected across industries that employ workers in the occupation.

(5) The prevailing wage determination should be based on the arithmetic mean (weighted average) of wages for workers that are similarly employed in the area of intended employment. If the survey provides a median wage of workers similarly employed in the area of intended employment and does not provide an arithmetic mean, the median wage shall be used as the basis for making a prevailing wage determination.

(6) In all cases where an employer provides the NPWHC with wage data for which it seeks acceptance, the employer must include the methodology used for the survey to show that it is reasonable and consistent with recognized statistical standards and principles in producing a prevailing wage (e.g., contains a representative sample), including its adherence to these standards for the acceptability of employer-provided wage data. It is important to note that a prevailing wage determination based upon the acceptance of employer-provided wage data for the specific job opportunity at issue does not supersede the OES wage rate for subsequent requests for prevailing wage data in that occupation.

Information from employers that consists merely of speculation, subjective impressions, or pleas that it cannot afford to pay the prevailing wage rate determined by the NPWHC

will not be taken into consideration in making a wage determination. If the NPWHC does not find the employer-provided wage survey acceptable, the NPWHC must notify the employer in writing and include the reasons the survey was not found to be acceptable. Upon receiving this determination, the employer may provide supplemental information, file a new request, or appeal the determination.

In issuing wage determinations, the NPWHC may be required to convert an hourly rate to a weekly, monthly, or annual rate, or to convert a weekly, monthly, or annual rate to an hourly rate. As a matter of policy, such conversions shall be based on 2,080 hours of work in a year.

Factors relating to the nature of the employer, such as whether the employer is public or private, for profit or nonprofit, large or small, charitable, a religious institution, a job contractor, or a struggling or prosperous firm, do not bear in a significant way on the skills and knowledge levels required and, therefore, are not relevant to determining the prevailing wage for an occupation under the regulations at 20 CFR 655.10 and 20 CFR 656.40. As noted above, the relevant factors are the job, the geographic locality of the job, and the level of skill required to perform independently on the job.

III. Procedures

A. Filing

Employers must request and receive the determination of the prevailing wage from the NPWHC. The NPWHC shall enter its wage determination on the ETA Form 9141 return the form to the employer. To enable NPWHC to provide employers or their representatives accurate wage determinations that take into account the employer's particular job and its requirements, all requests for and responses to wage determinations will be in writing. If the employer does not present sufficient information with its request – the particulars of the job offer or sufficient information about employer-provided wage data – the NPWHC shall request such additional information from the employer as may be necessary to make the determination.

B. NPWHC Response

The NPWHC responses shall state the specific wage rate applicable to the employer's job opportunity and indicate the source of such information. The response shall also specify the dates the prevailing wage is valid – the validity period begin and end dates.

It is important to note that §655.10 and 656.40 provide that a prevailing wage determination for labor certification purposes shall not permit an employer to pay a wage lower than that required under any other Federal, state, or local law. For example, if the wage rate in the OES or employer-provided survey is lower than the Federal, state, or local minimum wage, the response to the employer’s request should indicate that the employer must offer and pay at least the minimum wage provided by

Federal, state, or local law, whichever is higher. Since the OES wage data or data in an employer-provided survey are collected in the year or years prior to the data being available to the NPWHC, this may occur in some instances.

C. NPWHC Responsibilities

It is incumbent upon NPWHC to organize the prevailing wage function and establish controls that will enable them to provide information regarding a particular prevailing wage determination, to answer questions if it is required in an enforcement action conducted by the Department of Labor, and to provide information to the certifying officer to be used before the Board of Alien Labor Certification Appeals. Requests from employers for wage determinations shall be filed in writing with the organizational subcomponent of the NPWHC responsible for alien labor certification prevailing wage determinations. Only that component should respond to requests for wage information for immigration purposes. A dated copy of the prevailing wage determination provided to the employer should be maintained by the NPWHC for two years. The relevant portions of an employer-provided survey must also be maintained with the determination for the requisite period.

IV. Challenges to Prevailing Wage Determinations

The employer has the option of requesting a redetermination from the CO who issued the determination by submitting supplemental documentation under 655.10(g) or 656.40(h).

The employer may challenge the CO's PWD by requesting review by the Center Director under 655.11(a) or 656.41(a).

The employer may appeal the Center Director's determination by requesting review by the Board of Alien Labor Certification Appeals under 655.11(e) or 656.41(d).

The NPWHC must administer the above requests in accordance with the specific provisions of the appropriate regulation.

Appendix A: OES Prevailing Wage Guidance

All employer applications for a prevailing wage determination shall initially be considered an entry level or Level I wage. The employer's requirements for experience, education, training, and special skills shall be compared to those generally required for an occupation as described in O*NET and shall be used as indicators that the job opportunity is for an experienced (Level II), qualified (Level III), or fully competent (Level IV) worker and warrants a prevailing wage determination at a higher wage level.

All prevailing wage determinations start with a Level I determination; therefore, the check sheet and worksheet have a 1 entered in the Wage Level Column.

Step 1 – Enter the O*NET Requirements on the Worksheet

- Use the O*NET OnLine 'Find Occupations' feature (http://online.onetcenter.org) to determine the appropriate O*NET-SOC code based on the job title provided on the prevailing wage determination request form.

- Enter the job title from the employer's job offer into the Quick Search box and click on Go.

- Select the O*NET occupation that most closely matches the employer's request from the resulting list of occupations.

- Review the Tasks, Knowledge, Work Activities, and Job Zone information contained in the O*NET summary report to gain an understanding of what is generally required for vocational preparation and performance in that occupation.

Enter the O*NET education and experience requirements on the Worksheet.

Step 2 – Complete the Experience Section of the Worksheet

Compare the overall experience described in the O*NET Job Zone to the years of experience required by the employer on the prevailing wage determination request form.

For occupations contained in Job Zone 1, if the employer's experience requirement is equivalent to that described in an:

- SVP of 1 (experience requirement of a short duration), enter a 0 in the Wage Level Column.

- SVP of 2 (experience requirement of anything beyond short duration and up to 1 month), enter a 1 in the Wage Level Column.

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- SVP of 3 (experience requirement of over 1 month up to and including 3 months), enter a 2 in the Wage Level Column.

- SVP of 4 (experience requirement of over 3 months up to and including 6 months), enter a 3 in the Wage Level Column.

Refer to Appendix E: Specific Vocational Preparation (SVP) for an explanation of the experience requirements related to an SVP level.

For occupations in Job Zones 2 through 5, if the employer's experience requirement is:

- At or below the level of experience and SVP range, make no entry in the Wage Level Column.

- In the low end of the experience and SVP range, enter a 1 in the Wage Level Column.

- In the high end of the experience and SVP range, enter a 2 in the Wage Level Column.

- Greater than the experience and SVP range, enter a 3 in the Wage Level Column.

Points should be added for the amount of experience only if the required work experience is above the starting point of the O*NET job zone range. ***Education required for the job is addressed in Step 3 of the worksheet, and therefore the years of education required should not be considered in Step 2. However, if education is considered as an equivalent amount of experience in Step 2, it should not also be considered in Step 3.***

Step 3 – Complete the Education Section of the Worksheet

Compare the education requirement generally required for an occupation to the education requirement in the employer's job offer.

Determine if the level required by the employer's job offer is greater than what is generally required.

Professional Occupations by O*NET-SOC category and the related education and training category code are listed in Appendix A to the Preamble of the PERM regulations. The education and training categories assigned to those occupations shall be considered the usual education and training required when considering the education level for prevailing wage determinations. A listing of occupations designated as professional occupations and the related education and training category can be found in Appendix D of this document.

For professional occupations:

- If the education required on the prevailing wage determination request form is equal to or less than the usual education contained in Appendix D, make no entry in the Wage Level Column.

- If the education required on the prevailing wage determination request form is more than the usual education contained in Appendix D by one category, enter a 1 on the worksheet in the Wage Level Column.

- If the education required is more than the usual education contained in Appendix D by more than one category, enter a 2 on the worksheet in the Wage Level Column.

Example: If the occupation generally requires a Bachelor's degree and the employer's job offer requires a Master's degree, enter a 1; if the job offer requires a Ph.D., enter a 2.

For all other occupations, use the education level for what 'most of these occupations' require or 'these occupations usually require' described in the O*NET Job Zone for that occupation.

- If the education or training is equal to or less than what 'most occupations require' or the level that these occupations 'usually' require, make no entry in the Wage Level Column.

- If the education or training is more than what 'most occupations require' or the level that these occupations 'usually' require, enter a 1 on the worksheet in the Wage Level Column.

- If the education or training required on the prevailing wage determination request form is more than the level described by what 'some may require,' enter a 2 on the worksheet in the Wage Column.

Experience required for the job is addressed in Step 2 of the worksheet, and therefore the years of experience required should not be considered in Step 3.

Step 4 – Complete the Special Skills and Other Requirements Section of the Worksheet

- Review the job title, job description (duties), and special requirements on the prevailing wage determination request form to identify the tasks, work activities, knowledge, and skills required. An employer's requirement for an occupational license and/or certification should be evaluated to determine if they are indicators of a requirement for special skills warranting the award of a point or points on the worksheet. They may not necessarily be such an indicator.

- Make note of machines, equipment, tools, or computer software used. Consider how the employer's requirements compare to the O*NET Tasks, Work Activities, Knowledge, and Job Zone Examples. Consider whether the employer's requirements indicate the need for skills beyond those of an entry-level worker.

- In situations where the employer's requirements are not listed in the O*NET Tasks, Work Activities, Knowledge, and Job Zone Examples for the selected occupation, then the requirements should be evaluated to determine if they represent special skills. The requirement of a specific skill not listed in the O*NET does not necessitate that a point be added. If the specific skills required for the job are generally encompassed by the O*NET description for the position, no point should be added. However, if it is determined that the requirements are indicators of skills that are beyond those of an entry level worker, consider whether a point should be entered on the worksheet in the Wage Level Column.

Note: A language requirement other than English in an employer's job offer shall generally be considered a special skill for all occupations, with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers, and a point should be entered on the worksheet.

It is recognized, however, that there may be circumstances where a foreign language is required for the job, but that requirement does not sufficiently increase the seniority and complexity of the position such that a point must be added for the foreign language requirement (e.g. Specialty Cooks).

- If the employer's job opportunity requires the possession of a license or certification, the NPWHC must give careful consideration to the occupation in question and the education, training, and experience requirements of the license or certification to evaluate whether possession of a license or certification is an indicator that the offer of employment is for an experienced worker.

- An employer's requirement for the possession of an occupational license or certification does not constitute a situation where a point must automatically be awarded. The NPWHC should look at the employer's job description and stated requirements to evaluate, along with other factors, whether the position is closely supervised, involves only moderately complex duties, and allows limited exercise of independent judgment. If the license or certification is a normal requirement to perform the job duties as an entry level worker, no point should be added on the worksheet in the Wage Column, e.g., attorney, teacher, registered nurse.

- Some occupations have more than one license and the requirements of the license provide an indicator of the level of independent judgment and complexity of tasks required of the licensee, e.g. Journeyman Plumber or Master Plumber. The NPWHC must consider the education, training and experience requirements of the license or certification to determine when points should be entered on the worksheet in the Wage Column.

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If a substantial amount of work experience, education or training is required to obtain a license or certification and this results in the total amount of necessary work experience being on the high end of the O*NET job zone range, ***a point could be added either in Step 2 for the work experience, or Step 3 for the education or training, or in Step 4 for the license. A point or points should not be added in every step***.

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Step 5 – Complete the Supervisory Duties Section of the Worksheet

- Review the prevailing wage determination request form to determine the number or range of people to be supervised to determine if there is a supervisory requirement; and

- If the number is greater than 0, then enter a 1 on the worksheet in the Wage Level Column.

Exception: If supervision is a customary duty for the O*NET occupation (e.g., First-line Supervisors/Managers occupations), do not enter a 1 on the worksheet in the Wage Level Column.

Note: Previous guidance suggested that an employer's job offer that included supervisory duties should be assigned the higher of the two previous wage levels. In this new guidance, an employer's job requirement for supervisory duties will not automatically warrant a determination of the highest wage level because the wages for supervisory occupations already account for the supervision of employees. The guidance contained above for evaluating education, experience, and skills required in an employer's job offer should be used to determine the appropriate wage level for supervisory occupations.

Determine the wage level by summing the numbers in the Wage Level Column of the worksheet. The sum total shall equal the wage for the prevailing wage determination. If the sum total is greater than 4, then the wage level shall be Level 4.

The process described above should not be implemented in an automated fashion. The NPWHC must exercise judgment when making prevailing wage determinations. The wage level should be commensurate with the complexity of tasks, independent judgment required, and amount of close supervision received as described in the employer's job opportunity.

Appendix B: Check Sheet for Use in Determining OES Wage Level

Indicator	Job Offer Requirements	O*NET-Usual Requirements	Instruction	Wage Level Result
Step 1. Requirements				1
Step 2. Experience	Enter the years of experience required by the employer.	Job Zone (overall experience, job training)	If the years of required experience in the job order are greater than the low end of the O*NET usual requirements, enter 1, 2, or 3.	
Step 3. Education	Enter the education or training required by the employer.	Professional Occupations Appendix D Other occupations - Job Zone (overall experience, job training, education)	If the years of required education in the job order are greater than the Categories for Professional Occupations OR O*NET usual requirements for non-professional occupations, enter 1 or 2.	
Step 4. Special Skills (Y/N)	Note special requirements from the job description or other special requirements including licensure or certification.	O*NET Tasks, Knowledge, and Work Activities. National or state licensing/ certification requirements.	Consider if skills, knowledge, work activities, tasks, licensure or certification requirements indicate a higher level of complexity or decision-making. Enter 1 or 2 as appropriate.	
Step 5. Supervisory duties (Y/N)	Note any supervisory duties indicated in the job duties or description.		If Yes, enter a 1 – UNLESS supervision is generally required by the O*NET occupation.	
			Sum:	

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Appendix C: Worksheet for Use in Determining OES Wage Level

Employer's Job Title:

O*NET Title: **Date:**

O*NET Code: **Reviewer:**

Indicator	Job Offer Requirements	O*NET-Usual Requirements	Comments	Wage Level Result
Step 1. Requirements				1
Step 2. Experience				
Step 3. Education				
Step 4. Special Skills and Other Requirements? (Y/N)				
Step 5. Supervisory duties (Y/N)				
			Sum:	

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Appendix D: Professional Occupations
Education and Training Categories

Code	Definition
1	First professional degree. Completion of the academic program usually requires at least 6 years of full-time equivalent academic study, including college study prior to entering the professional degree program.
2	Doctoral degree. Completion of the degree program usually requires at least 3 years of full-time equivalent academic work beyond the bachelor's degree.
3	Master's degree. Completion of the degree program usually requires 1 or 2 years of full-time equivalent study beyond the bachelor's degree.
4	Work experience, plus a bachelor's or higher degree. Most occupations in this category are managerial occupations that require experience in a related non-managerial position.
5	Bachelor's degree. Completion of the degree program generally requires at least 4 years but not more than 5 years of full-time equivalent academic work.

O*NET-SOC Code	O*NET-SOC Title	Education & Training Category Code
21-2011.00	Clergy	1
23-1011.00	Lawyers	1
29-1011.00	Chiropractors	1
29-1021.00	Dentists, General	1
29-1022.00	Oral and Maxillofacial Surgeons	1
29-1023.00	Orthodontists	1
29-1024.00	Prosthodontists	1
29-1041.00	Optometrists	1
29-1051.00	Pharmacists	1
29-1061.00	Anesthesiologists	1
29-1062.00	Family and General Practitioners	1
29-1063.00	Internists, General	1
29-1064.00	Obstetricians and Gynecologists	1
29-1065.00	Pediatricians, General	1
29-1066.00	Psychiatrists	1
29-1067.00	Surgeons	1
29-1081.00	Podiatrists	1

O*NET-SOC Code	O*NET-SOC Title	Education & Training Category Code
29-1131.00	Veterinarians	1
15-1011.00	Computer and Information Scientists, Research	2
19-1021.01	Biochemists	2
19-1021.02	Biophysicists	2
19-1022.00	Microbiologists	2
19-1042.00	Medical Scientists, Except Epidemiologists	2
19-2011.00	Astronomers	2
19-2012.00	Physicists	2
19-3031.00	Clinical, counseling, and school psychologists	2
19-3031.01	Educational Psychologists	2
19-3031.02	Clinical Psychologists	2
19-3031.03	Counseling Psychologists	2
25-1021.00	Computer Science Teachers, Postsecondary	2
25-1022.00	Mathematical Science Teachers, Postsecondary	2
25-1032.00	Engineering Teachers, Postsecondary	2
25-1041.00	Agricultural Sciences Teachers, Postsecondary	2
25-1042.00	Biological Science Teachers, Postsecondary	2
25-1043.00	Forestry and Conservation Science Teachers, Postsecondary	2
25-1052.00	Chemistry Teachers, Postsecondary	2
25-1054.00	Physics Teachers, Postsecondary	2
25-1071.00	Health Specialties Teachers, Postsecondary	2
25-1072.00	Nursing Instructors and Teachers, Postsecondary	2
25-1121.00	Art, Drama, and Music Teachers, Postsecondary	2
25-1191.00	Graduate Teaching Assistants	2
15-2021.00	Mathematicians	3
15-2031.00	Operations Research Analysts	3
15-2041.00	Statisticians	3
19-1041.00	Epidemiologists	3
19-2041.00	Environmental Scientists and Specialists, Including Health	3
19-2042.00	Geoscientists, Except Hydrologists and Geographers	3
19-2042.01	Geologists	3
19-2043.00	Hydrologists	3
19-3011.00	Economists	3
19-3021.00	Market Research Analysts	3
19-3022.00	Survey Researchers	3
19-3032.00	Industrial-Organizational Psychologists	3
19-3041.00	Sociologists	3
19-3051.00	Urban and Regional Planners	3
19-3091.01	Anthropologists	3

O*NET-SOC Code	O*NET-SOC Title	Education & Training Category Code
19-3091.02	Archeologists	3
19-3092.00	Geographers	3
19-3093.00	Historians	3
19-3094.00	Political Scientists	3
21-1011.00	Substance Abuse and Behavioral Disorder Counselors	3
21-1012.00	Educational, Vocational, and School Counselors	3
21-1013.00	Marriage and Family Therapists	3
21-1014.00	Mental Health Counselors	3
21-1015.00	Rehabilitation Counselors	3
21-1023.00	Mental Health and Substance Abuse Social Workers	3
21-1091.00	Health Educators	3
25-4011.00	Archivists	3
25-4012.00	Curators	3
25-4021.00	Librarians	3
25-9031.00	Instructional Coordinators	3
29-1121.00	Audiologists	3
29-1123.00	Physical Therapists	3
29-1127.00	Speech-Language Pathologists	3
11-1011.00	Chief Executives	4
11-1011.01	Government Service Executives	4
11-1011.02	Private Sector Executives	4
11-1021.00	General and Operations Managers	4
11-2011.00	Advertising and Promotions Managers	4
11-2021.00	Marketing Managers	4
11-2022.00	Sales Managers	4
11-2031.00	Public Relations Managers	4
11-3011.00	Administrative Services Managers	4
11-3021.00	Computer and Information Systems Managers	4
11-3031.00	Financial Managers	4
11-3031.01	Treasurers, Controllers, and Chief Financial Officers	4
11-3031.02	Financial Managers, Branch or Department	4
11-3040.00	Human Resources Managers	4
11-3041.00	Compensation and Benefits Managers	4
11-3042.00	Training and Development Managers	4
11-3061.00	Purchasing Managers	4
11-9011.00	Farm, Ranch, and Other Agricultural Managers	4
11-9011.01	Nursery and Greenhouse Managers	4
11-9011.02	Agricultural Crop Farm Managers	4
11-9011.03	Fish Hatchery Managers	4

O*NET-SOC Code	O*NET-SOC Title	Education & Training Category Code
11-9031.00	Education Administrators, Preschool and Child Care Center/Program	4
11-9032.00	Education Administrators, Elementary and Secondary School	4
11-9033.00	Education Administrators, Postsecondary	4
11-9041.00	Engineering Managers	4
11-9111.00	Medical and Health Services Managers	4
11-9121.00	Natural Sciences Managers	4
13-1011.00	Agents and Business Managers of Artists, Performers, and Athletes	4
13-1111.00	Management Analysts	4
15-2011.00	Actuaries	4
23-1021.00	Administrative Law Judges, Adjudicators, and Hearing Officers	4
23-1022.00	Arbitrators, Mediators, and Conciliators	4
23-1023.00	Judges, Magistrate Judges, and Magistrates	4
25-2023.00	Vocational Education Teachers, Middle School	4
25-2032.00	Vocational Education Teachers, Secondary School	4
27-1011.00	Art Directors	4
27-2012.00	Producers and Directors	4
27-2012.01	Producers	4
27-2012.02	Directors - Stage, Motion Pictures, Television, and Radio	4
27-2012.03	Program Directors	4
27-2012.04	Talent Directors	4
27-2012.05	Technical Directors/Managers	4
27-2041.00	Music Directors and Composers	4
27-2041.01	Music Directors	4
27-2041.02	Music Arrangers and Orchestrators	4
27-2041.03	Composers	4
27-3020.00	News Analysts, Reporters and Correspondents	4
27-3021.00	Broadcast News Analysts	4
27-3022.00	Reporters and Correspondents	4
11-3051.00	Industrial Production Managers	5
11-9021.00	Construction Managers	5
11-9141.00	Property, Real Estate, and Community Association Managers	5
11-9151.00	Social and Community Service Managers	5
13-1071.00	Employment, Recruitment, and Placement Specialists	5
13-1071.01	Employment Interviewers, Private or Public Employment Service	5

O*NET-SOC Code	O*NET-SOC Title	Education & Training Category Code
13-1071.02	Personnel Recruiters	5
13-1072.00	Compensation, Benefits, and Job Analysis Specialists	5
13-1073.00	Training and Development Specialists	5
13-1121.00	Meeting and Convention Planners	5
13-2011.01	Accountants	5
13-2011.02	Auditors	5
13-2031.00	Budget Analysts	5
13-2041.00	Credit Analysts	5
13-2051.00	Financial Analysts	5
13-2052.00	Personal Financial Advisors	5
13-2053.00	Insurance Underwriters	5
13-2061.00	Financial Examiners	5
13-2071.00	Loan Counselors	5
13-2072.00	Loan Officers	5
13-2081.00	Tax Examiners, Collectors, and Revenue Agents	5
15-1021.00	Computer Programmers	5
15-1031.00	Computer Software Engineers, Applications	5
15-1032.00	Computer Software Engineers, Systems Software	5
15-1051.00	Computer Systems Analysts	5
15-1061.00	Database Administrators	5
15-1071.00	Network and Computer Systems Administrators	5
15-1071.01	Computer Security Specialists	5
15-1081.00	Network Systems and Data Communications Analysts	5
17-1011.00	Architects, Except Landscape and Naval	5
17-1012.00	Landscape Architects	5
17-1021.00	Cartographers and Photogrammetrists	5
17-1022.00	Surveyors	5
17-2011.00	Aerospace Engineers	5
17-2021.00	Agricultural Engineers	5
17-2031.00	Biomedical Engineers	5
17-2041.00	Chemical Engineers	5
17-2051.00	Civil Engineers	5
17-2061.00	Computer Hardware Engineers	5
17-2071.00	Electrical Engineers	5
17-2072.00	Electronics Engineers, Except Computer	5
17-2081.00	Environmental Engineers	5
17-2111.00	Health and Safety Engineers, Except Mining Safety Engineers and Inspectors	5
17-2111.01	Industrial Safety and Health Engineers	5
17-2111.02	Fire-Prevention and Protection Engineers	5

O*NET-SOC Code	O*NET-SOC Title	Education & Training Category Code
17-2111.03	Product Safety Engineers	5
17-2112.00	Industrial Engineers	5
17-2121.00	Marine Engineers and Naval Architects	5
17-2121.01	Marine Engineers	5
17-2121.02	Marine Architects	5
17-2131.00	Materials Engineers	5
17-2141.00	Mechanical Engineers	5
17-2151.00	Mining and Geological Engineers, Including Mining Safety Engineers	5
17-2161.00	Nuclear Engineers	5
17-2171.00	Petroleum Engineers	5
19-1010.00	Agricultural and Food Scientists	5
19-1011.00	Animal Scientists	5
19-1012.00	Food Scientists and Technologists	5
19-1013.01	Plant Scientists	5
19-1013.02	Soil Scientists	5
19-1020.00	Biological Scientists	5
19-1020.01	Biologists	5
19-1023.00	Zoologists and Wildlife Biologists	5
19-1031.00	Conservation Scientists	5
19-1031.01	Soil Conservationists	5
19-1031.02	Range Managers	5
19-1031.03	Park Naturalists	5
19-1032.00	Foresters	5
19-2021.00	Atmospheric and Space Scientists	5
19-2031.00	Chemists	5
19-2032.00	Materials Scientists	5
21-1021.00	Child, Family, and School Social Workers	5
21-1022.00	Medical and Public Health Social Workers	5
21-1092.00	Probation Officers and Correctional Treatment Sp	5
21-2021.00	Directors, Religious Activities and Education	5
23-2092.00	Law Clerks	5
25-2012.00	Kindergarten Teachers, Except Special Education	5
25-2021.00	Elementary School Teachers, Except Special Education	5
25-2022.00	Middle School Teachers, Except Special and Vocational Education	5
25-2031.00	Secondary School Teachers, Except Special and Vocational Education	5
25-2041.00	Special Education Teachers, Preschool, Kindergarten and Elementary	5
25-2042.00	Special Education Teachers, Middle School	5

O*NET-SOC Code	O*NET-SOC Title	Education & Training Category Code
25-2043.00	Special Education Teachers, Secondary School	5
25-3011.00	Adult Literacy, Remedial Education, and GED Teachers and Instructors	5
25-4013.00	Museum Technicians and Conservators	5
25-9021.00	Farm and Home Management Advisors	5
27-1014.00	Multi-Media Artists and Animators	5
27-1021.00	Commercial and Industrial Designers	5
27-1022.00	Fashion Designers	5
27-1024.00	Graphic Designers	5
27-1025.00	Interior Designers	5
27-1027.00	Set and Exhibit Designers	5
27-1027.01	Set Designers	5
27-1027.02	Exhibit Designers	5
27-3031.00	Public Relations Specialists	5
27-3041.00	Editors	5
27-3042.00	Technical Writers	5
27-3043.00	Writers and Authors	5
27-4032.00	Film and Video Editors	5
29-1031.00	Dietitians and Nutritionists	5
29-1071.00	Physician Assistants	5
29-1122.00	Occupational Therapists	5
29-1125.00	Recreational Therapists	5
29-2011.00	Medical and Clinical Laboratory Technologists	5
29-2091.00	Orthotists and Prosthetists	5
29-9010.00	Occupational Health and Safety Specialists and Technicians	5
29-9091.00	Athletic Trainers	5
33-3021.03	Criminal Investigators and Special Agents	5
39-9032.00	Recreation Workers	5
41-3021.00	Insurance Sales Agents	5
41-3031.01	Sales Agents, Securities and Commodities	5
41-3031.02	Sales Agents, Financial Services	5
41-9031.00	Sales Engineers	5
53-2011.00	Airline Pilots, Copilots, and Flight Engineers	5

Appendix E: SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);

b. Apprenticeship training (for apprenticeable jobs only);

c. In-plant training (organized classroom study provided by an employer);

d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);

e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	*Time*
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Source: *DICTIONARY OF OCCUPATIONAL TITLES (4th Ed., Rev. 1991)* -- APPENDIX C

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Appendix F: Check Sheet for Employer-Provided Wage Surveys

Employer-provided surveys cannot be considered if a union agreement covers the wage rates for the job opportunity where the worker will be employed.

Current wage determination in the area under the Davis-Bacon or McNamara-O'Hara Service Contract Acts can be submitted.

Published surveys or surveys conducted by employers can be submitted.

Written documentation on the methodology of how the survey was conducted and the validity of the statistical methodology used to determine the wage must be made available when submitting a survey for consideration.

Surveys Must Meet the Following Criteria

- Data on which the wage is based must have been collected within 24 months of the publication date of the survey or, if the employer itself conducted the survey, within 24 months of the date the employer submits the survey to the NPWHC.

- A published survey must have been published within 24 months of the date of submission and it must be the most current edition of the survey with wage data that meet the criteria under this section.

- The survey data must represent similar jobs in the area of intended employment - the area within normal commuting distance of the place (address) of intended employment. The area surveyed can be expanded if the employer can show that there are an insufficient number of workers in the original area.
    - If the place of intended employment is within a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA), any place within the MSA or PMSA is deemed to be within the normal commuting distance of the place of intended employment.
    - All locations within a Consolidated Metropolitan Statistical Area (CMSA) will not automatically be deemed to be within normal commuting distances for prevailing wage purposes.
    - The borders of PMSAs, MSAs, or CMSAs are not controlling in the identification of the normal commuting area; an employer location just outside of the PMSA, MSA, or CMSA boundary may still be considered within normal commuting distance.

- The survey's job description must match the job description contained in the employer's request for acceptance to use the survey or other wage data for prevailing wage purposes.
    - The job description submitted on the request for acceptance of an employer-provided survey or other wage data will be used in determining the appropriate level of skill to be applied.

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- Cross Industry Wage Data - The wage data must have been collected across industries that employ workers in the occupation.

- The survey should produce an arithmetic mean (weighted average) of wages for workers in the appropriate occupational classification in the area of intended employment. If a mean is not available, the median can be used.

- The survey must identify a statistically valid methodology that was used to collect the data.

Suggested Survey Methodology

The following are suggested actions that should be taken to conduct a valid wage survey:

Obtain a valid directory of employers in the area of intended employment (or expanded area) that would most likely employ the occupation to be surveyed.

Identify the industries in which the occupation is likely to be found. Use the industry/occupation matrix available from the state's labor market information agency.

Count (or estimate) the number of employers in the applicable area.

Decide how many employers must be contacted to produce usable wage results from at least three employers and at least 30 workers. Results for 30 workers is the minimum acceptable sample; for most occupations there should be wage data for many more workers.

Divide the number of employers to be contacted (the sample) by the number of employers in the applicable industry (the universe).

Use the number calculated in this last step to methodically select a random sample of employers to contact. For example, if the number is one-tenth, select every tenth employer in the universe or listing of employers in the industry.

Design a survey form which includes: the definition of the particular occupation (see Appendix G for Terms and Definitions), the number of workers in the occupation, and the wage rate.

Contact all the employers in the sample (call, write, or fax) to obtain the wage rate and employment data for the occupation surveyed.

Prepare a summary table of the data collected. There should be columns for: the employer, number of workers, the wage rate, and the product of multiplying the number of workers times the wage rate. There should be a row for each employer that

responded to the survey. Add the data in the column showing the number of workers to get the total number of workers. Add the data in the column showing the product of workers times wage rate.

Calculate the weighed mean by dividing the total product by the total number of workers.

Survey Documentation

Provide documentation to include the:

- Sample frame size and source, sample selection procedures, survey job descriptions, and related information to allow a determination with regard to the adequacy of the data provided and its adherence to the criteria; and
- Methodology used for the survey to show that it is reasonable and consistent with recognized statistical standards and principles in producing a prevailing wage (e.g., contains a representative sample).

Appendix G: Prevailing Wage Determination Request Form

This appendix was superseded by putting the ETA Form 9141 into use for all non-agricultural prevailing wage requests as of January 01, 2010. The form and instructions can be found at the OFLC forms web site:
http://www.foreignlaborcert.doleta.gov/form.cfm

The form is at:
http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9141.pdf

The instructions at:
http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9141_General_Instructions.pdf

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OFLC Internal Use Only

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW006
EFFECTIVE DATE: 12 September 2013
SUBJECT: Request For Information (RFIs)

Purpose: The purpose of this SOP is to document the steps required to complete a Request For Information (RFI) for an employer submitted ETA Form 9141 with deficiency(ies), to request additional information or to request clarification in order to determine the appropriate SOC and prevailing wage. The process steps in this SOP are primarily executed by the Contract staff and Federal staff making case recommendations.

Background: All employer submitted ETA Form 9141 require certain mandatory fields as outlined in Attachment "A" (Application for Prevailing Wage Determination – ETA Form 9141). Additionally, there are times where additional information or clarification is needed, requiring the Analyst to prepare an RFI.

Statutory Requirement
20 CFR 655.10
20 CFR 656.40
Non-agricultural Prevailing Wage Guidance, November 2009

Procedure:

1. Login to the iCERT portal.

2. Select an individual 9141 Form for review.

3. For applications older than seven days that contain missing, incorrect or vague information in a mandatory or conditionally mandatory field, the Recommender will send an RFI. For applications requesting survey or CBA wages without the relevant documents, the Recommender will send an RFI. For RFI's issued during the appeals process, refer to PW11 Redeterminations and PW12 Center Director Review.

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4. Add Case Note:

   a) Create a case note, the "Title" of the note should be: RFI – (reason) either Survey, CBA, Job Description, Supervision etc., with either a Void Date or Suspense Date xx/xx/xx.

      i. **Example:** RFI E.a.5: VOID xx/xx/xx or RFI Survey SUSP xx/xx/xx.

   b) Select "Correspondence" as the category option.

   c) The note caption will read:

      i. The physical file audit yielded the same omitted, incorrect or vague information. The 9141 will move forward as a RFI. The deficiencies are: List each section of the 9141 Form that was omitted, incorrect, or vague. Example: Section a. Job Description (5.) job duties vague.

   d) Save the note.

5. From the Correspondence Tab.

   a) Select the Correspondence tab and click new email or letter. The Correspondence type will be: Email and the Template selection will be: Request for Further Information Email.

      Insert standard language created in the above case note (para 5.D.1) (After the 2nd paragraph from [Insert RFI Reason] to the end of the letter) using the language from the Email RFI Template using the following text:

      1. The deficiencies are: XXXXXXXX

      The employer must fully complete the section(s) listed above within 7 calendar days. If the National Prevailing Wage Center does not receive the response within 7 days, we will void the application. The employer may withdraw this application at any time and submit a new application.

      2. Use "Response to RFI P-000-00000-000000" as the subject for the e-mail.

      3. In addition, indicate that the National Prevailing Wage Center has permission to correct your ETA 9141 with the information you provide in your response.

      You must send the information requested to the following address: flc.pwd@dol.gov

With your response, please reference the following information:
- the PW Case Tracking Number,
- the legal business name of the employer, and
- the requestor contact name, telephone number and email address.

National Prevailing Wage Center

a. Upon inserting the standard language list the applicable deficiencies within the email. Update the case number listed within the email.
b. Select send to notify the employer of the RFI Action.
c. From the actual RFI correspondence link:
d. Select the detail icon and click the “response due” drop down to select 12 days –this will automatically populate the appropriate projected VOID date.
e. Close the 9141. (Move the case to HOLD)
f. The case will remain in the Hold Queue.

B. RFI Response Received

a. Select the applicable case from “my cases queue”.

b. Open the case and review the requested information provided within the RFI Response was properly reconciled on the application.

c. Proceed with recommendation and submission as normal.

d. RFI’s for surveys that were not received and have been released back to processing for an OES wage by Helpdesk.

e. Confirm worksheet and analyst notes are correct, submit and assign to the appropriate federal analyst processing cases with surveys both attached and not attached.

For Additional Templates for RFIs Refer to Addendum 1: PW06 RFI Addendum 1 - Templates and List of RFI Language.xlsx
S:\Standard_Operating_Procedures\Production

Template for VOID RFI

Template for Survey RFI

Template for standard ACWIA RFI

Template for Davis Bacon Act (DBA) RFI

Template for Redetermination RFI

Template for RFI for Center Director Review Cases

For the list of template RFI Language refer to Addendum 1:PW06 RFI Addendum 1 - Templates and List of RFI Language.xlsx
S:\Standard_Operating_Procedures\Production

Attachment A: Application for Prevailing Wage Determination ETA Form 9141 (U.S. Department of Labor)

Mandatory fields are shaded in red	Non-mandatory fields are not shaded
Conditionally Mandatory fields are shaded in yellow	

Attachment A: Application for Prevailing Wage Determination ETA Form 9141 (U.S. Department of Labor)

Please read and review the instructions carefully before completing this form and print legibly. A copy of the instructions can be found at http://www.foreignlaborcert.doleta.gov/.

A. Employment-Based Visa Information

1. Indicate the type of visa classification supported by this application *(Write classification symbol)*: *	

B. Requestor Point-of-Contact Information

1. Contact's last (family) name *	2. First (given) name *	3. Middle name(s) *
4. Contact's job title *		
5. Address 1 *		
6. Address 2		
7. City *	8. State *	9. Postal code *
10. Country *	11. Province (if applicable)	
12. Telephone number *	13. Extension	14. Fax Number
15. E-Mail Address		

C. Employer Information

1. Legal business name *		
2. Trade name/Doing Business As (DBA), if applicable §		
3. Address 1 *		
4. Address 2		
5. City *	6. State *	7. Postal code *
8. Country *	9. Province (if applicable)	
10. Telephone number *	11. Extension	
12. Federal Employer Identification Number (FEIN from IRS) *	13. NAICS code (must be at least 4-digits) *	

D. Wage Processing Information

1. Is the employer covered by ACWIA? *	❑ Yes ❑ No
2. Is the position covered by a Collective Bargaining Agreement (CBA)? *	❑ Yes ❑ No
3. Is the employer requesting consideration of Davis-Bacon (DBA) or McNamara Service Contract (SCA) Acts? *	❑ Yes ❑ No ❑ DBA ❑ SCA

D. Wage Processing Information (cont.)

4. Is the employer requesting consideration of a survey in determining the prevailing wage? *	❑ Yes ❑ No
4a. Survey Name: *§*	
4b. Survey date of publication: *§*	

E. Job Offer Information

a. Job Description:

1. Job Title *	
2. *Suggested* SOC (ONET/OES) code *	2a. *Suggested* SOC (ONET/OES) occupation title *
3. Job Title of Supervisor for this Position (if applicable) *§*	
4. Does this position supervise the work of other employees? * ❑ Yes ❑ No	4a. If "Yes", number of employees worker *§* will supervise: _____
4b. If "Yes", please indicate the level of the employees to be supervised:	❑ Subordinate ❑ Peer
5. Job duties – Please provide a description of the duties to be performed with as much specificity as possible, including details regarding the areas/fields and/or products/industries involved. A description of the job duties to be performed **MUST** begin in this space. *	
6. Will travel be required in order to perform the job duties? * ❑ Yes ❑ No	6a. If "Yes", please provide details of the travel required, such as the area(s), frequency and nature of the travel. *§*

E. Job Offer Information (cont.)

b. Minimum Job Requirements:

1. Education: minimum U.S. diploma/degree required * ☐ None ☐ High School/GED ☐ Associate's ☐ Bachelor's ☐ Master's ☐ Doctorate (PhD) ☐ Other degree (JD, MD, etc.)	
1a. If "Other degree" in question 1, specify the diploma/ degree required §	1b. Indicate the major(s) and/or field(s) of study required § (May list more than one related major and more than one field)
2. Does the employer require a second U.S. diploma/degree? *	❑ Yes ❑ No
2a. If "Yes" in question 2, indicate the second U.S. diploma/degree and the major(s) and/or field(s) of study required §	
3. Is training for the job opportunity required? *	❑ Yes ❑ No
3a. If "Yes" in question 3, specify the number of months of training required §	3b. Indicate the field(s)/name(s) of training required § (May list more than one related field and more than one type)
4. Is employment experience required? *	❑ Yes ❑ No
4a. If "Yes" in question 4, specify the number of months of experience required §	4b. Indicate the occupation required §
5. Special Requirements - List specific skills, licenses/certificates/certifications, and requirements of the job opportunity. *	

c. Place of Employment Information:

1. Worksite address 1 *	
2. Address 2	
3. City *	4. County *
5. State/District/Territory *	6. Postal code *
7. Will work be performed in multiple worksites within an area of intended employment or a location(s) other than the address listed above? *	❑ Yes ❑ No
7a. If "Yes", identify the geographic place(s) of employment indicating each metropolitan statistical area (MSA) or the independent city(ies)/township(s)/county(ies) (borough(s)/parish(es)) and the corresponding state(s) where work will be performed. If necessary, submit a second completed ETA Form 9141 with a listing of the additional anticipated worksites. Please note that wages cannot be provided for unspecified/unanticipated locations.§	

D. Wage Processing Information (cont.)

4. Is the employer requesting consideration of a survey in determining the prevailing wage? *	❑ Yes ❑ No
4a. Survey Name: *§*	
4b. Survey date of publication: *§*	

E. Job Offer Information

a. Job Description:

1. Job Title *	
2. *Suggested* SOC (ONET/OES) code *	2a. *Suggested* SOC (ONET/OES) occupation title *
3. Job Title of Supervisor for this Position (if applicable) *§*	
4. Does this position supervise the work of other employees? * ❑ Yes ❑ No	4a. If "Yes", number of employees worker *§* will supervise: _____
4b. If "Yes", please indicate the level of the employees to be supervised:	❑ Subordinate ❑ Peer
5. Job duties – Please provide a description of the duties to be performed with as much specificity as possible, including details regarding the areas/fields and/or products/industries involved. A description of the job duties to be performed **MUST** begin in this space. *	
6. Will travel be required in order to perform the job duties? * ❑ Yes ❑ No	6a. If "Yes", please provide details of the travel required, such as the area(s), frequency and nature of the travel. *§*

E. Job Offer Information (cont.)

b. Minimum Job Requirements:

1. Education: minimum U.S. diploma/degree required * ☐ None ☐ High School/GED ☐ Associate's ☐ Bachelor's ☐ Master's ☐ Doctorate (PhD) ☐ Other degree (JD, MD, etc.)	
1a. If "Other degree" in question 1, specify the diploma/ degree required §	1b. Indicate the major(s) and/or field(s) of study required § (May list more than one related major and more than one field)
2. Does the employer require a second U.S. diploma/degree? *	❑ Yes ❑ No
2a. If "Yes" in question 2, indicate the second U.S. diploma/degree and the major(s) and/or field(s) of study required §	
3. Is training for the job opportunity required? *	❑ Yes ❑ No
3a. If "Yes" in question 3, specify the number of months of training required §	3b. Indicate the field(s)/name(s) of training required § (May list more than one related field and more than one type)
4. Is employment experience required? *	❑ Yes ❑ No
4a. If "Yes" in question 4, specify the number of months of experience required §	4b. Indicate the occupation required §
5. Special Requirements - List specific skills, licenses/certificates/certifications, and requirements of the job opportunity. *	

c. Place of Employment Information:

1. Worksite address 1 *	
2. Address 2	
3. City *	4. County *
5. State/District/Territory *	6. Postal code *
7. Will work be performed in multiple worksites within an area of intended employment or a location(s) other than the address listed above? *	❑ Yes ❑ No
7a. If "Yes", identify the geographic place(s) of employment indicating each metropolitan statistical area (MSA) or the independent city(ies)/township(s)/county(ies) (borough(s)/parish(es)) and the corresponding state(s) where work will be performed. If necessary, submit a second completed ETA Form 9141 with a listing of the additional anticipated worksites. Please note that wages cannot be provided for unspecified/unanticipated locations.§	

F. Prevailing Wage Determination

FOR OFFICIAL GOVERNMENT USE ONLY		
1. PW tracking number		2. Date PW request received
3. SOC (ONET/OES) code	3a. SOC (ONET/OES) occupation title	
4. Prevailing wage $ _____ . ____		4a. OES Wage level ☐ I ☐ II ☐ III ☐ IV ☐ N/A
5. Per: (Choose only one) ☐ Hour ☐ Week ☐ Bi-Weekly ☐ Month ☐ Year ☐ Piece Rate		
5a. If Piece Rate is indicated in question 2, specify the wage offer requirements :*		
6. Prevailing wage source (Choose only one) ❑ OES (All Industries) ❑ OES (ACWIA – Higher Education) ❑ CBA ❑ DBA ❑ SCA ❑ Other/Alternate Survey		
6a. If "Other/Alternate Survey" in question 7, specify		
7. Additional Notes Regarding Wage Determination		
8. Determination date	9. Expiration date	

F. OMB Paperwork Reduction Act *(1205-0466)*

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's reply to these reporting requirements is mandatory to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 101). Public reporting burden for this collection of information is estimated to average 55 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Foreign Labor Certification * U.S. Department of Labor * Room C4312 * 200 Constitution Ave., NW, * Washington, DC * 20210. **Do NOT send the completed application to this address.**

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE EVENT LOG

PW06

Revision Date	Section Number	Comments
1/28/2013	Section 6	Created Template for Survey RFIs
3/19/2013	Section 6	Created Template for OSD RFIs
9/12/2013	New 9141 Form	New 9141 Form Sample
1/13/2014	Purpose	The process steps in this SOP are primarily executed by the Federal and Contract staff
4/30/2014	Administrative	Updated header to "OFLC Internal Use Only" and page numbers.
12/9/2014	Section 5	Updated void language in initial RFI correspondence.
3/17/15	Section 6	Added IT related RFI language
3/27/15	Section	Updated ACWIA RFI language.
6/5/15	Section 5	Added Addendum 1
6/8/15	Section 5	Removed RFI language and templates(now listed in the addendum)
6/9/15	Section 5	Corrected Links to Addendum
6/20/16	Entire SOP	Formatting Updates

AILA Doc. No. 18010230. (Posted 1/2/18)

OFLC Internal Use Only

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW07
EFFECTIVE DATE: 20 September 2012
SUBJECT: Prevailing Wage SOP – ACWIA Coverage

Purpose: The purpose of this document is to outline the procedures to establish and maintain a listing of ACWIA wage employer institution and wage assignments.

Background: The NPWC must issue an ACWIA wage for all institutions of higher education and research entities covered by ACWIA. Federal analysts review identified employers for ACWIA coverage referencing 20 CFR 656.40(e)(1) and ACWIA Affiliated FAQ.

Internal Controls:
As part of the internal controls process, the NPWC produces daily and weekly productivity reports which are shared with the National Office. Such reports are used to ensure NPWC productivity is consistent with this Standard Operating Procedure.

Statutory Requirement
20 CFR 656.40(e)(1)
PWD Processing Directive No.03
ACWIA Affiliated FAQ
Non-agricultural Prevailing Wage Guidance, November 2009

Contents:
Part I
Determining ACWIA Coverage Procedure
Non ACWIA SME Team

Part II
Determining ACWIA Coverage Procedure
ACWIA SME Team

References:
Addendum 1: 20 CFR 656.40(e)(1)
Addendum 2: ACWIA Affiliated FAQ
Event log: Standard Operating Procedures event log

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AILA Doc. No. 18010230. (Posted 1/2/18)

Procedure

Part One
Determining ACWIA Coverage Procedure
Non ACWIA SME Team:
Note: ACWIA coverage requests in appeals see section A. 3. ii

A. Standard Look Up Procedure

1. Analyst reviews the Decision Support System (DSS) and ETA Form 9141 for possible indications of an ACWIA covered employer. Employers that meet any of the following criteria may be an ACWIA covered employer:
    i. Have 'College' or 'University' in their name.
    ii. Have a government agency in their name.
    iii. Have a NAICS of
        1. 611310
        2. 622110
        3. 622310
        4. 541712
        5. 541711
    iv. Is a research organization and indicated their affiliation and non-profit status.
    v. Includes a statement requesting the ACWIA wage.
    vi. Includes supporting ACWIA documentation
2. If the employer meets any of the ACWIA criteria listed above, proceed to next step. If the employer does not meet any of the ACWIA criteria above, proceed with case processing.
3. Check for ACWIA Coverage in the DSS and the Reference Application Note for PW Ref App: Use the FEIN located on the 9141 form, enter it into the "Find ACWIA Employer" section of the PWRA and select "Find Employer."
    i. *Covered*-issue ACWIA wage
    ii. *Not Covered*-issue All Industries OES wage except when the employer submits supporting ACWIA documentation or when the status is *Pending Validation.* If one of the two exceptions is met follow the steps below.
        1. Email the designated ACWIA SME Team members with the case number, employer's name, and FEIN.
        2. Add a Case Note and place the case in HOLD
            a. Title: ACWIA Coverage Request;
            b. Category: Correspondence;
            c. Note: Employer's information sent to ACWIA SME Team for coverage
            d. Set a 3 day suspense date
4. If the ACWIA SME Team requests a RFI, proceed to the next step

B. Sending an ACWIA RFI
    1. Analyst will add a case note, place the case in HOLD, and follow the standard RFI Procedures (See RFI SOP located at S:\Standard_Operating_Procedures\Production)
        i. Title: ACWIA RFI
        ii. Category: Correspondence
        iii. Note: ACWIA RFI sent.
    2. Analyst will use the ACWIA RFI language given to them by the ACWIA SME team member;
    3. If No ACWIA language is given, Analyst will use the standard ACWIA RFI language: The status of the employer in regards to coverage under the ACWIA wage provisions is unclear. Please provide documentation the entity meets one of the definitions under 656.40(e)(1) [paraphrased below]: (i) the employer is a non-profit college or university issuing a bachelor's degree or a two year program leading to a four year degree (ii) an affiliated [with a covered college or university] non-profit entity with a shared governing body (iii) the employer is a non-profit or government organization primarily engaged in research in the sciences, social sciences, or humanities.

Part Two: Administration of Proactive ACWIA Reports and Data
Determining ACWIA Coverage Procedure
ACWIA SME Team

A. Designated contract staff runs a report that includes ACWIA cases requiring coverage check every Wednesday. The report is titled: “EIN Not Found.”
B. The report is sent to the ACWIA SME Team, Contractor Supervisors, Federal Supervisors and Center Director.
    1. The “EIN Not Found” report generally includes:
        a. Cases that indicate one of the NAICS codes from the ACWIA directive but the employer is not in the Reference Application.
        b. Cases that meet one of the queried criteria (i.e. University in the name)
        c. Cases where the employer is specifically requesting ACWIA
        d. Cases that have uploaded ACWIA documentation and the case is either “Pending” or “Not Eligible” in the Reference Application.
C. On the following day (Thursday), a designated contract staff member will run a report to capture the cases needing RFI’s for ACWIA.
    1. The Helpdesk and/or the contract Team Leads will issue the RFI’s for ACWIA based on the report.
        a. Case Note for RFI:
            i. Title: “RFI Reason ACWIA Documentation SUSP MM/DD”
            ii. Category: “Correspondence”
            iii. Note: Insert the standard ACWIA RFI language (and if appropriate any other deficiency noted in the case note from the Federal Analyst).
                Standard ACWIA RFI Language:

"The status of the employer in regards to coverage under the ACWIA wage provisions is unclear. Please provide documentation the entity meets one of the definitions under 656.40(e)(1) [paraphrased below]:
(i) the employer is a non-profit college or university issuing a bachelor's degree or a two year program leading to a four year degree
(ii) an affiliated [with a covered college or university] non-profit entity with a shared governing body
(iii) the employer is a non-profit or government organization primarily engaged in research in the sciences, social sciences, or humanities."

2. When the RFI response comes in:
   a. Helpdesk notifies the ACWIA SME Team via e-mail and copies the contract Team Leads.
      i. The Helpdesk uses the following language in the e-mail:
         1) "We are in receipt of a response to the RFI for the above referenced case, uploaded for your approval and in HOLD pending your direction."
   b. If the RFI response is insufficient:
      i. The ACWIA SME Team notifies the contract Team Leads about the deficiencies
      ii. The Helpdesk will send insufficient language to the employer (see Helpdesk SOP)
3. Once all the action has been taken by the ACWIA SME Team, the Helpdesk releases the case from the HOLD queue and assigns to the appropriate Recommending Analyst.

I. Part Three: Proactive ACWIA Report Procedure – ACWIA SME Team
   A. One of the ACWIA SME team members will save a copy of the "EIN Not Found Report" to "S:\CO Use\ACWIA\Proactive ACWIA Reports" with the current date.
      i. The primary ACWIA SME shall evenly assign ACWIA cases among the active ACWIA team by color coding employers.
      ii. The primary ACWIA SME shall save the report as a "shared" document.
   B. The ACWIA SME will review the employer for ACWIA coverage using the Standard ACWIA Look up Procedures as outlined in Part Four below.
      i. If an RFI for ACWIA coverage is needed:
         1. The CO places the case in HOLD; **Note:** In order to move the case to the HOLD queue, the CO must reassign the case to his/herself first and then move the case to hold from his/her queue) with the following case note:
            a. Title: "ACWIA RFI"
            b. Category: "Correspondence"

c. Note: "ACWIA RFI requested.
d. Standard ACWIA RFI Language added in the case note:

"The status of the employer in regards to coverage under the ACWIA wage provisions is unclear. Please provide documentation the entity meets one of the definitions under 656.40(e)(1) [paraphrased below]:

i. the employer is a non-profit college or university issuing a bachelor's degree or a two year program leading to a four year degree
ii. an affiliated [with a covered college or university] non-profit entity with a shared governing body
iii. the employer is a non-profit or government organization primarily engaged in research in the sciences, social sciences, or humanities. "

e. There may be other deficiencies in the case and these must be listed in the case notes as well.
    i. If there are no other deficiencies in the case, please add a note stating "No Other Deficiencies."

C. Reviewing an ACWIA RFI Response
    i. The ACWIA SME Team opens the case from the HOLD queue to review all responses.
    ii. The ACWIA SME Team will save the ACWIA documentation to the S: Drive in the following location: S:\CO Use\ACWIA\ACWIA Supporting Documents
    iii. The ACWIA SME Team makes the ACWIA coverage determination (See Part Four, B. Determining if an Employer is Covered by ACWIA) and updates the Reference Application (see Part Three, C. Updating the PW Reference Application).
    iv. The ACWIA SME Team will reply to the original Helpdesk e-mail notifying the Helpdesk, the contract Team Leads, ACWIA SME Team, and Federal Supervisors of the determined ACWIA status.

D. When an ACWIA Coverage determination has been made from the ACWIA RFI response, the ACWIA SME will add a case note with the following:

a. Title: ACWIA Coverage Determination
b. Category: Decision
c. Note: ACWIA covered or not covered (depending on the outcome). "The Reference Application has been updated accordingly." Include an

explanation of what has been re-evaluated and/or updated.

E. The ACWIA SME will update the Reference Application with the determined ACWIA status (see Part IV.A.4.- Updating the PW Reference Application).
F. The ACWIA SME will also update the case status in the "EIN Not Found" excel spreadsheet.

II. Part Four: Standard ACWIA Look Up Procedure -ACWIA SME Team Initiated upon Review of PW07 Part 1, Part 2, or Part 3

A. Standard ACWIA Look Up Procedure
1. Locate the FEIN and case number on either the Coverage Request e-mail or the weekly proactive report, whichever is applicable.
2. Open the case in iCERT in the "PW Utilities" section using the case number
   a. Check for supporting ACWIA documentation in the "Correspondence" and/or "Case Document" sections of the PWD.
      i. Supporting ACWIA documentation needs to be saved at: S:\CO Use\ACWIA\ACWIA Supporting Documents
3. Check the ACWIA status of the employer in the PWRA: Select "Find ACWIA Employer" in the PWRA, enter the FEIN, and select "Find Employer."
   a. Entry indicates "Eligible"
      i. An ACWIA coverage decision has already been made, but double-check the information in the "Notes" section for accuracy. Make edits if necessary by using the "Edit" button.
   b. Entry indicates "Not Eligible"
      i. An ACWIA coverage decision has already been made but double-check the information in the "Notes" section for accuracy and evaluate any additional supporting ACWIA documentation submitted with the corresponding case.
      ii. If there is additional ACWIA supporting documentation submitted, re-evaluate the employer for ACWIA coverage using the steps below in section IV.B. Determining if an employer is covered by ACWIA.
   c. Entry indicates "Pending Validation"
      i. Check the notes for cases that may be pending an ACWIA RFI and/or other pertinent information to the ACWIA coverage decision such as supporting ACWIA documentation.
      ii. Evaluate the employer for ACWIA coverage using the steps below in section IV.B. Determining if an employer is covered by ACWIA.
   d. "Not Found" result
      i. Add a new record by entering the FEIN in the "EIN" section and selecting "Add Employer." Add the "Business Name" gathered from the 9141 form.
      ii. Evaluate the employer for ACWIA coverage using the steps below in section IV.B. Determining if an employer is covered by ACWIA.

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e. Multiple employers with the same FEIN
    i. There may be multiple employers listed under one FEIN. If the employer's name on the 9141 does not match the FEIN record in the PWRA, add a new record (follow step 4 below. for updating the PWRA)
    ii. Evaluate the employer for ACWIA coverage – see section IV.B below -Determining if an employer is covered by ACWIA.

4. Updating the PW Reference Application
    a. Open PW Reference Application and select "Find ACWIA Employer".
    b. Enter the Federal Employer Identification Number (FEIN) number in the field "EIN", and select "Find Employer" to see if a record exists.
    c. If no record exists
        i. Select "Add Employer".
        ii. Enter the employer's FEIN number in the field "EIN".
        iii. Enter the employer's name in the field "Business Name".
        iv. Enter the location of the supporting documents in the field "Location of Supporting Documents".
        v. Note the employer's ACWIA status.
            1) If the employer is ACWIA covered
                (i) Select "Eligible".
                (ii) Enter determination justification in the "Notes" field.
            2) If the employer is NOT ACWIA covered
                (i) Select "Not Eligible".
                (ii) Enter determination justification in the "Notes" field.
            3) If a RFI was deemed necessary
                (i) Select "Pending Validation".
                (ii) Enter specific notes in the "Notes" field including a case number and date.
    d. If a record exists
        i. Select "Edit" on the record and make modifications and add notes as necessary.
        ii. After all notes and modifications are entered, select "Save and Exit".
    e. After all notes and modifications are entered, select "Save and Exit".
5. Actions for ACWIA coverage request e-mails
    a. Reply to email indicating the ACWIA Coverage determination
        i. CC federal supervisors, contract supervisors and other ACWIA SME Team members.
        ii. The ACWIA SME Team must respond to the ACWIA coverage request email within three business days
    b. Add a case note with the following
        i. Title: ACWIA Coverage Determination
        ii. Category: Decision
        iii. Note: ACWIA covered or not covered (depending on the outcome). "The Reference Application has been updated accordingly."

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Include an explanation of what has been re-evaluated and/or updated.

III. Part Five: Determining if an Employer is Covered by ACWIA-ACWIA SME Team Initiated upon Review of PW07 Part 1, Part 2, Part 3, or Part 4

A.

B. The employer must meet one or more of the definitions in 20 CFR § 656.40(e)(1)
   1. See Addendum 1 for 20 CFR § 656.40(e)(1) definitions
   2. Also see Addendum 2 - ACWIA Affiliated FAQ - for helpful hints in determining 20 CFR § 656.40(e)(1)(ii)

C. Examine any supporting ACWIA documentation as well as conduct website research to determine if the employer is ACWIA coverage.

D. Verify that the address on the 9141 matches the address on the internet search. Many employers have similar names but the address will help distinguish them.
   3. See Addendum 1 for 20 CFR § 656.40(e)(1)

D. If the submitted documents and internet research are insufficient to render an ACWIA coverage decision, a RFI is appropriate.
   a. Part III, section B outlines the process for sending a RFI from a case from the proactive report.
   b. For ACWIA coverage email requests, reply to the email requesting the analyst to send a RFI for ACWIA using the standard ACWIA RFI language referenced in Part I.D.3.
   c. Update the PWRA for the employer indicating “Pending Validation” and include the case number, date, and explanation for RFI in the notes section.

E. Add a Case Note indicating the determined ACWIA coverage
   1. Case Note
      a. Title: ACWIA Coverage Determination
      b. Category: Decision
      c. Note: ACWIA Covered or Not ACWIA covered.
   2. Update the PWRA accordingly based on section IV.A.4-Updating the PWRA.

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References:

- **Regulation**
  - 20 Code of Federal Regulation § 656.40(e)(1)
- **Reference Links for ACWIA Coverage Determination**
  - National Center of Education Statistics: http://nces.ed.gov/globallocator/
  - U.S. Department of Education- The Database of Accredited Postsecondary Institutions and Programs: http://www.ope.ed.gov/accreditation/Search.aspx
- **Processing Directive**
  - PWD Processing Directive No.03: S:\Internal Directives\PWD Processing Directive No 03 06May2010 Final
- **ACWIA Affiliated FAQ**
  - S:\CO Use\ACWIA\Policy and Procedure Workarea

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Addendum 1

20 CFR 656.40(e)(1)

Institutions of higher education and research entities. In computing the prevailing wage for a job opportunity in an occupational classification in an area of intended employment for an employee of an institution of higher education, or an affiliated or related nonprofit entity, a nonprofit research organization, or a Governmental research organization, the prevailing wage level takes into account the wage levels of employees only at such institutions and organizations in the area of intended employment.
(1) The organizations listed in this paragraph (e) are defined as follows:
(i) Institution of higher education means an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965. Section 101(a) of that Act, 20 U.S.C. 1001(a)(2000), provides an institution of higher education is an educational institution in any state that:
(A) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
(B) Is legally authorized within such state to provide a program of education beyond secondary education;
(C) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;
(D) Is a public or other nonprofit institution; and
(E) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined there is satisfactory assurance the institution will meet the accreditation standards of such an agency or association within a reasonable time.
(ii) Affiliated or related nonprofit entity means a nonprofit entity (including but not limited to a hospital and a medical or research institution) connected or associated with an institution of higher education, through shared ownership or control by the same board or federation, operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary.
(iii) Nonprofit research organization or Governmental research organization means a research organization that is either a nonprofit organization or entity primarily engaged in basic research and/or applied research, or a United States

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Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or commercial interest. It may include research and investigation in the sciences, social sciences, or humanities. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. It may include research and investigation in the sciences, social sciences, or humanities.

(2) Nonprofit organization or entity, for the purpose of this paragraph (e), means an organization qualified as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6) (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)), and which has received approval as a tax exempt organization from the Internal Revenue Service, as it relates to research or educational purposes.

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Addendum 2

ACWIA Affiliated FAQ

Q: What documentation does NPWC require in order to show an employer meets the Department's Regulations at 20 CFR §656(e)(1)(ii) Affiliated or related nonprofit entity?

The NPWC researches entities that may be covered by the wage provisions of ACWIA using the WWW. When the a definitive decision cannot be reached, the NPWC will ask the requestor listed on the ETA Form 9141 for documentation showing how the employer meets the definition as set forth in Departmental regulations.

The first test is the non-profit status of the employer. An IRS issued letter stating the employer, under the FEIN on the application, has an appropriate non-profit status is sufficient.

Documentation showing affiliation through any of the following:

1) Shared ownership either directly or by a parent entity. This includes branch, subsidiary and cooperative relationships.
2) An oversight group (board, committee, et al) has the authority to direct the members.
3) An agreement exists requiring a position to have decision making authority in both entities – example: The position of Chief of Radiology at the Hospital will also be the Chair of the Radiology Department at the Medical School.
4) Responsibility for conducting the qualifying activity is shared - example: The Medical School and the Hospital shall jointly establish the curricula for medical resident and fellowship programs. This includes situations where several entities are involved such as a residency program where specific portions take place at separate hospitals and/or medical schools where the overall program is combined.

When the documentation shows the situations below, without any from above, then ACWIA wage coverage is not indicated:

1) Agreements where the institution of higher education is in essence 'renting space' from the requesting entity. Example statement: The Hospital will allow access to its facilities at the reimbursement rate negotiated each year and will remit appropriate charges for medical services provided to the Medical School.

2) Conferring of unpaid faculty status upon a person in the employ of the requesting entity by an institution of higher education.
3) The number cross-designated employees in relation to the total in the particular program is a relevant factor. When a requesting employer has a notable number of employees cross-designated with an institution of higher education, especially when combined with a notable number of participants, then ACWIA wage coverage is indicated. Conversely when the numbers are low then coverage is not indicated. An example: a mid-sized hospital has a single surgeon with part time faculty status with a particular medical school and a single fellow in training then the number of cross-designated employees and the number of participants is small enough to indicate ACWAI wage coverage is not appropriate.

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Internal Use Only

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE EVENT LOG

PW07 – ACWIA

DRAFT

Revision Date	Section Number	Comments
3/19/13	Internal Controls	Added “Internal Controls” section and statement on page one.
3/19/13	Part Two, Sections A.3.b.i and A.4.a-d	Changed “Federal Analyst” to “ACWIA SME Team”
4/30/2014	OFLC Internal Use Only	Added “ OFLC Internal Use Only” to the first page
4/30/2014	Contents	Updated pages in “Contents” section on page one
5/6/2014	All	Rearranged content and formatting for better flow and updated to reflect current processes
2/22/2017	Procedure Part B	Changed case note title to state “ACWIA RFI”

DRAFT

AILA Doc. No. 18010230. (Posted 1/2/18)

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW09
EFFECTIVE DATE: Revised 7 MARCH 2013
SUBJECT: Analyst Guide - PWRA

Purpose

The purpose of this SOP is to document the steps necessary to use the PW Reference Application Database in order to assist the analyst and reviewers to make qualified and consistent prevailing wage reviews and recommendations. The process steps in this SOP are primarily executed by the Contract and Federal Staff.

Background

The PW Reference Application was developed to consolidate reference information into a single location in order to promote consistency and efficiency. Efficiency results from a single lookup location for the most common elements such as job zone, education and ACWIA information. Consistency is enhanced as some of the subjective decisions such as supervision and travel have been recorded by occupation. The worksheet case note is generated through the application for both a consistent look and feel as well as demonstrating a standard process.

Statutory Requirement

In accordance to the National Prevailing Wage Policy Guidance issued in November 2009 at section "OES Wage Levels", "[t]he NPWHC shall make a prevailing wage determination selecting one of the four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation.

It is important to remember that wage levels are determined only after selecting the most relevant O*NET SOC occupational code classification. The selection of the O*NET SOC code should not be based solely on the title of the employer's job offer. The NPWHC should consider the particulars of the employer's job offer and compare the full description to the tasks, knowledge, and work activities generally associated with an O*NET SOC occupation to insure the most relevant occupational code has been selected.

Contents

Part One – Overview for federal and contract analysts: The procedure below document the process used to determine a Prevailing Wage recommendation and/or determination after opening and reviewing a case in iCERT: (S:\Common\PW Reference)

AILA Doc. No. 18010230. (Posted 1/2/18)

I. **Find O*NET**: Once the analyst has opened and reviewed the 9141 application for corresponding documentation and eligibility criteria (accuracy and completeness) and has reviewed all mandatory fields on the 9141(See Internal Color Coded Form for guidance in training materials. Electronic copy stored on S:\Training Materials\ETA Form 9141 Mandatory Fields Marked.doc) the analyst is to then use the "Find O*NET" button in the PW Ref App Main Menu to create the corresponding worksheets (for recommenders) and/or confirm the selected SOC occupation to what the employer's job duties describe and confirm what is normal to the selected SOC (for reviewers).

II. **Find ACWIA Employer**: In the 9141the analyst must review the EIN (Section C.12.) and Employer (Section C) for ACWIA coverage (see SOP PW07 – ACWIA for complete instructions); in order to verify if the employer is a candidate for ACWIA coverage, the analyst will need to copy and paste the employer EIN from the 9141 (Section C.12) to the area in PW Ref App Main Menu – "Find ACWIA Employer" button. If the employer meets any of the following criteria they may be ACWIA Covered:
    A. Have 'College' or 'University' in their name.
    B. Have a government agency in their name.
    C. Have a NAICS of
        1. 611310
        2. 622110
        3. 622310
        4. 541712
        5. 541711
    D. Is a research organization and indicated their affiliation and non-profit status.
    E. Includes a statement requesting the ACWIA wage

III. **Occupation Group Reference**: The Occupation Group Reference tool allows analysts to select any occupation group or series in order to find helpful information about that occupational profile.

IV. **What's New**: The analyst is to read the "What's New" section each time they come into the PWRA to see if there is something they should open to notice what has changed or been added.

V. **Dictionary**: This tool represents a reference which contains an alphabetical list of words, with information given for each word that is useful to the NPWC analysts. So that when a word, abbreviation or acronym has a different meaning depending on the context, we may see the difference.

VI. **General Reference**: This tool is used when viable or different information is obtained on a SOC code which will help analysts make a practical decision in coding and leveling on the PW 9141 Form.

VII. **Find SCA**: The analyst may use this tool to find SCA cross walk codes that are comparable to O*NET SOC codes.

VIII. **Survey Worksheet:** The analyst may use this tool for the Employer Provided Survey – Check Sheet for when an employer provides a survey; however currently this function is not being used.

IX. **DBA Info**: Davis Bacon Survey Information, this tool was used during the **New Rule Effect**; however it is currently not being used.

Part Two – Overview for federal staff only – "How to Enter"

I. What's New
II. Occupation Group Reference
III. General Reference
IV. General Items
V. Dictionary
VI. Find O*Net

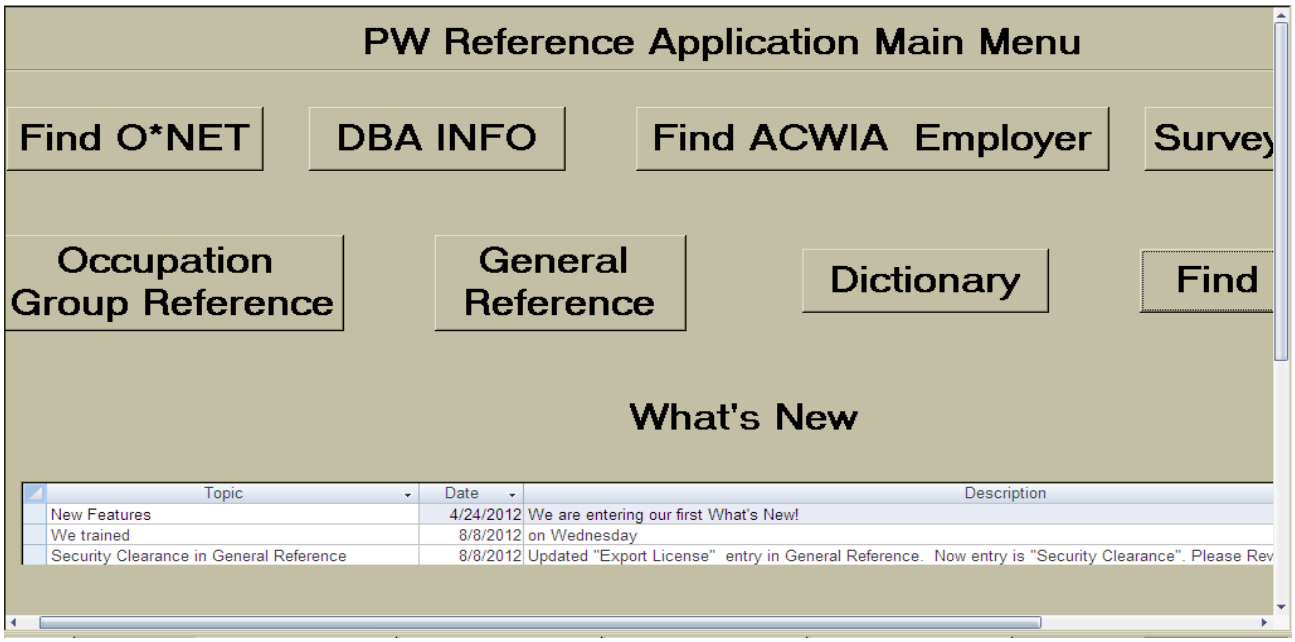


Fig.1 (PW Reference Application Main Menu screen)

Procedure

I. Find O*NET (*Fig.2*)

Feature Function: Once the analyst has opened and reviewed the 9141 application for corresponding documentation and eligibility criteria (accuracy and completeness) and has reviewed all mandatory fields on the 9141(See Internal Color Coded Form for guidance in training materials. Electronic copy stored on S:\Training Materials\ETA Form 9141 Mandatory Fields Marked.doc) the analyst is to then use the "Find O*NET" button in the PW Ref App Main Menu to create the corresponding worksheets (for recommenders) and/or confirm the selected SOC occupation to what the employer's job duties describe and confirm what is normal to the selected SOC (for reviewers).

a. In the PW Reference Application Main Menu select the **Find O*NET** button (*Fig.2*)
b. In the SOC Code location enter the needed 8 digit occupation code (v.2000) (format: xx-xxxx.xx) (*Fig.4*)
    i. **Note**: If you enter the 2010 SOC codes you will receive the following error message below (*Fig.3*):
c. Click the **Find Occupation** button (*Fig.4*)
d. Review the occupation information to make the appropriate SOC selection which closely matches the employer's job duties. (*Fig.4 and Fig.5*)
e. After deciding on an SOC selection, click **Create Worksheet Notes or landscape** (*Fig.6*)
    i. Enter the employer's requirements (*Fig.7 and Fig.8a - below*)
        1. **Experience** amount
        2. **Training** amount (if any)
        3. **Education** selection
            a. None, High School, Associate's, Bachelor's, Master's, Doctorate, Professional Degree
    ii. Select the type of **Supervision** described on the application
        1. None, Limited, Inherent
    iii. Enter the frequency and **area** of **travel** described on the application
        1. Incidental, Little, Limited, Some, Extensive
        2. Local, National, International
    iv. Mark "Yes" if a special skill point is warranted – otherwise mark "No"
        1. License
        2. Language
        3. Other Special
    v. Describe why an **Other Special** skill point was assigned
    vi. Enter general **Analyst Notes** such as why the occupation was chosen, etc…
    vii. Click the **Show Worksheet Notes** to create the worksheet notes
    viii. Copy from the **Worksheet Notes** section and paste into I-Cert case notes. (*Fig.8a and 8b*)
    ix. Close out of the screen and click **Exit** (*Fig.6*)

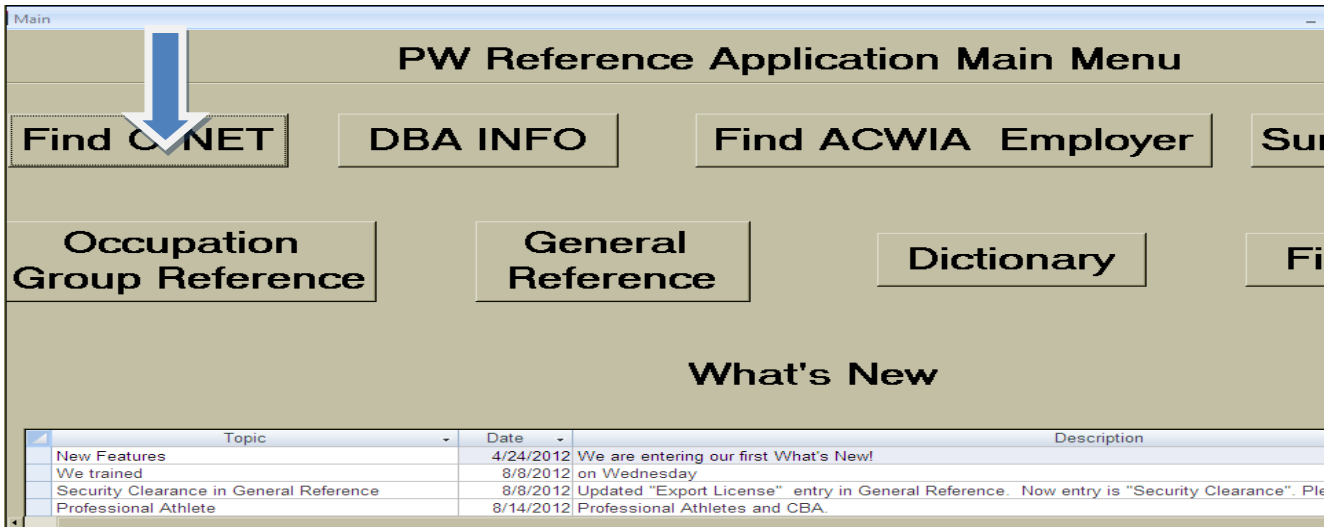

Main
PW Reference Application Main Menu
Find C*NET
DBA INFO
Find ACWIA Employer
Occupation Group Reference
General Reference
Dictionary
What's New
Topic
Date
Description
New Features
4/24/2012
We are entering our first What's New!
We trained
8/8/2012
on Wednesday
Security Clearance in General Reference
8/8/2012
Updated "Export License" entry in General Reference. Now entry is "Security Clearance".
Professional Athlete
8/14/2012
Professional Athletes and CBA

Fig.2

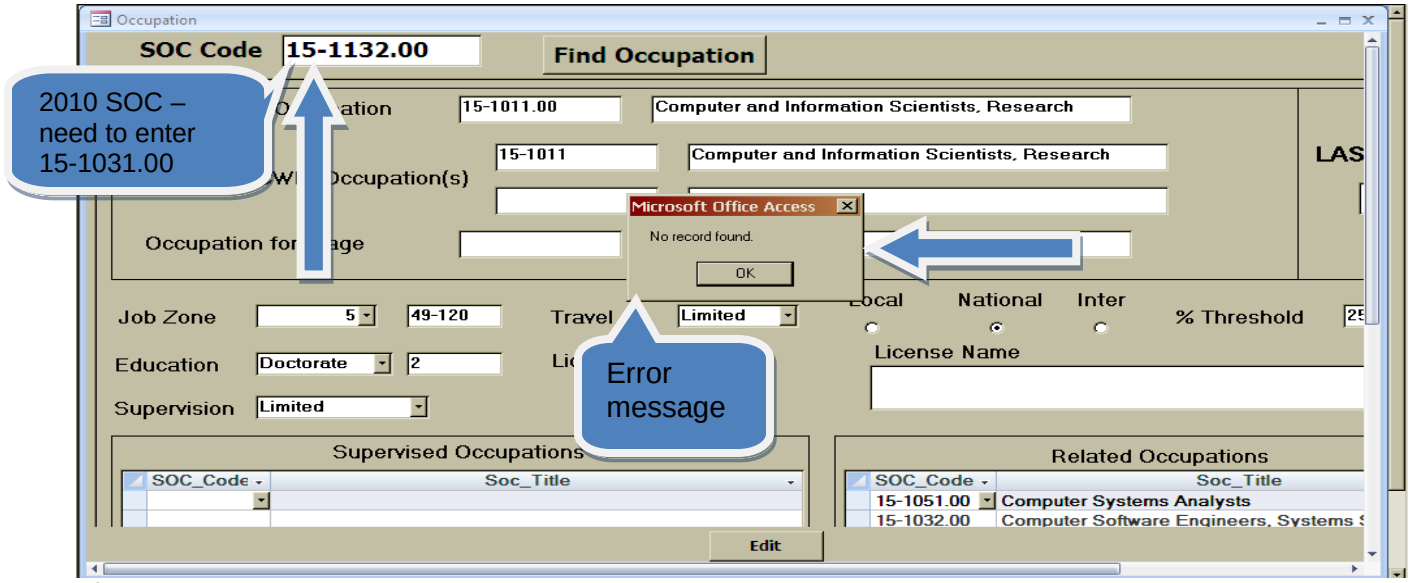

Occupation
SOC Code
15-1132.00
Find Occupation
2010 SOC – need to enter 15-1031.00
15-1011.00
Computer and Information Scientists, Research
15-1011
Computer and Information Scientists, Research
Occupation(s)
Occupation for
Microsoft Office Access
No record found.
OK
Job Zone
5
49-120
Travel
Limited
Local
National
Inter
% Threshold
Education
Doctorate
2
License Name
Supervision
Limited
Error message
Supervised Occupations
SOC_Code
Soc_Title
Related Occupations
SOC_Code
Soc_Title
15-1051.00
Computer Systems Analysts
15-1032.00
Edit

Fig.3

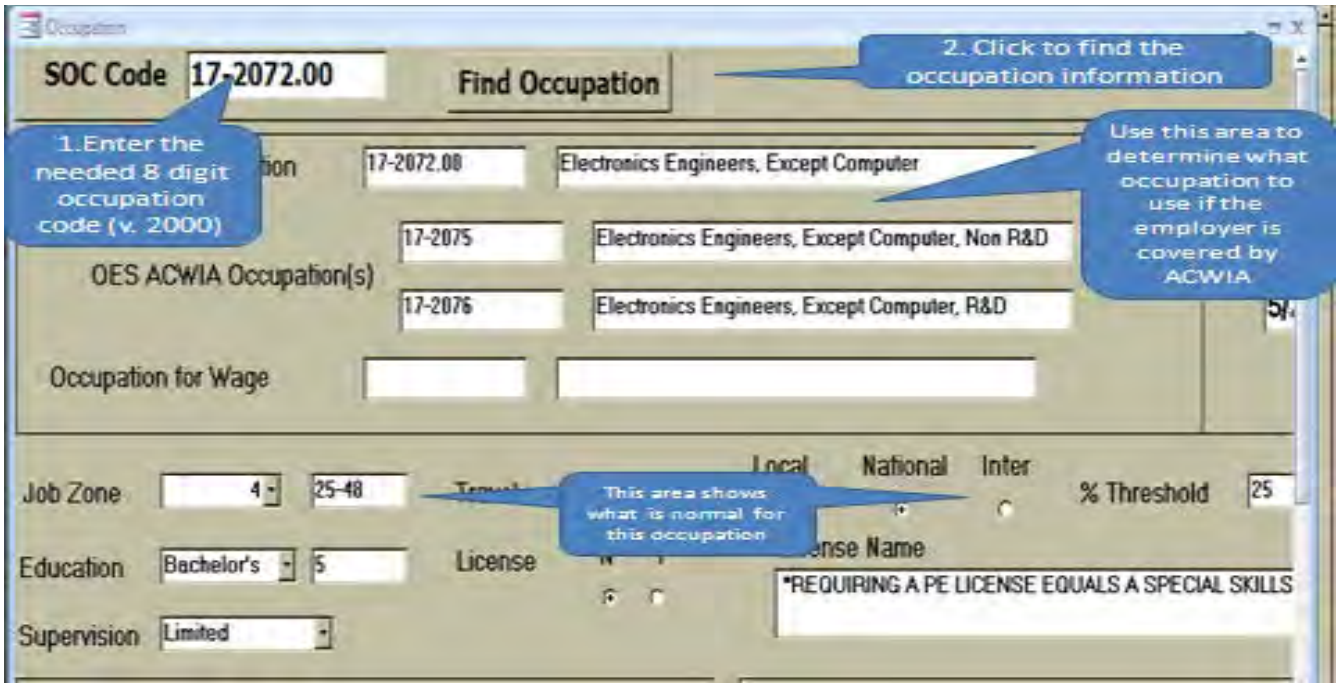

SOC Code 17-2072.00
Find Occupation
2. Click to find the occupation information
1.Enter the needed 8 digit occupation code (v. 2000)
17-2072.00
Electronics Engineers, Except Computer
Use this area to determine what occupation to use if the employer is covered by ACWIA
17-2075
Electronics Engineers, Except Computer, Non R&D
OES ACWIA Occupation(s)
17-2076
Electronics Engineers, Except Computer, R&D
Occupation for Wage
Local
National
Inter
Job Zone
4
25-48
This area shows what is normal for this occupation
% Threshold
25
Education
Bachelor's
5
License
*REQUIRING A PE LICENSE EQUALS A SPECIAL SKILLS
Supervision
Limited

Fig.4

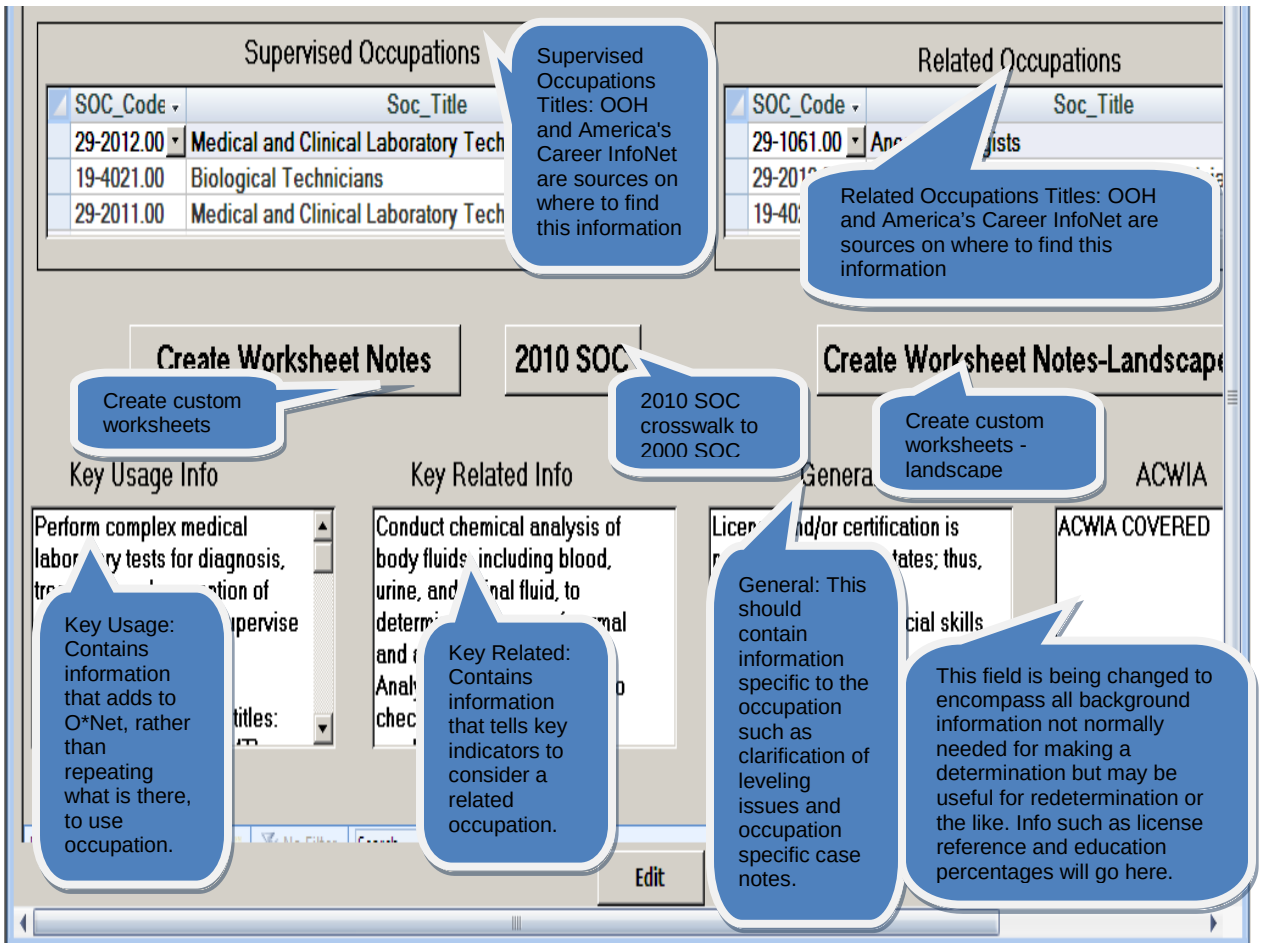

Supervised Occupations
SOC_Code
Soc_Title
29-2012.00
Medical and Clinical Laboratory Tech
19-4021.00
Biological Technicians
29-2011.00
Medical and Clinical Laboratory Tech
Supervised Occupations Titles: OOH and America's Career InfoNet are sources on where to find this information
Related Occupations
SOC_Code
Soc_Title
29-1061.00
Related Occupations Titles: OOH and America's Career InfoNet are sources on where to find this information
Create Worksheet Notes
Create custom worksheets
2010 SOC
2010 SOC crosswalk to 2000 SOC
Create Worksheet Notes-Landscape
Create custom worksheets - landscape
Key Usage Info
Perform complex medical
Key Usage: Contains information that adds to O*Net, rather than repeating what is there, to use occupation.
Key Related Info
Conduct chemical analysis of body fluids including blood,
Key Related: Contains information that tells key indicators to consider a related occupation.
General
General: This should contain information specific to the occupation such as clarification of leveling issues and occupation specific case notes.
ACWIA
ACWIA COVERED
This field is being changed to encompass all background information not normally needed for making a determination but may be useful for redetermination or the like. Info such as license reference and education percentages will go here.
Edit

Fig.5

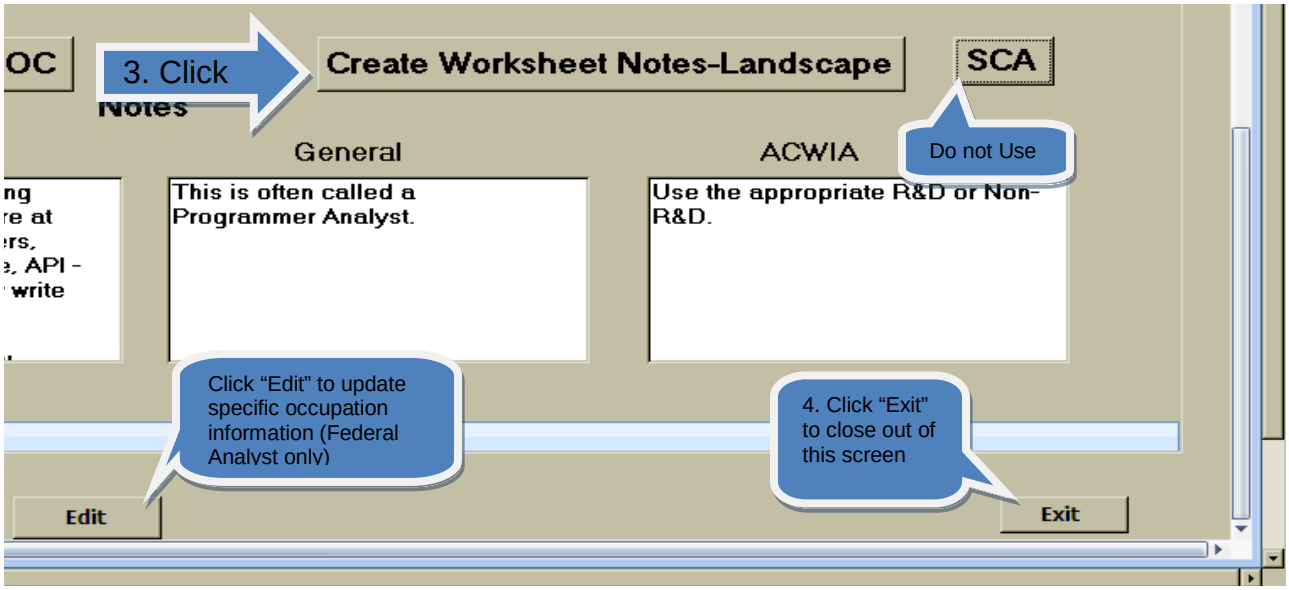
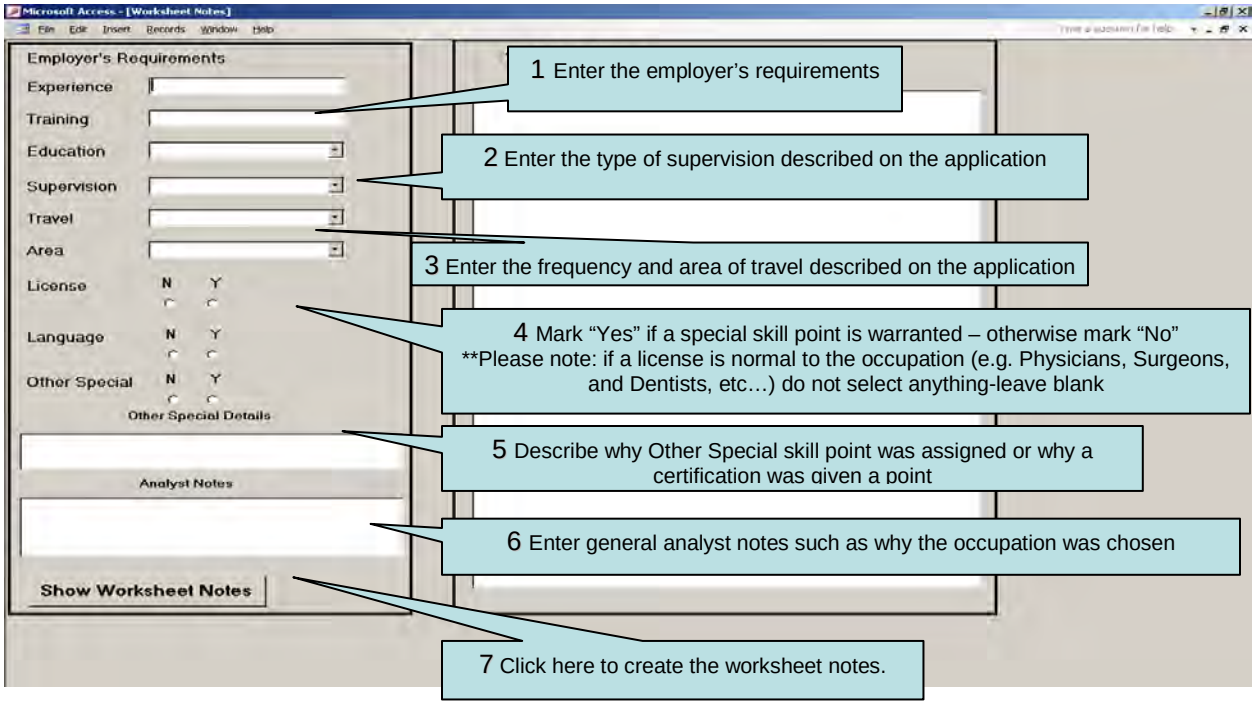

OC
3. Click
Notes
Create Worksheet Notes-Landscape
SCA
Do not Use
General
ACWIA
This is often called a Programmer Analyst.
Use the appropriate R&D or Non-R&D.
Click "Edit" to update specific occupation information (Federal Analyst only)
4. Click "Exit" to close out of this screen
Edit
Exit

Fig.6


Employer's Requirements
Experience
Training
Education
Supervision
Travel
Area
License
Language
Other Special
Other Special Details
Analyst Notes
Show Worksheet Notes
1 Enter the employer's requirements
2 Enter the type of supervision described on the application
3 Enter the frequency and area of travel described on the application
4 Mark "Yes" if a special skill point is warranted – otherwise mark "No"
**Please note: if a license is normal to the occupation (e.g. Physicians, Surgeons, and Dentists, etc…) do not select anything-leave blank
5 Describe why Other Special skill point was assigned or why a certification was given a point
6 Enter general analyst notes such as why the occupation was chosen
7 Click here to create the worksheet notes.

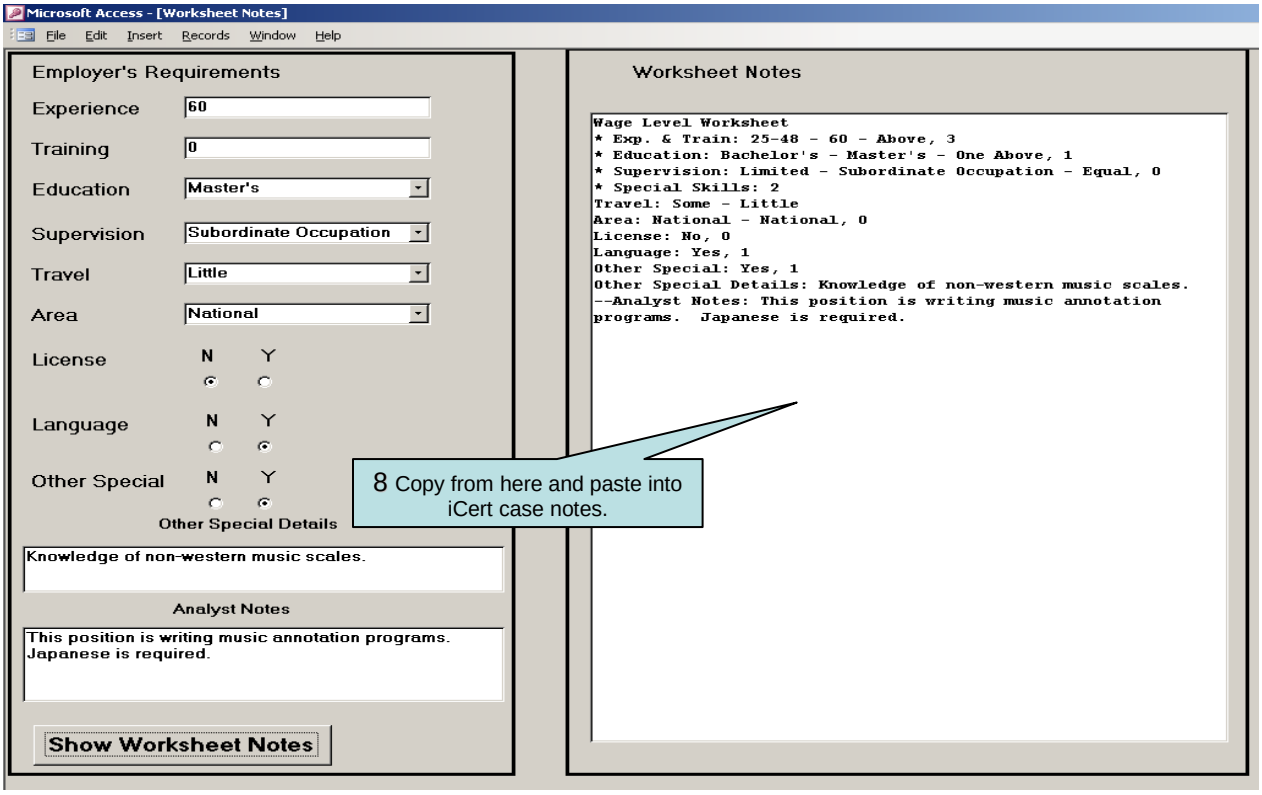

Microsoft Access - [Worksheet Notes]
File Edit Insert Records Window Help
Employer's Requirements
Experience 60
Training 0
Education Master's
Supervision Subordinate Occupation
Travel Little
Area National
License N Y
Language N Y
Other Special N Y
Other Special Details
Knowledge of non-western music scales.
Analyst Notes
This position is writing music annotation programs. Japanese is required.
Show Worksheet Notes
Worksheet Notes
Wage Level Worksheet
* Exp. & Train: 25-48 - 60 - Above, 3
* Education: Bachelor's - Master's - One Above, 1
* Supervision: Limited - Subordinate Occupation - Equal, 0
* Special Skills: 2
Travel: Some - Little
Area: National - National, 0
License: No, 0
Language: Yes, 1
Other Special: Yes, 1
Other Special Details: Knowledge of non-western music scales.
--Analyst Notes: This position is writing music annotation programs. Japanese is required.
8 Copy from here and paste into iCert case notes.

Fig.8a

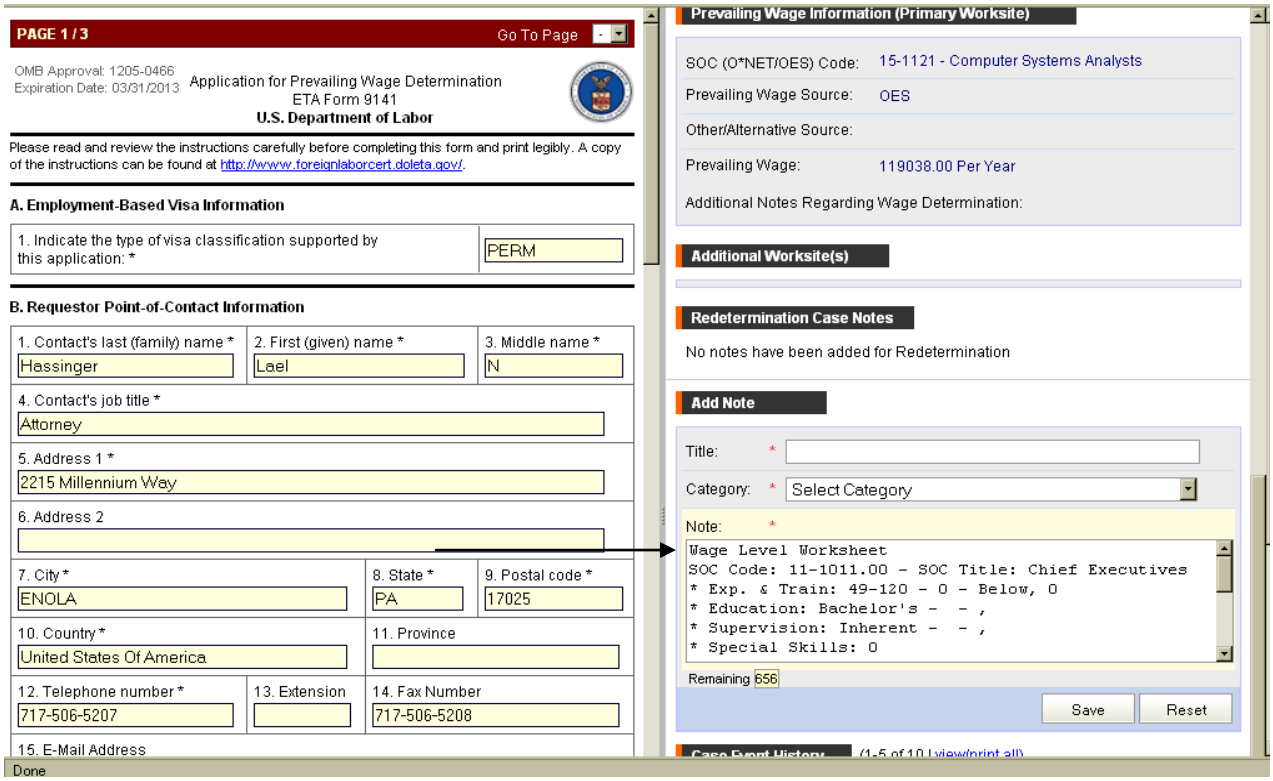

PAGE 1 / 3
Go To Page
OMB Approval: 1205-0466
Expiration Date: 03/31/2013
Application for Prevailing Wage Determination
ETA Form 9141
U.S. Department of Labor
Please read and review the instructions carefully before completing this form and print legibly. A copy of the instructions can be found at http://www.foreignlaborcert.doleta.gov/.
A. Employment-Based Visa Information
1. Indicate the type of visa classification supported by this application: * PERM
B. Requestor Point-of-Contact Information
1. Contact's last (family) name * Hassinger
2. First (given) name * Lael
3. Middle name * N
4. Contact's job title * Attorney
5. Address 1 * 2215 Millennium Way
6. Address 2
7. City * ENOLA
8. State * PA
9. Postal code * 17025
10. Country * United States Of America
11. Province
12. Telephone number * 717-506-5207
13. Extension
14. Fax Number 717-506-5208
15. E-Mail Address
Done
Prevailing Wage Information (Primary Worksite)
SOC (O*NET/OES) Code: 15-1121 - Computer Systems Analysts
Prevailing Wage Source: OES
Other/Alternative Source:
Prevailing Wage: 119038.00 Per Year
Additional Notes Regarding Wage Determination:
Additional Worksite(s)
Redetermination Case Notes
No notes have been added for Redetermination
Add Note
Title:
Category: Select Category
Note:
Wage Level Worksheet
SOC Code: 11-1011.00 - SOC Title: Chief Executives
* Exp. & Train: 49-120 - 0 - Below, 0
* Education: Bachelor's - - ,
* Supervision: Inherent - - ,
* Special Skills: 0
Remaining 656
Save
Reset

Fig.8b

Procedure

II. Find ACWIA Employer (*Fig.9*)

Feature Function: Find ACWIA related information on employers who are ACWIA covered (American Competitiveness and Workforce Improvement Act) (*Fig.9*)

a. Click the **Find ACWIA Employer** button (*Fig.9*)
b. **EIN Number** - Insert (FEIN) Federal Employer Identification Number (i.e., nine digit # 954406156) (*Fig.10*)
c. Click on the **Find Employer** - Information on employer will appear
d. **Add Employer** - Add an Employer to the Database Entries (Done only by the ACWIA Team).
e. **Business Name** - Name of the Business will appear
f. **Coverage** Buttons -
    i. *Eligible* - When an employer has been determined to be ACWIA eligible the toggle button will be highlighted.
        1. If found and the employer is eligible then issue the ACWIA wage.
    ii. *Not Eligible* - The employer has been determined not eligible for ACWIA the toggle button will be highlighted.
        1. If found and the employer is NOT eligible then issue the All Industries wage.
    iii. *Pending Validation* - This button will be highlighted when an RFI has been sent to the employer requesting additional information to determine if the employer has ACWIA eligibility.
g. **Location of Supporting Documents** - Where information can be located to determine eligibility on the employer.
h. **Notes**: Information on the employer to learn how eligibility was determined.
i. **Edit** - Used by the Federal Analysts (ACWIA Team)
j. **Exit** - Click to exit this screen

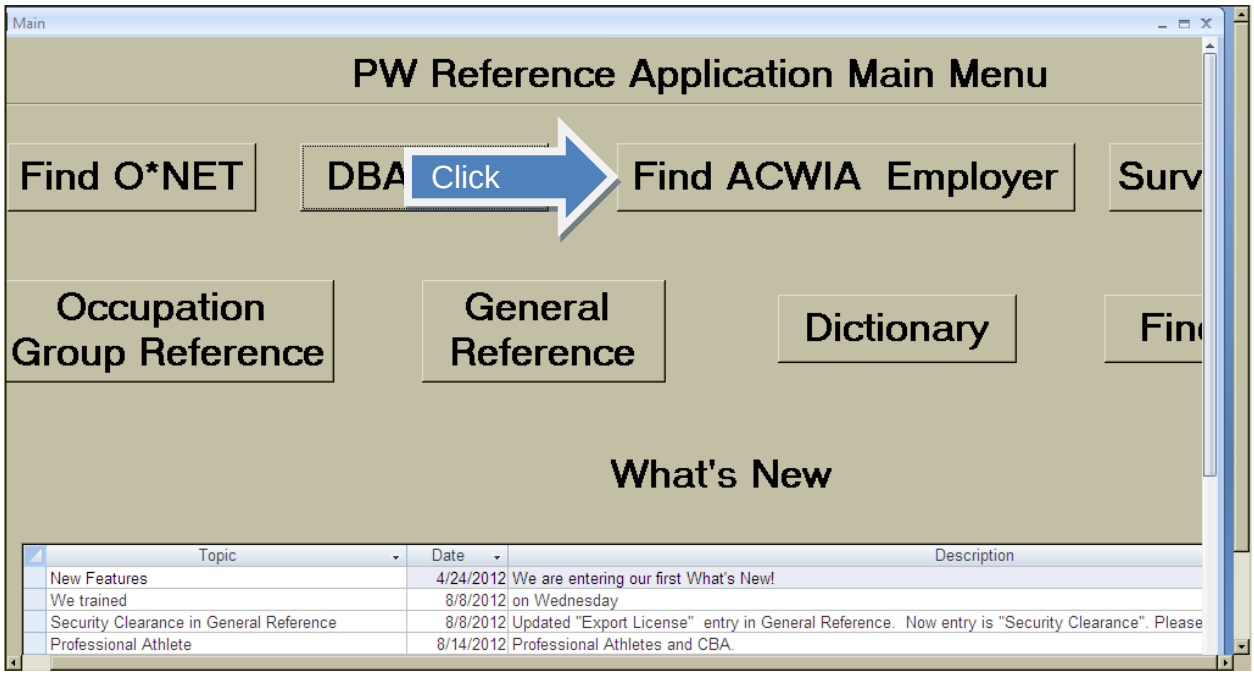

Main
PW Reference Application Main Menu
Find O*NET
DBA
Click
Find ACWIA Employer
Surv
Occupation Group Reference
General Reference
Dictionary
Fin
What's New
Topic
Date
Description
New Features
4/24/2012
We are entering our first What's New!
We trained
8/8/2012
on Wednesday
Security Clearance in General Reference
8/8/2012
Updated "Export License" entry in General Reference. Now entry is "Security Clearance". Please
Professional Athlete
8/14/2012
Professional Athletes and CBA.

Fig.9

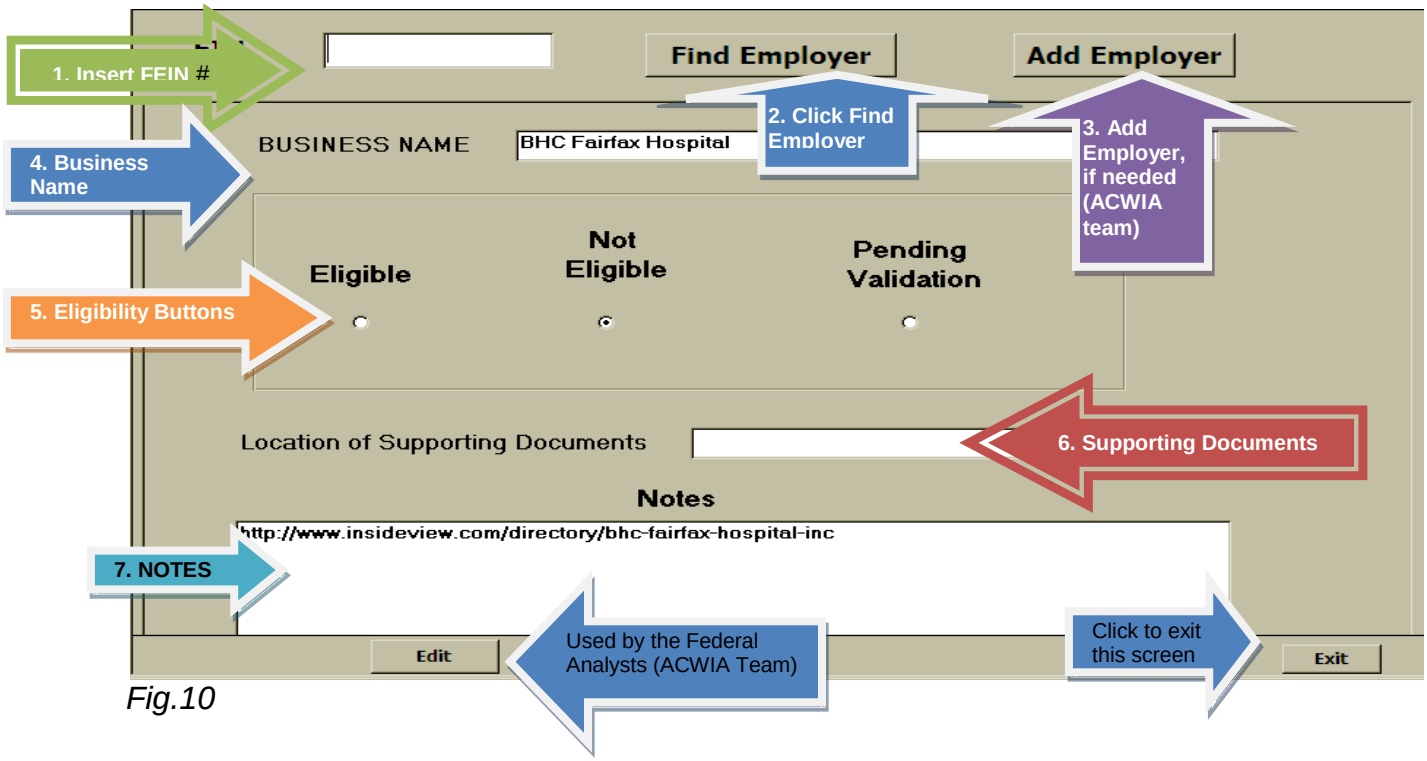

1. Insert FEIN #
Find Employer
Add Employer
2. Click Find Employer
3. Add Employer, if needed (ACWIA team)
4. Business Name
BUSINESS NAME
BHC Fairfax Hospital
5. Eligibility Buttons
Eligible
Not Eligible
Pending Validation
Location of Supporting Documents
6. Supporting Documents
Notes
http://www.insideview.com/directory/bhc-fairfax-hospital-inc
7. NOTES
Edit
Used by the Federal Analysts (ACWIA Team)
Click to exit this screen
Exit

Fig.10

Procedure

III. Occupation Group Reference (*Fig.11*)

Feature Function: The Occupation Group Reference tool allows analysts to select any occupation group or series in order to find helpful information about that occupational profile. The purpose of this tool is basically cause and effect. For example, if the employer has this particular requirement (cause) then a special skill point will be the effect and the related note in the "Notes" section is what is supposed to be copied and/or modified if appropriate into the Additional Notes section of the 9141 or as an RFI.

a. Click the **Occupation Group Reference** button (*Fig.11*)
b. Select the appropriate **Occupation Group** from the drop down menu (*Fig.12*)
c. Next select the needed **Standard Action** based on what the employer has provided
d. Click "**Get Selection**" radio button
e. Review material on right hand side
f. Follow instructions in the "**Actions**" and "**Notes**" section

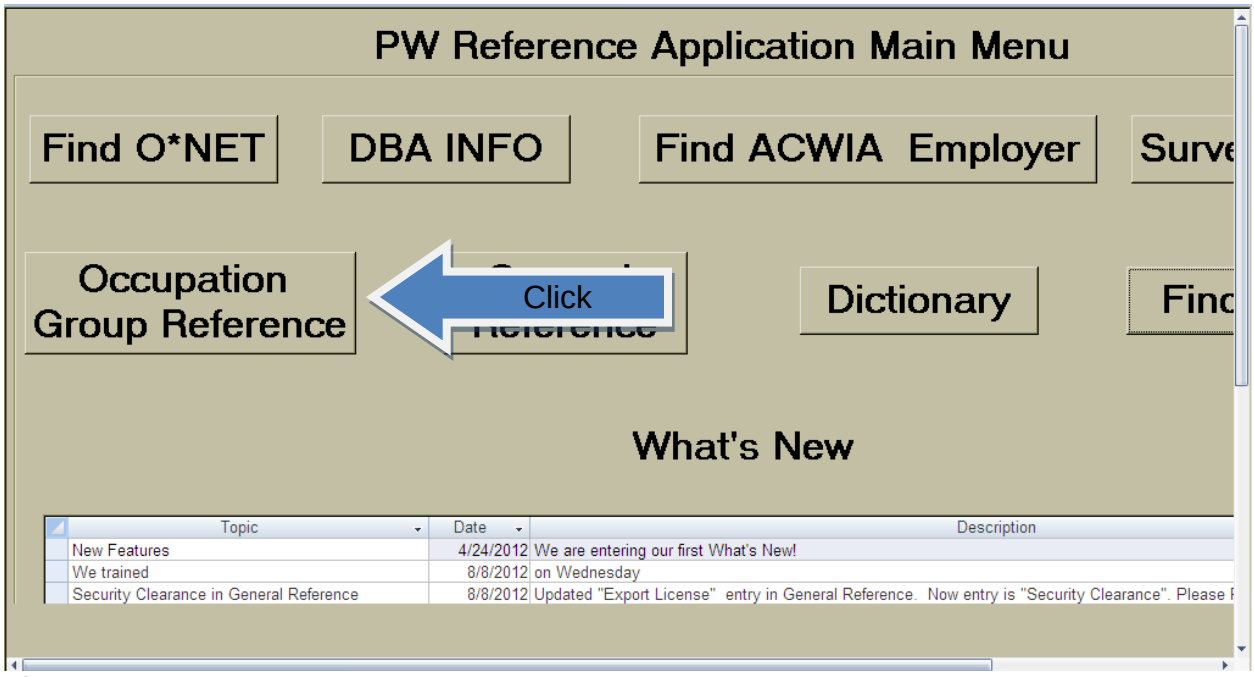


Fig.11

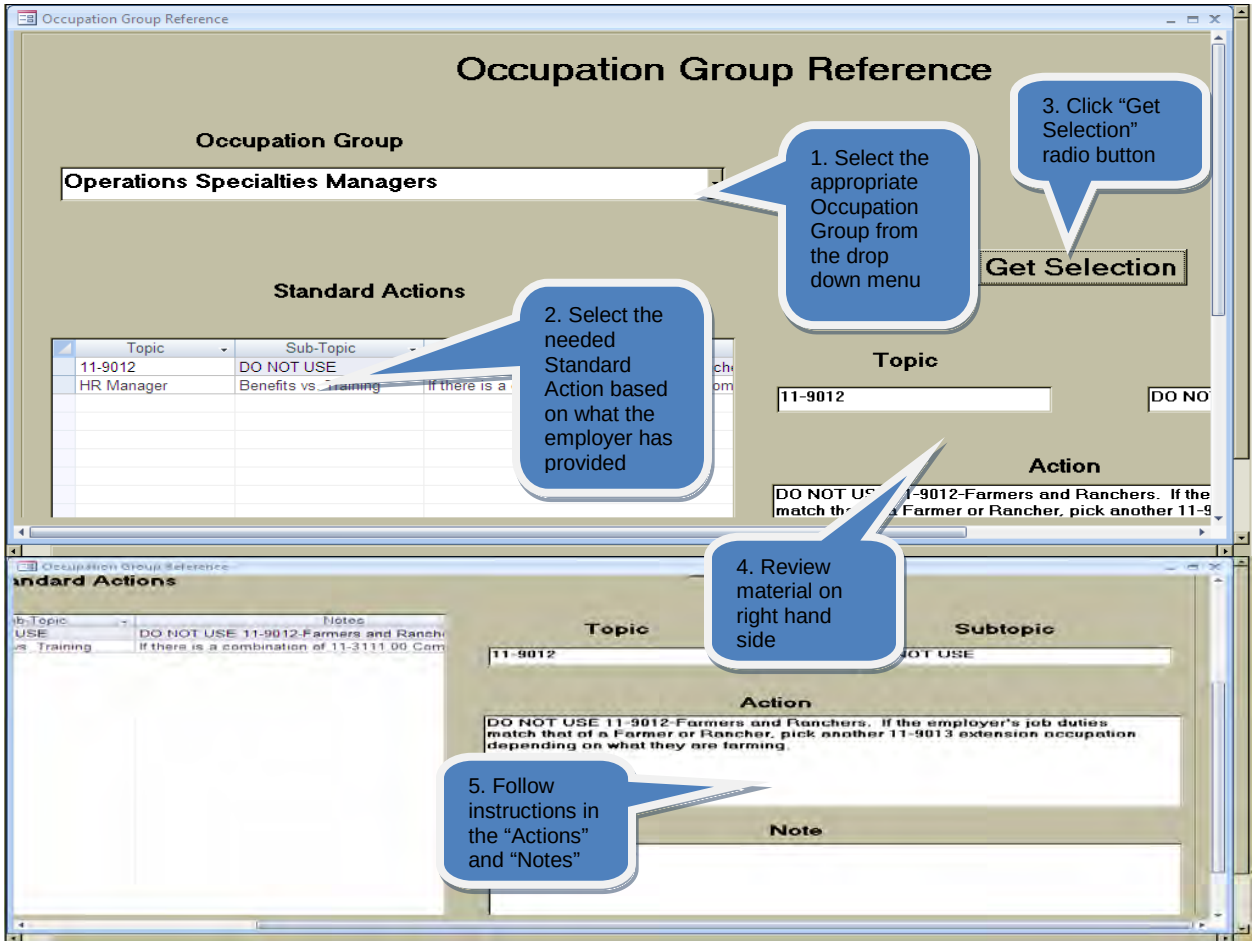


Fig.12

Procedure

IV. What's New(*Fig.13*)

Feature Function: Describes whatever is new in the PWR application

a. The analyst should read the **What's New** each time they come into the PWRA to see if there is something they should open to see what has been changed or what has been added.

Fig.13

Procedure

V. Dictionary (*Fig.14*)

Feature Function: The purpose of the Dictionary feature is to represent a reference which contains an alphabetical list of words, with information given for each word that is useful to the NPWC. So that when a word, abbreviation or acronym has a different meaning depending on the context, we may see the difference.

a. Click the **Dictionary** button (*Fig.14*)
b. Select the appropriate **Occupation group** (*Fig.15*)
c. Choose the needed **Word**
d. Click **Get Selection** button
e. Review the **Definition** and the **Occupation Groups With Definition**

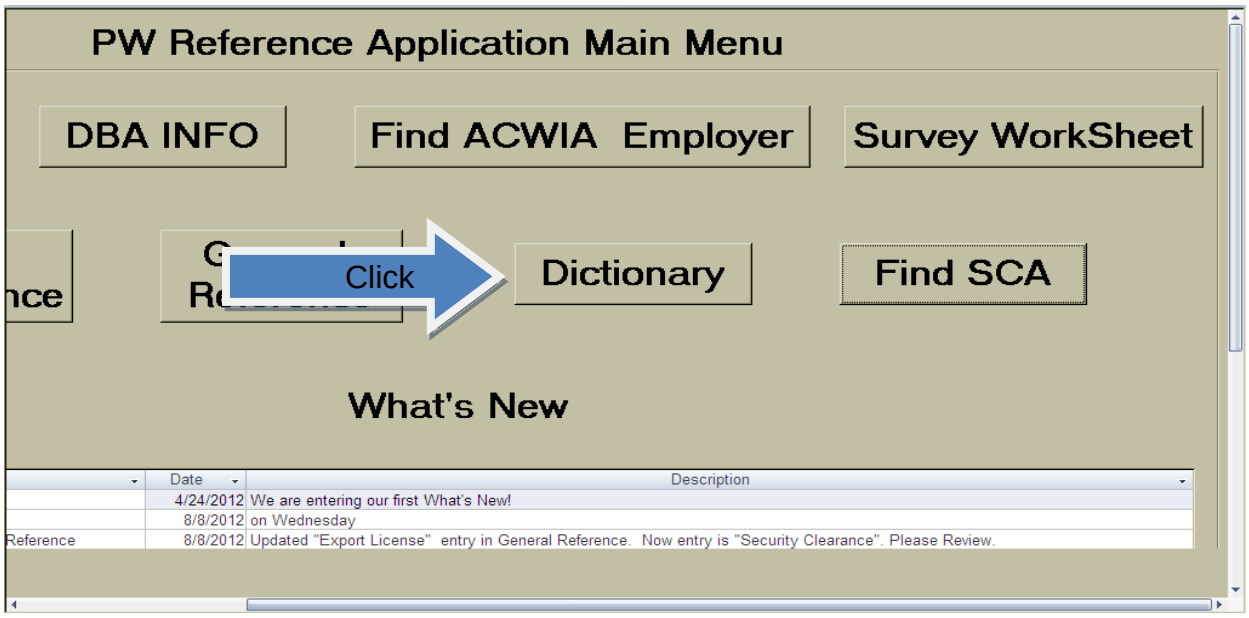


Fig.14

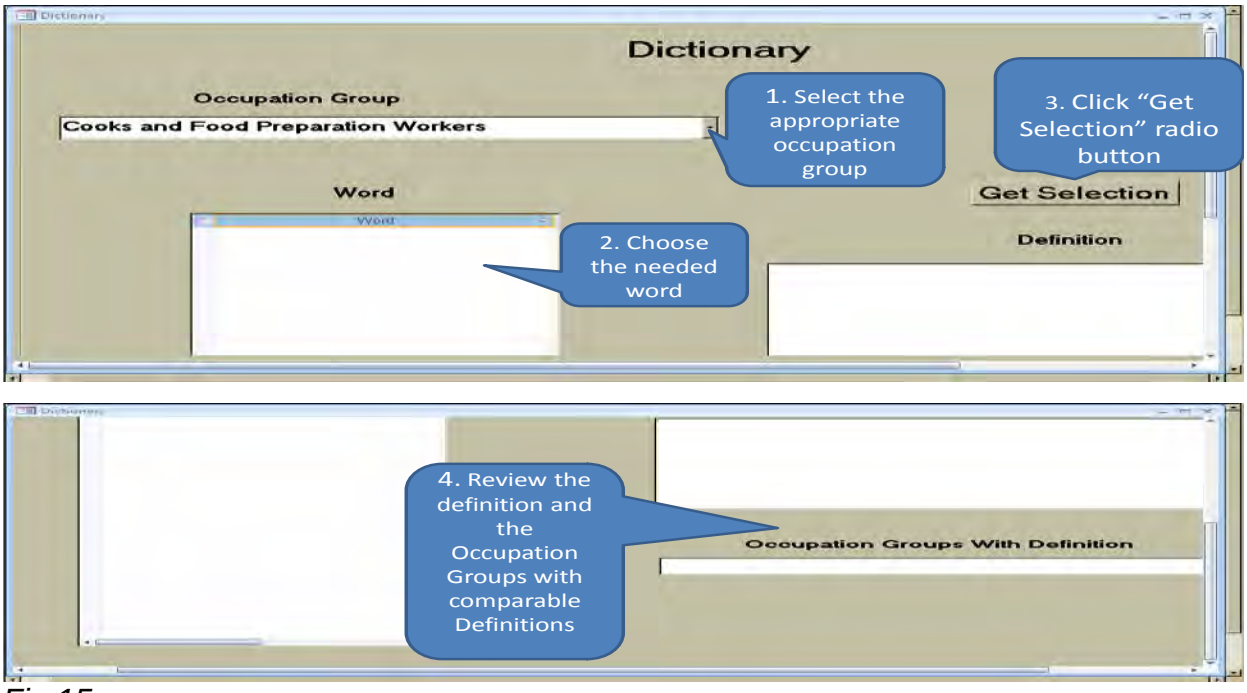


Fig.15

Procedure

VI. General Reference (*Fig.16*)

Feature Function: This feature is used when viable or different information is obtained on a SOC code which will help analysts make a practical decision in coding and leveling on the PW 9141 Form.

a. Click the **General Reference** button (*Fig.16*)
b. **Standard Actions** (*Fig.17*)
    1. Select needed topic on left hand side
    2. Click "**Get Selection**" radio button
    3. Review material on right hand side
    4. Follow instructions in the **Actions** section
c. **General Items** (*Fig.18*)
    1. Select needed topic on left hand side
    2. Click **Get Selection** button
    3. Review material on right hand side
    4. Follow instructions in the **Notes** section
    5. Click on the appropriate hyper link in the **Reference** section

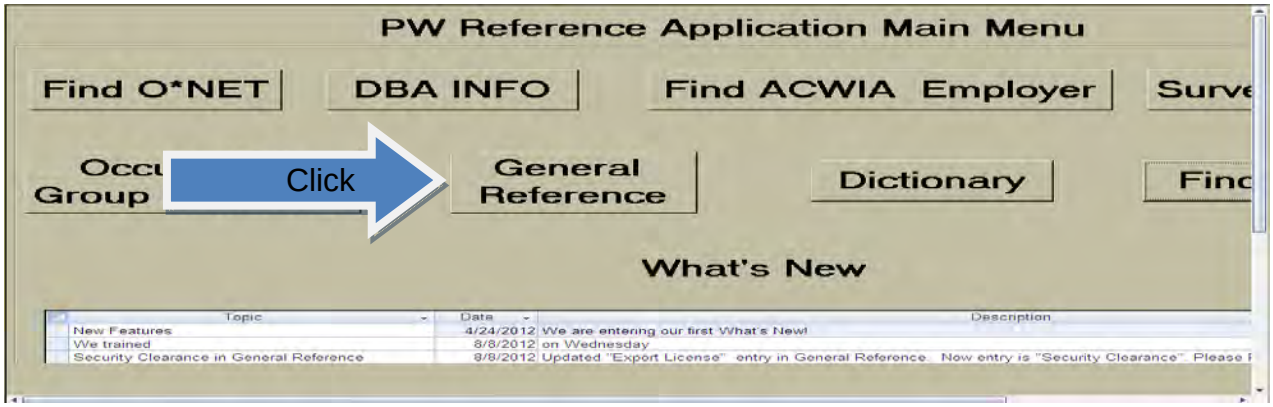


Fig.16

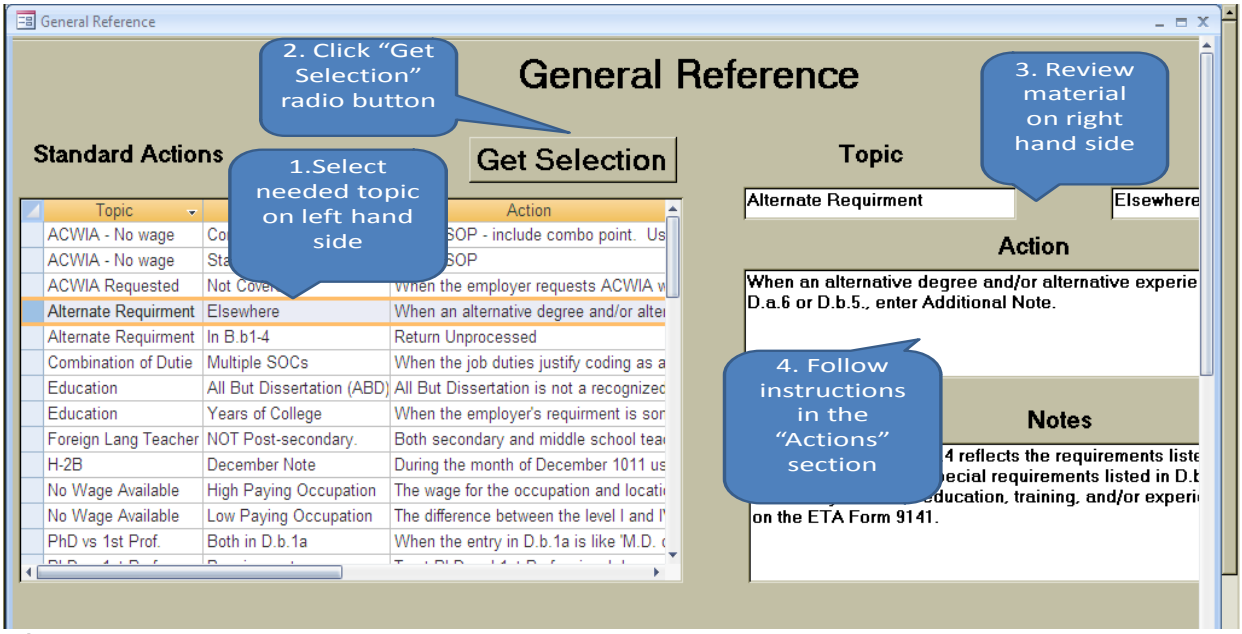


Fig.17

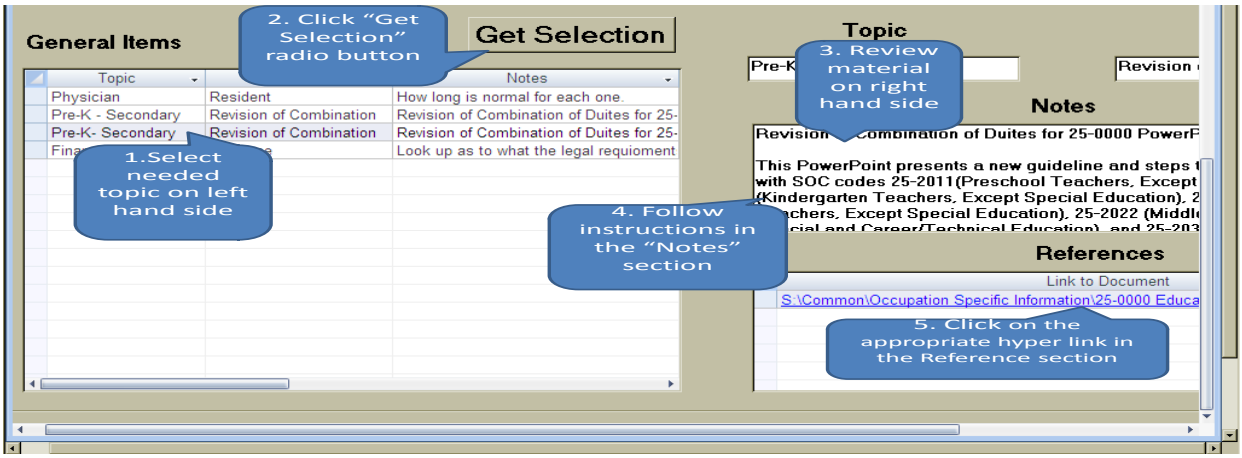


Fig.18

Procedure

VII. Find SCA (*Fig.19*)

Feature Function: Used to find SCA cross walk codes that are comparable to O*NET SOC codes.

a. Click the **Find SCA** button (*Fig.19*)
b. **SCA Code**: enter five digit code (*Fig.20*)
c. **SCA Title**: Name of Occupation
d. **Occupational Base**: SCA Code Description of duties used when there is more than one level in an SCA occupation; common duties are listed here with specifics that distinguish the levels in the Description entry.
e. **Description**: O*NET Job Description for SOC CODE
f. **SOC Code**: Six Digit code (43-3031.00)
g. **SOC Title**: Bookkeeping, Accounting, and Auditing Clerks (*Fig.21*)
h. **Key Usage Info** - Contains information that adds to SCA Description, rather than repeating what is there, to use occupation.
i. **Key Related Info** - Contains information that tells key indicators to consider a related SCA occupation.
j. **General** - This should contain information specific to the occupation such as situations where the SCA occupation cannot be used such as in 08010 BRUSH/PRECOMMERCIAL THINNER; an entry should be "This is not an appropriate occupation for utility rights of way clearing".
k. **Edit** - Used to update occupation information
l. **Exit -** click to exit the screen (*Fig.21*)

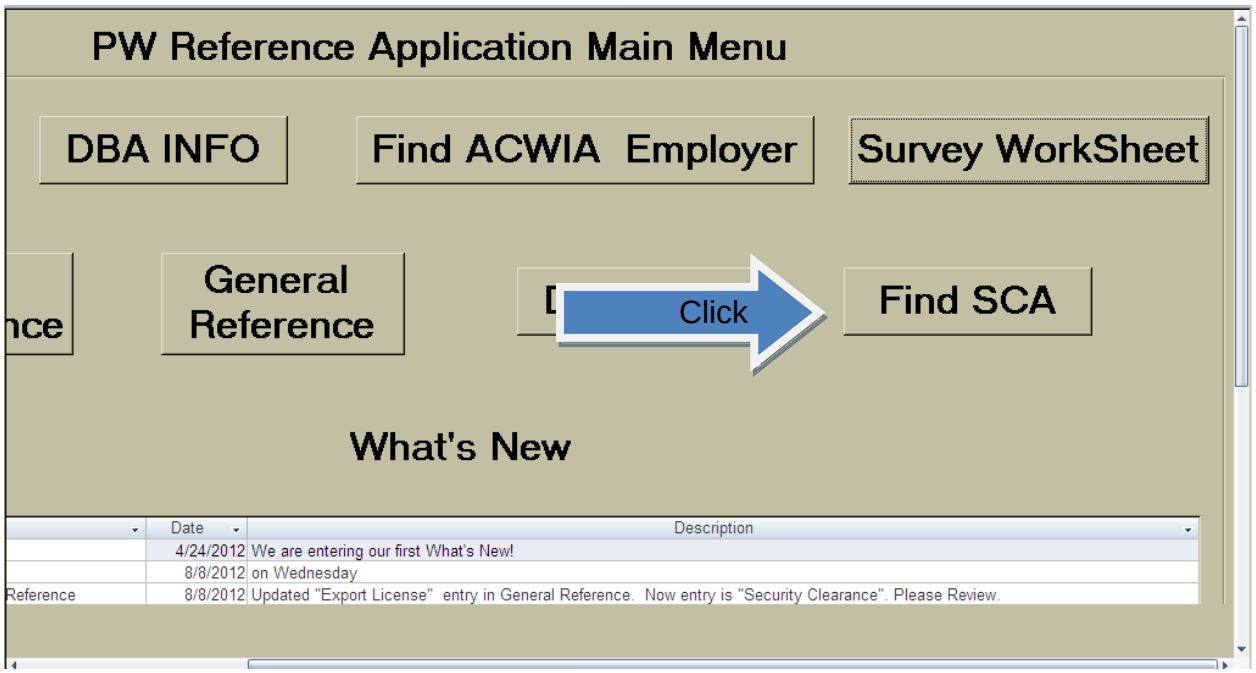

PW Reference Application Main Menu
DBA INFO
Find ACWIA Employer
Survey WorkSheet
General Reference
Click
Find SCA
What's New
Date
Description
4/24/2012
We are entering our first What's New!
8/8/2012
on Wednesday
8/8/2012
Updated "Export License" entry in General Reference. Now entry is "Security Clearance". Please Review.

Fig.19

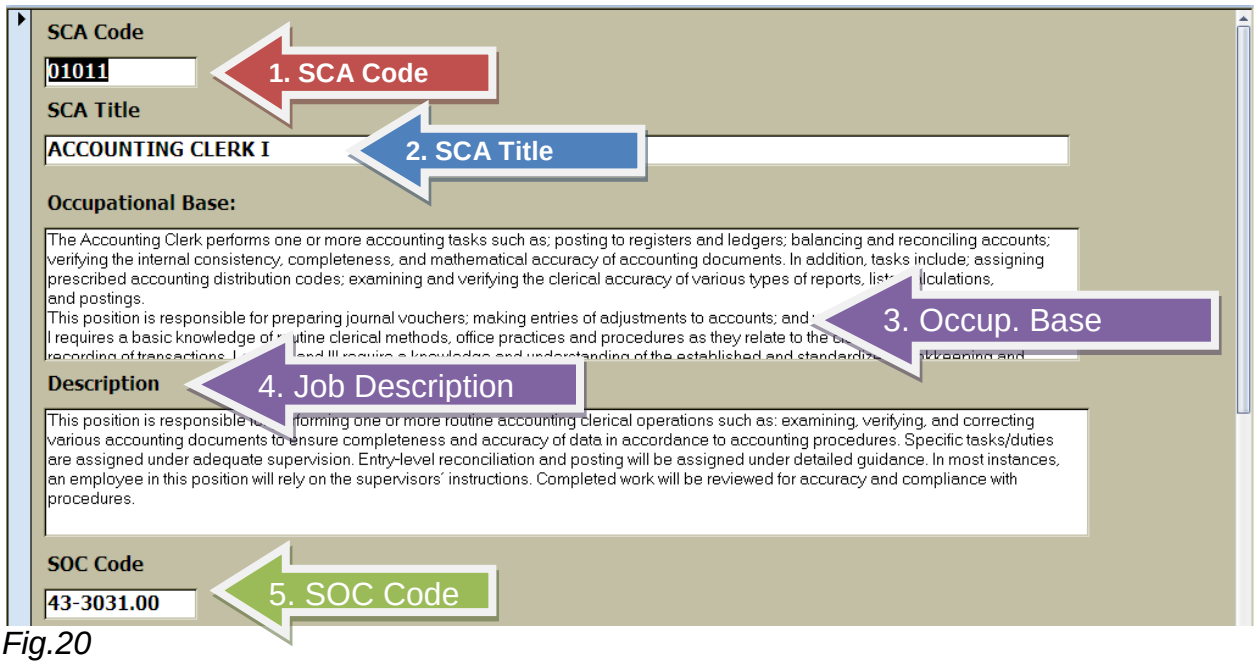

SCA Code
01011
1. SCA Code
SCA Title
ACCOUNTING CLERK I
2. SCA Title
Occupational Base:
The Accounting Clerk performs one or more accounting tasks such as; posting to registers and ledgers; balancing and reconciling accounts; verifying the internal consistency, completeness, and mathematical accuracy of accounting documents. In addition, tasks include; assigning prescribed accounting distribution codes; examining and verifying the clerical accuracy of various types of reports, lis lculations, and postings.
This position is responsible for preparing journal vouchers; making entries of adjustments to accounts; and
l requires a basic knowledge of utine clerical methods, office practices and procedures as they relate to the
recording of transactions. I and III require a knowledge and understanding of the established and standardiz kkeeping and
3. Occup. Base
Description
4. Job Description
This position is responsible f forming one or more routine accounting clerical operations such as: examining, verifying, and correcting various accounting documents to ensure completeness and accuracy of data in accordance to accounting procedures. Specific tasks/duties are assigned under adequate supervision. Entry-level reconciliation and posting will be assigned under detailed guidance. In most instances, an employee in this position will rely on the supervisors' instructions. Completed work will be reviewed for accuracy and compliance with procedures.
SOC Code
43-3031.00
5. SOC Code

Fig.20

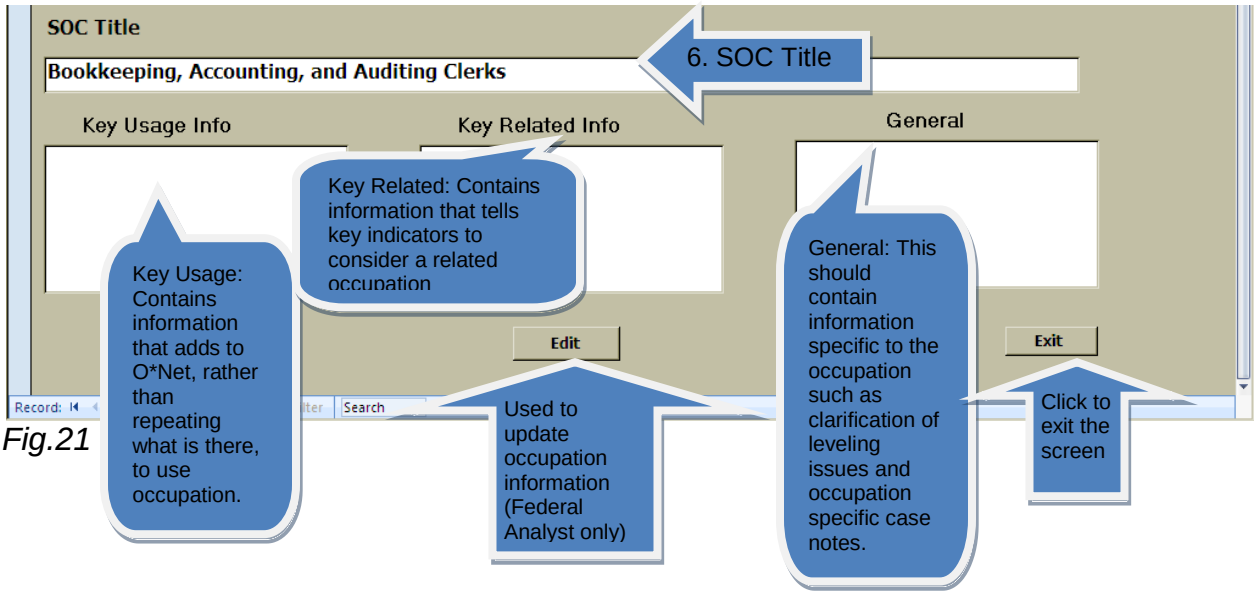


Fig.21

Procedure

VIII. Survey Worksheet (*Fig.22*)

Feature Function: Employer Provided Survey – Check Sheet for when an employer provides a survey **(FUNCTION NOT USED)** (*Fig.22 and 23*)

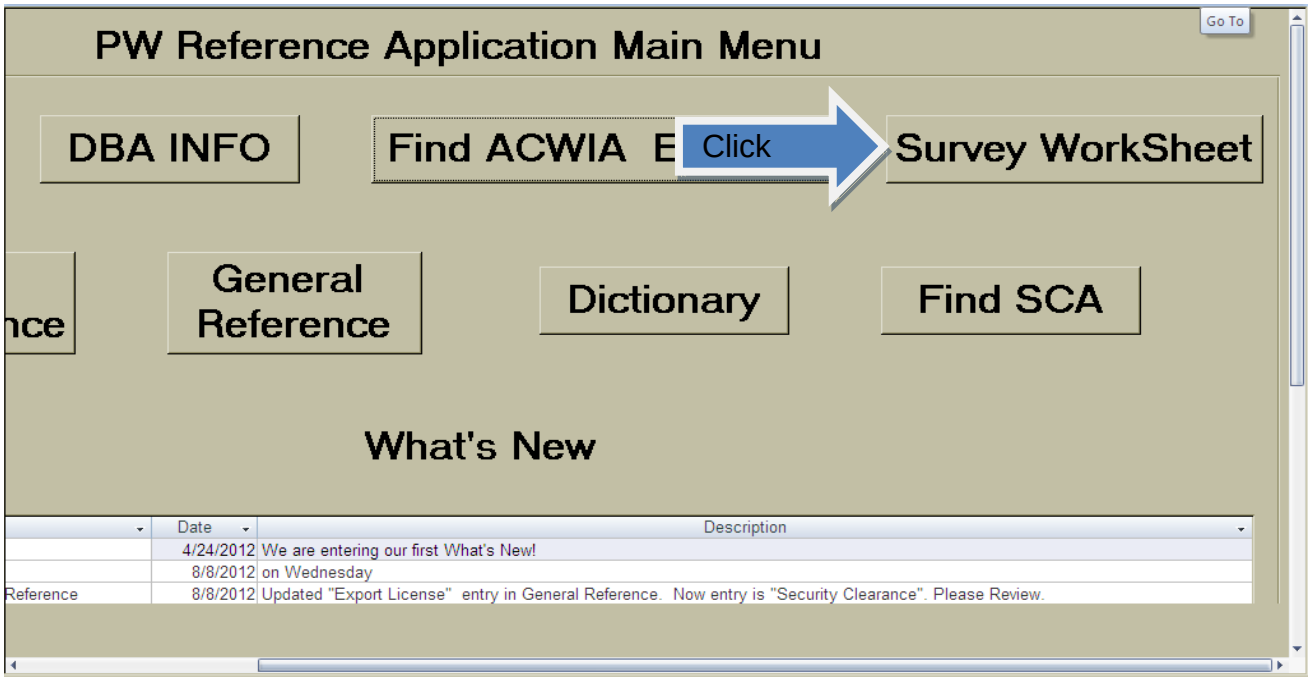


Fig.22

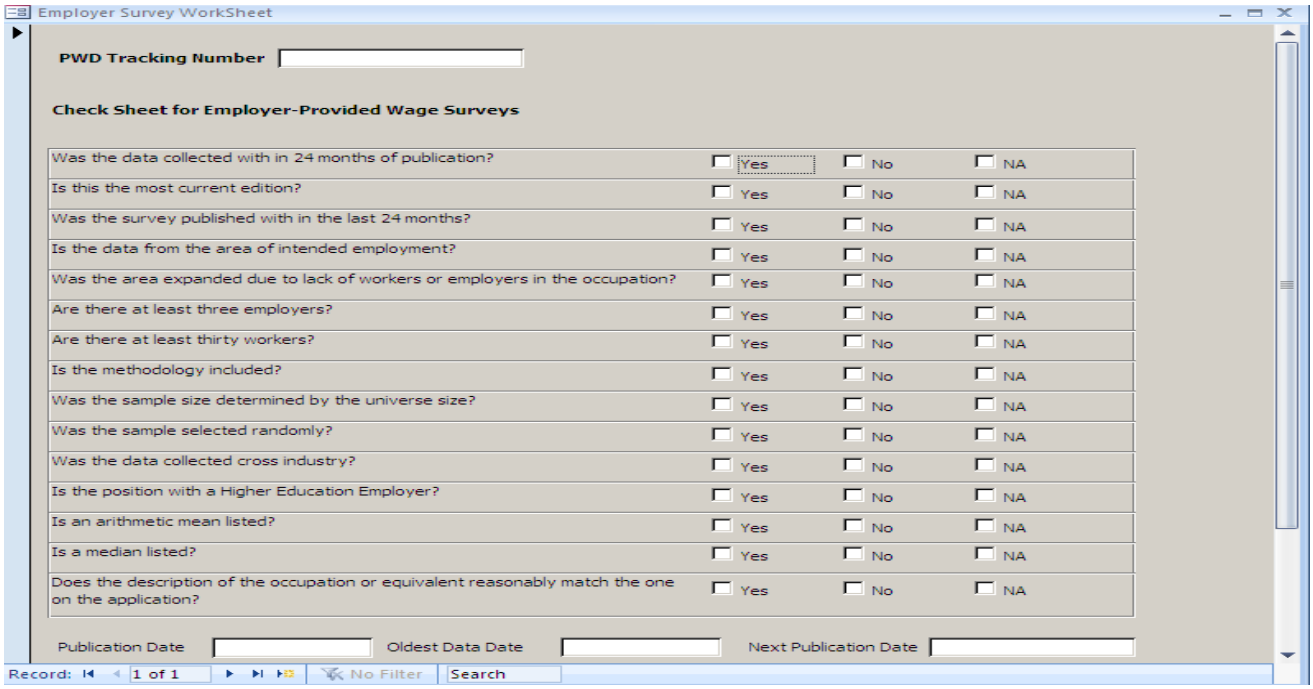


Fig.23

Procedure

IX. DBA INFO (*Fig.24*)

Feature Function: Davis Bacon Survey Information

a. Click on the **DBA INFO** button (*Fig.24*)
b. This feature was used during the **New Rule Effect** – currently not used
c. Used to determine the Mean Wages (*Fig.25*)

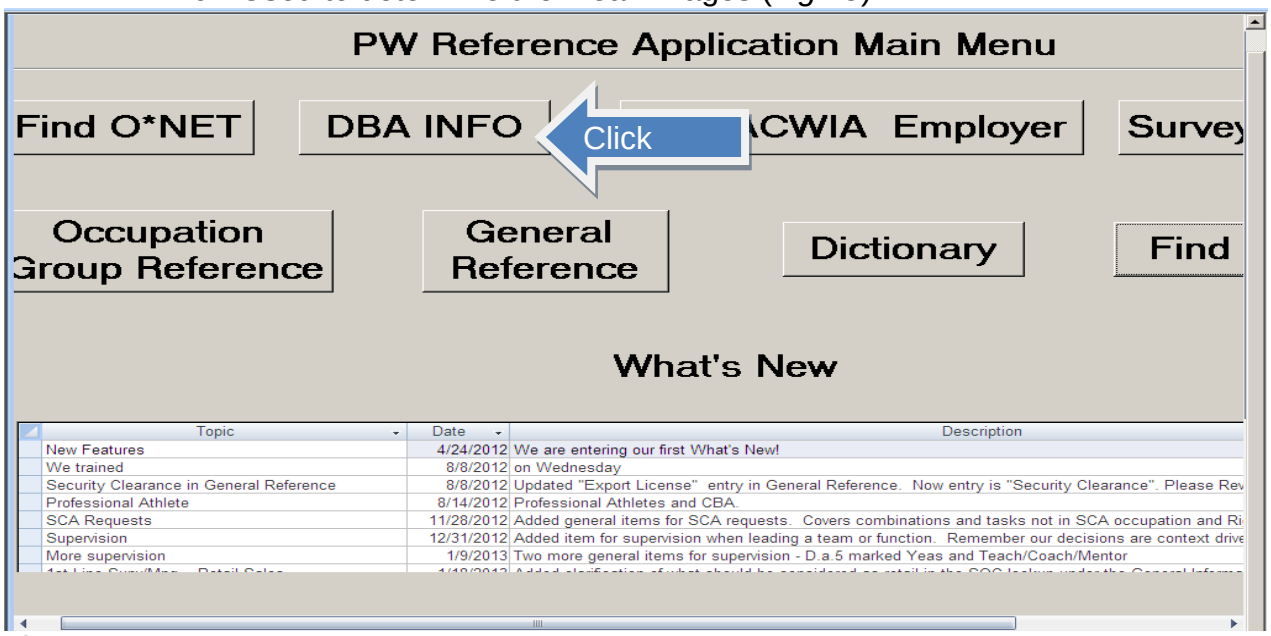


Fig.24

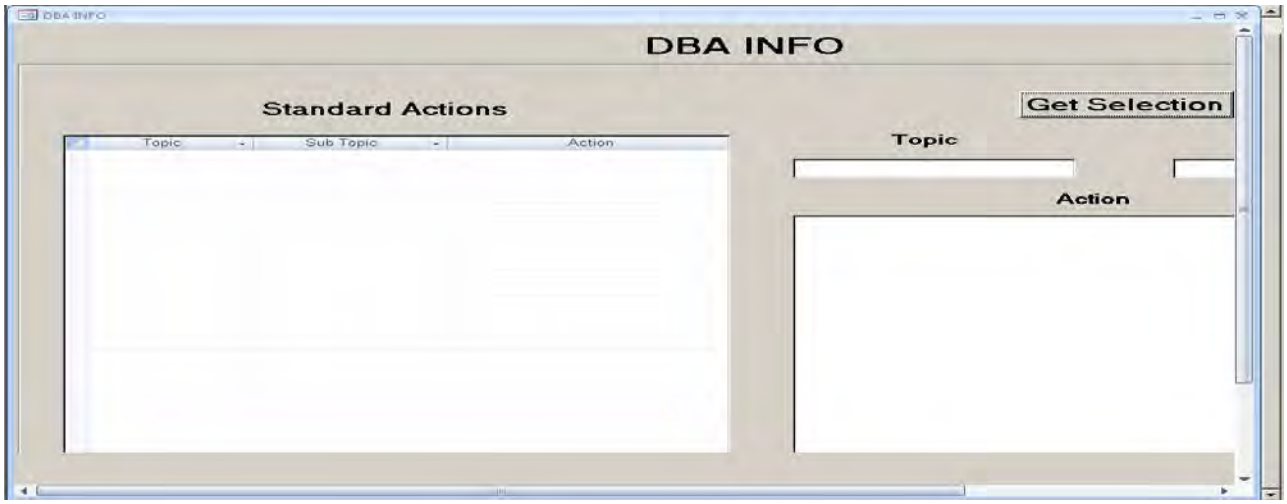

DBA INFO
DBA INFO
Standard Actions
Get Selection
Topic
Sub Topic
Action
Topic
Action

Fig.25

PART II - Overview for federal staff only – "How to Enter"

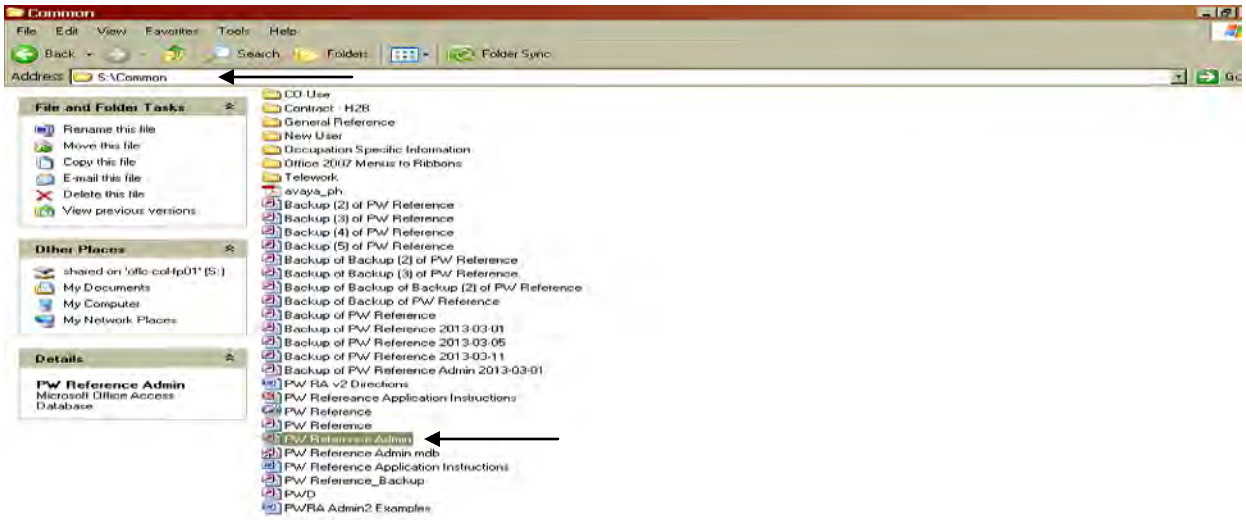


Fig.26a (S:\Common\PW Reference Admin)

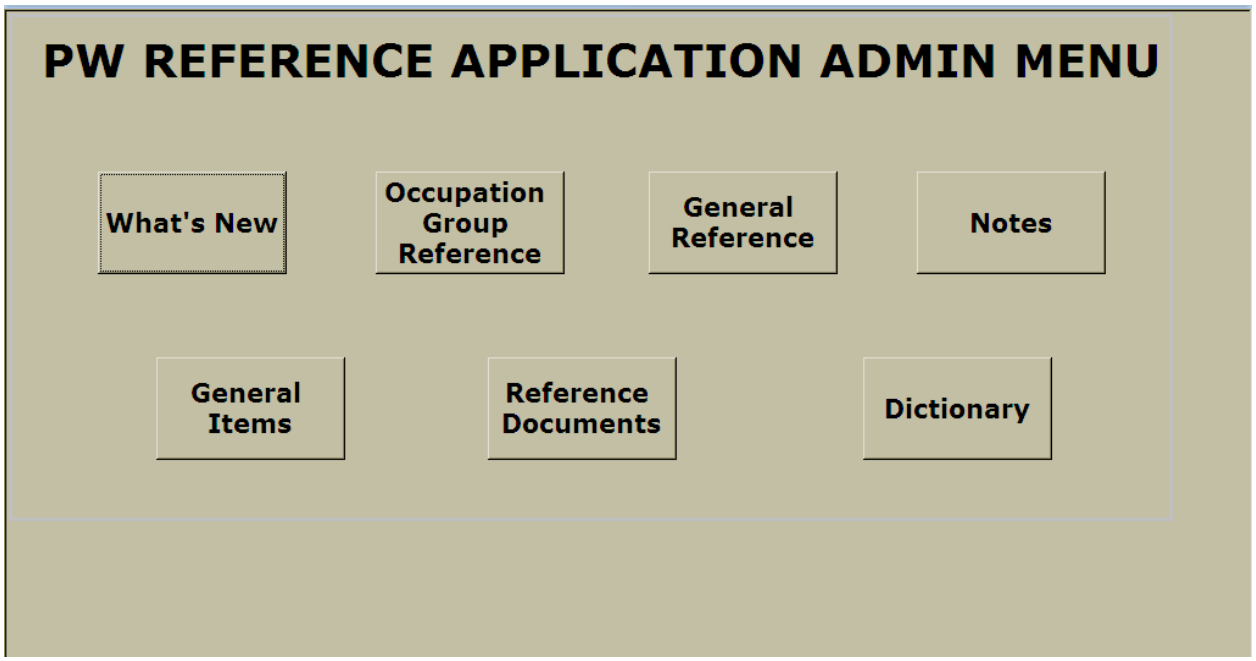
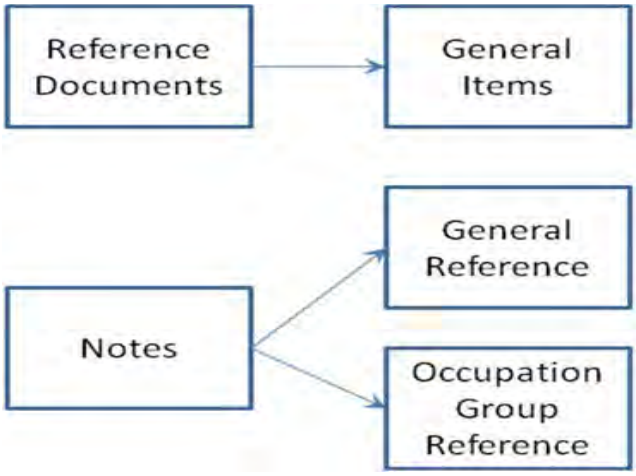


Fig.26b (PW Reference Application Admin Menu screen)

- **IMPORTANT:** When entering information in the "NOTES", "GENERAL REFERENCE", and "OCCUPATION GROUP REFERENCE" sections, please start with "NOTES" section; because this initial entry will produce a subsequent entry into the "GENERAL REFERENCE" and "OCCUPATION GROUP REFERENCE" drop down menus and will be available for use if the analyst so chooses (please see below).

- **IMPORTANT:** When entering information in the "REFERENCE DOCUMENTS" and "GENERAL ITEMS" sections please start with the "REFERENCE DOCUMENTS" section; because this initial entry will produce a subsequent entry into the "GENERAL ITEMS" " drop down menu and will be available for use if the analyst so chooses (please see below).



Procedure

I. **What's New** (*Fig.27*)

Feature Function: The purpose of this feature is to let fellow analysts know of any updates in regards to their SME/occupation area.

a. Click on the "**What's New**" button to enter updates or policy changes regarding your particular SME area (*Fig.27*). Use this to also delete an unwanted feature.
b. Under the **Topic** heading, enter the desired subject of the new feature (Fig.28)
c. Under the **Date** heading, enter the date when the new feature was made (x/xx/xxxx)
d. Under the **Description** heading, enter the actual content of the new feature
e. The newly entered information will automatically appear in the "**What's New**" box used by both Federal and contract analysts (*Fig.29*)
f. The analyst must **close-out** the screen in order for the auto-save feature to take effect

Who enters this information?	Federal analysts
What needs to be entered?	Topic, Date, and Description information
When does it need to be entered?	When there is any change to the Reference App. (policy or procedure changes, SME area updates, trends, inconsistency in determinations, or circumstances not inherent to the occupation etc…)
Where does it need to be entered?	PW Reference Application Admin Menu – **What's New** button (S:\Common\PW Reference Admin)
Why does it need to be entered?	To assist the analyst and reviewers in order to make qualified and consistent prevailing wage reviews and recommendations.
How does an analyst determine when to make a new entry?	If an analyst or reviewer notices criteria of a SOC Code that would increase the leveling or change the leveling of a SOC Code due to overlapping job duties or special skills areas in more than one SOC Code, entries should then be inputted into this area. • **Topic** – should be the main subject of the summary or synopsis • **Date** – when the entry was made • **Description** – the analyst should write a brief summary about the subject at hand o Present the main idea or topic sentence (what happened) o Add details (most important details about what changed) o And where to find it

Example

Topic	Date	Description
Athletic Trainers and Certification	03/11/2013	• According to the BLS OOH, nearly all states require Athletic Trainers to be certified. Additionally, an independent Board of Certification, Inc. (BOC) offers the standard certification examination that most states use for licensure. Certification generally requires passing the BOC exam, adhering to BOC Standards of Practice and taking continuing education courses. Athletic trainers are required to graduate from a CAATE (Commission on Accreditation of Athletic Training Education)-accredited program before taking the BOC exam. Further, most states require athletic trainers to be licensed; however, the licensure requirements vary by state. The requirements in most states include graduating from an accredited athletic training program and passing either the BOC exam or a state exam. • At the following website, http://www.bocatc.org/index.php?option=com_content&view=article&id=92&Itemid=144, it shows that New Jersey is

		a state that requires licensure. • The Personal Training Certification requirement on the application does not warrant a special skills point.

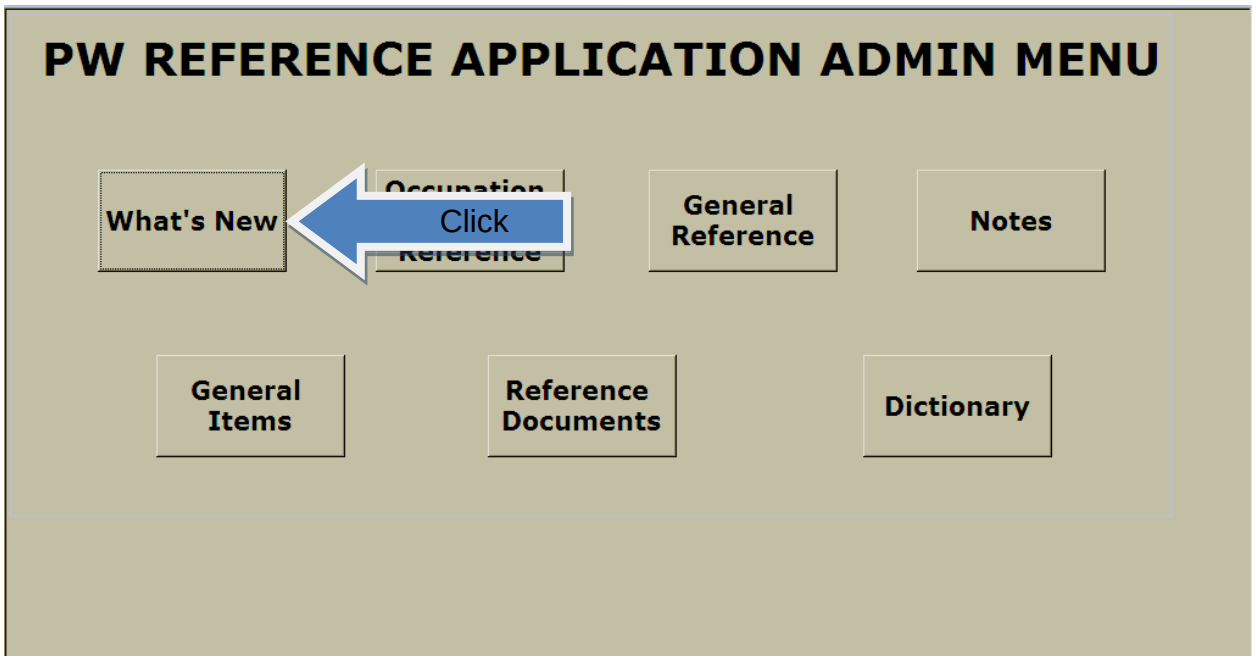


Fig.27

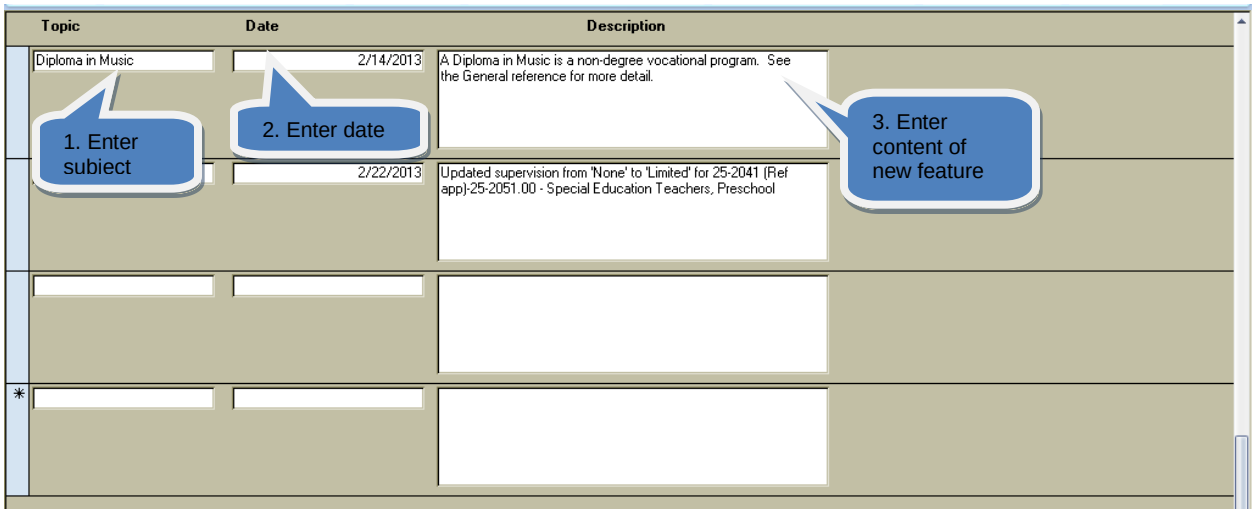


Fig.28

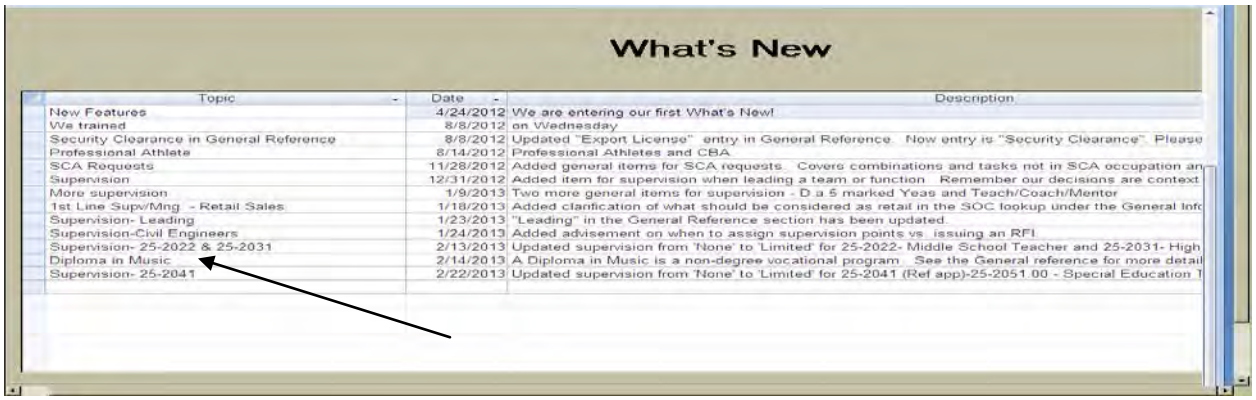


Fig.29

Procedure

II. **Occupation Group Reference** (*Fig.30*)

Feature Function: The purpose of this feature is to let fellow analysts know of any relevant facts in regards to a particular occupation either by group or series.

- **For specialized entries**
- **Please Note:** Make sure all information has been verified by a supervisor or SME before entering information into the Prevailing Wage Reference Application (PWRA).
- **Please** make sure the note or entry is available in the "Notes" section before proceeding, if not, please add
- **Update What's New**

a. Click on the **Occupation Group Reference** button to enter relevant facts in regards to a particular occupation either by group or series (*Fig.30*)
b. Occupational Group will appear. Scroll to the bottom of the page until you see a blank field (*Fig.31*)
c. Click on the drop down bar and select the Occupation Group (*Fig.32*)
d. Fill in the each category(s) i.e., Occupation Group, Topic, Subtopic, Action, SDN-Topic, SDN - Subtopic (*Fig.33*)
e. The analyst must **close-out** the screen in order for the auto-save feature to take effect
f. **Update What's New**

Who enters this information?	Federal analysts
What needs to be entered?	Occupation Group, Topic, Subtopic, Action, SDN - Topic,SDN-Subtopic
When does it need to be entered?	• Entry/entries should be made into the Occupational Group when research has been done by the Program Analysts on a particular SOC Code, and discovers new information or a trend occurring on a particular SOC Code or Occupation Group. • Data should also be entered when the information affects one or more Occupational Groups entry (ies). • Used for specialized entries • Policy or procedure changes, SME area updates, trends, inconsistency in determinations, or circumstances not inherent to the occupation, etc…
Where does it need to be entered?	PW Reference Application Admin Menu - **Occupation Group Reference** button (S:\Common\PW Reference Admin)
Why does it need to be entered?	If an analyst or reviewer notices criteria of a SOC Code that would increase the leveling or change the leveling of a SOC Code due to overlapping job duties in more than one SOC Code, entries should then be inputted into this area. The information should communicate that there is more than one SOC Code which could be considered. Please see example # 1 above: "Please see notes under 15-2000 Series, if job duties fall between Computer Systems Analyst and Operations Research Analyst".
How does an analyst determine when to make a new entry?	If an analyst or reviewer notices criteria of a SOC Code that would increase the leveling or change the leveling of a SOC Code due to overlapping job duties or special skills areas in more than one SOC Code, entries should then be inputted into this area. • **Occupation Group**: Select appropriate occupational group • **Topic**: should be the main subject of the Action item • **Sub Topic**: one of the divisions into which a main topic may be divided • **Action**: the causation of change by factors within the application • **SDN-Topic**: Drop-down menu of choices for formal written diplomatic or official communication from the NPWC to the employer; usually placed in the external notes section • **SDN-Subtopic**: one of the divisions under the Topic

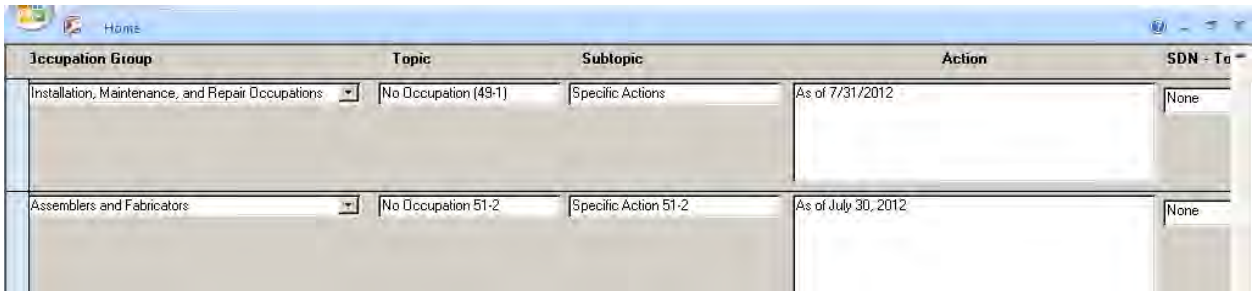
Examples

Occupation Group	Topic	Subtopic	Action	SDN-Topic	SDN-Subtopic
Ex.#1 Computer and Mathematical Occupations	Operation Research Analyst (ORA)	Selecting the correct SOC Code	Please see notes under 15-2000 Series, if job duties fall between Computer Systems Analyst and Operations Research Analyst		
Ex.#2 Health Technologists and Technicians	Nurses	No License Indicated on 9141	When the employer does not indicate on the 9141 form a license is required for the following SOC's, take the actions listed below:29-1111 - Registered Nurses (License required add a special skill points) 29-2061- Licensed Practical and Licensed Vocational Nurses (License required: add a special skills point)		

Example

**If additional documentation is not needed make an entry as follows:

- **Topic** - No Occupation
- **Subtopic** - Specific action
- **Action** - as of (enter date as MM/DD/YYYY)



PW REFERENCE APPLICATION ADMIN MENU
Click
Occupation Group Reference
General Reference
Notes
General Items
Reference Documents
Dictionary

Fig.30

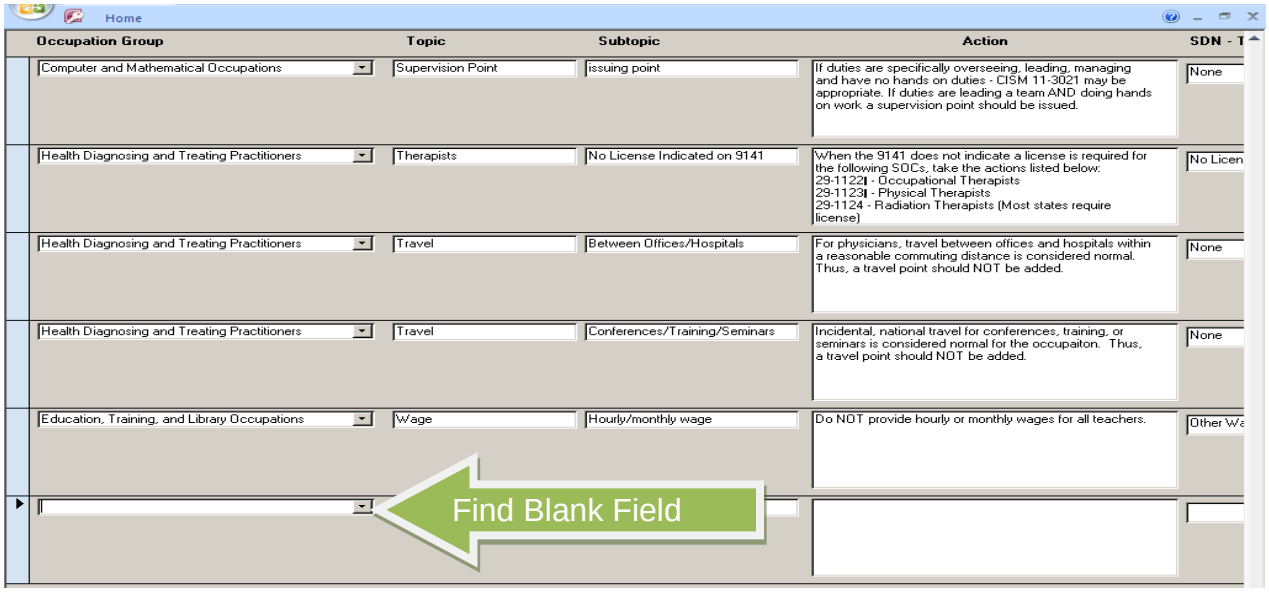

Home
Occupation Group
Topic
Subtopic
Action
SDN - T
Computer and Mathematical Occupations
Supervision Point
issuing point
If duties are specifically overseeing, leading, managing and have no hands on duties - CISM 11-3021 may be appropriate. If duties are leading a team AND doing hands on work a supervision point should be issued.
None
Health Diagnosing and Treating Practitioners
Therapists
No License Indicated on 9141
When the 9141 does not indicate a license is required for the following SOCs, take the actions listed below:
29-1122 - Occupational Therapists
29-1123 - Physical Therapists
29-1124 - Radiation Therapists (Most states require license)
No Licen
Health Diagnosing and Treating Practitioners
Travel
Between Offices/Hospitals
For physicians, travel between offices and hospitals within a reasonable commuting distance is considered normal. Thus, a travel point should NOT be added.
None
Health Diagnosing and Treating Practitioners
Travel
Conferences/Training/Seminars
Incidental, national travel for conferences, training, or seminars is considered normal for the occupaiton. Thus, a travel point should NOT be added.
None
Education, Training, and Library Occupations
Wage
Hourly/monthly wage
Do NOT provide hourly or monthly wages for all teachers.
Other Wa
Find Blank Field

Fig.31

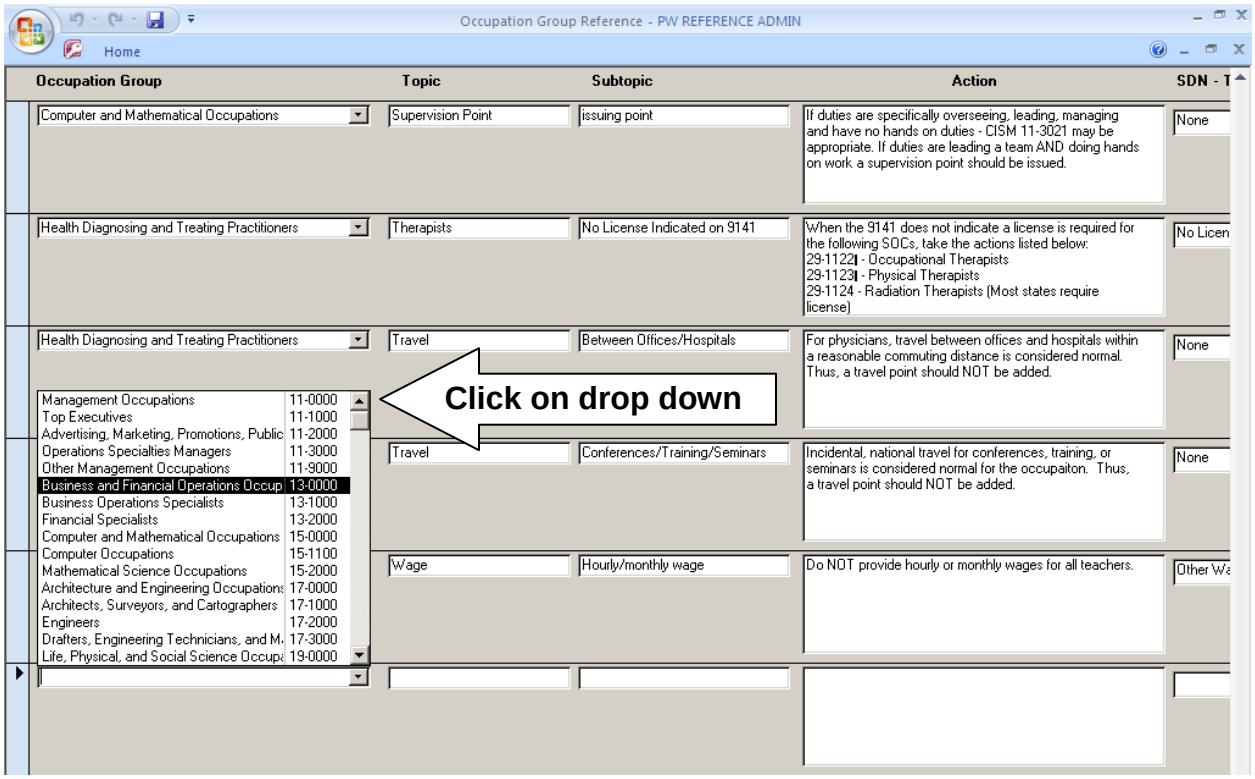

Occupation Group Reference - PW REFERENCE ADMIN
Home
Occupation Group
Topic
Subtopic
Action
SDN - T
Computer and Mathematical Occupations
Supervision Point
issuing point
If duties are specifically overseeing, leading, managing and have no hands on duties - CISM 11-3021 may be appropriate. If duties are leading a team AND doing hands on work a supervision point should be issued.
None
Health Diagnosing and Treating Practitioners
Therapists
No License Indicated on 9141
When the 9141 does not indicate a license is required for the following SOCs, take the actions listed below:
29-1122 - Occupational Therapists
29-1123 - Physical Therapists
29-1124 - Radiation Therapists (Most states require license)
No Licen
Health Diagnosing and Treating Practitioners
Travel
Between Offices/Hospitals
For physicians, travel between offices and hospitals within a reasonable commuting distance is considered normal. Thus, a travel point should NOT be added.
None
Click on drop down
Management Occupations 11-0000
Top Executives 11-1000
Advertising, Marketing, Promotions, Public 11-2000
Operations Specialties Managers 11-3000
Other Management Occupations 11-9000
Business and Financial Operations Occup 13-0000
Business Operations Specialists 13-1000
Financial Specialists 13-2000
Computer and Mathematical Occupations 15-0000
Computer Occupations 15-1100
Mathematical Science Occupations 15-2000
Architecture and Engineering Occupations 17-0000
Architects, Surveyors, and Cartographers 17-1000
Engineers 17-2000
Drafters, Engineering Technicians, and M 17-3000
Life, Physical, and Social Science Occup 19-0000
Travel
Conferences/Training/Seminars
Incidental, national travel for conferences, training, or seminars is considered normal for the occupaiton. Thus, a travel point should NOT be added.
None
Wage
Hourly/monthly wage
Do NOT provide hourly or monthly wages for all teachers.
Other Wa

Fig.32

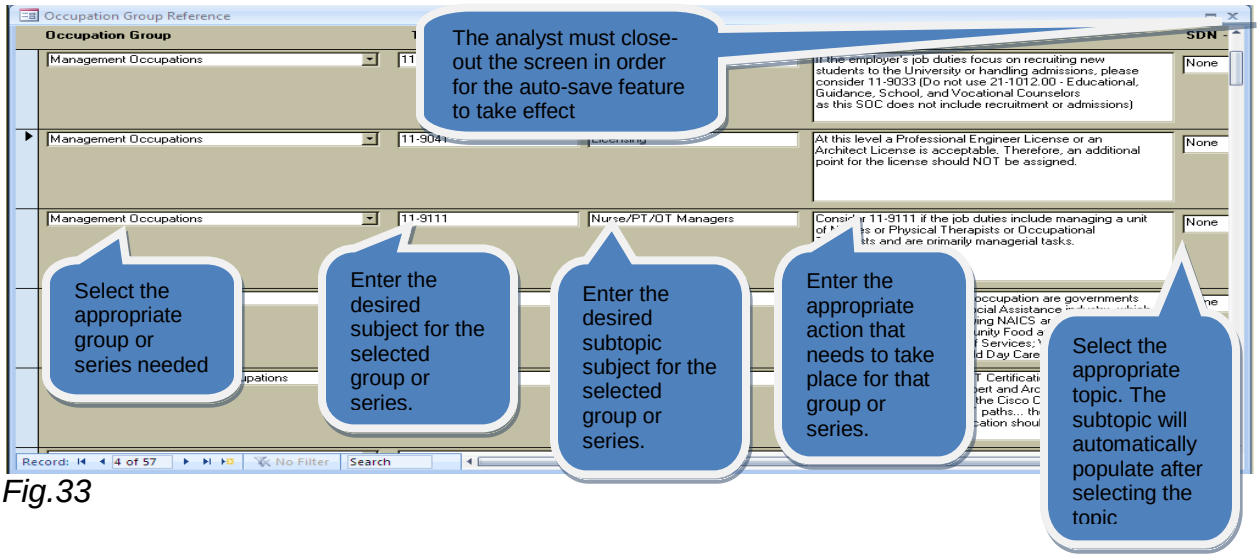

Occupation Group Reference
Occupation Group
SDN
Management Occupations
None
Management Occupations
11-9041
At this level a Professional Engineer License or an Architect License is acceptable. Therefore, an additional point for the license should NOT be assigned.
None
Management Occupations
11-9111
Nurse/PT/OT Managers
None
The analyst must close-out the screen in order for the auto-save feature to take effect
Select the appropriate group or series needed
Enter the desired subject for the selected group or series.
Enter the desired subtopic subject for the selected group or series.
Enter the appropriate action that needs to take place for that group or series.
Select the appropriate topic. The subtopic will automatically populate after selecting the topic
Record: 4 of 57
No Filter
Search

Fig.33

Procedure

III. **General Reference** (*Fig.34*)

Feature Function: Entry/entries should be made into the General Reference when viable or different information is obtained on a SOC code which will help make a practical decision in coding and leveling on the PW 9141 Form. This entry should be verified by the Program Analyst. Once this information has been verified it should also be entered by the Subject Matter Expert (SME).

- **For cross-occupational entries**
- **Please Note:** Make sure all information has been verified by a supervisor or SME before entering information into the Prevailing Wage Reference Application (PWRA).
- **Please** make sure the note or entry is available in the "Notes" section before proceeding, if not, please add
- **Update What's New**

a. Click on the **General Reference** button (*Fig.34*)
b. The General Group will appear. Scroll to the bottom of the page until you see a blank field (*Fig.35*)
c. Fill in the each category(s) e.g., Topic, Subtopic, Action, SDN - Topic, SDN - Subtopic (*Fig.36*)
d. The analyst must **close-out** the screen in order for the auto-save feature to take effect
e. **Update What's New**

Who enters this information?	Federal analysts
What needs to be entered?	Topic, Subtopic, Action, SDN – Topic, SDN-Subtopic
When does it need to be entered?	• Entry/entries should be made into the General Reference when viable or different information is obtained on a SOC code which will help make a practical decision in coding and leveling on the PW 9141 Form. This entry should be verified by the Program Analyst. Once this information has been verified it should also be entered. • Supposed use when the analyst has to input cross-reference entries • Policy or procedure changes, SME area updates, trends, inconsistency in determinations, or circumstances not inherent to the occupation, etc…
Where does it need to be entered?	PW Reference Application Admin Menu – **General Reference** button (S:\Common\PW Reference Admin)
Why does it need to be entered?	To assist the analyst and reviewers in order to make qualified and consistent prevailing wage reviews and

	recommendations.
How does an analyst determine when to make a new entry?	If an analyst or reviewer notices criteria of a SOC Code that would increase the leveling or change the leveling of a SOC Code due to overlapping job duties or special skills areas in more than one SOC Code, entries should then be inputted into this area. • Occupation Group: Select appropriate occupational group • Topic: should be the main subject of the Action item • Sub Topic: one of the divisions into which a main topic may be divided • Action: the causation of change by factors within the application • SDN-Topic: Drop-down menu of choices for formal written diplomatic or official communication from the NPWC to the employer; usually placed in the external notes section • SDN-Subtopic: one of the divisions of the communication

Example

- **Topic** – Various Worksites
- **Subtopic** – Not in additional location
- **Action** – Add the information: When unspecified worksites or travel is listed in fields other than D.c.7a, enter the Additional Note
- **SDN Topic** - Various Worksites
- **SDN Subtopic** - Not in additional location

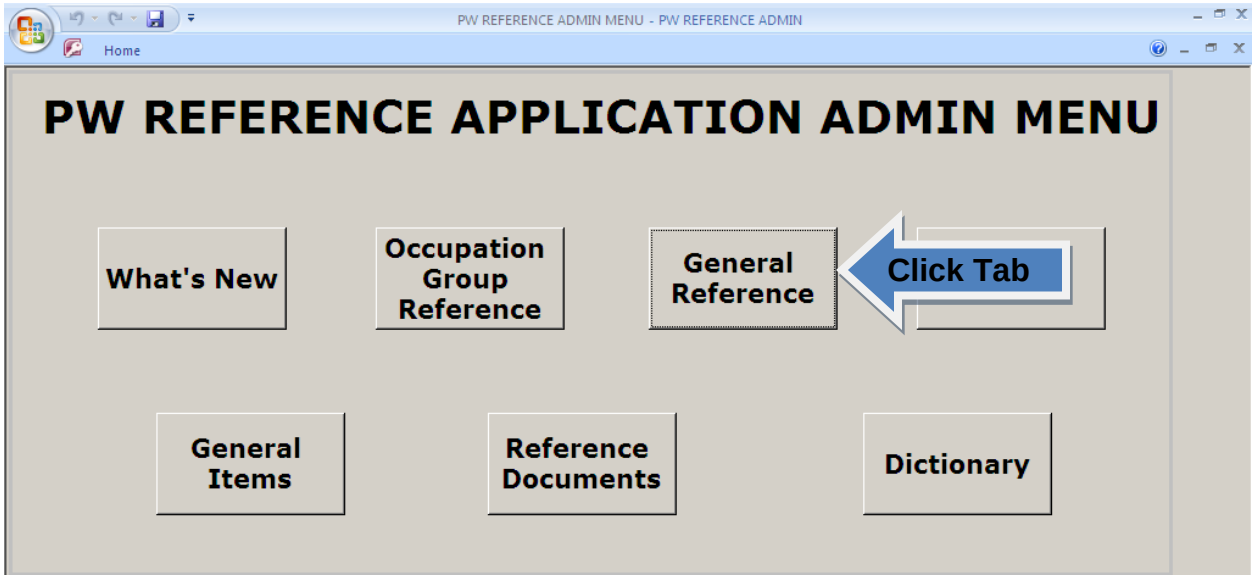


Fig.34

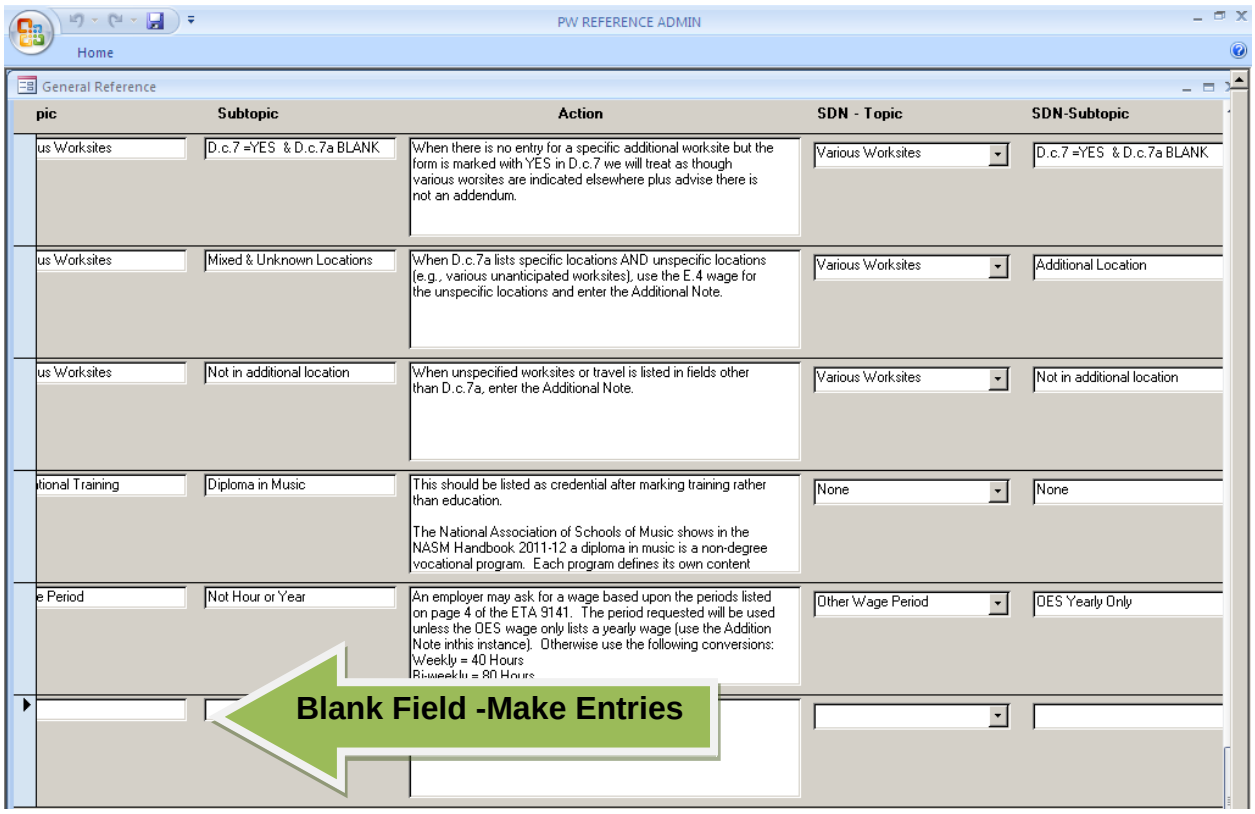

PW REFERENCE ADMIN
Home
General Reference
pic
Subtopic
Action
SDN - Topic
SDN-Subtopic
us Worksites
D.c.7 =YES & D.c.7a BLANK
When there is no entry for a specific additional worksite but the form is marked with YES in D.c.7 we will treat as though various worsites are indicated elsewhere plus advise there is not an addendum.
Various Worksites
D.c.7 =YES & D.c.7a BLANK
us Worksites
Mixed & Unknown Locations
When D.c.7a lists specific locations AND unspecific locations (e.g., various unanticipated worksites), use the E.4 wage for the unspecific locations and enter the Additional Note.
Various Worksites
Additional Location
us Worksites
Not in additional location
When unspecified worksites or travel is listed in fields other than D.c.7a, enter the Additional Note.
Various Worksites
Not in additional location
itional Training
Diploma in Music
This should be listed as credential after marking training rather than education.
The National Association of Schools of Music shows in the NASM Handbook 2011-12 a diploma in music is a non-degree vocational program. Each program defines its own content
None
None
e Period
Not Hour or Year
An employer may ask for a wage based upon the periods listed on page 4 of the ETA 9141. The period requested will be used unless the OES wage only lists a yearly wage (use the Addition Note inthis instance). Otherwise use the following conversions:
Weekly = 40 Hours
Other Wage Period
OES Yearly Only
Blank Field -Make Entries

Fig.35

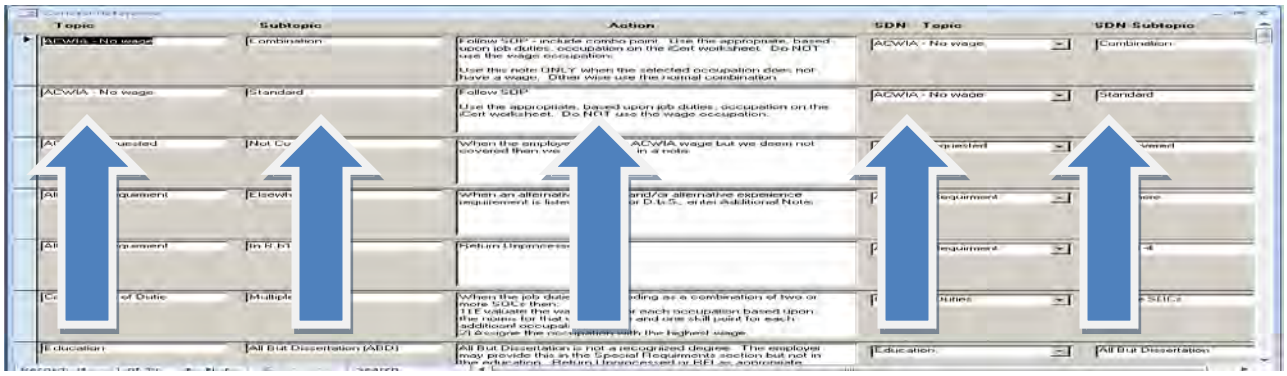

Topic
Subtopic
Action
SDN - Topic
SDN-Subtopic

Fig.36

Procedure

IV. **General Items** (*Fig.37*)

Feature Function: The purpose of the **General Items** is to give the analyst a straightforward method to link to documents with more information than will reasonably fit elsewhere in the PWRA.

- **Please Note:** Make sure all information has been verified by a supervisor or SME before entering information into the Prevailing Wage Reference Application (PWRA).
- **Please** make sure an entry is available in the "Reference Documents" section, if not, please add
- **Update What's New**

a. Click on the **General Items** button (*Fig.37*)
b. The General Items group will appear. Scroll to the bottom of the page until you see a blank field (*Fig.38*)
c. Fill in the each category(s) e.g., Topic, Subtopic, Notes, Reference Documents (*Fig.39*)
d. The analyst must **close-out** the screen in order for the auto-save feature to take effect
e. **Update What's New**

Who enters this information?	Federal analysts
What needs to be entered?	Topic, Subtopic, Notes, Reference Doc
When does it need to be entered?	• Entry/entries should be made into the General Items when viable or different information is obtained on a SOC code which will help make a practical decision in coding and leveling on the PW 9141 form. This entry should be verified by the Program Analyst. Once this information has been verified, it should be entered into the database application. • Policy or procedure changes, SME area updates, trends, inconsistency in determinations, or circumstances not inherent to the occupation, etc…
Where does it need to be entered?	PW Reference Application Admin Menu – **General Items** button (S:\Common\PW Reference Admin)
Why does it need to be entered?	To assist the analyst and reviewers in order to make qualified and consistent prevailing wage reviews and recommendations.
How does an analyst determine when to make a new entry?	If an analyst or reviewer notices criteria of a SOC Code that would increase the leveling or change the leveling of a SOC Code due to overlapping job duties or special skills areas in more than one SOC Code, entries should then be inputted into this area.

	• Topic: should be the main subject of the Action item • Sub Topic: one of the divisions into which a main topic may be divided • Notes: the causation of change by factors within the application • Reference Doc: Location heading of the document

Example

- **Topic** – Pre-K – Secondary
- **Subtopic** – Revision of Combination
- **Notes** – Add the information - Revision of Combination of Duties for 25-0000 Document: This document presents a new guideline and steps to process combinations with SOC codes 25-2011(Preschool Teachers, Except Special Education), 25-2012 (Kindergarten Teachers, Except Special Education), 25-2021 (Elementary School Teachers, Except Special Education), 25-2022 (Middle School Teachers, Except Special and Career/Technical Education), and 25-2031 (Secondary School Teachers, Except Special and Career/Technical Education).
- **Reference Doc** – 25-0000 Combination Revision (drop down menu)

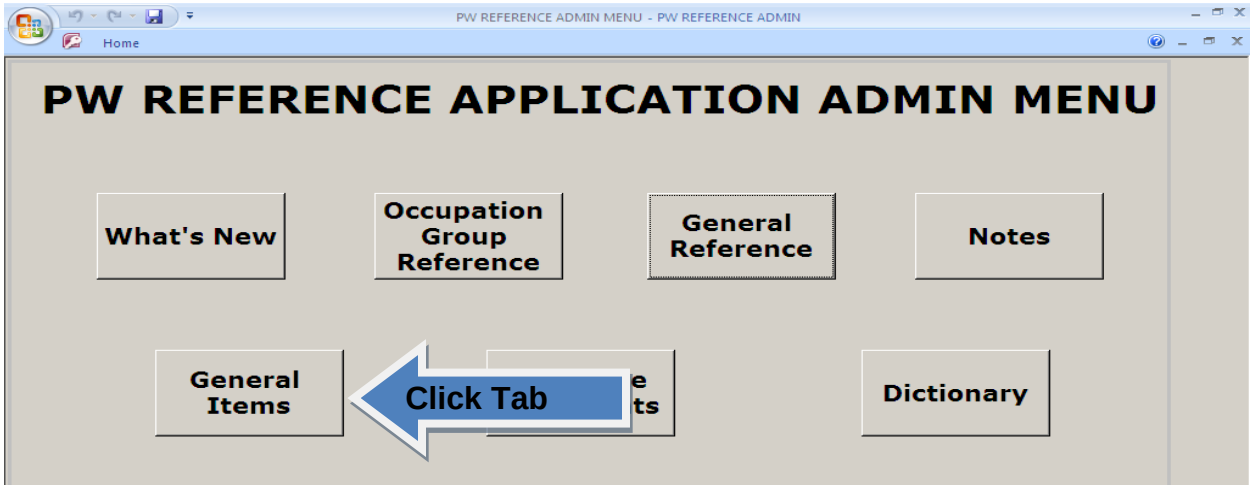


Fig.37

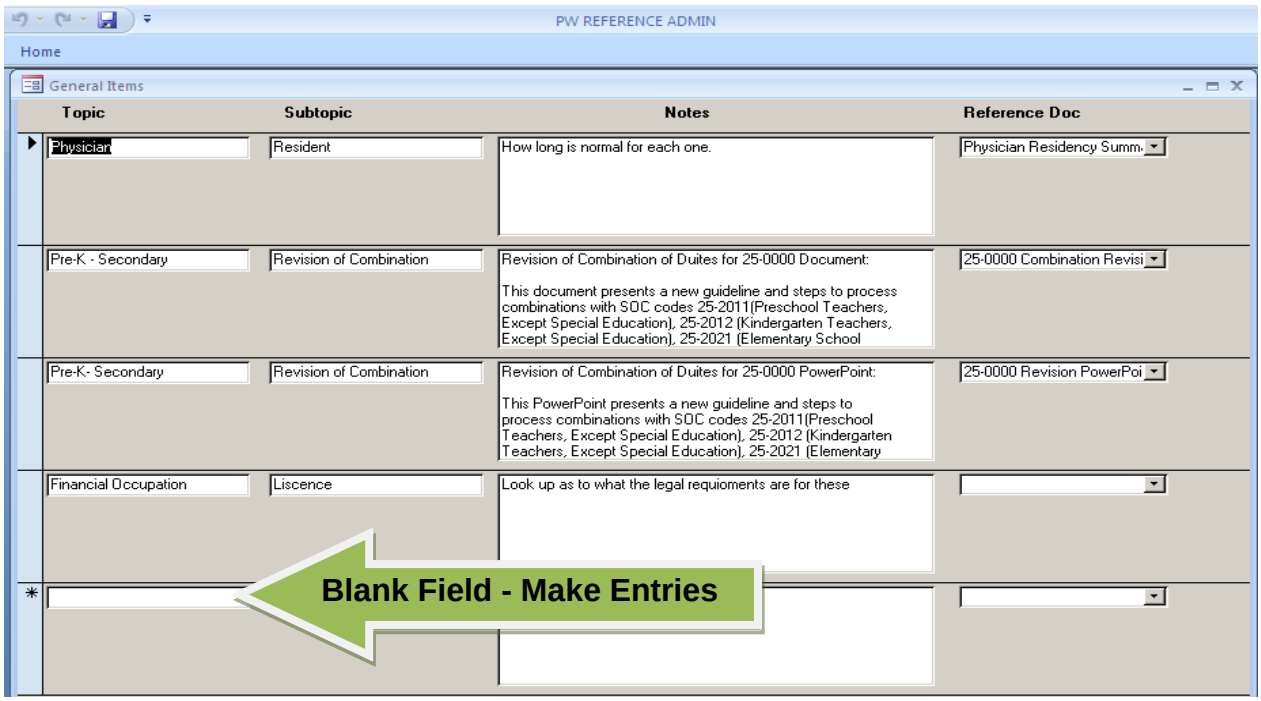

PW REFERENCE ADMIN
Home
General Items
Topic
Subtopic
Notes
Reference Doc
Physician
Resident
How long is normal for each one.
Physician Residency Summ
Pre-K - Secondary
Revision of Combination
Revision of Combination of Duites for 25-0000 Document:
This document presents a new guideline and steps to process combinations with SOC codes 25-2011(Preschool Teachers, Except Special Education), 25-2012 (Kindergarten Teachers, Except Special Education), 25-2021 (Elementary School
25-0000 Combination Revisi
Pre-K- Secondary
Revision of Combination
Revision of Combination of Duites for 25-0000 PowerPoint:
This PowerPoint presents a new guideline and steps to process combinations with SOC codes 25-2011(Preschool Teachers, Except Special Education), 25-2012 (Kindergarten Teachers, Except Special Education), 25-2021 (Elementary
25-0000 Revision PowerPoi
Financial Occupation
Liscence
Look up as to what the legal requioments are for these
Blank Field - Make Entries

Fig.38

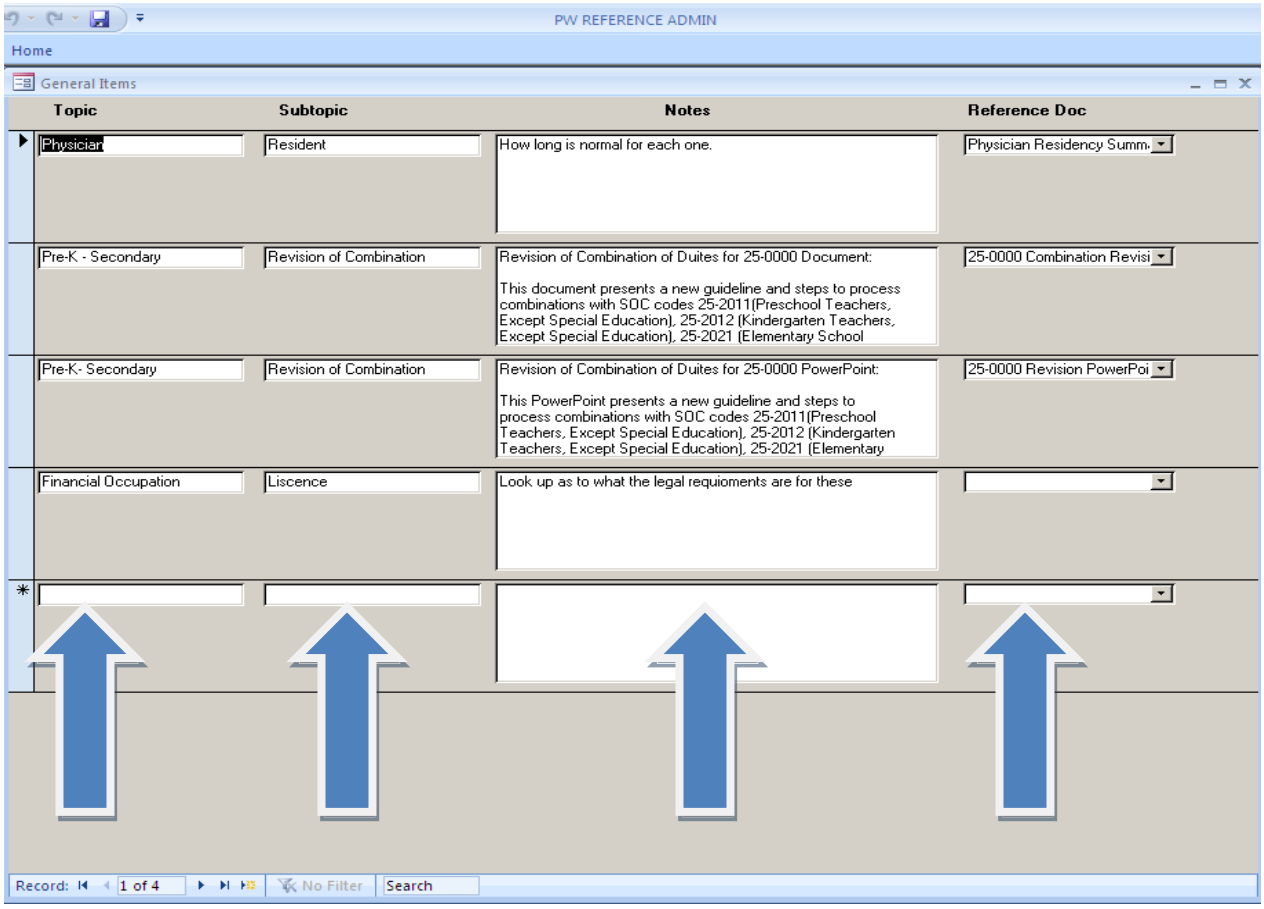

PW REFERENCE ADMIN
Home
General Items
Topic
Subtopic
Notes
Reference Doc
Physician
Resident
How long is normal for each one.
Physician Residency Summ
Pre-K - Secondary
Revision of Combination
Revision of Combination of Duites for 25-0000 Document:
This document presents a new guideline and steps to process combinations with SOC codes 25-2011(Preschool Teachers, Except Special Education), 25-2012 (Kindergarten Teachers, Except Special Education), 25-2021 (Elementary School
25-0000 Combination Revisi
Pre-K- Secondary
Revision of Combination
Revision of Combination of Duites for 25-0000 PowerPoint:
This PowerPoint presents a new guideline and steps to process combinations with SOC codes 25-2011(Preschool Teachers, Except Special Education), 25-2012 (Kindergarten Teachers, Except Special Education), 25-2021 (Elementary
25-0000 Revision PowerPoi
Financial Occupation
Liscence
Look up as to what the legal requioments are for these
Record: 1 of 4
No Filter
Search

Fig.39

Procedure

V. **Dictionary** (*Fig.40*)

Feature Function: The purpose of the Dictionary feature is to represent a reference which contains an alphabetical list of words, with information given for each word that is useful to the NPWC. So that when a word, abbreviation or acronym has a different meaning depending on the context, we may see the difference. This feature is to be filled in by the occupation group or groups if appropriate.

a. Click on the **Dictionary** button to enter a word, abbreviation or acronym (*Fig.40*)
b. Under the **Occupation Group** heading, select the appropriate group or series needed (*Fig.41*)
c. Under the **Word** heading, enter the appropriate word, abbreviation or acronym for the selected group or series.
d. Under the **Definition** heading, enter the actual content of the new word, abbreviation or acronym
e. The analyst must **close-out** the screen in order for the auto-save feature to take effect

Who enters this information?	Federal analysts
What needs to be entered?	Occupation group, Word, and Definition
When does it need to be entered?	When a word, abbreviation or acronym has a different meaning depending on the context, we may see the difference
Where does it need to be entered?	PW Reference Application Admin Menu – **Dictionary** button (S:\Common\PW Reference Admin)
Why does it need to be entered?	To assist the analyst and reviewers in order to make qualified and consistent prevailing wage reviews and recommendations.
How does it need to be entered?	By following the steps outlined in this SOP

Example

Occupation Group	**Word**	**Definition**
Business and Financial Operations Occupations	CPI	Consumer Price Index, a measure of the cost of goods and services at the consumer, rather than wholesale or producer, level.

AILA Doc. No. 18010230. (Posted 1/2/18)

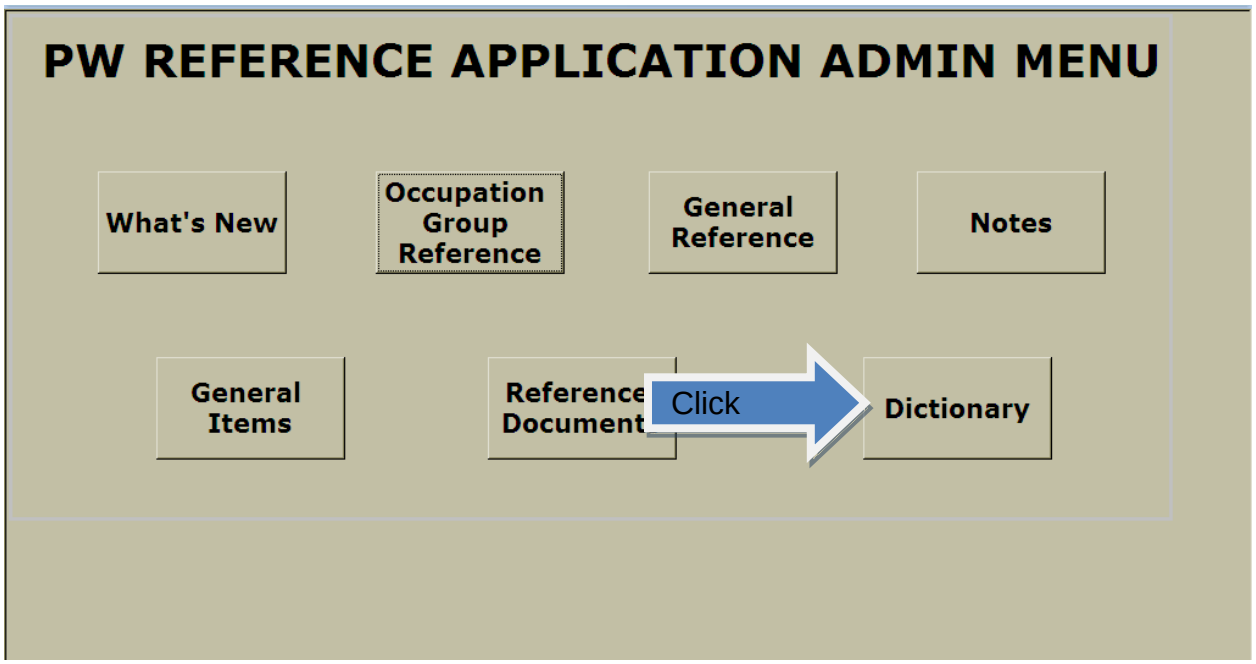

PW REFERENCE APPLICATION ADMIN MENU
What's New
Occupation Group Reference
General Reference
Notes
General Items
Reference Document
Click
Dictionary

Fig.40

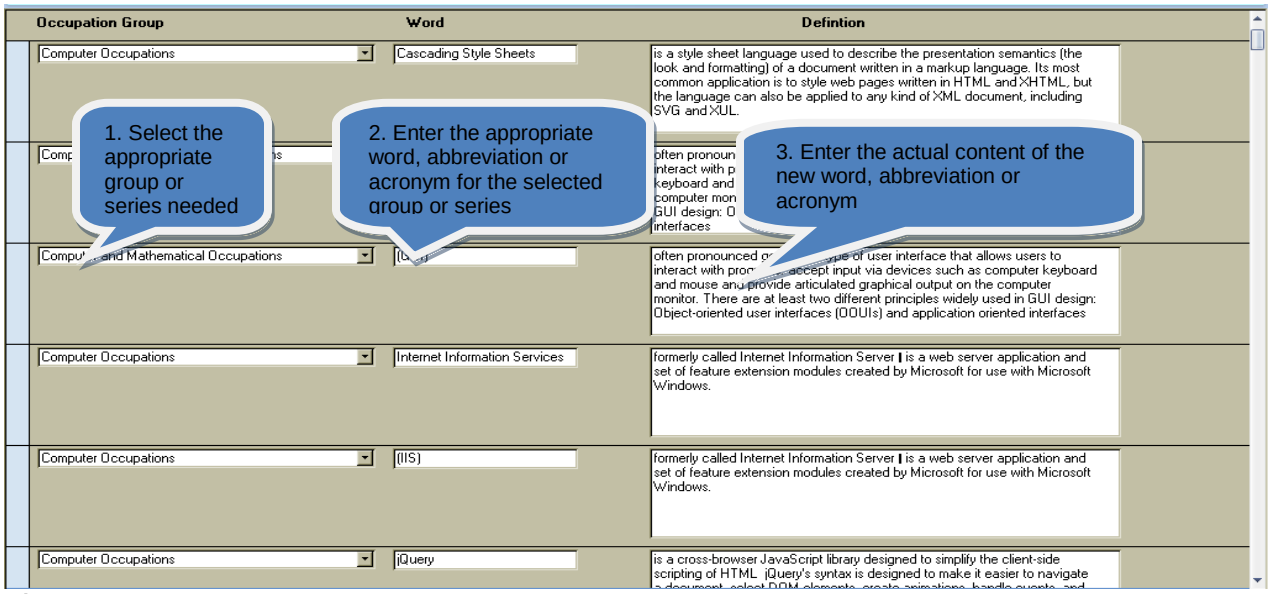

Occupation Group
Word
Defintion
Computer Occupations
Cascading Style Sheets
is a style sheet language used to describe the presentation semantics (the look and formatting) of a document written in a markup language. Its most common application is to style web pages written in HTML and XHTML, but the language can also be applied to any kind of XML document, including SVG and XUL.
1. Select the appropriate group or series needed
2. Enter the appropriate word, abbreviation or acronym for the selected group or series
3. Enter the actual content of the new word, abbreviation or acronym
Computer Occupations
Internet Information Services
formerly called Internet Information Server I is a web server application and set of feature extension modules created by Microsoft for use with Microsoft Windows.
Computer Occupations
(IIS)
formerly called Internet Information Server I is a web server application and set of feature extension modules created by Microsoft for use with Microsoft Windows.
Computer Occupations
jQuery
is a cross-browser JavaScript library designed to simplify the client-side scripting of HTML. jQuery's syntax is designed to make it easier to navigate

Fig.41

Procedure

VI. **Find O*Net** (*Fig.42*)

Feature Function: Make entry/entries into the Find O*Net when new information or a trend occurs on a particular SOC Code.

a. Click on the "**Find O*NET**" button to edit (*Fig.42)*
b. Enter the SOC that needs to be updated (*Fig.43)*
c. Click the **Find Occupation** button
d. Click **Edit**
e. Update needed information (see below- How to make entry/entries* - *Fig.45, 46 and 47*):
f. Click **Save and Exit** (*Fig.44)*
g. **Update What's New**

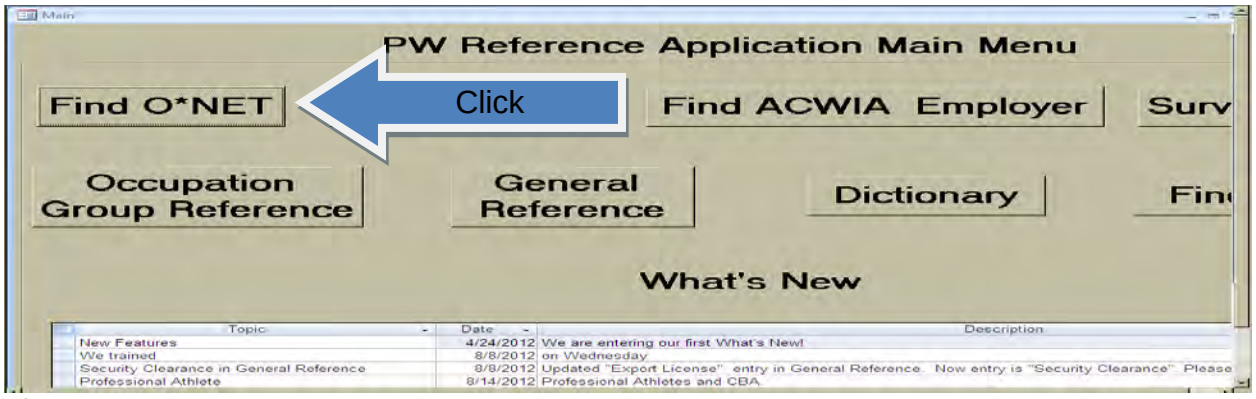


Fig.42

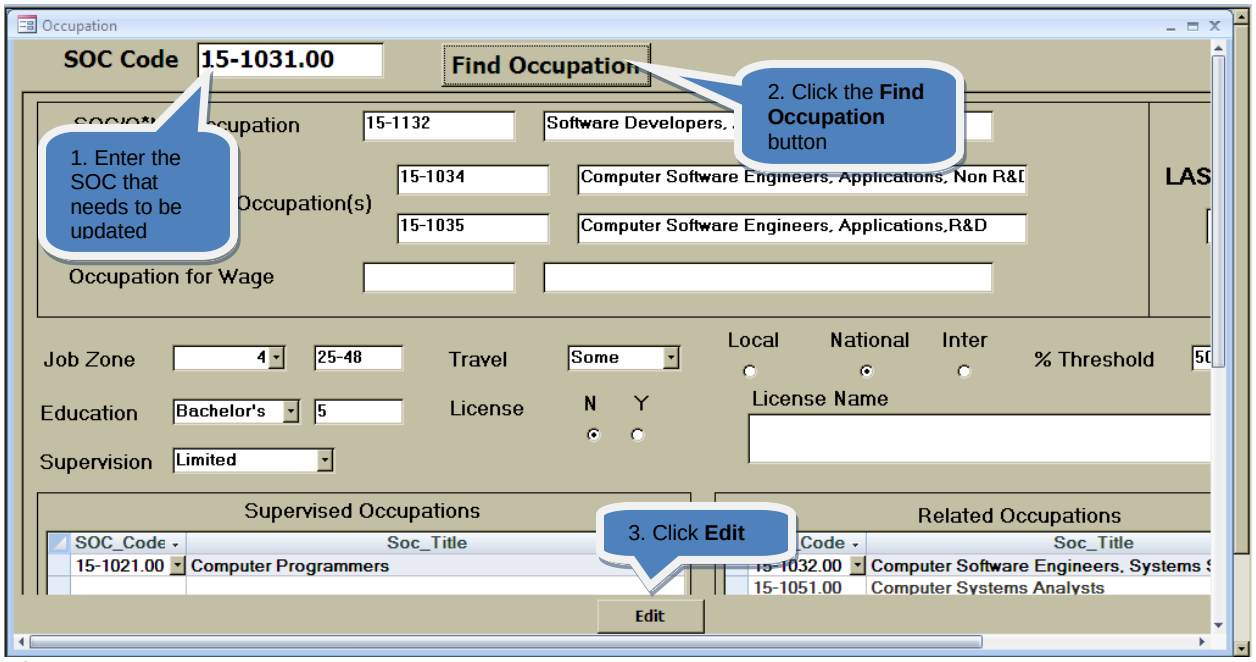


Fig.43

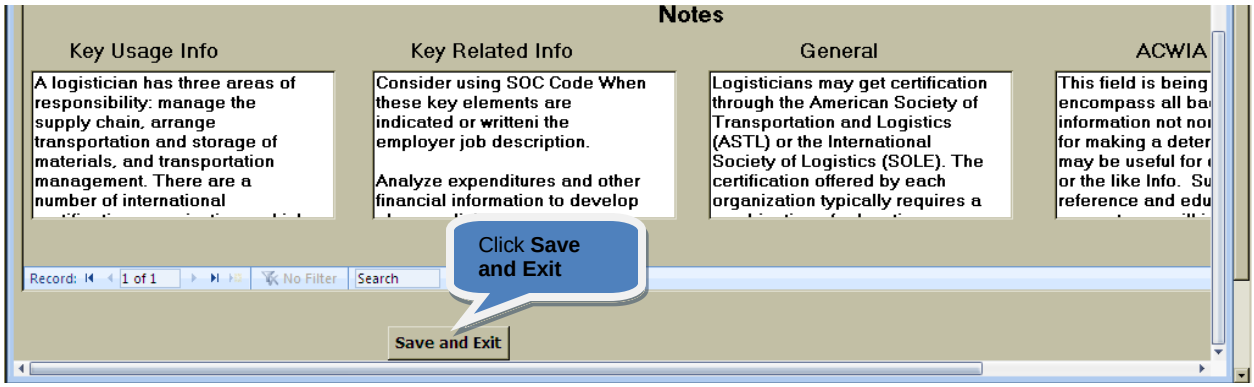


Fig.44

HOW TO MAKE ENTRY/ENTRIES – OVERVIEW*

1. Making entry/entries into the Prevailing Wage Reference Application (PWRA-Find O*Net).
    a. When new information or a trend occurs on a particular SOC Code
    b. Research should be done by the analyst on that particular SOC code.
2. Once the research has been done the analyst should gather the relevant information and forward this information to the Subject Matter Expert (SME) that covers that occupation area **(in writing).**
3. The SME should then verify the information given by the analyst and any other parallel information for verification.
4. All information should then be forwarded to the Supervisor for approval**. Note** (All inquires to the Supervisor should be in writing in order to maintain a proper paper trail).**
5. Once the information has been approved by the Supervisor the SME should make entry/entries into PWRA (Find O*Net-edit) within a one to two day time frame. If needed as soon as possible. **Note**** (**If the Supervisor is not available the SME for the area will have to make the decision.)**
6. Make a folder on **S:\Common\Occupation Specific Information\ (name of folder)**; copy and paste all information pertaining to that particular SOC Code into this folder.

MAKING OCCUPATION SPECIFIC ENTRIES*

1. When making an entry or entries into the PWRA - Find O*Net Key Usage Information, Key Related Information, General and ACWIA categories they should contain the following information (*Fig.45 and 46*):
    a. **Key Usage Information**: this should contain information that adds to O*NET, rather than repeating what has already been written in O*NET.
    b. **Key Related Information**: this should contain information that indicates key indicators to consider a related occupation.
        i. When making an entry in this field, the analyst should take note that each of the Related Occupations in the section above

should have an entry beginning on its own line with one blank line in between a previous entry. Hence, the first line will just be the SOC code and each indicator will start with a bullet and get its own line. For example:

1. 15-1032
   - write compilers
   - write drivers

2. 15-1021
   - only assist in design
   - only test own code

c. **General**: this should contain information specific to the occupation such as clarification of leveling issues and occupation specific case notes.

d. **ACWIA**: This field is being changed to encompass all background information not normally needed for making a determination but may be useful for redetermination or the like Info. Such as license reference and education percentages will in this particular field. See the samples listed below.

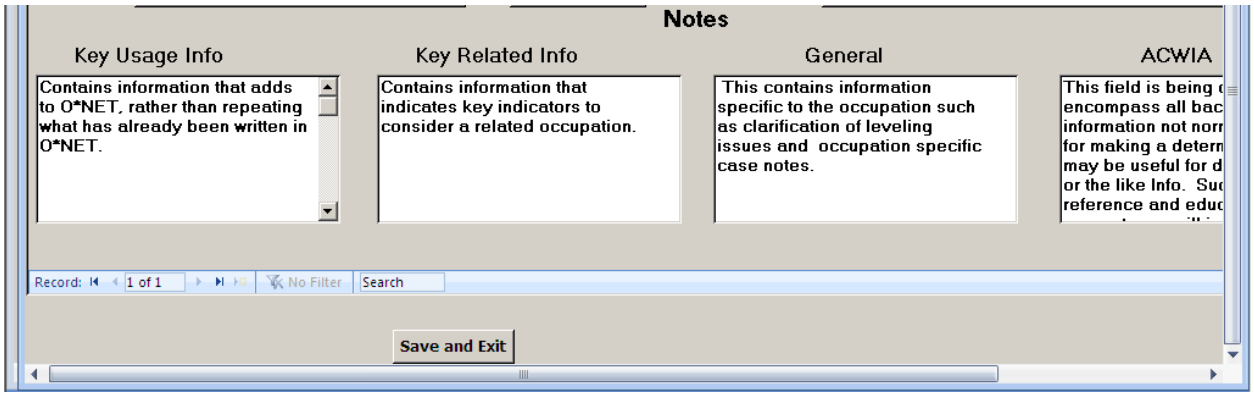


Fig.45

Example
SOC CODE – 13- 1081.00 LOGISTICIAN

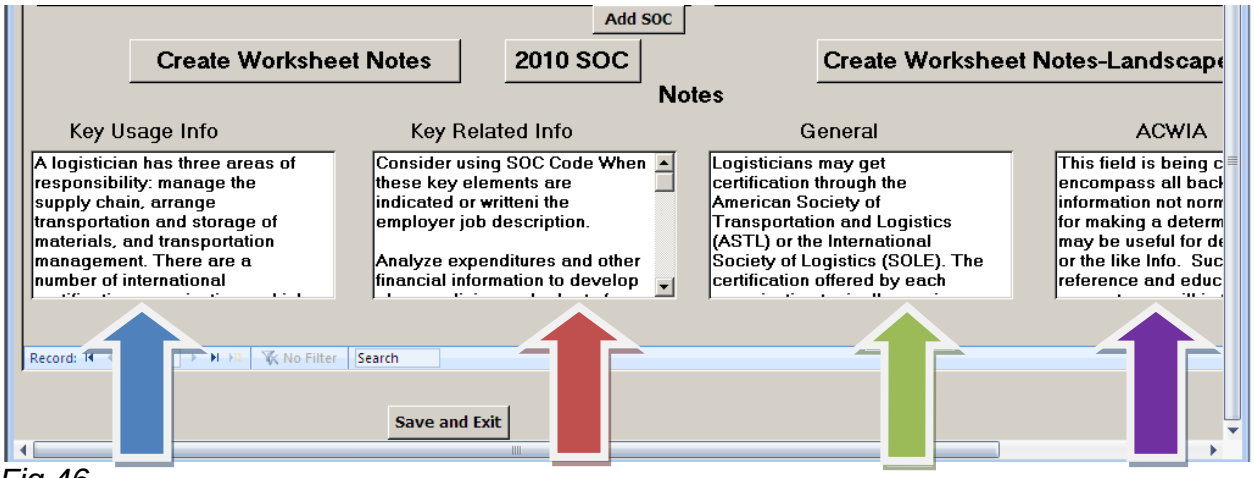


Fig.46

Key Usage Info. - Example:
A logistician has three areas of responsibility: manage the supply chain, arrange transportation and storage of materials, and transportation management. There are a number of international certification organizations, which are responsible for this professional designation.

Key Related Info. - Example:
- Consider using this SOC Code when these key elements are indicated or written in the employer job description:
    - Analyze expenditures and other financial information to develop plans, policies, or budgets for increasing profits or improving services. Set operations policies and standards, including determining safety procedures for the handling of dangerous goods.
    - Negotiate and authorize contracts with equipment and materials suppliers, and monitor contract fulfillment. Conduct investigations related matters from shipping companies

General - Example:
Logisticians may get certification through the American Society of Transportation and Logistics (ASTL) or the International Society of Logistics (SOLE). The certification offered by each organization typically requires a combination of education, experience, and passing an exam. Although it is not required, certification can demonstrate professional competence and a broad knowledge of logistics.

ACWIA – Example:
This field is being changed to encompass all background information not normally needed for making a determination but may be useful for determination or the like Info.

Such as license reference and education percentages will in this particular field. See the samples listed.

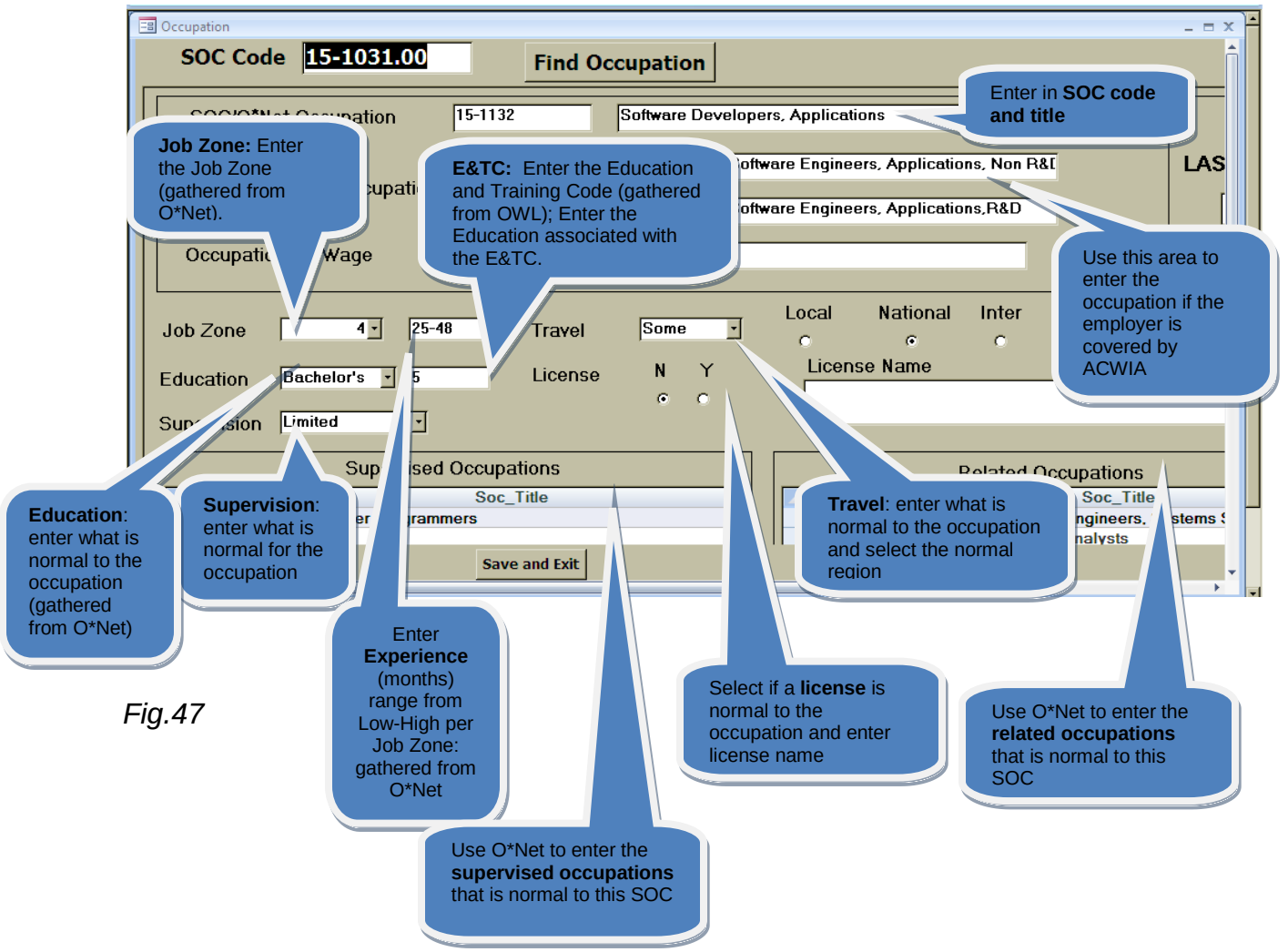


Fig.47

Commonly Used Acronyms/Terms:

- 9141: Prevailing Wage Form
- ACWIA: American Competitive Work Enforcement Act
- “Add Note”: The note Analysts populate the worksheet checklist.
- “Additional Note”: The employer will see this note.
- BALCA: Board of Alien Labor Certification of Appeals
- BLS: Bureau of Labor Statistics
- CBA: Collective Bargaining Agreement
- CO: Certifying Officer
- DBA: Davis Bacon Act
- DOT: Dictionary of Occupational Titles
- ETA: Employment and Training Administration
- ETC: Education and Training Code
- FLC: Foreign Labor Certification
- JZ: Job Zone
- LCA: Labor Condition Application
- NPWHC: National Prevailing Wage & Helpdesk Center
- NPWC: National Prevailing Wage Center
- OES: Occupation Employment Statistics
- OFLC: Office of Foreign Labor Certification
- O-Net: Occupational Search tool (for looking up SOCs)
- OWL: Online Wage Library
- PWC: Prevailing Wage Center
- PWD: Prevailing Wage Determination
- PWDR: Prevailing Wage Determination Request
- RFI: Request For more Information
- SCA: Service Contract Act
- SME: Subject Matter Expert
- SOC: Standard Occupation Classification
- SOP: Standard Operating Procedure
- SVP: Specific Vocation Preparation
- SWA: State Workforce Agency

Commonly Used Websites/References:

OWL (Online Wage Library):
http://www.flcdatacenter.com/OESWizardStart.aspx

O*Net:
http://online.onetcenter.org/

Career Info net (For looking up licenses/certifications):
http://www.careerinfonet.org/

2010-2011 Occupational Outlook Handbook:
http://www.bls.gov/oco/

Wage Determination Online (SCA Wages-H-2B):
http://www.wdol.gov/sca.aspx#0

iCERT:
http://icert.doleta.gov/index.cfm

ACWIA Reference Application:
My Computer→S:/drive→Common→ACWIA Reference (1,644 KB)

Standard Operating Procedures:
My Computer→S:/drive→Standard Operating Procedures
Prevailing Wage Determination Procedure (via iCERT) is located in this folder.

DOL/Employment and Training Administration:
http://www.doleta.gov

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE EVENT LOG

PW09

Revision Date	Section Number	Comments
07MAR2013	All	Established this SOP as a replacement for the previous Analyst Guide which was replaced by the PWRA.

OFLC Internal Use Only

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW08
EFFECTIVE DATE: 9 September 2013
SUBJECT: Analyst Review: Prevailing Wage Determination

Purpose
The purpose of this SOP is to document the process used to determine a Prevailing Wage recommendation. The process steps in this SOP are primarily executed by the Contract staff and Federal Staff making case recommendations

Background
This SOP is used to perform analyst review actions for Prevailing Wage Determinations. Subsequent analyst reviews are then forwarded to a federal certifying official for certification.

Statutory Requirement
O*net http://www.onetonline.org
Online Wage Library (OWL) http://www.flcdatacenter.com/OesWizardStart.aspx
Career Infonet http://www.careerinfonet.org/
iCERT http://icert.doleta.gov/index.cfm
DOL/Employment and Training Administration http://www.doleta.gov/
ACWIA Reference database S:\Common\ACWIA Reference
SCA wages for H-2B http://www.wdol.gov/sca.aspx#0
PW Reference Application

Additional Requirement
DSS (Decision Support Software) \\oflc-col-fp01\shared\desktop\TekPro Apps\ Decision Support

Procedure

1. Launch iCERT, OWL, and O-Net, PW Reference Application (I-Cert and OWL are located on each Analyst's Desktop), DSS (Decision Support Software)
2. Login to the iCERT portal http://icert.doleta.gov/index.cfm; Enter designated login and password.
3. Click on "Prevailing Wage"→ "PW Queues" → "My Cases"
4. Team Lead will assign cases to analyst each morning, within the respective "recommendation day" range.
    A. H2B, Microsoft and Data Entered Cases will be assigned to Analysts that are identified to work cases requiring "special handing".
    B. All cases are to be worked in FIFO (First In First Out) Order with the exception of instances where there are duplicate E.a.5 cases submitted by the employer, the Analyst then has the approval to work all cases with Duplicate job duties out of FIFO order.

AILA Doc. No. 18010230. (Posted 1/2/18)

5. Open a Case in iCERT

6. PW Decision Support System

   A. Prior to processing, all cases must be immediately entered into DSS.
   B. Copy/paste the case number into the DSS by highlighting (right to left) the case number from iCERT
   C. Based upon the results, please create a case note as follows:

Title:	DSS
Category:	Worksheet/Checklist
Note:	Copy/Paste the findings

   D. Review each DSS flag and take appropriate action, as necessary.
   E. Any duplicate cases flagged will be assigned for coding consistently.
   F. If DSS is not available, CPA will enter the following note:

Title:	DSS
Category:	Worksheet/Checklist
Note:	DSS not available

7. Review the 9141 Form for corresponding documentation and eligibility criteria (accuracy and completeness):
   NOTE: If ACWIA supporting documentation found, send case information to ACWIA team as directed in Part 1 of ACWIA SOP – PW07.
   A. Check the "Correspondence", "Case Notes" and "Case Document Tabs"
   B. Review all prior correspondence and external uploads
   C. Analyst is to open and view all correspondence and take appropriate action.
      i. Employer Provided Survey
      ii. Collective Bargaining Agreement Wage Documentation
      iii. Contract Service Agreement
      iv. Other Supporting Documentation
   D. If the Analyst determines if a case is not a survey, they are to create an OSD case note. Reference SOP PW17 OFLC Case Notes.
   E. If the Analyst finds that the "Other Supporting Documentation" are additional Job Duties (Section E.a.5) and/or additional Special Requirements (Section E.b.5), the Analyst will send an RFI to the employer requesting the additional information that must be listed on the 9141. Reference PW_06 RFI

   F. If the case was data entered confirm that the original 9141 has been uploaded, open the document, and review/check for accuracy against the iCERT case.

   G. If a data entry error is discovered, the Analyst makes the necessary corrections, creates a case note: Title, Data Entry Correction, Category is Data Entry and the note should identify the Section and field where the correction was made.

   H. If a revision or edit must be made within the specified guidelines regarding the Employer Correspondence process, make the necessary adjustment and in doing

so, in the dialogue box, select Other as the Category. Reference SOP: PW17 NPWC Case Note Coding System

8. Review all Mandatory fields on the 9141 (See Internal Color Coded Form for guidance in training materials. Electronic copy stored on S:\Training Materials\ETA Form 9141 Manditory Fields Marked.doc.
    A. If there are missing mandatory fields and submitted within 7 days, the case is then eligible for VOID. See SOP PW 04 – VOID Processing for further instructions.
    B. If USA is listed in Section E.c4 or there is a city/county/state obvious misspelling, employer correspondence needs to be sent, see SOP PW17 – NPWC Case Note Coding System for proper Employer Notification Code and process.
    C. If there are missing mandatory fields and submitted outside of 7 days, the case then requires an RFI (Request for Further Information). See SOP PW06 RFI
    D. Once the RFI response is received by Help Desk, and the case is returned to the Analyst, it is the responsibility of the Analyst to review the employers entire RFI response and reconciliation for accuracy and completeness.

9. Review EIN (Section C.12.) and Employer (Section C) for ACWIA eligibility. See SOP PW07 – ACWIA for complete instructions.
    A. If candidate for ACWIA, copy and past the EIN (Section C.12.) in PW Reference Application to verify eligibility. PW Reference Application: (S:\Common\ PW Reference)
    B. DSS (Decision Support System) will flag cases that are ACWIA eligible, ineligible and possible employer candidates for consideration. See SOP PW07 – ACWIA for proper case handling instructions.

10. Review Job Description and make comparison to O*Net in order to select the Candidate SOCs.

    A. Consider employer requirements in totality, such as Experience, Training, Education and other Special Details in order to make the most appropriate selection.

    B. Highlight key words or phrases, considering most significant job duties and determine connection to the Summary task of the candidate occupations in ONET. (Referencing employer's job duties and O*NET)

    C. Eliminate those SOCs that least fit the employer's job duties. In addition:

    D. Consider prior determinations, Redeterminations and Center Director Reviews submitted by the same employer with duplicate job duties. (Referencing DSS and iCERT).

        1. If analyst determines that case should be coded contrary to previous determinations, please see Addendum 1 and 2.
        2. If there is an identical previous determination pending redetermination, please see Addendum 3.

    E. Research any licensing, requirements job duties that are unknown to the Analyst using resources such as Google, Wikipedia.

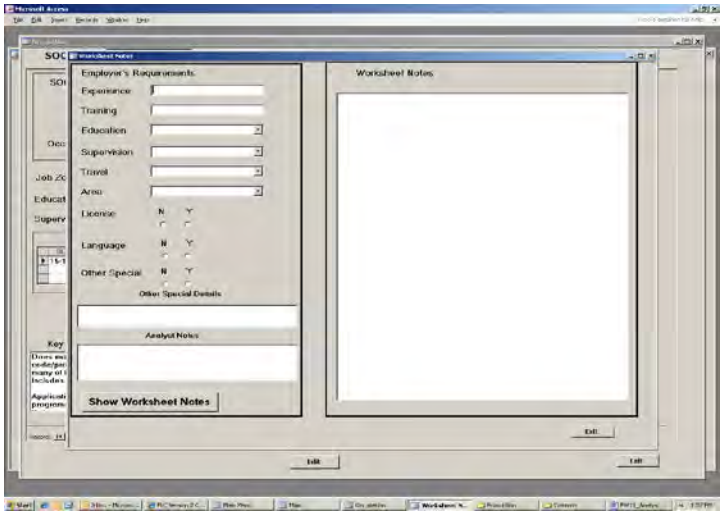
F. Thoroughly read the Occupation page of the PW Ref App; consider tasks under the Key Usage Info, Key Related Info and the General Section tab.

G. Make most appropriate SOC selection based on items outlined above.

11. Special Handling Instructions
    A. Combination of Duties: If the job duties have several tasks from different but similar occupations and the tasks require significantly different skill sets then select both (only rarely will there be more than two occupations, and record reasoning in Case Notes. Use the OES Wage Level Procedures to determine the occupation with the higher wage for the location and wage level and code the PWD as this occupation while putting into the Additional Notes Regarding Wage Determination. Also record the two wages and the wage level worksheet for the non-selected occupation in the Case Notes.
    B. All Microsoft, Qualcomm and Intel cases are currently assigned to designated Analysts for special handling. See instructional documents - S:\CO Use\Microsoft, Intel, Qualcomm
    C. Recommendation for H-2B cases should be completed within ten days of submission and assigned to the designated Federal Reviewer. See Analyst SME listing. This target timeframe is subject to change based upon volume, the need to send an RFI or other circumstances that may arise.

12. From the PW Ref App Main Menu (S:\Common\ PW Reference):

    A. Click Find O*Net:
    B. Enter SOC Code, then Click Find Occupation
    C. Click Create Worksheet Notes
    D. Enter the required fields in the Worksheet Notes as outlined below:



    E. "Analyst Note" should explain the Analyst's reasoning for SOC selection. Analyst should give an explanation of their SOC selection.

    F. Once all necessary information has been filled out, Click "Show Worksheet Notes"

13. Complete Analyst Recommendation in iCERT

A. Copy and paste the Worksheet Notes into iCERT in the "Add Note" section. Title: "Wage Level Worksheet"; Category: "Worksheet/Checklist"; Save.
B. H-2B Cases: Do Not insert the total points from the Wage Level Worksheet notes into the "Checklist" for the categories: Occupation, Experience, Education, Training, Special Skills/Other Requirements, and Supervisory duties.
    1. When calculating H-2B wage no points are to be assessed in the "Checklist" of the Worksheet & Checklist Tab due to all H-2B cases being assigned a mean wage.

C. Go to the Worksheet & Checklist Tab and insert the total points from the Wage Level Worksheet notes into the "Checklist" for the categories: Occupation, Experience, Education, Training, Special Skills/Other Requirements, and Supervisory duties.
D. In the "Prevailing Wage Information (Primary Worksite)" box, the selected SOC (ONET/OES) Code must match the selected SOC.
E. To change the selected SOC Code: Click on "Search SOC/O*Net (OES) Code"
F. Enter the 6 digit SOC code into the "Search" area and click "Search."
G. Click the desired SOC code from the list and this will populate the new SOC code in iCERT in the Prevailing Wage Information (Primary Worksite) area.
H. In the "Prevailing Wage Information (Primary Worksite)" box, change the "Prevailing Wage Source" to "OES."
I. Use the wage level calculator in iCERT (small calculator icon next to the "Year") to determine the wage level.
J. Within the OES calculator, select "County/Township" as the "Area Based On." **Exception:** Select "ACWIA Higher Ed." as the "Collection Type" for ACWIA eligible employers.
K. Select the Area based on the County, City and State (from sections E.c.3., E.c.4., E.c.5. in iCERT)
    1. Click "Calculate" and "Add Wage to Worksheet"
    2. H-2B CASES: When calculating mean H-2B wage, make sure that the "Use Mean Calculation" box is checked. This will calculate a mean wage and not a Level 1 wage.
L. Click "Calculate" and "Add Wage to Worksheet"
M. Click on "Submit Determination" to forward the prevailing wage recommendation to the Certifying Officer (CO)
N. Click "Ok" when asked "Are you sure you wish to submit recommendation?"
O. Assign all CBA/Survey cases to the appropriate Federal Reviewer.
    1. H-2B Cases: Assign cases requesting a Non-OES wage (SURVEY, SCA, DBA or CBA) to the appropriate respective Federal Reviewer. Cases requesting an OES wage are not assigned to a specific Federal Reviewer.

14. Analyst Review: Return Procedures
    A. Analyst will be notified of Federal Review Return by email.
    B. Email will indicate the following: "P-100-13310-178791 is being returned for further consideration".
    C. Open up case in iCERT and click on "Case Notes"
    D. Read the most current note added by Federal Reviewer.

1. Note will be titled “Return Note” and begin with a numbered return code (5,6,7,8)

E. Read entire note and assess all changes/actions recommended by Federal Reviewer.
    1. If Analyst does not agree with CO Return, See Step 2(B)(iii) of SOP PW17 Case Note Coding System.
F. Create a new Wage Level Worksheet (if needed) to include all necessary changes recommended by Federal Reviewer.
G. If return is for an RFI, issue the RFI and place case into HOLD.
    1. Once RFI comes in, assess case based on RFI Response.
H. Save new Wage Level Worksheet into iCERT.
I. Change SOC selection (if needed).
J. Update Checklist to account for correct amount of points.
K. Assess wage based on new evaluation.
L. Submit case and assign back to Federal Review who issued the return.

ADDENDUM 1

Purpose: Coding contrary to previous determination.

1. Identify the current case and all prior case(s) in question to code inconsistently.
    a. Previously issued or recommended case(s) in question can be found through DSS and Multiple Fillings tab of 9141.

2. Check with the analyst who made the original decision and the SME for the occupation to get input.

3. Write an explanation as to why your decision is appropriate and, if possible, why the previous decision is not correct.

4. Modify the write up to incorporate their comments when appropriate.

5. Populate your analysis using the format below; send an e-mail to your appropriate supervisors (Tekpro as directed by your CoC; Federal analysts send to both supervisors).

Current Case Number: **P-100-13353-204230**	Precedent Case Numbers: Highlighted case is a redetermination based on survey.

P-100-13178-091677	17-2072
P-100-13256-154513	17-2072
P-100-13192-407834	17-2072
P-100-13204-820047	15-1133
P-100-13294-347446	15-1133
P-100-13298-721189	15-1133
P-100-13308-537080	15-1121
P-100-13198-567519	17-2072

What is in conflict between the determinations: The precedent cases were coded as 17-2072, 15-1133 and 15-1121. Some requested surveys, some did not.

What it should be: 15-1121	What was issued: 15-1133, 17-2072 and 15-1121
An explanation of the suggested change: The job duties include designing and implementing system requirements, determining system specifications, coordinating design of subsystems and integrating the total system. The duties are a good fit to 15-1121. ONET: Develop, document and revise system design procedures, Determine computer software or hardware needed to set up or alter system, including coordinating the installation of computer programs and systems. The Special Requirements in E.b.5 point more towards 17-2072 and include experience in DSP, RF measurements, experience with radio chips and wireless components and semi-conductors. Two suggestions for proceeding: 1. Code as 15-1121 based on job duties and add a point for the experience requirement which is not normal to CSA. 2.Send an RFI to clarify the type of systems the employee will design. .	An explanation of why the decision was flawed: The job duties as written are a good match to 15-1121. If we can code based on the job duties, then we do have a match. The duties do not include design and development of operating systems software so 15-1133 is not a good fit. The job duties in conjunction with the special requirements could be used to justify 17-2072/1 but we would be justifying SOC selection via Special Requirements rather than job duties.

Response from the CO for the precedent case and the relevant SMEs: I conferred with the precedent case COs and the SME for the 15 series. The 17 series SME is

out till mid Feb. 15-series SME feedback: This seems more in line with the engineers. Kristin is the 17 SME now (although she's out of town so that doesn't help). The 17-2072 seems like the best fit especially given the education requirements. Brian, Telisa and Terri are the COs for the non-survey cases and Caroline for the survey cases. Brian's feedback: I do think it has to be coded as 15-1121 and I really cannot see 17-2072 or 15-1133. I do think we should consider assigning a special skill point for the special requirements since they really don't have any relevance to the job duties. I understand the desire to RFI, but we can very easily code the case based on the job description. Considering how far behind we are, it seems to me it would be best to assign a special skill point and allow them to come back at redetermination to tell us why those duties are normal. The one thing that gives me pause is the education. I am not sure why a CSA would need to have a Ph.D., but in the end, is that really for us to question when the duties are so clear? Caroline's feedback: The job duties as written are taken from the survey job descriptions for the provided surveys
A recommendation on how the PWRA or other reference/procedure can be improved to limit this/these issue(s) occurring in the future: I believe there is sufficient information in the PWRA to make a decision.

6) Add a case note:

Title: See "Case Awaiting Guidance Codes Reference Sheet" for proper title
Category: HOLD
Note: Breaking Consistency: Add a brief note as to why and what codes are involved.

7) Move the case to HOLD.

8) Email respective Management and Cc: Tekpro Supervisors.

a. Tekpro TL's will search for multiple filings with duplicate job duties and move those cases to HOLD with the appropriate case note (above).

9) One of the federal supervisors will respond giving permission to break consistency or providing the reason why the original determination(s) is correct. If the case reaches

day 50 for review (day 35 for recommendation) and no response has been received from a supervisor then check with your supervisor in person.

a. Tekpro TL's will add the respective case note, 20i Guidance Received to all of the appropriate cases in HOLD.

b. Upon coding guidance, analyst will code case and submit for CO review

ADDENDUM 2

For the All Other SOCs process, please refer to the SOP PW25 – All Other SOCs – Analyst Review

ADDENDUM 3

Purpose: To clarify the use of the Duplicate Pending Redetermination process.

Directive: When a case has a job description identical to the job description of a case currently pending redetermination, no action should be taken without checking with the redetermination team as to whether they are likely to make any coding changes. **Analysts:** If the DSS search or another search indicates that there is a pending redetermination, please initiate the process below. **Reviewers:** Check the recommender's DSS notes, check DSS and/or multiple filing; if you discover there is a pending redetermination please initiate the process below.

1. Place the regular case on hold (see instructions below for the format to be used for the hold note).
2. Send an e-mail to the entire redetermination team requesting their feedback on the redetermination request.
3. Copy the Federal Supervisors.
4. Copy Contract Supervisors. Contractor will check for additional matching cases.
5. One member of the redetermination team will assign the case under their name, and then review the redetermination and supporting documents (when applicable).
6. The reviewing member of the redetermination team will respond to all recipients of the email, informing them of the proposed outcome.
    a) Once the redetermination member responds, you may move forward with the case based on that response.
    b) Once a decision has been made the Contractor should copy the note from the redetermination team member to each case in the hold queue and release the case from hold (and assign the following code: 20i – Guidance Received).

7. The proposed decision may not be immediately processed because, like all redeterminations, it will be processed in FIFO order.
8. The analyst or reviewer of the regular case will either send an RFI for documents, if needed, or continue processing the case.
9. If no RFI is needed, but the analyst or reviewer and the redetermination team member agree to code in a way that is inconsistent with a previous determination, one of the following steps must be taken:
    a) When the coding of both the current case and the case pending redetermination are going to be changed, and there are no other finalized determinations coded differently, consistency will be considered to have been maintained (even if the current case is issued before the redetermination case) and the coding contrary process will not be used.
    b) When the coding of both the current case and the case pending redetermination are going to be changed, and those changes will be inconsistent with previous finalized determinations, then the coding contrary process will be used.

Please Note: It might not be immediately obvious that there is a pending redetermination with identical job duties. If the DSS lists identical job descriptions, check each case that is older than the current case in iCERT to determine whether redetermination has been requested. **Reviewers:** You **must** search in iCERT because the fact that a redetermination had not been requested when the DSS was checked does not mean one has not been requested subsequently. If there is any question as to whether there are prior determinations that are not captured by the DSS, please check multiple filings or perform a search in utilities to double check whether there is a pending redetermination.

Note: If the case is in any stage of appeal send a courtesy e-mail to the redetermination team asking whether the redetermination will be affirmed or if the CDR will continue to BALCA as determined.

Process for placing the case in hold:

1. Place the case in the hold queue and insert a note in the case notes using the following format.

    a. Note Title: See "Case Awaiting Guidance Codes Reference Sheet" for proper title
    b. Category: Hold
    c. Note: Identical Case Matching Post Determination: Add a brief note

Process for sending an RFI when there is a case pending redetermination:

1. When to RFI

    a. If the redetermination team decides that the employer has provided information with the redetermination request that may cause the coding to be changed, the reviewer will send an RFI trying to elicit the same information provided in support of the redetermination request.
        i. DO NOT ask for the information sent at redetermination or reference the case awaiting redetermination in any way.
        ii. Use the information in the redetermination to craft RFI language that may elicit the same information.
            1. Example: A PWD is issued as 41-9031. The employer believes 13-2051 is the better choice. They submit information demonstrating that the job requires performing financial analysis in support of securities trading, but that the job does not actually require executing trades. When writing the RFI, ask the employer to clarify the meaning of duties Y and Z, which were originally read as performing financial trading, but which the redetermination request explains are trading support duties.
            2. Example: A PWD is issued as 15-1132, but the employer requests redetermination as 15-1121. The redetermination request explains that the testing being performed is integration and functionality testing, not code level testing, which was the reason the PWD was issued as 15-1132. The RFI sent by the reviewer should ask the employer what kind of testing is being performed.

    b. If the redetermination team decides that more information is needed on both cases, the redetermination team will provide the RFI language for the redetermination and request that the Reviewer send a RFI eliciting the same or similar information for their pending case.

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STANDARD OPERATING PROCEDURE EVENT LOG

PWXX

Revision Date	Section Number	Comments
5/20/2013	Procedure #4	Reflecting the case assignment procedure change from Analysts assigning themselves work to Team Lead making daily case assignments.
9/12/2013	New 9141 Form	Added New 9141 Form for Reference
01/08/2014	6.E	Added case note for DSS not available
01/08/2014	7.E	Modified OSD directions
1/13/2014	Purpose	The process steps in this SOP are primarily executed by the Contract staff and Federal Staff making case recommendations
02/04/14	Section 14	Created Section 14 to address handling returned cases.
02/04/14	Section 13	Updated to include H-2B steps.
02/05/14	Section 14	Updated to direct to SOP PW 17 for disagreeing with CO return.
02/05/14	Section 10	Updated to include direction to ADDENDUM 1.
04/30/2014	Administrative	Updated header to “OFLC Internal Use Only” and page numbers.
07/08/2014	Section 10	Updated to include direction to ADDENDUM 2.
07/17/2014	Section 10	Updated to include direction to ADDENDUM 2.
09/12/2014	ADDENDUM I and 2.	Modified case note for removal from hold queue to 20i Guidance Received
09/12/2014	Section 10	Updated to include direction to ADDENDUM 3
09/12/2014	ADDENDUM 3	Added ADDENDUM 3 to the SOP

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2/22/2017	ADDENDUM 1,2, and 3	Case Note Title for cases “Awaiting Guidance” includes a link to new codes reference sheet
2/23/2017	ADDENDUM 2	Removed ADDENDUM 2 (All Other SOCs Process) and included reference to SOP PW25 - All Other SOCs.
3/28/2017	ADDENDUM 3	Removed all references to 5 day suspense date

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Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW10
EFFECTIVE DATE: Revised 26 JUN 2015 Previous Version 09 JAN 2013
SUBJECT: Prevailing Wage SOP – Federal Review and Determination

Purpose
Provide procedures for making prevailing wage reviewing recommendations and making the federal determination.

Background
The actual determination of the prevailing wage is an inherently federal function. Analyst recommendations are reviewed by a federal staff member and the determination issued.

Internal Controls
As part of the internal controls process, the NPWC produces daily and weekly productivity reports which are shared with the National Office. Such reports are used to ensure NPWC productivity is consistent with this Standard Operating Procedure.

Statutory Requirement
20 CFR 655.10
20 CFR 656.40
Non-agricultural Prevailing Wage Guidance, November 2009

Procedure

I. Case Assignment
A. Cases will be reviewed in First In First Out (FIFO) order. Reviewers will assign cases from the unassigned queue using the Get Next Decision Review Case tab in iCERT, up to a maximum of 25 cases.
B. Special handling queues for high volume employers will be reviewed in FIFO order with designated reviewers assigning a maximum of 25 cases from the holding queue to their work queues. The Senior Analyst will coordinate assignments from the holding queue as needed.
C. H-2B cases will be reviewed in FIFO order with designated reviewers assigning cases from the production window to their working queues. The production window will be established by the Team Lead and coordinated by the Senior Analyst.

a. In the iCert Portal under the “PW Utilities” Tab select the visa classification to indicate “H-2B;”

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b. In the “Case Submitted” section of the utilities tab select the current date of processing for H-2B cases, please note, this date will be provided to the Federal Reviewer in the Daily H-2B production report;
c. In the “Status” section of the utilities tab select the “Pending CO Determination – Unassigned” option and hit the “Search” button to get the next PWDR cases currently pending CO Determination;
d. Proceed to assign the next available 25 H-2B cases for processing.

D. Upon completion of the cases initially assigned, Federal Reviewers will assign additional cases to their working queue in no more than 25 case increments. At the close of the production day, Reviewers should complete all cases in their working queues. Reviewers will report any cases remaining in their queues by 3pm daily to the Federal Supervisor and Senior Analyst for redistribution if needed.

II. Review application to see if the mandatory fields are completed.
III. Review Job Coding
A. Compare job duties to the occupational definition and O*NET reported tasks for the recommended SOC
B. Review Candidate Occupations and Coded Occupation
1. Check Case Notes to see if the analyst identified candidate occupations
2. Compare O*Net tasks for candidate occupations to determine if the correct occupation was chosen.
C. Select the appropriate occupation
1. If a combination of occupations review appropriateness of the combination and if the correct occupation was chosen as the Coded Occupation
a) If the job duties have several tasks from different but similar occupations and the tasks require significantly different skill sets then select both (only rarely will there be more than two occupations) and record reasoning in Case Notes. If the Reviewer determines that assigning a combination of three or more occupations may be necessary, refer to Appendix 4.
b) If the job duties have tasks from non-similar different occupations the tasks will normally require significantly different skill sets and both should be selected (only rarely will there be more than two occupations) and record reasoning in Case Notes
c) Use the OES Wage Level Procedures to determine the occupation with the higher wage for the location and wage level and code the PWD as this occupation while putting into the Additional Notes Regarding Wage Determination (E-7, page 4); also record the two wages and the wage level ‘worksheet’ for the non-selected occupation in the Case Notes.
2. If the correct occupation falls within the SOC designated All Other occupations, refer to Appendix 2.

3. To maintain consistency, Reviewers who discover an error in SOC assigned or wage level in previous determinations will follow the Code Contrary process in Appendix 1.

4. Review the selection of a Candidate Occupation where O*Net does not have data:

a) Assign the closest occupation where data is available

b) In the case notes, indicate the occupation that would have been used if the data were available – "<SOC, Title> would have been assigned to this position but O*Net data is not available at this time.

5. If the employer is covered by ACWIA use the appropriate R&D and Non R&D suffix; the duties and data will be from the parent occupation of the same title without the suffix

6. When an analyst or CO Reviewer finds an occupation where there is no ACWIA wage in OWL and no wage occupation in the ACWIA Reference Application, contact the ACWIA federal supervisor. See PW_07ACWIA.

IV. Review Wage Level Assigned

A. Compare the recommended wage level to the occupational norms for the SOC.

B. Verify that points assigned in the wage level worksheet are correctly transferred to the Checklist.

V. Review Recommended Wage

A. If requested wage source is a Collective Bargaining Agreement (CBA); please notify the Senior Analyst of the Non-OES Team prior to reassigning the case to the Non-OES queue. See PW15_Survey_CBA_PWDs.

B. If requested wage source is SCA/DBA; please notify the Senior Analyst of the Non-OES Team about the SCA/DBA case prior to reassigning the case to the designated Non-OES queue.

C. If requested wage source is an Employer Provided Survey; please notify the Senior Analyst of the Non-OES Team prior to reassigning the case to the Non-OES queue. See PW15_Survey_CBA_PWDs.

D. If the no other wage source is requested or if OES is explicitly requested. Confirm that the appropriate OES wage source is identified - "OES All Industries" or "OES Higher Education" wage database. To determine ACWIA status of the employer, see PW_07 ACWIA.

1. Verify correct wage source
2. Review wage level worksheet and additional notes to the employer.
3. Verify wage assigned for all work sites.

VI. Complete Review

A. Enter Case Notes – use Review Notes Standard Coding reference.

1. Correction needed to recommendation

a) Return to analyst (RTA) using the case notes standard coding chart identifying the error and providing instructions for correction.

b) If change is subtle then make change and send an e-mail to team leads for use in training

c) If change is notable but approaching 60 days for PERM/LCA then make change and send e-mail to team leads and analyst

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2. RFI needed
    a) Add a case note using the case notes standard coding chart providing RFI language as appropriate
    b) See PW_06_RFI.
3. Reviewer agrees with recommendation – add case note using the standard coding chart.

B. Review all entries to make sure the determination is complete – Use Reference Application

1. DSS note entered
2. Wage Level Worksheet entered
3. Correct Wage Source selected
4. Correct Wage entered
    a) Full time is annual for PERM/LCA unless requested otherwise
        (1) Week; $/h X 40 = $/wk
        (2) Bi-week; $/h X 80 = $/bw
        (3) Month
            (a) ($/yr) / 12 = $/mo
            (b) ($/h * 2080) / 12 = $/mo
        (4) Year; $/h * 2080 = $/yr
    b) Piece Rate is only available from an employer provided survey See PW_15_Survey_CBA_PWDS.
5. Additional Notes Regarding Wage Determination block properly completed
6. CO Notes entered

C. Issue determination if not returned to analyst

VII. Refer to Appendix 1 for Coding Contrary to Previous Determinations
VIII. Refer to Appendix 2 for use of All Other SOCs
IX. Refer to Appendix 3 for actions to take when a review case has an identical case pending redetermination

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Normal Procedure		Time Saving Procedure – used only when directed.		Redetermination and CDR
Federal Review Notes Standard Coding In order to make data extraction more consistent a standard coding system is being initiated. This will allow the actual number of corrections and returns to be more accurately reported but also to categorize the reasons so corrective action can be taken to reduce the errors. When an error is discovered the Reviewer will enter a case note with the Title 'Return Notes' (also used for RFIs) or 'CO Correction' or 'CO Notes' as appropriate and a Category of 'Decision' for COs. The note itself will have on the first line the type of correction followed by the area of correction codes. Multiple corrections are separated by commas. A blank line then separates the codes from a textual description of the correction. Below is an example. Title: CO Correction		***Modification – continue to use the 5 code below when you would return to analyst but only use the Return to Analyst feature in iCert when the occupation is being changed or there are a number of worksites. For other cases where you are currently returning go ahead and make the corrections and issue the determination but use the notes process below. This should speed determinations as they will not be handled twice.***		**Redetermination Notes Standard Coding** To make data extraction more consistent, a standard coding system is being initiated. This will allow the actual number of corrections and returns to be more accurately reported but also to categorize the reasons so corrective action can be taken to reduce the errors. When preparing redeterminations, the Reviewer will enter a case note with the Title 'Redetermination – [Affirm, Modify]' as appropriate and a category of 'Redetermination.' The first line of the note will indicate the type of redetermination decision, affirm or modify, followed by the decision reason code on a new line. Multiple decision reasons are separated by commas. A blank line then separates the code(s) from a text description of the correction. Below are examples. Redetermination - Affirm Affirm 2a The employer argued the job should be coded as a 15-1031 but did clarify why this was applications rather than systems software. The job duties state 'write drivers for NICs for Linux, Windows Vista and Windows 7'. As the NIC drivers are system software the code 15-1032 is appropriate and the

Category: Decision Notes: 5a, 6j, 5k The occupation should be Internist rather than Family Practitioner since the residency being required is in internal medicine. A special skill point was assigned for multiple locations when the places are just a few blocks apart. A special skill point was assigned for board certification but this is normal for the occupation.				original determination was affirmed. Redetermination - Modify Modify 3a, 3j, 3k The occupation should be Internist rather than Family Practitioner since the residency being required is in internal medicine. A special skill point was assigned for multiple locations when the places are just a few blocks apart. A special skill point was assigned for board certification but this is normal for the occupation. Therefore the determination was modified from wage level III to wage level I and the SOC was corrected.

Federal Review Notes Standard Coding

Type of Correction			Area of Correction		Post Determination Action Reason
Code	Description		Code	Description (use with 1,5,6,7,8,9)	Description (use with 2,3)
1	RFI Post-Determination		a	SOC code selection incorrect.	SOC code selection incorrect.
2	Affirm		b	Education Points not properly assigned.	Education Points not properly assigned.
3	Modify		c	Experience Points not properly assigned.	Experience Points not properly assigned.
4	Process/Procedure Change		d	Training Points not properly assigned.	Training Points not properly assigned.
5	CO Review – Returned - Error		e	Experience and Training not combined.	Experience and Training not combined.
6	CO Review – Returned – No Fault due to the situational subjective nature of decision		f	Special Skill Points not properly assigned - general.	Special Skill Points not properly assigned - general.
			g	---	---
			h	---	---
			j	Special Skill Points not properly assigned – travel.	Special Skill Points not properly assigned – travel.
7	CO Review – RFI; job duties		k	Special Skill Points not properly assigned – certification.	Special Skill Points not properly assigned – certification.
8	CO Review – RFI; other		m	Special Skill Points not properly assigned – language.	Special Skill Points not properly assigned – language.
9	No Problems		n	Supervision Point not properly assigned.	Supervision Point not properly assigned.
			o	Additional Note incorrect.	Requesting new validity period
			p	Additional Note not entered.	Requesting modification to employer-submitted application
			q	Worksheet Note not correct or missing.	Requesting modification due to NPWC data entry error

		r	Wage wrong.	Wage wrong.
		s	ACWIA wage not used.	ACWIA wage not used.
		t	Other reason.	Survey requested but not used.
		u	Initial survey materials missing	Survey unacceptable.
		v	Additional survey materials needed	Other reason.
		x	---	Received after time limit
		y	---	---
		z	Agree with recommendation	

Appendix 1

Coding contrary to previous determination.

1) Identify the current case and all prior case(s) in question to code inconsistently.
   a. Previously issued or recommended case(s) in question can be found through DSS and Multiple Fillings tab of 9141.

2) Check with the analyst who made the original decision and the SME for the occupation to get input.

3) Write an explanation as to why your decision is appropriate and, if possible, why the previous decision is not correct.

4) Modify the write up to incorporate their comments when appropriate.

5) Populate your analysis using the format below; send an e-mail to your appropriate supervisors (Contractors as directed by your CoC; Federal analysts send to all GS-13 Team Leads and to all supervisors).

<table>
<tr><td>Current Case Number: P-100-13353-204230</td><td>Precedent Case Numbers:

Highlighted case is a redetermination based on survey.

<table><tr><td>P-100-13178-091677</td><td>17-2072</td></tr><tr><td>P-100-13256-154513</td><td>17-2072</td></tr><tr><td>P-100-13192-407834</td><td>17-2072</td></tr><tr><td>P-100-13204-820047</td><td>15-1133</td></tr><tr><td>P-100-13294-347446</td><td>15-1133</td></tr><tr><td>P-100-13298-721189</td><td>15-1133</td></tr><tr><td>P-100-13308-537080</td><td>15-1121</td></tr><tr><td>P-100-13198-567519</td><td>17-2072</td></tr></table></td></tr>
<tr><td colspan="2">What is in conflict between the determinations: The precedent cases were coded as 17-2072, 15-1133 and 15-1121. Some requested surveys, some did not.</td></tr>
<tr><td>What it should be: 15-1121</td><td>What was issued: 15-1133, 17-2072 and 15-1121</td></tr>
<tr><td>An explanation of the suggested change: The job duties include designing and implementing system requirements, determining system specifications, coordinating design of subsystems and integrating the total system. The duties are a good fit to 15-1121. ONET: Develop, document and revise system design procedures, Determine computer</td><td>An explanation of why the decision was flawed: The job duties as written are a good match to 15-1121. If we can code based on the job duties, then we do have a match. The duties</td></tr>
</table>

software or hardware needed to set up or alter system, including coordinating the installation of computer programs and systems. The Special Requirements in E.b.5 point more towards 17-2072 and include experience in DSP, RF measurements, experience with radio chips and wireless components and semi-conductors. Two suggestions for proceeding: 1. Code as 15-1121 based on job duties and add a point for the experience requirement which is not normal to CSA. 2.Send an RFI to clarify the type of systems the employee will design. .	do not include design and development of operating systems software so 15-1133 is not a good fit. The job duties in conjunction with the special requirements could be used to justify 17-2072/1 but we would be justifying SOC selection via Special Requirements rather than job duties.
Response from the CO for the precedent case and the relevant SMEs: I conferred with the precedent case COs and the SME for the 15 series. The 17 series SME is out till mid Feb. 15-series SME feedback: This seems more in line with the engineers. The 17-2072 seems like the best fit especially given the education requirements. Previous CO: I do think it has to be coded as 15-1121 and I really cannot see 17-2072 or 15-1133. I do think we should consider assigning a special skill point for the special requirements since they really don't have any relevance to the job duties. I understand the desire to RFI, but we can very easily code the case based on the job description. Considering how far behind we are, it seems to me it would be best to assign a special skill point and allow them to come back at redetermination to tell us why those duties are normal.	

The one thing that gives me pause is the education. I am not sure why a CSA would need to have a Ph.D., but in the end, is that really for us to question when the duties are so clear? CO feedback: The job duties as written are taken from the survey job descriptions for the provided surveys
A recommendation on how the PWRA or other reference/procedure can be improved to limit this/these issue(s) occurring in the future: I believe there is sufficient information in the PWRA to make a decision.

6) Add a case note:
Title: See "Case Awaiting Guidance Codes Reference Sheet" for proper title
Category: HOLD
Note: Breaking Consistency: Add a brief note as to why and what codes are involved.

7) Move the case to HOLD.

8) Email respective Management and Cc: Contract Supervisors.
a. Contract TL's will search for multiple filings with duplicate job duties and move those cases to HOLD with the appropriate case note (above).

9) One of the federal supervisors will respond giving permission to break consistency or providing the reason why the original determination(s) is correct. If the case reaches day 50 for review (day 35 for recommendation) and no response has been received from a supervisor then check with your supervisor in person.
a. Upon coding guidance, analyst will code case and submit for CO review.
10) Contract supervisors will work with federal supervisors to reach a decision.

11) If the supervisor decides to break constancy one or the other will send an e-mail to all COL staff including the e-mail from the reviewer and any further explanations or limitations and directing conract supervisors to Release Back To Processing
12) Contract Supervisor will add the respective case note, 20i Guidance Received to all of the appropriate cases in HOLD.

Appendix 2 All Other SOCs

For the All Other SOCs process, please refer to the SOP PW26 – All Other SOCs – Federal Review.

Appendix 3

When a case has a job description identical to the job description of a case currently pending redetermination, no action should be taken without checking with the redetermination team as to whether they are likely to make any coding changes. **Analysts:** If the DSS search or another search indicates that there is a pending redetermination, please initiate the process below. **Reviewers:** Check the recommender's DSS notes, check DSS and/or multiple filing; if you discover there is a pending redetermination please initiate the process below.

- Place the regular case on hold (see instructions below for the format to be used for the hold note).
- Send an e-mail to the entire redetermination team requesting their feedback on the redetermination request.
- Copy the Federal supervisors
- Copy Contract supervisors. Contractor will check for additional matching cases.
- One member of the redetermination team will assign the case under their name, and then review the redetermination and supporting documents (when applicable).
- The reviewing member of the redetermination team will respond to all recipients of the email, informing them of the proposed outcome.
    - Once the redetermination member responds, you may move forward with the case based on that response.
    - Once a decision has been made the Contractor should copy the note from the redetermination team member to each case in the hold queue and release the case from hold (and assign the following code: 20i – Guidance Received).
- The proposed decision may not be immediately processed because, like all redeterminations, it will be processed in FIFO order.
- The analyst or reviewer of the regular case will either send an RFI for documents, if needed, or continue processing the case.
- If no RFI is needed, but the analyst or reviewer and the redetermination team member agree to code in a way that is inconsistent with a previous determination, one of the following steps must be taken:
    - When the coding of both the current case and the case pending redetermination are going to be changed, and there are no other finalized determinations coded differently, consistency will be considered to have been maintained (even if the current case is issued before the redetermination case) and the coding contrary process will not be used.
    - When the coding of both the current case and the case pending redetermination are going to be changed, and those changes will be inconsistent with previous finalized determinations, then the coding contrary process will be used.

Please Note: It might not be immediately obvious that there is a pending redetermination with identical job duties. If the DSS lists identical job descriptions, check each case that is older than the current case in iCERT to determine whether redetermination has been requested. **Reviewers:** You **must** search in iCERT because the fact that a redetermination had not been requested when the DSS was checked does not mean one has not been requested subsequently. If there is any question as to whether there are prior determinations that are not captured by the DSS, please check multiple filings or perform a search in utilities to double check whether there is a pending redetermination.

Note: If the case is in any stage of appeal send a courtesy e-mail to the redetermination team asking whether the redetermination will be affirmed or if the CDR will continue to BALCA as determined.

Process for placing the case in hold:

1. Place the case in the hold queue and insert a note in the case notes using the following format
    a. Note Title: See "Case Awaiting Guidance Codes Reference Sheet" for proper title
    b. Category: Hold
    c. Note: Identical Case Matching Post Determination: Add a brief note.

Process for sending an RFI when there is a case pending redetermination

1. When to RFI
    a. If the redetermination team decides that the employer has provided information with the redetermination request that may cause the coding to be changed, the reviewer will send an RFI trying to elicit the same information provided in support of the redetermination request.
        i. DO NOT ask for the information sent at redetermination or reference the case awaiting redetermination in any way.
        ii. Use the information in the redetermination to craft RFI language that may elicit the same information.
            1. Example: A PWD is issued as 41-9031. The employer believes 13-2051 is the better choice. They submit information demonstrating that the job requires performing financial analysis in support of securities trading, but that the job does not actually require executing trades. When writing the RFI, ask the employer to clarify the meaning of duties Y and Z, which were originally read as performing financial trading, but which the redetermination request explains are trading support duties.

2. Example: A PWD is issued as 15-1132, but the employer requests redetermination as 15-1121. The redetermination request explains that the testing being performed is integration and functionality testing, not code level testing, which was the reason the PWD was issued as 15-1132. The RFI sent by the reviewer should ask the employer what kind of testing is being performed.

b. If the redetermination team decides that more information is needed on both cases, the redetermination team will provide the RFI language for the redetermination and request that the Reviewer send a RFI eliciting the same or similar information for their pending case.

Appendix 4
Requesting Consideration of more than 2 SOCs

Escalation process for federal reviewers:
Analysts proposing use of multiple codes must provide a compelling argument for applying more than 2 occupational codes for management review and consideration.

Forward the request to the appropriate personnel with the following comment in iCERT:

Title: See "Case Awaiting Guidance Codes Reference Sheet" for proper title
Category: HOLD
Note: Triple Combination of Occupations: Add a brief note

Comments should include a compelling argument for applying more than 2 occupational codes. NPWC management will meet weekly to review these requests and make a determination on how best to code.

When reviewing employer PWD requests, reviewers should focus on the entire description of the job duties and not on individual words within the application in a rather narrow or discrete manner.

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE EVENT LOG

PW10 – Federal Review

Revision Date	Section Number	Comments
3/18/2013	Internal Controls	Added "Internal Controls" section and statement on page one.
7/7/2014	Appendix 1 and 2	Added Appendix 1 and 2
7/17/2014	Appendix 2	Modified step #6 for clarity.
9/12/2014	Appendix 1 and 2	Modified case note for removal from hold queue to 20i Guidance Received
9/12/2014	Section VIII in procedures and Appendix 3	Added a section VIII in procedures to reference appendix 3 and added appendix 3
6/26/2015	Section I A-D	Modified case assignment procedures
6/26/2015	Section III A-C	Revised for clarity
6/26/2015	Section IV	Added Review Wage Level Assigned
6/26/2015	Section V	Revised to add referral to Survey/CBA SOP and ACWIA SOP
6/26/2015	Section VI	Revised for clarity
6/26/2015	Appendix 2	Revised for updated procedures
3/4/2016	Section III.C.1.a	Added multiple SOC process
3/4/2016	Appendix 4	Added multiple SOC process
10/20/2016	Appendix 2	Revised for updated procedures
2/22/2017	Appendices 1-4	Case Note Title for cases "Awaiting Guidance" includes a link to new codes reference sheet

AILA Doc. No. 18010230. (Posted 1/2/18)

2/23/2017	Appendix 2	Removed appendix 2 (All Other SOCs Process) and included reference to SOP PW26 - All Other SOCs.
3/28/2017	Appendix 3	Removed all references to 5 day suspense date

OFLC Internal Use Only

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW11
EFFECTIVE DATE: 6 February 2012
SUBJECT: Redeterminations

Purpose: The purpose of this SOP is to document the steps necessary to process all Redetermination Requests concerning the National Prevailing Wage Center.

Background: In accordance with the Department's regulations at 20 CFR § 656.40(h), for the PERM, H-1B, H-1B1, or E-3 programs, an employer may request a redetermination by filing supplemental information within 30 calendar days of the date the prevailing wage determination (PWD) was issued. The employer may submit a request for redetermination and provide any supplemental information via the iCERT Portal or via email at FLC.PWD@dol.gov.

Effective April 29, 2015, the H-2B Final Wage Rule streamlined the appeal process and removed the option to request redeterminations for H-2B PWDs. In accordance with Department's regulations at 20 CFR § 655.13(a), to appeal an H-2B PWD, an employer may request review by the NPWC Center Director within 7 business days from the date the PWD is issued. The employer may submit a request for Center Director Review and provide any supplemental information via the iCERT Portal or via email at FLC.PWD@dol.gov. Please see **Center Director Review SOP PW12** for more details.

Internal Controls:
As part of the internal controls process, the NPWC produces daily and weekly productivity reports which are shared with the National Office. Such reports are used to ensure NPWC productivity is consistent with this Standard Operating Procedure.

Statutory Requirement:
20 CFR § 656.40
Non-agricultural Prevailing Wage Guidance, November 2009

Procedure

These functions are the responsibility of the **Mailroom Clerk:**

1. The steps below describe the process of preparing a re-determination request via in-coming mail:
   a. Login into iCERT Portal
   b. Click on Prevailing Wage link
   c. Click “PW Utilities” Enter the “Case File Number”
   d. Click “Search”
   e. Click on Case File Number
   f. Determine that the case has been issued a Prevailing Wage Determination
   g. Mailroom Clerk logs the mail into the daily mail log noting the case is a redetermination request
   h. Take the letter and entire correspondence to the Team Lead - Team Lead reviews the case in iCERT
   i. Mailroom Clerk scans the correspondence sending the correspondence as an attachment in an email to the Team Lead
      i. Save the emailed attachment labeled “Redetermination Request – P-XXX-XXXXX-XXXXXX”
      ii. Click on “Correspondence Upload” button in iCERT from the “Worksheet tab”
      iii. Click “Browse” to locate the file in the S:\scanned docs folder and upload
      iv. Click “Type” drop-down and select “Re-Determination”
      v. Enter the Case File Number
      vi. Copying and paste – copy and paste re-determination correspondence from the email into “Add Note” section
      vii. Select “Category” drop-down as “Correspondence”
      viii. Enter Title information with Case File Number
      ix. Add “Note” including the reason for the redetermination request, e.g. survey, SOC Code, Wage Level and Wage Methodology
   j. Click “Save”
   k. Close out of the case
   l. Mailroom Clerk logs into the help desk tracker and email and responds to the requestor’s email stating the re-determination is under review by an analyst.

These functions are the responsibility of the **Help Desk:**

1. The steps below describe the process of preparing a re-determination request received electronically via the Helpdesk email system (the flc.pwd@dol.gov mailbox):
   a. Determine message is a valid request for Redetermination:

i. Discern whether the Redetermination request was received within 30 days of Determination Issued
ii. Discern whether a case where the Redetermination request for consideration of survey, previously had a survey uploaded at the time of the initial ETA Form 9141 submission
iii. Redetermination Requests may require the approval of a Team Lead prior to processing and upload
iv. The message will be forwarded to the TL or designated staff member indicating a "Request for Re-Determination for Approval" citing reason for approval or rejection

b. Respond to the requestor's email stating the redetermination is under review by an Analyst.
c. Login into iCERT Portal
d. Click on Prevailing Wage link
e. Click "PW Utilities" Enter the "Case File Number"
f. Click "Search"
g. Click on Case File Number
h. Open up the case file in ICERT:
   i. Electronically save all correspondence as part of the complete Redetermination Request as provided by the Requestor/Employer.
      a). Email Cover Letter – label as "Redetermination Cover Ltr P-XXX-XXXXX-XXXXXX"
      b). Any Attachments – label as "Redetermination Request P-XXX-XXXXX-XXXXXX" and/or "Redetermination Supporting Documentation P-XXX-XXXXX-XXXXXX" as appropriate
   ii. Click on "Correspondence Upload" button from the "Worksheet tab" in iCERT
   iii. Click "Browse" to locate the file in the S:\scanned docs folder and upload
   iv. Click "Type" drop-down and select "Re-Determination"
   v. Enter the Case File Number
   vi. Copying and paste – copy and paste re-determination correspondence from the email into "Add Note" section
   vii. Select "Category" drop-down as "Correspondence
   viii. Enter Title information with Case File Number
   ix. Add "Note" copy and paste email into field. *Note: Keep hitting OK to complete the note. The field has a limit on the number of characters.*
   x. Click "Save"
   xi. Close out of the case
   xii. Team Lead goes the "Utilities" tab in iCERT
   xiii. Enter the case number
   xiv. Enter it into the Redetermination queue
i. Click "Redetermination Request"
j. Click (drop-down box) for "Reason Type" select reason type.
k. Click in Case Note: Please see correspondence of Re-Determination Request.

2. If the case has already been through Re-Determination and comes back for a Center Director review**,** please see **Center Director Review SOP PW12.**

3. Effective, March 15, 2011, The Department of Labor, OFLC, posted new Frequently Asked Questions (FAQs) to assist employers and others regarding prevailing wage requests and determinations. As directed by the Certifying Officer, effective March 21, 2011, NPWC will decipher:

   Employer must have submitted request for redetermination within 30 days from the date of the prevailing wage determination. Redetermination requests received after 30 days will not be processed; the employer must file a new prevailing wage request.

   a. All requests for redetermination received electronically through the Help Desk must be reviewed by a Team Lead for approval prior to uploading the Requestor's correspondence.
   b. Upon Team Lead approval, If the request for redetermination is denied, the following steps must be followed:
      i. Upload the Requestors correspondence. Mailroom will generate an Ineligible Letter and return to Help Desk to include as part of the correspondence upload.
      ii. If the Redetermination Request is received by mail or electronically through the Help Desk - Create a ticket, Title as "Redetermination Rejection", and select the appropriate deficiency above as your response to the Requestor. Note: There are currently 2 scripts
      iii. Mailroom Clerk will mail the Redetermination Request Rejection, Over 30 days and Return Letter as appropriate.

These functions are the responsibility of the **Federal Staff (Redetermination Analyst):**

1. Go to the redetermination assignment spreadsheet located in the folder S:\CO Use\Redeterminations\Redeterminations Reports:
   a. Select a case with a status of "PENDING REDETERMINATION REVIEW – UNASSIGNED"
   b. Update the spreadsheet to reflect a status of "PENDING REDETERMINATION REVIEW – ASSIGNED"
   c. Enter your name in the "First_Name" and "Last_Name" columns
   d. Save the spreadsheet. Note this is a shared spreadsheet so it must be saved before and after changes are made
   e. Copy the case number

2. Enter the copied case number in the search function in the PW Utilities module in iCERT and reassign the case to the redetermination analyst

3. Go to My Cases in iCERT and open the pending redetermination case

4. Determine if the case involves a survey by reviewing the Case Documents and the employer's reason for redetermination:
    a. If a valid survey request is included, reassign the case to the appropriate SME for survey redeterminations. The SME will then follow the steps outlined in Steps 18-29 below. Valid survey requests include:
        i. Employer originally asked for a survey/CBA and we did not use it
        ii. Employer disputes our selection of job or level in a survey
    b. If the request for a survey is not valid, e.g., the employer is requesting the survey for the first time at redetermination, process the redetermination as you would a non-survey redetermination (Step 5 below) and use the Standard Language informing the employer that he/she may not request a survey at redetermination
    c. If the case includes a survey, but the redetermination request is not regarding the survey, e.g., the employer is challenging the OES wage level or the SOC assigned, process the redetermination as you would a non-survey redetermination (Step 5 below) and use the Standard Language. Note: If the employer is challenging the SOC in support of the use of a survey, then the case should be processed as a survey redetermination

5. If the redetermination does not involve a survey, review the employer's reason for redetermination
    a. Be sure to check the Correspondence tab to see if the employer submitted additional information regarding their redetermination request

6. Assess if the redetermination request is legitimate
    a. Examples of requests that are NOT legitimate include:
        i. Requesting an extension on the validity period
        ii. Requesting amendments to an application due to the employer's data entry error (verify that the application was submitted externally versus internally data entered)
        iii. The employer simply makes a statement and does not provide an actual argument; e.g., "test"
    b. Examples of requests that are legitimate include:
        i. Disputing the wage level
        ii. Disputing the issued wage
        iii. Disputing the assigned SOC
        iv. Requesting amendments to an application due to the NPWC's data entry error (verify the application was internally data entered)

7. Review the Case Notes to determine why the recommender and Federal Reviewer made their decisions

8. Review Multiple Filings to see if a prior determination or redetermination was issued. When possible, strive for consistency

9. Review the employer's argument

10. In the event that more information is needed to process a redetermination, a RFI may be sent. Please note RFIs at the redetermination stage should be limited and only issued when necessary.
    a. Examples of when a RFI is necessary include:
        i. The uploaded redetermination documents are not accessible
        ii. The employer provided conflicting requirements that were not clarified prior to the initial PWD
        iii. Incomplete ACWIA documents
        iv. Incomplete survey documents
    b. To send an RFI:
        i. Create a Case Note in iCERT with the Title "Post Determination RFI" and the Category "Correspondence." Use the appropriate 1 code per the Federal Notes Standard Coding document (S:\Standard_Operating_Procedures\Draft\PW10 Federal Review)
        ii. In the Case Note include any specific language to be included in the RFI
        iii. Move the case to the "Hold" queue in iCERT using "Other Management Reason" as the reason
        iv. Send an email to the contract staff responsible for issuing RFIs to inform them that a post determination RFI needs to be sent for the case in the hold queue
    c. Once the employer responds to the RFI the case will be returned to the redetermination analyst's queue to complete the redetermination based on the employer's response
    d. In the event that the employer does not respond to the RFI, the case will be returned to the redetermination analyst's queue. The analyst will need to complete the redetermination request based on the information on record

11. After reviewing the employer's argument, determine whether the initial determination should be affirmed or modified
    a. Note: Only address the issues brought up by the employer, for example:
        i. If the employer only challenges the wage level, the SOC cannot be changed
        ii. However, if the employer challenges the SOC and the redetermination analyst decides to change the SOC then the wage level must be reevaluated per the requirements for the new SOC

12. If the redetermination analyst agrees with the initial determination, prepare an affirmation response:
    a. Draft a response (in MS Word) that includes all of the points addressed in the employer's redetermination request. Note: there is a character limit in iCERT for redetermination responses.

b. Use the Standard Language when possible – be sure to update the text in the draft where appropriate. See the "Redetermination Language [Year]" document located in the folder S:\CO Use\Redeterminations\Redetermination standard language.
c. When the employer has made an extensive comparison to O*NET, the redetermination analyst does not need address each individual item; just do enough to show why we are coming to a different conclusion.
d. Whenever possible quote from the application and a creditable source such as O*NET or a state governing body (useful for justifying special skill points for non-required licenses such as CPA or Architect)

13. If the redetermination analyst disagrees with the initial determination, but does not agree with the employer's request, e.g., the employer requests a particular SOC but the redetermination analyst believes another SOC is more appropriate, prepare a modification response:
    a. Draft a response (in MS Word) that includes all of the points addressed in the employer's redetermination request and explain why another SOC was selected
    b. This response would be similar to the affirmation response outlined above

14. If the redetermination analyst disagrees with the initial determination and also agrees with the employer's request, a written redetermination response is not necessary

15. After the redetermination response has been drafted, take the steps to process the redetermination in iCERT

16. To affirm a redetermination in iCERT:
    a. Enter a Case Note with:
        i. Title "Redetermination – Affirm"
        ii. Category "Redetermination"
        iii. In the notes section include the appropriate code for redeterminations from the Federal Notes Standard Coding document located in the folder S:\Standard_Operating_Procedures\Draft\PW10 Federal Review
        iv. Add detailed notes explaining the reason for affirming the determination
    b. Click the "Affirm Determination" button at the top of the Redetermination panel. Then click "OK" to confirm
    c. Click the "Redetermination" button to open the email window. Note: this button only remains visible for a few seconds before the page refreshes. In the event that the page refreshes prior to clicking the button, go to the Correspondence tab and select the 'New Email or Letter' button, and select the "Redetermination Affirmed Email" template.
    d. In the Affirmation Email window:
        i. The redetermination analyst inserts the affirmation response he/she drafted (copy and paste from MS Word) as well as the appropriate

regulatory guidelines informing the employer of their next option in the event that the employer disagrees (see sample templates at the end of this document).

ii. Click 'Send'

e. Proceed to Step 30 below

17. To modify a redetermination in iCERT:

a. Click the "Modify Determination" button at the top of the Redetermination panel:

b. Make the necessary modifications to the determination which, depending on the reason for the modification, may include:

i. Revising the worksheet checklist to adjust the wage level

ii. Revising the SOC

iii. Revising the wage (or wages for multiple worksites)

iv. Adding/removing 'Additional Notes'

c. Enter a Case Note with:

i. Title "Redetermination – Modify"

ii. Category "Redetermination"

iii. In the notes section include the appropriate code for redeterminations from the Federal Notes Standard Coding document located in the folder S:\Standard_Operating_Procedures\Draft\PW10 Federal Review

iv. Add detailed notes explaining the reason for modifying the determination

v. If necessary, create new worksheet notes reflecting the new SOC and/or wage level

d. Click on the "Issue Determination" button at the top of the panel

e. Click the "Redetermination" button to open the email window. Note: this button only remains visible for a few seconds before the page refreshes. In the event that the page refreshes prior to clicking the button, go to the Correspondence tab and select the 'New Email or Letter' button, and select the "Redetermination Modified Email" template.

f. In the Modification Email window:

i. If the redetermination analyst is modifying the redetermination and issuing a determination consistent with the employer's request, response language may not be necessary. Simply insert the appropriate regulatory guidelines informing the employer of their next option in the event the employer disagrees with the modification (see sample templates at the end of this document).

ii. If the redetermination analyst is modifying the redetermination to something other than what the employer requested, insert the drafted modification response (copy and paste from MS Word) as well as the appropriate regulatory guidelines informing the employer of their next option in the event the employer disagrees (see sample templates at the end of this document).

iii. Click 'Send'

g. Proceed to Step 30 below

18. Surveys – For redeterminations involving surveys: Begin at Step 1 under the responsibilities for Federal Staff and follow the process through Step 4
    a. On the Redetermination Assignment spreadsheet, survey redetermination cases are highlighted in yellow and include a "Y" in column B on the spreadsheet
    b. There may be additional valid survey redetermination requests not identified on the redetermination assignment spreadsheet. If the redetermination analyst comes across a survey redetermination case not initially identified as a survey request, the redetermination analyst will reassign the application to the SME for survey redeterminations

19. Review the employer's reason for redetermination regarding the survey
    a. Check the Correspondence tab to see if the employer submitted additional information regarding their redetermination request
    b. Additionally, check the Correspondence tab and verify that all the required survey documentation has been uploaded into the employer's case
        i. Note: Explanation on the required survey documentation can be found in the **Survey SOP PW15**
        ii. If the required survey documentation has not been submitted by the employer, a RFI should be issued following the process in Step 10 above

20. Review the Case Notes to determine why the recommender and Federal Reviewer made their decisions

21. Review Multiple Filings to see if a prior determination or redetermination was issued. When possible, try to be consistent with previous decisions

22. Review the employer's argument and the submitted survey documentation

23. After reviewing the employer's argument and the submitted survey documentation, determine whether the initial determination should be affirmed or modified
    a. Note: As outlined in Step 11.a above, only address issues raised by the employer

24. If the redetermination analyst agrees with the initial determination, prepare an affirmation following the process outlined in Step 12 above

25. If the redetermination analyst disagrees with the initial determination, but does not agree with the employer's request, e.g. the employer requests particular SOC to validate the survey request and the redetermination analyst believes another SOC is more appropriate, prepare a modification response following the process outlined in Step 13 above

26. If the redetermination analyst disagrees with the initial determination and also agrees with the employer's request regarding the survey, a written redetermination response may not be necessary. Note, in situations where the redetermination analyst may agree with the employer's request regarding the survey, but perhaps is issuing a different survey wage or level than requested, an written explanation should be included in the redetermination response email.

27. After the redetermination analyst has drafted the redetermination response, take the steps to process the redetermination in iCERT

28. To affirm a redetermination regarding a survey, follow the process outlined in Step 16 above

29. To modify a redetermination regarding a survey in iCERT:
    a. Click the "Modify Determination" button at the top of the Redetermination panel:
    b. Make the necessary modifications to determination which, depending on the reason for modification, may include:
        i. Revising the SOC and the worksheet checklist
        ii. Revising the OES wage (or wages for multiple worksites)
        iii. Revising the OES wage to the requested survey's wage data
        iv. Revising and uploading the Survey Worksheet into the application
        v. Adding or removing additional notes
    c. For the remaining modification steps, follow the process outlined in Step 17.c through 17.g above

30. Update the redetermination assignment spreadsheet by changing the status to "Completed" and click save.

Redetermination Affirmed Email

To:

Re: Case Number: P-XXX-XXXX-XXXXXX Received: Jun 27, 2012

This is an official notification that the Department has made a decision to uphold its initial wage determination issued on Aug 13, 2012 covering the PERM visa classification for the position of [job title automatically inserted].
-
[INSERT REDETERMINATION UPHOLD REASON(S) HERE]
-
[INSERT ANY REGULATORY DUE PROCESS RIGHTS HERE]
-
Sincerely,
Office of Foreign Labor Certification

Redetermination Modified Email

To:

Re: Case Number: P-XXX-XXXX-XXXXXX Received: Jun 27, 2012

We have modified the Prevailing Wage issued on Aug 13, 2012 based on the Redetermination Request submitted on Sep 11, 2012. The Department's prevailing wage determination for the position of [job title automatically inserted] can be found under Section E on the attached ETA Form 9141 and is valid between [date automatically inserted] and [date automatically inserted] .

[INSERT ANY REGULATORY DUE PROCESS RIGHTS HERE]

Sincerely,
Office of Foreign Labor Certification

Redetermination Modified Email
(When modifying to something other than what the employer requested)

To:

Re: Case Number: P-XXX-XXXX-XXXXXX Received: Jun 27, 2012

We have modified the Prevailing Wage issued on Aug 13, 2012 based on the Redetermination Request submitted on Sep 11, 2012.

[INSERT REDETERMINATION MODIFICATION REASON(S) HERE]

The Department's prevailing wage determination for the position of [job title automatically inserted] can be found under Section E on the attached ETA Form 9141 and is valid between [date automatically inserted] and [date automatically inserted] .

[INSERT ANY REGULATORY DUE PROCESS RIGHTS HERE]

Sincerely,
Office of Foreign Labor Certification

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE EVENT LOG

PW11 – Redeterminations

Revision Date	Section Number	Comments
3/18/13	Internal Controls	Added “Internal Controls” section and statement on page one.
3/20/13	Throughout document	Revised statements that included “you” and updated with appropriate staff title (e.g., Redetermination Analyst)
5/5/14	1st page heading	Changed from “Internal Use Only” to “OFLC Internal Use Only”
5/5/14	Throughout document	Revised page number format to Page X of Y
11/19/15	Background and Statutory Requirement	Revised regulatory citations to indicate redeterminations apply to PERM & H-1B only; for H-2B must request CDR.
11/19/15	Federal Staff sections 17.f.i, 18 a-b, and 26.	Expanded/clarified Federal Redetermination Analyst process steps
11/19/15	Redetermination Modified Email Template	Added instructions to the template to insert regulatory language.

AILA Doc. No. 18010230. (Posted 1/2/18)

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NO. PW13
EFFECTIVE DATE: March 23, 2011
SUBJECT: Assembling, Copying, and Mailing the BALCA Appeal File for Prevailing Wage Determinations

Background

Per the regulations governing the prevailing wage determination process in the H-2B, H-1B, and PERM programs, at 20 CFR §§ 655 and 656 respectively, if an employer requests review of a Center Director determination to the Board of Alien Labor Certification Appeals (BALCA), the Center Director (CD) must immediately (within **seven** business days for H-2Bs) assemble an indexed appeal file of all relevant documents and send the complete appeal file to BALCA. The CD must draft a BALCA transmittal letter, assemble an indexed appeal file of all relevant documents, and send the complete appeal file to BALCA. The CD must also provide copies of the appeal file to the Employment and Training Administration's Employment and Training Legal Services (ETLS), the employer, and the agent/attorney on record, if applicable.

This document establishes the protocols for preparing, copying, and mailing said appeal files to BALCA.

Internal Controls

As part of the internal controls process, the NPWC produces daily and weekly productivity reports which are shared with the National Office. Such reports are used to ensure NPWC productivity is consistent with this Standard Operating Procedure.

Regulatory Requirement

Pursuant to the PERM Program:

§ 656.41 Review of prevailing wage determinations.

(a) *Review of NPC PWD.* Any employer desiring review of a PWD made by a CO must make a request for such review within 30 days of the date from when the PWD was issued. The request for review must be sent to the director of the NPC that issued the PWD within 30 days of the date of the PWD; clearly identify the PWD from which review is sought; set forth the particular grounds for the request; and include all the materials pertaining to the PWD submitted to the NPC up to the date of the PWD received from the NPC.

AILA Doc. No. 18010230. (Posted 1/2/18)

(b) *Processing of request by NPC.* Upon the receipt of a request for review, the NPC will review the employer's request and accompanying documentation, and add any material that may have been omitted by the employer, including any material the NPC sent the employer up to the date of the PWD.

(c) *Review on the record.* The director will review the PWD solely on the basis upon which the PWD was made and, upon the request for review, may either affirm or modify the PWD.

(d) *Request for review by BALCA.* Any employer desiring review of the director's determination must make a request for review by the BALCA within 30 days of the date of the Director's decision.

(1) The request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal arguments and only such evidence that was within the record upon which the director made his/her affirmation of the PWD.

(2) The request for review must be in writing and addressed to the director of the NPC making the determination. Upon receipt of a request for a review, the director will assemble an indexed appeal file in reverse chronological order, with the index on top followed by the most recent document.

(3) The director will send the Appeal File to the Office of Administrative Law Judges, BALCA. The BALCA handles the appeals in accordance with §§ 656.26 and 656.27.

§ 656.26 Board of Alien Labor Certification Appeals review of denials of labor certification.

(a) *Request for review.* (1) If a labor certification is denied, if a labor certification is revoked pursuant to §656.32, or if a debarment is issued under §656.31(f), a request for review of the denial, revocation, or debarment may be made to the Board of Alien Labor Certification Appeals by the employer or debarred person or entity by making a request for such an administrative review in accordance with the procedures provided in paragraph (a) of this section. In the case of a finding of debarment, receipt by the Department of a request for review, if made in accordance with this section, shall stay the debarment until such time as the review has been completed and a decision rendered thereon.

(2) A request for review of a denial or revocation:

(i) Must be sent within 30 days of the date of the determination to the Certifying Officer who denied the application or revoked the certification;

(ii) Must clearly identify the particular labor certification determination for which review is sought;

(iii) Must set forth the particular grounds for the request; and

(iv) Must include a copy of the Final Determination.

(b) Upon the receipt of a request for review, the Certifying Officer immediately must assemble an indexed Appeal File:

(1) The Appeal File must be in chronological order, must have the index on top followed by the most recent document, and must have consecutively numbered pages. The Appeal File must contain the request for review, the complete application file, and copies of all the written material, such as pertinent parts and pages of surveys and/or reports upon which the denial was based.

(2) The Certifying Officer must send the Appeal File to the Board of Alien Labor Certification Appeals, Office of Administrative Law Judges, 800 K Street, NW., Suite 400–N, Washington, DC 20001–8002.

(3) The Certifying Officer must send a copy of the Appeal File to the employer. The employer may furnish or suggest directly to the Board of Alien Labor Certification Appeals the addition of any documentation that is not in the Appeal File, but that was submitted to DOL before the issuance of the Final Determination. The employer must submit such documentation in writing, and must send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

Pursuant to the H-1B Program:

§ 655.731 What is the first LCA requirement, regarding wages?

An employer seeking to employ H–1B nonimmigrants in a specialty occupation or as a fashion model of distinguished merit and ability shall state on Form ETA 9035 or 9035E that it will pay the H–1B nonimmigrant the required wage rate. For the purposes of this section, “H–1B” includes “E–3 and H–1B1” as well.

(a) *Establishing the wage requirement.* The first LCA requirement shall be satisfied when the employer signs Form ETA 9035 or 9035E attesting that, for the entire period of authorized employment, the required wage rate will be paid to the H–1B nonimmigrant(s); that is, that the wage shall be the greater of the actual wage rate (as specified in paragraph (a)(1) of this section) or the prevailing wage (as specified in paragraph (a)(2) of this section). The wage requirement includes the employer's obligation to offer benefits and eligibility for benefits provided as compensation for services to H–1B nonimmigrants on the same basis, and in accordance with the same criteria, as the employer offers to U.S. workers.

(2) The prevailing wage for the occupational classification in the area of intended employment must be determined as of the time of filing the application. The employer

shall base the prevailing wage on the best information available as of the time of filing the application. Except as provided in this section, the employer is not required to use any specific methodology to determine the prevailing wage and may utilize a wage obtained from an OFLC NPC (OES), an independent authoritative source, or other legitimate sources of wage data. One of the following sources shall be used to establish the prevailing wage:

(i) A collective bargaining agreement which was negotiated at arms-length between a union and the employer which contains a wage rate applicable to the occupation;

(ii) If the job opportunity is in an occupation which is not covered by paragraph (a)(2)(i) of this section, the prevailing wage shall be the arithmetic mean of the wages of workers similarly employed, except that the prevailing wage shall be the median when provided by paragraphs (a)(2)(ii)(A), (b)(3)(iii)(B)(2), and (b)(3)(iii)(C)(2) of this section. The prevailing wage rate shall be based on the best information available. The following prevailing wage sources may be used:

(A) *OFLC National Processing Center (NPC) determination.* Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment shall continue to receive and process prevailing wage determination requests, but shall do so in accordance with these regulatory provisions and Department guidance. On or after January 1, 2010, the NPC shall receive and process prevailing wage determination requests in accordance with these regulations and with Department guidance. Upon receipt of a written request for a PWD on or after January 1, 2010, the NPC will determine whether the occupation is covered by a collective bargaining agreement which was negotiated at arms length, and, if not, determine the arithmetic mean of wages of workers similarly employed in the area of intended employment. The wage component of the Bureau of Labor Statistics Occupational Employment Statistics survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey. The NPC shall determine the wage in accordance with secs. 212(n) and 212(t) of the INA. If an acceptable employer-provided wage survey provides a median and does not provide an arithmetic mean, the median shall be the prevailing wage applicable to the employer's job opportunity. In making a PWD, the Chicago NPC will follow 20 CFR 656.40 and other administrative guidelines or regulations issued by ETA. The Chicago NPC shall specify the validity period of the PWD, which in no event shall be for less than 90 days or more than 1 year from the date of the determination.

(*1*) An employer who chooses to utilize an NPC PWD shall file the labor condition application within the validity period of the prevailing wage as specified in the PWD. Any employer desiring review of an NPC PWD, including judicial review, shall follow the appeal procedures at 20 CFR 656.41. Employers which challenge an NPC PWD under 20 CFR 656.41 must obtain a ruling prior to filing an LCA. In any challenge, the Department and the NPC shall not divulge any employer wage data collected under the promise of confidentiality. Once an employer obtains a PWD from the NPC and files an LCA supported by that PWD, the employer is deemed to have accepted the PWD (as to the amount of the wage) and thereafter may not contest the legitimacy of the PWD by

filing an appeal with the CO (see 20 CFR 656.41) or in an investigation or enforcement action.

(*2*) If the employer is unable to wait for the NPC to produce the requested prevailing wage for the occupation in question, or for the CO and/or the BALCA to issue a decision, the employer may rely on other legitimate sources of available wage information as set forth in paragraphs (a)(2)(ii)(B) and (C) of this section. If the employer later discovers, upon receipt of the PWD from the NPC, that the information relied upon produced a wage below the final PWD and the employer was paying the NPC-determined wage, no wage violation will be found if the employer retroactively compensates the H–2B nonimmigrant(s) for the difference between wage paid and the prevailing wage, within 30 days of the employer's receipt of the PWD.

Pursuant to the H-2B Program:

§ 655.13 Review of PWDs.

(a) *Request for review of PWDs.* Any employer desiring review of a PWD must make a written request for such review to the NPWC Director within 7 business days from the date the PWD was issued. The request for review must clearly identify the PWD for which review is sought; set forth the particular grounds for the request; and include any materials submitted to the NPWC for purposes of securing the PWD.

(b) *NPWC review.* Upon the receipt of a written request for review, the NPWC Director will review the employer's request and accompanying documentation, including any supplementary material submitted by the employer, and after review shall issue a Final Determination letter; that letter may:

(1) Affirm the PWD issued by the NPWC; or

(2) Modify the PWD.

(c) *Request for review by BALCA*. Any employer desiring review of the NPWC Director's decision on a PWD must make a written request for review of the determination by BALCA within 10 business days from the date the Final Determination letter is issued.

(1) The request for BALCA review must be in writing and addressed to the NPWC Director who made the final determinations. Upon receipt of a request for BALCA review, the NPWC will prepare an appeal file and submit it to BALCA.

(2) The request for review, statements, briefs, and other submissions of the parties must contain only legal arguments and may refer to only the evidence that was within the record upon which the decision on the PWD was based.

(3) BALCA will handle appeals in accordance with §655.61.

§ 655.61 Administrative review.

(a) *Request for review.* Where authorized in this subpart, employers may request an administrative review before the BALCA of a determination by the CO. In such cases, the request for review:

(1) Must be sent to the BALCA, with a copy simultaneously sent to the CO who denied the application, within 10 business days from the date of determination;

(2) Must clearly identify the particular determination for which review is sought;

(3) Must set forth the particular grounds for the request;

(4) Must include a copy of the CO's Determination; and

(5) May contain only legal argument and such evidence as was actually submitted to the CO before the date the CO's determination was issued.

(b) *Appeal file*. Upon the receipt of a request for review, the CO will, within 7 business days, assemble and submit the Appeal File using means to ensure same day or next day delivery, to the BALCA, the employer, and the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor.

(c) *Briefing schedule.* Within 7 business days of receipt of the Appeal File, the counsel for the CO may submit, using means to ensure same day or next day delivery, a brief in support of the CO's decision.

(d) *Assignment*. The Chief ALJ may designate a single member or a three member panel of the BALCA to consider a particular case.

(e) *Review.* The BALCA must review the CO's determination only on the basis of the Appeal File, the request for review, and any legal briefs submitted and must:

(1) Affirm the CO's determination; or

(2) Reverse or modify the CO's determination; or

(3) Remand to the CO for further action.

(f) *Decision.* The BALCA should notify the employer, the CO, and counsel for the CO of its decision within 7 business days of the submission of the CO's brief or 10 business days after receipt of the Appeal File, whichever is later, using means to ensure same day or next day delivery.

Standard Operating Procedure

I. Determining the Nature of the Request **(Contract Staff Role)**

a. Correspondence referencing a request for review or request for appeal will be forwarded from the mailroom directly to the contract Team Lead for review. The Team Lead will review the correspondence and confirm the request involves an Appeal. If the correspondence is not a request for Appeal, the contract Team Lead will handle the correspondence pursuant to the relevant SOP for that correspondence.

b. The Mailroom Clerk will take the following steps to enter the Appeal request in iCERT:

i. Scan the correspondence and upload to the corresponding PWD case in iCERT. Title the request "Appeal Request P-XXX-XXXXX-XXXXXX"

ii. Create iCERT case note as follows:

1. Title: Appeal Request
2. Category: Correspondence
3. Note: Appeal Request received [insert date]

iii. Move the case to the Appeal Review queue in iCERT.

c. The Mailroom Clerk will create an Appeals folder using the previous CDR folder:

i. Pull the corresponding CDR case folder and turn it into an Appeals case folder.

ii. Move any CDR notes and documents from the left inside cover of the folder to the right inside cover of the folder.

iii. Attach a copy of the Appeals Checklist to the left inside cover of the folder with the appropriate information filled in (Case Number, Employer name, Date Received). The checklist is located at S:\CD Review and Appeals\BALCA\Appeals Work Area\Appeals Checklist.doc

iv. In the folder, insert the original appeal correspondence from the employer in front of the CDR correspondence.

d. The Mailroom Clerk will initial the Appeals Checklist to indicate the file folder was created and the request was uploaded into iCERT.

e. Upon completion, route the Appeal folder to the appropriate Federal Support Staff.

II. Contents of the BALCA Appeal file

a. The appeal file serves to introduce events surrounding the processing of the application (case history), detail the issue(s) presented therein (reasons for determination), and provide all necessary documentary evidence (make a case) in support of such arguments.

b. All appeal file documents must be placed in reverse chronological order (most recent document first), based on the date the document was issued. This allows BALCA judges and ETLS attorneys to better follow the events and issues in the appeal.

c. Generally, the appeal file should consist of, at a minimum, the following documents (Detailed instructions on how to assemble the Appeal file are found in SectionIII below):

   i. The cover letter/BALCA transmittal letter

   ii. The Index Page (sample at Appendix A)

   iii. The employer's request for Appeal

   iv. The CD Review decision letter

   v. The Form ETA-9141 as modified, if applicable (i.e., modified 9141 issued at CDR)

   vi. The employer's response to any requests for information (RFI), if applicable

   vii. The request for information (RFI), if applicable

   viii. The employer's CD Review (CDR) request

   ix. The redetermination email

   x. The Form ETA-9141 as redetermined, if applicable (i.e., modified 9141 issued at redetermination)

   xi. The employer's response to any redetermination requests for information (RFI), if applicable

   xii. The redetermination request for information (RFI), if applicable

   xiii. The employer's request for redetermination

   xiv. The Form ETA-9141, as originally determined

   xv. The employer's response to any requests for information (RFI), if applicable

   xvi. The request for information (RFI), if applicable

   xvii. All documentation in the application file that details the relevant procedural history and/or supports the reason(s) for the determination

   xviii. Complete copies of the submitted Form ETA-9141, both the electronic version and the non-electronic mailed-in version, if applicable

xix. Copy of the Wage Source (OES data (FLC printout), CBA, Survey, etc.)

xx. Copy of the O*NET printout of the assigned SOC

xxi. Copy of the NPWC Policy Guidance

d. The following documentation must not be included in the BALCA Appeal file, unless specifically directed to do so by National Office and/or ETLS:

i. Case notes, including worksheet information; and

ii. Other notes regarding deliberative work product, i.e., notes from the federal staff to contract staff regarding the decision making process, etc.

III. Initiating the Appeal Package **(Federal Support Staff Role)**

a. The Federal Support Staff will initiate assembling the Appeal package

b. Create an electronic file folder on the S drive to save the appeal documents

i. The folder should be placed in the following location: S:\CD Review and Appeals\BALCA.

ii. Name the folder with the corresponding case number, employer name, and issue; e.g., "P-XXX-XXXXX-XXXXXX, University XYZ, ACWIA Coverage."

c. Print and/or copy the following documentation and place it in reverse chronological order in the physical file folder

i. The employer's request for Appeal

1. The employer's entire request for Appeal must be copied, even if the originals of the attachments are separately included in the appeal file. This will decrease the amount of independent research/investigation in which BALCA judges and ETLS attorneys will need to engage.

ii. The CD Review (CDR) decision letter

1. Either copy the Center Director's response letter from the file folder; or

2. Print a copy of the letter from iCERT correspondence. In iCERT the file name should be "CDR Response Letter P-XXX-XXXXX-XXXXXX."

iii. The Form ETA-9141 as modified, if applicable (i.e., modified 9141 issued at CDR)

iv. The employer's response to any requests for information (RFI), if applicable

1. Check iCERT 'Correspondence' to determine if a RFI response was uploaded at the CDR stage.
2. If so, print a copy of the uploaded response.

v. The request for information (RFI), if applicable

1. Check iCERT 'Correspondence' to determine if a RFI email was issued at the CDR stage.
2. If so, print a copy of the RFI email.
3. In situations where the text of the email extends beyond the printable iCERT view, cut and paste the text of the email into a word document (located at S:\CD Review and Appeals\iCERT Case Notes and Emails Templates) and title appropriately with the date the email was sent. The case number should be populated in the footer
    a. Save a copy of this document on the S drive (S:\CD Review and Appeals\BALCA) in the folder with the corresponding case number.

vi. The employer's CD Review (CDR) request

1. The employer's entire request for CDR must be included with the appeal documents even if the originals of the attachments are separately included in the appeal file. This will decrease the amount of independent research/investigation in which BALCA judges and ETLS attorneys will need to engage.
2. For CDR requests submitted via mail or email:
    a. Photocopy the employer's cover letter or cover email as well as any supplemental documentation submitted with the CDR request.
3. For CDR requests submitted via iCERT
    a. Copy and paste the CDR request/case note information into the format below (found at S:\CD Review and Appeals\iCERT Case Notes and Emails Templates).

DATE/TIME	REQUESTER POC	CATEGORY/TITLE	CASE EVENT	NOTES

b. Save a copy of this document on the S drive (S:\CD Review and Appeals\BALCA) in the folder with the corresponding case number.

c. Print any uploaded CDR request documents from iCERT 'Correspondence.'

vii. The redetermination email

1. Print from iCERT 'Correspondence' where possible

2. In situations where the text of the email extends beyond the printable iCERT view, cut and paste the text of the email into a word document (located at S:\CD Review and Appeals\iCERT Case Notes and Emails Templates) and title appropriately with the date the email was sent. The case number should be populated in the footer

a. Save a copy of this document on the S drive (S:\CD Review and Appeals\BALCA) in the folder with the corresponding case number.

viii. The Form ETA-9141 as redetermined, if applicable (i.e., the modified 9141 issued at redetermination)

ix. The employer's response to any redetermination requests for information (RFI), if applicable

1. Check iCERT 'Correspondence' to determine if a RFI response was uploaded at the redetermination stage.

2. If so, print a copy of the uploaded response.

x. The redetermination request for information (RFI), if applicable

1. Check iCERT 'Correspondence' to determine if a RFI email was issued at the redetermination stage.

2. If so, print a copy of the RFI email.

3. In situations where the text of the RFI email extends beyond the printable iCERT view, cut and paste the text of the email into a word document (located at S:\CD Review and Appeals\iCERT Case Notes and Emails Templates) and title appropriately with the date the email was sent. The case number should be populated in the footer

a. Save a copy of this document on the S drive (S:\CD Review and Appeals\BALCA) in the folder with the corresponding case number.

xi. The employer's request for redetermination

1. The employer's entire request for redetermination must be included with the appeal documents even if the originals of the attachments are separately included in the appeal file. This will decrease the amount of independent research/investigation in which BALCA judges and ETLS attorneys will need to engage.
2. For redetermination requests submitted via mail or email:
    a. Photocopy the employer's cover letter or cover email as well as any supplemental documentation submitted with the redetermination request.
3. For redetermination requests submitted via iCERT:
    a. Copy and paste the case note information into the format below (found at S:\CD Review and Appeals\iCERT Case Notes and Emails Templates).

DATE/TIME	REQUESTER POC	CATEGORY/TITLE	CASE EVENT	NOTES

    b. Save a copy of this document on the S drive (S:\CD Review and Appeals\BALCA) in the folder with the corresponding case number.
    c. Print any uploaded redetermination request documents from iCERT 'Correspondence.'

xii. The Form ETA-9141, as originally determined.

xiii. The employer's response to any requests for information (RFI), if applicable
1. Check iCERT 'Correspondence' to determine if a RFI response was uploaded at the initial determination stage.
2. If so, print a copy of the uploaded response.

xiv. The request for information (RFI), if applicable
1. Check iCERT 'Correspondence' to determine if a RFI email was issued at the initial determination stage.
2. In situations where the text of the RFI email extends beyond the printable iCERT view, cut and paste the text of the email into a

word document (located at S:\CD Review and Appeals\iCERT Case Notes and Emails Templates) and title appropriately with the date the email was sent. The case number should be populated in the footer

a. Save a copy of this document on the S drive (S:\CD Review and Appeals\BALCA) in the folder with the corresponding case number. If the case folder does not already exist, create the folder.

xv. All documentation in the application file that details the relevant procedural history and/or supports the reason(s) for the determination

1. All items attached to, and/or referenced in, a principal document must also be included in the appeal file. For example, if the determination references a communication with the employer via email, a copy of the referenced email must be placed in the Appeal file.

2. A copy of iCERT case events must also be included in the appeal file, if necessary, to demonstrate the procedural history of the application and support the reason(s) for the determination. The contract analyst and federal staff names should be redacted from the case events notes.

xvi. Complete copies of the original Form ETA-9141 as submitted by the employer

1. For applications mailed-in to the NPWC, print a copy of the uploaded original from the iCERT 'Correspondence.'

2. For applications that were initiated in iCERT by the employer, print a copy of the iCERT submission email from 'Correspondence'.

xvii. Copy of the Wage Source (OES data (FLC Data Center printout), CBA, Survey, etc.).

xviii. Copy of the O*NET printout of the assigned SOC.

xix. Copy of the NPWC Policy Guidance.

d. After printing/copying the above documents, review the preliminary document list and ensure all documents relevant to the appeal are compiled and placed in reverse chronological order (most recent first) and that the list reflects the same order

e. Create tabs (sticky notes) sequentially number the pages of the documents, from the top, starting with the employer's request for appeal.

f. Initial the Appeals Checklist in the file folder indicating the documents were organized and index tabbed

g. Deliver the file folder to the appropriate Federal Analyst

IV. Preparing the Appeal Transmittal/Cover Letter and Package **(Federal Analyst Role)**

a. The Federal Analyst will draft the appeal transmittal/cover letter, index page, and review the appeal package contents.

b. Appeal Transmittal/Cover Letter and Index Page

i. Review the CD Review determination letter to obtain background information into the reason(s) and procedural history resulting in the appeal of the application. This will assist in making sure all appropriate documents are included in the assembled BALCA appeal file

ii. Prepare a Transmittal/Cover Letter

1. Generate and print the BALCA transmittal/cover letter. The template can be found on the S drive (S:\CD Review and Appeals\BALCA\Appeals Work Area\BALCA Transmittal letter & Index.doc)

2. Save a copy of this document on the S drive (S:\CD Review and Appeals\BALCA) in the folder with the corresponding case number.

iii. Review the documentation prepared by the Federal Support Staff to ensure all appropriate documentation is included in the package and is appropriately tabbed and numbered.

iv. Prepare the Index page draft listing all documents contained in the appeal file. The template can be found on the S drive (S:\CD Review and Appeals\BALCA\Appeals Work Area\BALCA Transmittal letter & Index.doc). See Appendix A for a sample index page

1. At the top of the page insert the employer's name, the position title and location, and the ETA case number.

2. The Index Page is an outline listing the documents contained in the appeal file

a. The documents should be listed in reverse chronological order (most recent first).

b. At this point the document page numbers should not be included on the Index page. The page numbers should be updated by the Federal Support Staff after the documents have been paginated (Step V.b below).

3. Save a copy of this document on the S drive (S:\CD Review and Appeals\BALCA) in the folder with the corresponding case number.

c. Initial the Appeals Checklist to indicate:

   i. The cover letter and index were drafted.

   ii. The documentation is appropriately organized and sequentially numbered (tabbed with sticky notes).

d. Forward the BALCA Appeal file to the Federal Support Staff for pagination.

V. Paginating the Appeal Documents and Updating the Index Page **(Federal Support Staff Role)**

a. The Federal Support Staff will create a paginated copy of the appeal documents (the cover letter and index page are not included in the pagination). See Appendix C for details on utilizing the copier for pagination.

b. After pagination is complete, open the Transmittal/Cover Letter and Index document drafted by the Federal Analyst. The document should be located on the S drive in the corresponding case folder (S:\CD Review and Appeals\BALCA)

   i. Update the Index page to correspond with the pagination and save the document.

c. Print a copy of the Transmittal/Cover Letter and the updated Index page.

d. Attach the Transmittal/Cover Letter and Index page to the paginated documents with a binder clip or rubber band. Place the package in the appeal file folder.

e. Initial the Appeals Checklist to indicate:

   i. The appeal documents have been paginated.

   ii. The Transmittal/Cover Letter and Index page have been printed, attached to the paginated appeal documents, and placed in the file folder.

f. Forward the BALCA Appeal file to the CO for review.

VI. Reviewing the Appeal Package **(Certifying Officer Role)**

a. The Certifying Officer (CO) will review the appeal transmittal/cover letter and documents.

b. Initial the Appeals Checklist.

c. Forward the file to the Center Director (CD) for final approval. If there are unresolved discrepancies in the Appeals file, the CO will bring them to the attention of the CD as required.

VII. Approving the Appeal Package **(Center Director Role)**

a. The CD will review the complete Appeal package.

b. Upon approval, sign the appeal package by initialing the appeal transmittal/cover letter.

c. Initial the Appeals Checklist to indicate CD review and sign-off is complete.

d. Forward the approved BALCA Appeal file to the CO.

VIII. Finalizing the Appeal Package **(Certifying Officer and Federal Analyst)**

a. The CO will ensure the CD signed the transmittal/cover letter.

b. Initial the Appeals Checklist to indicate CO has completed final review.

c. Forward the appeal file to the Federal Analyst for a final review.

d. The Federal Analyst will do a final review to ensure

i. The appeal documents are properly paginated.

ii. The Index page accurately corresponds with the paginated documents.

e. Initial the Appeals Checklist to indicate the Federal Analyst has completed final review.

f. Forward the appeal file to the Federal Support Staff for copying and preparing for mailing.

IX. Copying and Preparing for Mailing **(Federal Support Staff Role)**

a. Once approved, the Appeal file is returned to the Federal Support Staff to prep for copying and mailing.

b. Create address cover sheets for ETLS, Agent/Attorney (if applicable), and the employer

i. Templates, including ETLS contact info, are located on the S drive at S:\CD Review and Appeals\BALCA\Appeals Work Area\Appeals Address Coversheet.doc. (See Appendix D for an example)

ii. Note, an address cover sheet is not needed for the BALCA copy as the appeal transmittal/cover letter includes the BALCA address information.

c. Save copies of the address cover sheets on the S drive in the corresponding employer file folder (S:\CD Review and Appeals\BALCA).

d. Make copies of the complete appeal package, as appropriate. Each Appeals package copy must be customized to the recipient:

i. BALCA: The appeal file mailed to BALCA must include the transmittal/cover letter, Index page, and all **original** documents, in reverse chronological order with most recent first.

ii. ETLS: The appeal file mailed to ETLS must be a duplicate copy of the appeal file sent to BALCA, along with the appropriate address cover sheet.

iii. Agent/Attorney: If applicable, the appeal file mailed to the agent/attorney must be a duplicate of the appeal file sent to BALCA, along with the appropriate address cover sheet.

iv. Employer:

1. If the employer is not represented by an agent/attorney, the appeal file mailed to the employer must be a duplicate of the appeal file sent to BALCA, along with the appropriate address cover sheet.

2. If the employer is represented by an agent/attorney, the appeal file mailed to the employer must only include a copy of the BALCA transmittal letter, and the appropriate address cover sheet.

v. NPWC: NPWC must retain a copy of the complete file submitted to BALCA.

e. Ensure that all appeal file packages are complete (i.e., verify all pages are copied for each set and that the pagination appears on each copy).

f. Initial the Appeals Checklist indicating the address cover sheets were completed and the appeal package copies were made.

g. Submit an email request to the Center Director (cc the CO and Federal Analyst) for approval of mailing the packages via the government contracted overnight courier service (e.g., UPS) to BALCA, ETLS, and the employer's agent/attorney (or to the employer if not represented). Once the CD approves, proceed to finalizing the appeal.

X. Mailing the Appeal File **(Federal Support Staff and Contract Staff Roles)**

a. Depending on the recipient of the appeal package, the packages will be sent via the government contracted overnight service (e.g., UPS) or via US Mail. For example:

i. Complete appeal packages for BALCA, ETLS, and the employer's agent/attorney (or the employer if not represented) will be sent via UPS

ii. A copy of only the transmittal letter will be sent to the employer via US Mail if the employer is represented by an attorney/agent.

b. The Federal Support Staff will prepare and place sticky notes on each package/item indicating the recipient and method of mailing. For example, on

the BALCA package, place a sticker indicating to “BALCA via UPS;” for the employer’s copy, place a sticky note on the address cover sheet/transmittal letter indicating to “Employer via US Mail;” etc.

c. Initial the Appeals Checklist to indicate the packages were prepped for mailing and will be delivered to the contract Team Lead.

d. Keep the file folder, but deliver the appeal packages to the contract Team Lead for mailing.

e. Upon receipt, the Team Lead will instruct the Mailroom Staff to:

   i. Mail the appeal packages to each recipient using the appropriate method of mailing (courier service or US Mail) as indicated on each sticky note

   ii. Ensure that the auto-generated courier service email is sent to the Federal Support Staff.

XI. Finalizing Appeal in iCERT **(Federal Support Staff Role)**

a. Upon receiving the auto-generated courier service emails, save copies of the emails on the S drive in the corresponding employer file folder (S:\CD Review and Appeals\BALCA).

b. Open the case in iCERT and go to the Appeals Review tab.

c. Create a Case Note with the courier tracking information:

   i. Title “Appeal Sent”

   ii. Category “Appeal”

   iii. Enter the following as the note:

      1. BALCA Appeal Sent on mm/dd/yyyy

      2. To BALCA via UPS [insert tracking number]

      3. To ETLS via UPS [insert tracking number]

      4. To Attorney/Agent/Employer (whichever applicable) via UPS [insert tracking number]

      5. To Employer via US Mail (if applicable).

d. Go up to the ‘Appeals Review Request’ section to review the documents checklist.

e. Each item on the checklist of documents will show a status of “Pending.”

f. Click the “Complete” button for each document completed in the appeal file. Even if an item was not required for a particular appeal, “Complete” must be clicked in order to proceed.

g. Click the “Administrative File Complete and Sent” button at the bottom of the checklist.

h. Once the “Administrative File Complete and Sent” button has been clicked, iCERT will refresh and update the case status to ‘Pending Appeal BALCA Decision.’

i. Initial the Appeals Checklist in the file folder to indicate the appeal has been completed in iCERT.

j. Deliver the file folder to the contract Team Lead to update iCERT and close out the file folder.

XII. Update iCERT and Close out Appeal File Folder **(Contract Staff Role)**

a. Upon receipt of the file folder, the contract Team Lead will instruct the Mailroom Staff to complete the following to update iCERT and close out the file folder.

b. Scan and upload a copy of the BALCA transmittal/cover letter to the iCERT case

   i. Title the file “BALCA Transmittal P-XXX-XXXXX-XXXXXX”

   ii. Choose “BALCA Transmittal” as the Correspondence Type

c. Create an iCERT case note as follows:

   i. Title: BALCA Transmittal Letter

   ii. Category: Correspondence

   iii. Note: BALCA transmittal letter uploaded

d. Initial the Appeals Checklist to indicate

   i. The Appeal packages were mailed and include the Date Sent for each package sent.

   ii. The transmittal letter was uploaded to iCERT.

e. Return the file folder to the cabinet with the pending BALCA decision files.

XIII. Appeals Response **(Contract and Federal Staff Roles)**

a. Correspondence referencing a BALCA decision will be forwarded from the mailroom directly to the contract Team Lead for review.

b. The contract Team Lead, after reviewing the correspondence and confirming the correspondence is a BALCA response, will notify the appropriate CO and route the BALCA correspondence accordingly.

c. The CO will pull the appeals file and review the BALCA decision.

d. The CO will forward the appeals file to the appropriate Federal Analyst with instructions on how to proceed.

e. The Federal Analyst will process the response in iCERT by going to PW Queues/Appeals Review and opening the corresponding case. The Federal Analyst will select one of three options:

   i. BALCA Decision – Affirm

      1. If the BALCA decision is to affirm the CD decision, create a Case Note to reflect the affirmation with the Category "Appeals" and the Title "Appeals – Decision Affirm".
      2. Click on the 'BALCA Decision Affirm' button in the Appeals Review Request section.
      3. iCERT will refresh the page and change the case status to 'Appeal BALCA Affirmed.'
      4. Forward the appeal file to the contract Team Lead
         a. Deliver the file folder to the Team Lead to
            i. Scan the BALCA decision.
            ii. Upload the decision in iCERT.
            iii. Save a copy of the decision in the BALCA Decisions folder with the corresponding issue name; e.g., if the appeal was regarding an ACWIA issue, save the decision in the ACWIA subfolder. The folders are located on the S drive at S:\CD Review and Appeals\BALCA\BALCA Decisions.
            iv. Save a copy of the decision in the corresponding case number/employer name file folder. The folders are located on the S drive at S:\CD Review and Appeals\BALCA.
            v. Close the file pursuant to the Records Management SOP.

   ii. BALCA Decision Modify

      1. If the BALCA decision is to overturn or modify the CD decision, create a Case Note to reflect the requested modification with the Category "Appeals" and the Title "Appeals – Decision Modify."
      2. Click on the 'BALCA Decision Modify' button in the Appeals Review Request section.
      3. Correct/modify the PWD by adjusting the following in accordance with the decision:
         a. Validity Period

b. Wage Level

c. SOC

d. Prevailing Wage Source

e. Prevailing Wage(s)

f. Additional Notes.

4. Upon making the necessary modifications, click the 'Issue New Determination' button at the top of the page to update the case status to "Appeal Overturned – Modified."

5. Forward the appeal file to the contract Team Lead

   a. Send an email instructing the Team Lead to send the employer the BALCA Decision Modify email via the Help Desk along with an attached copy of the modified Form ETA-9141. The template is located on the S drive S:\CD Review and Appeals\BALCA\BALCA Decisions\BALCA Decision Email Language.docx (See Appendix E for sample BALCA Decision email templates).

   b. Deliver the file folder to the Team Lead to

      i. Scan the BALCA decision.

      ii. Upload the decision in iCERT.

      iii. Save a copy of the decision in the BALCA Decisions folder with the corresponding issue name; e.g., if the appeal was regarding an ACWIA issue, save the decision in the ACWIA subfolder. The folders are located on the S drive at S:\CD Review and Appeals\BALCA\BALCA Decisions.

      iv. Save a copy of the decision in the corresponding case number/employer name file folder. The folders are located on the S drive at S:\CD Review and Appeals\BALCA.

      v. Close the file pursuant to the Records Management SOP.

iii. BALCA Decision Dismissed

1. If the BALCA decision is to dismiss the Appeal, create a Case Note to reflect the dismissal with the Category "Appeals" and the Title "Appeals – Decision Dismissed"

2. iCERT will refresh the page and change the case status to 'Appeal BALCA Dismissed'

3. Forward the appeal file to the contract Team Lead

a. Send an email instructing the Team Lead to send the employer the BALCA Decision Dismissed email via the Help Desk. The template is located on the S drive S:\CD Review and Appeals\BALCA\BALCA Decisions\BALCA Decision Email Language.docx (See Appendix E for sample BALCA Decision email templates).

b. Deliver the file folder to the Team Lead to

   i. Scan the BALCA decision.

   ii. Upload the decision in iCERT.

   iii. Save a copy of the decision in the BALCA Decisions folder with the corresponding issue name; e.g., if the appeal was regarding an ACWIA issue, save the decision in the ACWIA subfolder. The folders are located on the S drive at S:\CD Review and Appeals\BALCA\BALCA Decisions.

   iv. Save a copy of the decision in the corresponding case number/employer name file folder. The folders are located on the S drive at S:\CD Review and Appeals\BALCA.

   v. Close the file pursuant to the Records Management SOP.

Appendix A: SAMPLE INDEX PAGE

EMPLOYER: School District of Palm Beach County

POSITION: Secondary ESOL Teacher in Boynton Beach, Florida

ETA CASE NUMBER: P-100-10278-688948

I N D E X

Pages	Documents
1-9	Request for BALCA Review (Employer's Appeal)
10-15	Center Director's Decision (Response to Challenge)
16-20	Application for Prevailing Wage Determination (Form ETA-9141, including Center Director's decision)
21-34	Request for Center Director's Review (Challenge of Certifying Officer's Redetermination)
35-36	Certifying Officer's Redetermination (Response to Request for Redetermination)
37-42	Application for Prevailing Wage Determination (Form ETA-9141, including Certifying Officer's redetermination)
43-197	Response to Request for Additional Information
198	Request for Additional Information
199	Supplemental Information/Request for Redetermination
200-205	Application for Prevailing Wage Determination (Form ETA-9141, including Certifying Officer's original determination)
206	Confirmation of Form ETA-9141 submission
207-375	Wage Source Information (OES data and employer provided Collective Bargaining Agreement)
376-381	O*NET Printout
381-417	National Prevailing Wage Policy Guidance

APPENDIX B: SAMPLE APPEALS CHECKLIST

Appeals Checklist

Case Number: _____

Employer: _____

Date Received: _____

<table>
<tr><th>Initial</th><th>Role</th><th>Task</th></tr>
<tr><td></td><td>Contract Staff</td><td>Appeal Documents Received (folder completed with checklist)</td></tr>
<tr><td></td><td>Contract Staff</td><td>iCERT Appeal Uploaded</td></tr>
<tr><td></td><td>Fed Support Staff</td><td>Appeal Documents Organized and Index Tabbed</td></tr>
<tr><td></td><td>Fed Analyst</td><td>Draft Index and BALCA Transmittal/Cover Letter</td></tr>
<tr><td></td><td>Fed Analyst</td><td>Review Document Organization and Tabs</td></tr>
<tr><td></td><td>Fed Support Staff</td><td>Create Paginated Copy (1 copy)</td></tr>
<tr><td></td><td>Fed Support Staff</td><td>Attach Cover Letter & Index Page to Paginated Documents</td></tr>
<tr><td></td><td>Cert Officer</td><td>CO Appeal File Review</td></tr>
<tr><td></td><td>Center Director</td><td>Center Director Appeal File Review & Initial</td></tr>
<tr><td></td><td>Cert Officer</td><td>CO Final Review</td></tr>
<tr><td></td><td>Fed Analyst</td><td>Federal Analyst Final Review</td></tr>
<tr><td></td><td>Fed Support Staff</td><td>Address Cover Letter(s) Complete; Copies Made for BALCA, ETLS, Attorney, Employer, & NPWC</td></tr>
<tr><td></td><td>Fed Support Staff</td><td>Appeal Packages Prepped for Mailing & Delivered to Contract Team Lead</td></tr>
<tr><td></td><td>Fed Support Staff</td><td>iCERT Appeal Finalized</td></tr>
<tr><td></td><td>Contract Staff</td><td>Sent Completed Appeal File to:
<table>
<tr><th>Date Sent</th><th>Sent To</th></tr>
<tr><td></td><td>BALCA</td></tr>
<tr><td></td><td>ETLS</td></tr>
<tr><td></td><td>Attorney/Agent (if applicable)</td></tr>
<tr><td></td><td>Employer (Appeal Package or Letter)</td></tr>
</table></td></tr>
<tr><td></td><td>Contract Staff</td><td>iCERT Appeal Updated & Appeal File Folder Closed</td></tr>
</table>

APPENDIX C: PAGINATION STEPS

Sets to Paginate

1. Paginate one section at a time
   *** Paginate starts with the first page after the index page ***

2. Change the settings on the copier after each round of paginating
   a. Application Tab
   b. Stamp/Composition
   c. Page Number
      i. Starting Page Number
         1. use key pad to select page number to start with
      ii. Page Number Type
         1. 1, 2, 3 …
      iii. Text Size
         1. 12 point
         2. OK
      iv. Print Position
         1. Top Right
         2. OK
   d. OK
   e. Start

Paginate 2 Sided

1. Basic Tab
2. Duplex/Combine
3. 2 Sided > 2 Sided
   a. OK
4. Then repeat the steps to paginate

*** Press Reset after each round of printing 2 Sided ***

APPENDIX D: ADDRESS COVERSHEETS INFO

Employer's Point of Contact
Title
Employer's Name
Address
City, State Zip

Employer's Attorney
Firm or Title
Address
City, State Zip

ETLS Point of Contact
U.S. Department of Labor
Office of the Solicitor
Associate Solicitor for Employment and Training Legal Services
200 Constitution Avenue, NW
Rm. N2101
Washington, DC 20210

APPENDIX E: BALCA DECISION EMAIL LANGUAGE

The contract staff will send an email to the employer, via the Help Desk, informing the employer of the BALCA decision. Depending on the decision, the following language should be used in the email:

1. BALCA Decision **Modify** email:

   The Board of Alien Labor Certification Appeals has overturned the prevailing wage determination for case number P-XXX-XXXXX-XXXXXX. As such, attached is a copy of the modified Form ETA-9141.

2. BALCA Decision **Dismissed** email:

   The Board of Alien Labor Certification Appeals has dismissed the employer's request for review for case number P-XXX-XXXXX-XXXXXX. Therefore, the Center Director's decision stands.

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE EVENT LOG

PW13 – BALCA Appeal File

Revision Date	Section Number	Comments
3/18/13	Internal Controls	Added "Internal Controls" section and statement on page one.
4/15/13	Sections I-XIV	Revised SOP to clarify individual steps/corresponding staff roles. Updated procedures for BALCA decisions.
4/15/13	Appendix B	Revised checklist to coincide with staff roles.
4/28/14	Section III.v	Clarified how to include CDR documentation submitted via mail, email, or iCERT.
4/28/14	Section III.x	Clarified how to include redetermination documentation submitted via mail, email, or iCERT.
5/5/14	1st page heading	Changed from "Internal Use Only" to "OFLC Internal Use Only"
5/21/14	Sections II and III	Revised to include modified 9141 at CDR
6/26/14	Appendix A	Revised sample index to include modified 9141 at CDR
7/2/14	Section I.b	Added text for appeal received case note
7/2/14	Section I.c	Included instruction on moving CDR notes/inserting Appeals Checklist inside the folder.
7/2/14	Section XII.b	Added instructions on creating an iCERT case note regarding BALCA transmittal letter upload
7/2/14	Sections XIV.e.i.4 and Appendix E	Removed references to BALCA Decision Affirm email templates as email is no longer applicable.

AILA Doc. No. 18010230. (Posted 1/2/18)

9/24/14	Sections IX-XII	Revised, reordered, and/or combined steps to transfer the physical mailing of the appeal packages from a Federal Support Staff Role to Contract Staff Role.
9/24/14	Change to Section Number XIV	Above noted changes also affected section numbering; the last section of the SOP is now Section XIII (no longer includes a Section XIV)
9/24/14	Appendix B	Revised checklist to coincide with changes to staff roles for mailing the appeal package.
8/24/16	Background	Revised number of days required to process H-2B Appeals per the updated 2015 Final Wage Rule (§ 655.13).
8/24/16	Regulatory Requirement (H-2B Regulations sub-section)	Made changes to the regulation sections for H-2B PWDs. Removed quotes from § 655.10 as it no longer includes “Review of PWDs.” Revised quotes from § 655.13 since it includes “Review of PWDs.”
8/24/16	Entire Document	Changed all references of ETA Form 9141 to Form ETA-9141.

OFLC Internal Use Only

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW12

EFFECTIVE DATE: 2 March 2012

SUBJECT: Center Director Review

Purpose

The Purpose of this SOP is to document the steps necessary to perform a Center Director Review in iCERT.

Background

In accordance with the Department's regulations at 20 CFR § 656.41(a), for the PERM, H-1B, H-1B1, or E-3 programs, if an employer disagrees with a redetermination of a PWD, the employer may request review by the NPWC Center Director within 30 calendar days of the date the redetermination was issued. The employer may submit a request for Center Director Review via the iCERT Portal or via email at FLC.PWD@dol.gov.

Effective April 29, 2015, the H-2B Final Wage Rule streamlined the appeal process and removed the option to request redeterminations for H-2B PWDs. In accordance with Department's regulations at 20 CFR § 655.13(a), to appeal an H-2B PWD, an employer may request review by the NPWC Center Director within 7 business days from the date the PWD is issued. The employer may submit a request for Center Director Review and provide any supplemental information via the iCERT Portal or via email at FLC.PWD@dol.gov.

Internal Controls

As part of the internal controls process, the NPWC produces daily and weekly productivity reports which are shared with the National Office. Such reports are used to ensure NPWC productivity is consistent with this Standard Operating Procedure.

Statutory Requirement

20 CFR § 655.13
20 CFR § 656.41
Non-agricultural Prevailing Wage Guidance, November 2009

Procedure

If the case has already been through redetermination and comes back for a Center Director Review (CDR) via iCERT, mail or email, perform the following steps. Note: For H-2B cases, CDR is the first step in review; i.e., H-2B cases do not go through redetermination first:

These functions are the responsibility of the **Mailroom Clerk**:

1. All requests for Center Director Review are to be hand-carried to Team Lead for approval prior to processing.

2. For CDR requests received via iCERT, the Mailroom Clerk will:

    a. Print a copy of the employer's CDR request from iCERT
    b. Check the "Correspondence" tab in iCERT to determine if the employer uploaded documents in support of their Center Director Review.
        i. If yes, proceed to Step 2.c.
        ii. If no, create a file folder as outlined in Step 5 below.

    c. Review the uploaded documents in the "Correspondence."
        i. If the uploaded iCERT documents are unique with no multiple uploads of the same document, create a file folder as outlined in Step 5 below.
        ii. If any of the uploaded iCERT documents are the same (i.e, multiple uploads of the same document), escalate to the Team Lead. Based upon Team Lead's approval, the Team Lead will instruct the Mailroom Clerk to create a file folder as outlined in Step 5 below.

3. For CDR requests received via mail, the Mailroom Clerk will:

    a. Scan the correspondence and attach to the PWD case in iCERT. Title the request "CDR Request P-XXX-XXXXX-XXXXXX."

    b. Create iCERT case note as follows:
        i. Title: CDR Request
        ii. Category: Correspondence
        iii. Note: CDR requested on [enter date from postage]; received on [enter mailroom receipt date].

    c. Move the case to the CDR queue in iCERT

    d. Create a file folder as outlined in Step 5 below.

4. For CDR requests received via email, the Help Desk Clerk should immediately escalate to the Team Lead for approval. Based upon Team Lead's approval, Team Lead will instruct the Mailroom Clerk to process as outlined in Step 3 above.

5. Prepare a paper copy of the case to include:

    a. The CDR request
        i. If submitted via mail, include a copy of the employer's CDR request letter
        ii. If submitted via email, include a copy of the employer's CDR request email
        iii. If submitted via iCERT, print the employer's CDR request note which is located on the Center Director Review panel in the "Center Director Review Case Notes." Click "View/Print All" to open the note and print. Also print any uploaded CDR request documents if included.

    b. All CDR related correspondence from the employer

    c. Determination – Print a copy of the 9141. Print either the "Form 9141 As Redetermined modified.pdf" if the Redetermination was modified or print the "Form 9141 As Determined.pdf" if the Redetermination was affirmed.

    d. All case notes and case events

    e. Label the documents with tabs and place in green hanging folder/file. Prepare a cover sheet for outside of folder entitled: "Case File Folder" to include PW Tracking # (handwritten).

6. Deliver the case file folder to the Team Lead for approval and then on to the appropriate filing location as approved by the Center Director (CD) for administrative routing of correspondence.

7. Once the CD renders a decision, the Federal Staff will issue the CDR in iCERT and email the CDR letter to the Mailroom Clerk. The email from the Federal Staff will include the approved CDR letter, indication of whether the CDR was "Affirmed" or "Modified," and when necessary, instructions to retrieve a copy of the modified ETA Form 9141 from iCERT.

8. The Mailroom Clerk will send the CDR letter, and if necessary, the ETA Form 9141, to the employer. All completed CDRs sent to the Mailroom Clerk by the Federal Staff are to be processed and emailed same day.

9. Mailroom Clerk will print and scan the CDR letter, and when necessary, the modified ETA Form 9141, and upload it to the PWD in iCERT. When uploading in iCERT:

a. Select Correspondence Type: Center Director Decision Documentation

b. Label the CDR Letter as: CDR Response P-XXX-XXXXX-XXXXXX

c. Label the ETA 9141 as: Form 9141 As Revised (no case number necessary)

10. Mailroom Clerk will send an email to the employer using the appropriate "affirmed" or "modified" email template along with the scanned CDR letter, and if included, the modified ETA Form 9141 (See Appendix A for sample templates).

    a. Mailroom Clerk will create a ticket in the Helpdesk Tracker but will actually send the email from Outlook.

    b. In the Helpdesk Tracker, select the appropriate template from the helpdesk scripts: (1) Center Director Affirmed Email Template or (2) Center Director Modified Email Template.

    c. In iCERT, open the courtesy email labeled "Center Director Decision Affirm/Modify" and copy the Employer Contact information from the email. Copy only the "To" information and the case number. For example: To: JANE DOE 123 MAIN STREET, CHICAGO, IL 60616 Re: Case Number: P-200-XXXXX-XXXXXX.

    d. Return to the Helpdesk Tracker email:

        i. Paste the copied employer contact information for the "To" section of the email body.

        ii. Paste the copied information for the "Re:" section of the email body.

        iii. Insert the case number into the body of the email message.

        iv. Insert the CDR request date into the body of the email message.

    e. Go to Outlook and open a new/blank email to send to the employer:

        i. Insert the employer's email address in the "To" line

        ii. Enter "Center Director Affirmed Email" or "Center Director Modified Email" as the subject line

        iii. Copy the entire email drafted in the Helpdesk Tracker and paste into the Outlook email

        iv. Attach the Center Director Letter from the scanned folder and, if applicable, attach the modified 9141.

v. Send the email in Outlook.

f. Return to the Helpdesk Tracker and resolve the ticket.

11. In the event that the employer has not provided an email address, the CDR letter will need to be mailed via U.S. mail. As such, the Mailroom Clerk will need to create an address cover page for the letter.

12. Mailroom Clerk will enter case note in iCERT as follows:

    a. Title: CDR Emailed (or Mailed in the event there is no email address provided)

    b. Category: Correspondence

    c. Note: CDR Emailed (or Mailed in the event there is no email address

13. For CDR responses that must be mailed, Mailroom Clerk will log outgoing Mail (CDR letter and ETA Form 9141) in the Mail Tracker as outlined in PW01 Mailroom Operations SOP.

14. The Mailroom Clerk will place the printed CDR letter, and if modified, the ETA Form 9141 into the file folder. The physical file is then stored in a temporary location for 45 days pending the employer's decision to appeal. If no appeal is received after 45 days, the file is routed to a more permanent location and held pending file archiving. If an appeal is received, the file is retrieved from the temporary location and routed to the CD with the appeal documentation. Further handling of the file once an appeal is received is covered in the Appeals SOP.

These functions are the responsibility of the **Team Lead** when any of the uploaded iCERT documents are the same (i.e., multiple uploads of the same document):

1. Contact designated Federal Analysts to review documents to determine if an RFI is necessary.

    a. If no RFI is needed, the Team Lead will instruct the Mail Clerk to create a file folder.

    b. If an RFI is necessary, proceed to Step 2.

2. Send an RFI to the employer.

3. Update the date the RFI was sent and the date of RFI response is due on the Pending CDR Due Date spreadsheet. The spreadsheet is located on the S drive at S:\CD Review and Appeals\CD Review Letters\Pending CDR Due Date.xls.

4. When the RFI Response is received:

    a. Notify the designated Federal Analysts via e-mail that the RFI response was received.

    b. Upload (or designate personnel to upload) the employer's response and additional attachments, if any, into the case in iCERT.

5. Instruct the Mailroom Clerk to create a file folder.

These functions are the responsibility of the **Federal Staff**:

1. Analyst selects a pending CDR case from the Pending CDR Due Date spreadsheet located on the S drive at S:\CD Review and Appeals\CD Review Letters\Pending CDR Due Date.xls.

2. Analyst enters the case number in the PW Utilities module in iCERT and reassigns the case to his/her queue.

3. Analyst drafts CDR response letter[1] addressed to the requestor on the ETA Form 9141.

4. Analyst saves and prints the draft letter. The file name should include the corresponding case number, employer name, and issue; e.g., "P-XXX-XXXXX-XXXXXX, University XYZ, ACWIA Coverage." Save the letter in the appropriate S drive folder[2].

5. Analyst completes the "CDR Checklist & Notes," located on the S drive and retrieves any applicable supplemental documentation (e.g., look-ups from O*NET, OWL, etc.). The checklist is located on the S drive at S:\CD Review and Appeals\CD Review Letters\Final Decision Letters\CD Review letter work Area\CDR Checklist & Notes (see Appendix B for a sample). Save the checklist in the appropriate S drive folder.[3]

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[1] Continue to draft letters using the saved templates on the S drive (S:\CD Review and Appeals\CD Review Letters\Final Decision Letters\CD Review letter work Area) until further notice; currently awaiting changes to the letter templates in iCERT.

[2] Save the draft letter in the "H-2B" or "PERM and H-1B" folder located on the S drive (S:\CD Review and Appeals\CD Review Letters\Final Decision Letters\CD Review letter work Area)

[3] Save the CDR checklist in the appropriate H-2B\CDR Checklists & Notes or PERM and H-1B\CDR Checklists & Notes folders located on the S drive (S:\CD Review and Appeals\CD Review Letters\Final Decision Letters\CD Review letter work Area)

6. Analyst sends an email to the Certifying Officer with hyperlinks to the saved CDR draft response letter and the CDR Checklist & Notes, as well as hyperlinks to any supplemental documentation (O*NET, OWL, etc.).

7. Certifying Officer either approves the CDR response draft, enters a case note in iCERT, and forwards the Analysts' email and documents to the Center Director; or the Certifying Officer responds to the Analyst with a request for further information or instructions for further work.

8. Center Director either approves the CDR response draft, enters a case note in iCERT, and replies to the Analyst indicating the CDR is ready for issuance; or the Center Director replies to the Analyst with a request for further information or instructions for further work.

9. Analyst receives approved CDR response and if necessary, revises the first page with the current date (the letter should be dated the same day the CDR will be issued in iCERT).

10. Analyst enters a detailed case note into iCERT with the Title "CDR Upheld" or "CDR Adjusted" and the Category "Center Director Review."

11. Analyst clicks either "Modify" or "Affirm" in iCERT.

12. If "Affirm" is selected skip to Step 16 below.

13. If "Modify" is selected:

    a. Make necessary corrections to the worksheet checklist, SOC, and/or wage(s).

    b. Add or edit 'Additional Notes' if necessary.

    c. Click "Issue Center Director Review" to issue the CDR.[4]

14. Analyst sends an email to the Mailroom Clerk (with copy to the Contract Manager and Team Leads) indicating the CDR letter is ready to be sent to the employer. In the email, the Analyst will indicate whether the CDR was "Affirmed" or "Modified" and when necessary, instruct the Mailroom Clerk to retrieve a copy from iCERT of the modified ETA Form 9141 to be sent with the CDR letter. See SOP PW_01 Mailroom Operations for detailed information on scanning, saving, and uploading the signed CDR response letter into iCERT.

15. Analyst moves the approved/finalized version of the CDR response letter from the drafts folder (S:\CD Review and Appeals\CD Review Letters\Final Decision

[4] iCERT will automatically send a courtesy email to the requestor on the ETA Form 9141 notifying the employer that the NPWC has made a decision on the CDR and that the employer will receive all official documentation within 7 working days.

Letters\CD Review letter work Area) to the appropriate final decision folder (S:\CD Review and Appeals\CD Review Letters\Final Decision Letters).

16. Analyst updates the Pending CDR Due Date spreadsheet to indicate the CDR has been completed. The spreadsheet is located on the S drive at S:\CD Review and Appeals\CD Review Letters\Pending CDR Due Date.xls.

APPENDIX A: SAMPLE EMAIL TEMPLATES (EMAILS SENT VIA MAILROOM)

Center Director Affirmed Email Template

To:

Re: Case Number: P-XXX-XXXXX-XXXXXX Received: [Insert Case Submission Date]

The National Prevailing Wage Center (NPWC) has completed the Center Director Review for case number P-XXX-XXXXX-XXXXXX as you requested on [Insert CDR request date as noted in the CDR letter]. Attached is a copy of the Center Director's response.

Sincerely,

NPWC

Center Director Modified Email Template

To:

Re: Case Number: P-XXX-XXXXX-XXXXXX Received: [Insert Case Submission Date]

The National Prevailing Wage Center (NPWC) has completed the Center Director Review for case number P-XXX-XXXXX-XXXXXX as you requested on [Insert CDR request date as noted in the CDR letter]. Attached is a copy of the Center Director's response and the modified ETA Form 9141.

Sincerely,

NPWC

APPENDIX B: SAMPLE CDR CHECKLIST & NOTES

Case Number	
Due Date (60 Day Date) (Day, Date) ***If date falls on a holiday or weekend, use the business day before**	
Validity Dates OK? *** Is the validity date not close to expiring?**	
Checklist:	
	☐ Center Director Review (CDR) Draft ☐ Page 1 of O*NET SOC Occupation for each, if applicable ☐ SOC Assigned at Redetermination ☐ Employer Suggested SOC at CDR ☐ SOC Assigned at CDR (if different from previous) ☐ Page 1 of OWL for Primary Work Location, if applicable ☐ SOC Assigned at Redetermination ☐ Employer Suggested SOC at CDR ☐ SOC Assigned at CDR (if different from previous) ☐ Additional Supporting Documents (if any) ☐ Additional Notes (if any)
Decision (Modify or Affirm):	
Issue (i.e, SOC, Wage Level, ACWIA, etc):	
Analyst Notes: ☐ More Analyst Notes	
Analyst/ Date:	
CO Notes: ☐ More CO Notes	
CO/ Date:	

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE EVENT LOG

PW12 – Center Director Review

Revision Date	Section Number	Comments
3/18/13	Internal Controls	Added "Internal Controls" section and statement on page one.
4/15/13	Federal Staff	Added instructions on using the CDR Checklist & Notes.
4/15/13	Appendix B	Created Appendix with a sample CDR Checklist & Notes
3/25/14	Federal Staff	Revised instructions on saving and uploading CDR letter (Steps 17-18)
3/25/14	Federal Staff	Added step 19 re: updating the CDR spreadsheet after CDR has been issued.
3/25/14	CDRs While Teleworking	Added new section outlining steps for issuing CDRs while teleworking.
4/15/14	Mailroom Clerk	Removed yellow highlights from Step 2a-c
4/15/14	Team Lead	Removed yellow highlights from Steps 1-5
4/15/14	Mailroom Clerk	Revised Item 5.b. to clarify only CDR correspondence
4/16/14	Mailroom Clerk	Added Item 3.b.iii. to include language for iCERT case note.
5/5/14	1st page heading	Changed from "Internal Use Only" to "OFLC Internal Use Only"
5/5/14	Throughout document	Revised page number format to Page X of Y
12/4/15	Background and Statutory Requirement	Revised regulatory citations to indicate changes to CDR process for H-2Bs.
12/4/15	Mailroom Clerk	Modified instructions in steps 6-8 and 14 to include areas where physical/hard copy file processing steps were removed and/or changed to electronic processing steps.

AILA Doc. No. 18010230. (Posted 1/2/18)

12/4/15	Federal Staff	Modified instructions in steps 5-8 and 14-15 to include areas where physical/hard copy file processing steps were removed and/or changed to electronic processing steps.
12/4/15	CDRs While Teleworking	Removed this section. Due to removal of many physical/hard copy file processing steps, there is no longer a need for special “teleworking” steps. All steps are included in the routine CDR processing.

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW15
EFFECTIVE DATE: 6 June 2012
SUBJECT: Prevailing Wage Determinations with Alternate Wage Source Requests: Survey and Collective Bargaining Agreement

Purpose: To provide standard operating procedures for the initial recommendation and Federal review and issuance of prevailing wage determinations in which the employer has requested the use of a survey or Collective Bargaining Agreement (CBA) as an alternate wage source.

Background: Pursuant to the National Prevailing Wage Policy Guidance issued in November 2009, if the job opportunity is in an occupation covered by a collective bargaining agreement (CBA) negotiated between a union and the employer, the wage rate in the agreement shall be considered the prevailing wage in making the prevailing wage determination. If the job opportunity is in an occupation not covered by a CBA, the NPWC shall also consider wage data that has been furnished by the employer in the form of a published wage survey, or wage data contained in a survey that has been conducted or funded by the employer for prevailing wage purposes and that survey must: 1) have been published within 24 months of the date of submission of the prevailing wage request; 2) be the most current edition of the survey; and 3) be based on data collected within 24 months of the date of the publication of the survey.

Internal Controls:
As part of the internal controls process, the NPWC produces daily and weekly productivity reports which are shared with the National Office. Such reports are used to ensure NPWC productivity is consistent with this Standard Operating Procedure.

Statutory Requirement:
20 CFR 655.10
20 CFR 656.40
Non-agricultural Prevailing Wage Guidance, November 2009

Procedure For Survey Determinations

Initial Recommendation of Prevailing Wage Requesting Consideration of a Survey or CBA

AILA Doc. No. 18010230. (Posted 1/2/18)

1. If the employer requests a survey, and the survey is **NOT** attached:
   a. Assess the application and assign an ONET occupational classification;
   b. Assign an OES wage for the occupation;
   c. Complete the appropriate Analyst Notes;
   d. Indicate in the Comments section that the employer requested a survey, but that no survey/CBA documentation is attached;
   e. Send a request to the Non-OES Team Lead for review of the case and RFI language to request any missing survey/CBA documentation;
   f. Upon receipt of the RFI language, create a Case Note:
      i. Title: RFI Survey SUSP Date xx/xx/xx (12 Days from issuance of RFI)
      ii. Category: Correspondence
      iii. Note: Indicate reason for RFI – Include the RFI language provided by the Federal CO
   g. Generate Correspondence - New Email - Email - Request for Further Information E-mail with the following template:

   The deficiencies are: Include the RFI language provided by the Federal CO
      i. The employer must fully complete the section(s) listed above within 7 calendar days.
      ii. If the National Prevailing Wage Center does not receive the response within 7 calendar days, we will proceed with the application without consideration of an alternate wage source. The employer may also withdraw the application and submit a new application.

   Use "Response to **RFI P-000-00000-000000**" as the subject for the e-mail.
   In addition, indicate that the National Prevailing Wage Center has permission to correct the Form ETA-9141 with the information provided in the RFI response.

You must send the information requested to the following address: flc.pwd@dol.gov
With your response, please reference the following information:
   a) the PW Case Tracking Number,
   b) the legal business name of the employer, and
   c) the requestor contact name, telephone number and email address.

   h. Send RFI Correspondence to Employer;
   i. Place the case in the HOLD queue by selecting the checkbox on the lefthand side of case number and then selecting the “Move to Hold Queue” button on the bottom left-hand side of your screen; and
   j. Proceed to the next case in your queue.
2. If the employer requests a survey, and the survey **IS** attached:
   a. Assess the application and assign the appropriate ONET occupational classification;
   b. Assign a wage for the occupation;
   c. Complete the appropriate Analyst Notes;
   d. Indicate in the Comments section that the employer requested a survey, and that it is attached;
   e. Submit the case for Federal CO determination;
   f. Assign the case to the designated Survey or CBA queue; and
   g. Proceed to the next case in your queue.

Federal Review and Issuance of Prevailing Wage Requesting Consideration of a Survey or CBA

The Federal Team Lead for the Non-OES Team assigns cases to Federal Analyst team members on a daily basis or as needed, according to processing date demands and pending queue inventory levels.

1. If the employer requests a survey/CBA, and the survey/CBA is **NOT** attached:
   a. Assess the application and verify the assigned ONET occupational classification;
   b. Assess and verify the assigned OES wage;
   c. Select the "Case Document" tab in order to review submitted survey documentation; create an RFI request for any missing documentation;
   d. Create a Case Note:
      i. Title: RFI Survey
      ii. Category: Correspondence
      iii. Note: Indicate reason for RFI – Include specific language you want included in the emailed request in "double quotes".
      iv. Return Case to the recommending Analyst by clicking "Return To Analyst.
      v. Proceed to the next case in your queue.
2. If the employer requests a survey, and the survey **IS** attached:
   a. Assess the application and verify the assigned ONET occupational classification;
   b. Assess and verify the assigned OES wage;
   c. Select the "Case Document" tab in order to review the submitted survey documentation;
   d. Open survey document attachments and verify the following:
      i. Verify that the survey is the most recently published version of the survey;
      ii. Verify that the survey was published within 24 months of the date of submission of the prevailing wage request;
      iii. Verify that the survey's data was collected within 24 months of the date of the publication.
      iv. Verify that all the required survey documentation/information is attached including the survey's:
         a) Job Description;
         b) Wage data for area of intended employment;
         c) Mapping of levels;
         d) Methodology; and
         e) List of participants.

However, if the documentation is not complete, proceed to the issuance of an RFI Request (to issue an RFI request please see the previous section).

3. Once you have verified that the survey documentation and/or information is complete, proceed to performing the survey analysis.
   a. In order to complete the survey analysis, the Federal Analyst completes a "Survey Checklist." Please see Appendix 3.

b. Procedures on how to save the completed "Survey Checklist " will be provided below in Item 4.
c. To complete the survey analysis, the Federal Analyst must ensure that the survey documentation complies with the following criteria:
    i. Was the survey published within the last 24 months? The employer submitted survey must have:
        a) Been published within 24 months of the date of submission of the prevailing wage request;
        b) Be the most current edition of the survey; and
        c) Be based on data collected within 24 months of the date of the publication of the survey.
    ii. Is the data from the area of intended employment?
        a) Area of intended employment means the area within normal commuting distance of the place (address) of intended employment.
        b) If the place of intended employment is within a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA), any place within the MSA or PMSA is deemed to be within the normal commuting distance of the place of intended employment.
        c) All locations within a Consolidated Metropolitan Statistical Area (CMSA) will not automatically be deemed to be within normal commuting distances for prevailing wage purposes.
        d) The borders of PMSAs, MSAs, or CMSAs are not controlling in the identification of the normal commuting area; an employer location just outside of the PMSA, MSA, or CMSA boundary may still be considered within normal commuting distance.
        e) The terminology CMSAs and PMSAs are being replaced by the Office of Management and Budget (OMB); however, ETA will continue to recognize the use of these area concepts as well as their replacements.
    iii. Are there at least (3) three employers?
        a) The survey's statistical universe and sample size must contain wage data collected from a sample of at least 3 employers in order to produce an accurate Arithmetic Mean wage data result for all levels for the occupation in the area of intended employment. A sample size of a minimum of 3 employers and 30 workers is determined to be large enough for the results to comply with the Central Limit Theorem with reasonable accuracy.
    iv. Are there at least (30) thirty workers?
        a) The survey's statistical universe and sample size must contain wage data collected from a sample of at least 30 workers in order to produce an accurate Arithmetic Mean wage data result for all levels for the occupation in the area of intended employment. A sample size of a minimum of 3 employers and 30 workers is determined to be large enough for the results to comply with the Central Limit Theorem with reasonable accuracy.
    v. Is the survey methodology included?

a) The employer must include the methodology used for the survey to show that it is reasonable and consistent with recognized statistical standards and principles in producing a prevailing wage, including its adherence to these standards for the acceptability of employer-provided wage data. It is important to note that a prevailing wage determination based upon the acceptance of employer-provided wage data for the specific job opportunity at issue does not supersede the OES wage rate for subsequent requests for prevailing wage data in that occupation.

vi. Was the sample size determined by the universe size?
   a) The universe size refers to the entire population of units/employers and workers, which were used to collect the data being reported by the survey. As such, the universe size could consist of all workers and employers or a segment of these groups in the geographical location at the national, regional, sub-regional, state or local area of intended employment were the employment will take place.

vii. Was the sample selected randomly?
   a) A random sample selection from within a population, workers and employers, ensures that the results being reported by the survey are a true representation of the sampled population in the area of intended employment.

viii. Was the data collected cross industry?
   a) The wage data must have been collected across the various industries and it must cover the specific occupational category for which the employer is seeking a prevailing wage determination.

ix. Did the survey limit the nature of the employer?

x. Is the position with a Higher Education (ACWIA) employer?
   a) By statute, the NPWC must issue an ACWIA wage when the employer seeking a prevailing wage determination is an entity covered by ACWIA provisions. Such entities include: institutions of higher education; an affiliate or related nonprofit entity; a nonprofit research organization; or a governmental research organization. Therefore, the prevailing wage determination should only take into account ACWIA wage levels for employees and entities covered by ACWIA provisions in the area of intended employment.
   b) In order to verify ACWIA eligibility, open the PW Reference Application located at (S:\Common\PW Reference.mdb) and select “Find ACWIA Employer.” Further information on this procedure may be found in the ACWIA SOP document.

xi. Does the survey only use ACWIA employers?

xii. Employers that are eligible under the ACWIA provisions request consideration of a survey; however, the survey’s participants must all be eligible under the ACWIA provisions. If any of the participants/employers whose wage data were used in calculating the arithmetic mean and/or median wage are not eligible under the ACWIA provisions, then the survey is not acceptable for use by an ACWIA-eligible employer.

xiii. Is an arithmetic mean listed?

a) By regulation, the prevailing wage determination should be based on the arithmetic mean (weighted average) of wages for workers that are similarly employed in the area of intended employment.

xiv. Is a median listed?
   a) If the survey provides a median wage of workers similarly employed in the area of intended employment and does not normally provide an arithmetic mean, the median wage may be used as the basis for making a prevailing wage determination.

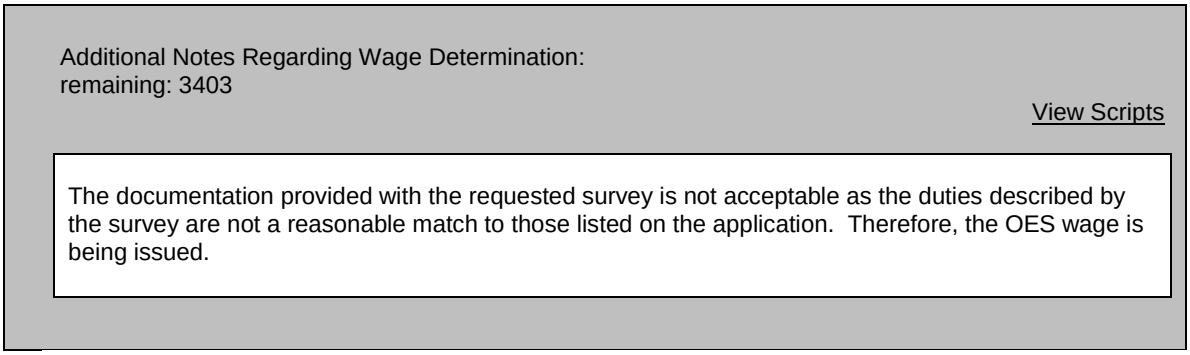
xv. Does the description of the occupation or equivalent reasonably match the one on the application?
   a) The survey's job description must provide a reasonable match to the duties provided by the employer in its application for a prevailing wage determination. This ensures that the survey's wage data submitted by the employer represents an adequate match to the occupation for workers similarly employed in the area of intended employment.

xvi. Is the survey leveling description included?
   a) The job leveling characteristics and leveling descriptions vary across the different surveys; therefore, the mapping of levels and/or the criteria used in deciding the job level for the survey occupation must be included.
   b) When accounting for atypical requirements (i.e. relocation, international travel, certifications) that are not included in the survey occupation description, the mapping of levels determines the extent to which additional levels may be added.

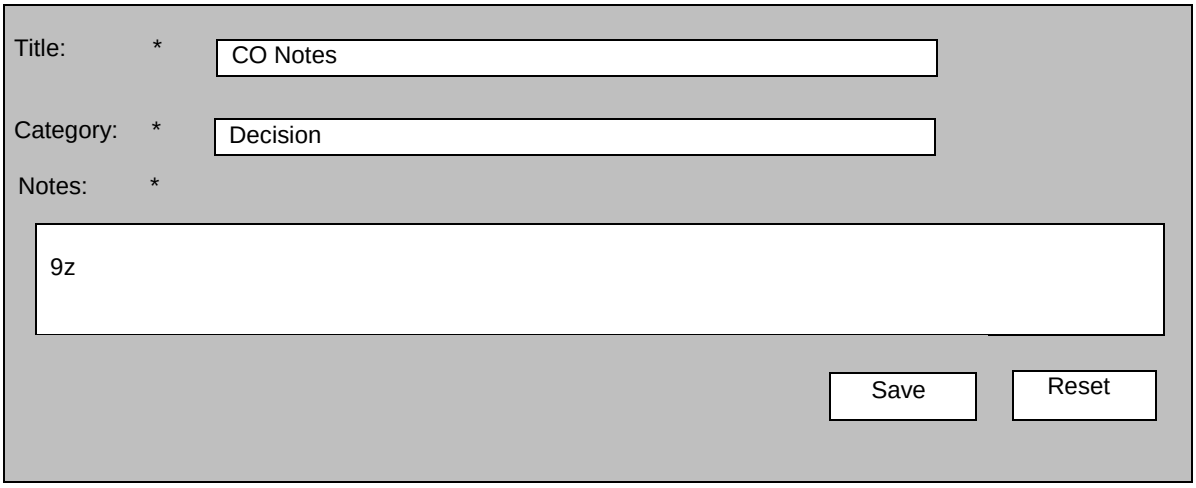
xvii. Are all portions of the documentation from the same survey and edition (year)?
   a) All survey documentation submitted to the NPWC must be from the same survey source and within the same date of publication. Survey data varies from publication to publication; therefore, the submitted data must also be the most recent data published by the survey source.

4. Procedures for saving the completed "Survey Checklist."
   a. Once you have completed the analysis of the survey documentation and you have completed the "Survey Checklist ," the completed worksheet will need to be saved at a designated location for upload into iCert for documentation purposes.
   b. In order to save the completed "Survey Review Worksheet," follow the following steps:
      i. Click the Microsoft "Office Button" and select, Save As and save as a "Word 97-2003 Document" Please Note that the completed worksheet may be saved in your "My Documents Folder" for easy reference during the save process.
      ii. Once the "Save As" window opens, save the document in the following format: Case number first, follow by the document name, "P-000-00000-000000 – survey worksheet."
      iii. Click "Save" to save the document to your selected folder.
5. Once the survey analysis is complete, proceed to completing the processing of the prevailing wage application:

a. If the survey is to be rejected complete the following:
    i. In iCert, click the "Edit Determination" button and complete the following steps:
        a) In the "Additional Notes Regarding Wage Determination Section" of the Form ETA-9141, add text explaining the reason for the survey rejection, please see example below:

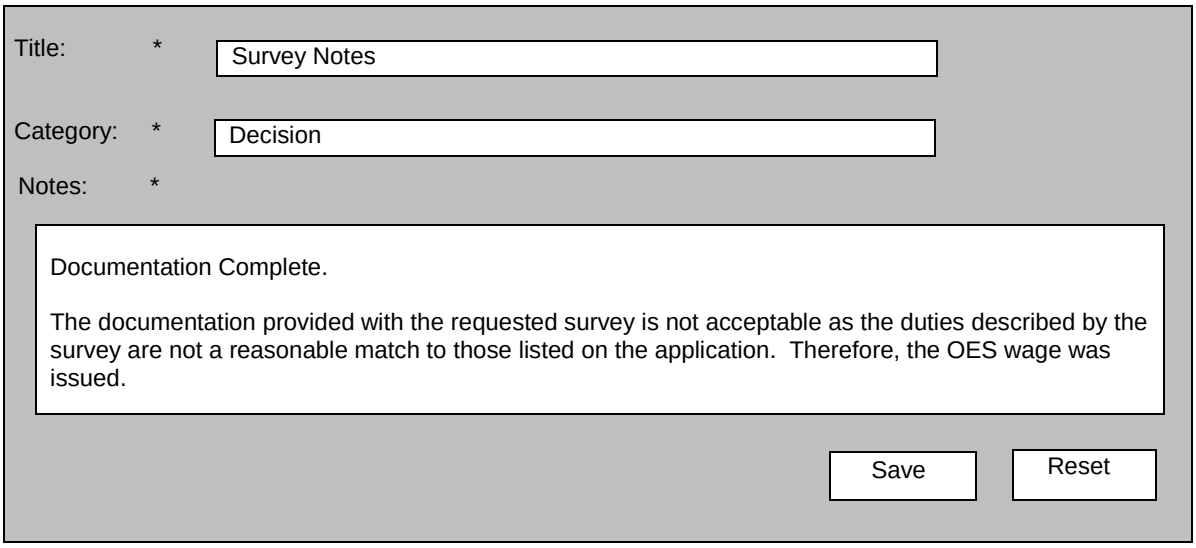


        b) Then, create a CO Notes in the "Add Note" Section of the Form ETA-9141, please see example below:



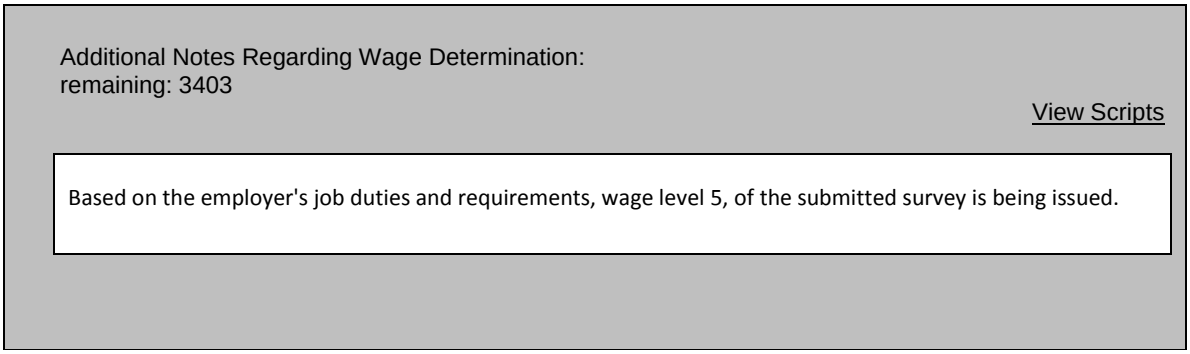
        c) Proceed to save the note.

        d) Then, create a Survey Note in the "Add Note" Section of the Form ETA-9141. All of the Reviewer's reasons for rejection of the requested survey/CBA should be provided in this case note. Please see example below:



e) Proceed to save the note.

b. If the survey is to be accepted complete the following:
   i. In iCert, click the "Edit Determination" button and complete the following steps:
      a) In the "Additional Notes Regarding Wage Determination Section" of the Form ETA-9141, add text stating the assigned survey level, please see example below:



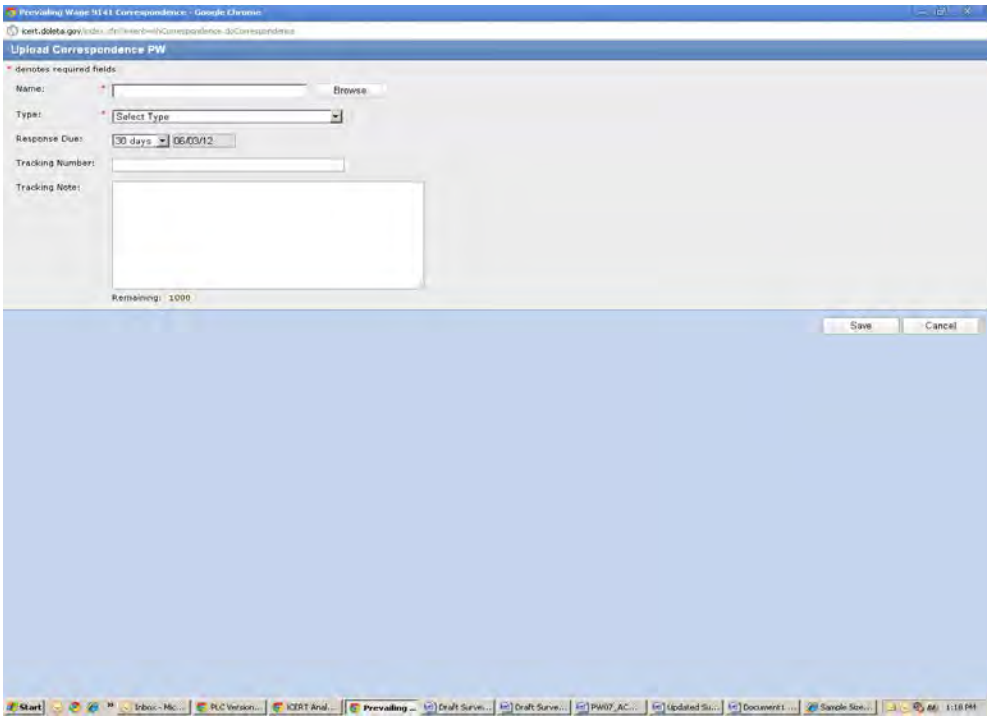
b) Then, create a CO Notes in the "Add Note" Section of the Form ETA-9141, please see example below:

c) Proceed to save the note.

d) Then, create a Case Note in the "Add Note" Section of the Form ETA-9141, please see example below:

e) Proceed to save the note.

6. Once the case notes have been entered and saved into the case record, proceed to load the "Survey Review Worksheet" completed at the survey analysis stage. In order to do so, follow the following steps:
   a. On the Correspondence Tab in iCert, select the "Correspondence Upload" button.
   b. Once the "Upload Correspondence PW" box opens, see illustration below, complete the upload process as follows:



i. Select the "Browse" button to search for the saved worksheet in your "My Documents Folder";
ii. Once you have selected the worksheet, in the "Type" of document field, select "Survey Review Worksheet" for type of document;
iii. Select the Zero "0" days Response Due;
iv. Proceed to save the correspondence to the case record in iCert.

7. In the Final Step, follow the following steps:
   a. Assess the application and verify the assigned occupational classification;
   b. Assess and verify the survey assigned wage;
   c. In iCert, click the "Issue Determination" button in order to issue the wage determination decision to the employer;
   d. Proceed to the next case in your queue.

Procedure For Collective Bargaining Agreement Determinations

When the job opportunity is covered by a Collective Bargaining Agreement (CBA), the employer must submit the following at the time it submits the Form ETA-9141:

1. A copy of the relevant portions of the actual CBA with evidence of the validity dates for the agreement;
2. A letter, on letterhead, from the employer, stating the relevant section of the CBA, the CBA job title, and the appropriate wage; and
3. A letter, on letterhead, from the collective bargaining unit's (union) authorized representative, stating the relevant section of the CBA, the CBA job title, and the appropriate wage.

Initial Recommendation of CBA Based Prevailing Wage Requests

1. If the employer requests a CBA, and the CBA is **NOT** attached:
   a. Assess the application and assign an occupational classification;
   b. Assess a wage for the occupation;
   c. Complete the Analyst Checklist Notes;
   d. Indicate in the Comments section that the employer requested a CBA, but that the appropriate documentation is not attached;
   e. Create a Case Note:
      i. Title: RFI Survey SUSP Date xx/xx/xx (12 Days from issuance of RFI)
      ii. Category: Correspondence
      iii. Note: Indicate reason for RFI – Include specific language you want included in the request.
   f. Generate Correspondence - New Email - Email - Request for Further Information E-mail with the following template:

   The deficiencies are: Insert specific language you want included in the request.
   The employer must fully complete the section(s) listed above within 7 calendar days. If the National Prevailing Wage Center does not receive the response within 7 days, we will void the application. The employer may withdraw this application at anytime and submit a new application. Use "Response to **RFI P-000-00000-000000**" as the subject for the e-mail.

   g. In addition, indicate that the National Prevailing Wage Center has permission to correct your ETA 9141 with the information you provide in your response.

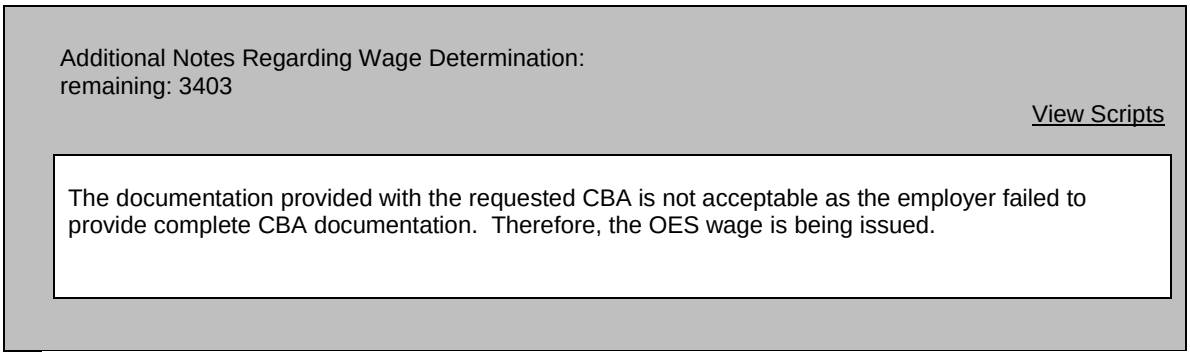
   You must send the information requested to the following address:
   flc.pwd@dol.gov
   With your response, please reference the following information:
   the PW Case Tracking Number, the legal business name of the employer, and the requestor contact name, telephone number and email address.
   h. Send RFI Correspondence to Employer;
   i. While the Case is still in your queue, place the case in the HOLD queue by selecting the checkbox on the left-hand side of case number and then selecting the “Move to Hold Queue” button on the bottom left-hand side of your screen; and
   j. Proceed to the next case in your queue.
2. If the employer requests a CBA, and the CBA **IS** attached:
   a. Assess the application and assign an ONET occupational classification;
   b. Assign the OES wage for the occupation;
   c. Complete the Analyst Checklist Notes;
   d. Indicate in the Comments section that the employer requested a CBA, and that it is attached;
   e. Submit the case for Federal CO determination – Assign the case to the Survey/CBA Group’s Federal CO Lead; and
   f. Proceed to the next case in your queue.

Federal Review and Issuance of CBA Based Prevailing Wage Requests

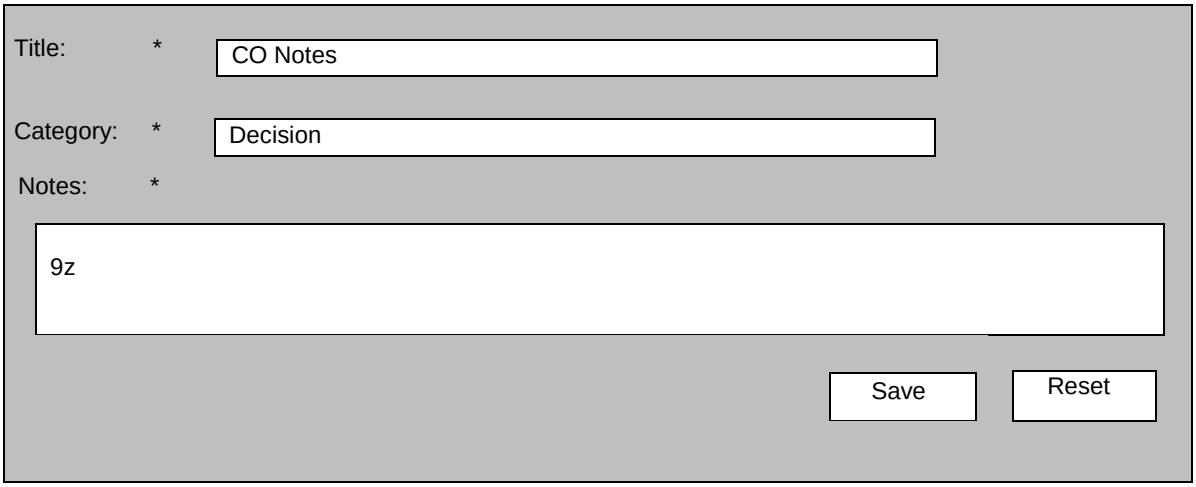
1. If the employer requests a CBA, and the CBA is **NOT** attached:
   a. Assess the application and verify the assigned occupational classification;
   b. Assess and verify the assigned wage;
   c. Select the "Case Document" tab in order to review submitted CBA documentation; since documentation is not included, create a RFI request;
   d. Create a Case Note:
      i. Title: RFI Survey
      ii. Category: Correspondence
      iii. Note: Indicate reason for RFI – Include specific language you want included in the request in "double quotes".
      iv. Return Case to Analyst by clicking "Return To Analyst" button.
      v. Proceed to the next case in your queue.
2. If the employer requests a CBA, and the CBA **IS** attached:
   a. Assess the application and verify the assigned occupational classification;
   b. Assess and verify the assigned wage;
   c. Select the "Case Document" tab in order to review the submitted survey documentation;
   d. Open CBA document attachments and verify the following:
      i. Verify that relevant portions of the actual CBA with evidence of the validity dates for the agreement is attached;
      ii. Verify that a letter, on letterhead, from the employer, stating the relevant section of the CBA, the CBA job title, and the appropriate wage is attached; and
      iii. Verify that a letter, on letterhead, from the collective bargaining unit's (union) authorized representative, stating the relevant section of the CBA, the CBA job title, and the appropriate wage is attached.

However, if the documentation is not complete, proceed to the issuance of an RFI Request (to issue an RFI request please see the previous section).

3. Once you have verified that the CBA documentation and/or information is complete, proceed to performing the CBA analysis.
   a. Verify that the CBA documentation submitted by the employer is the most up-to-date documentation and that the CBA has current validity.
   b. Verify that the employer provided letter contains all relevant information concerning the job opportunity; and
   c. Verify that the collective bargaining unit's (union) authorized representative provided letter contains all relevant information concerning the job opportunity.
4. Once the CBA analysis is complete, proceed to completing the processing of the prevailing wage application:
   a. If the CBA is to be rejected complete the following:
      i. In iCert, click the "Edit Determination" button and complete the following steps:
         a) In the "Additional Notes Regarding Wage Determination Section" of the Form ETA-9141, add text explaining the reason for the CBArejection, please see example below:

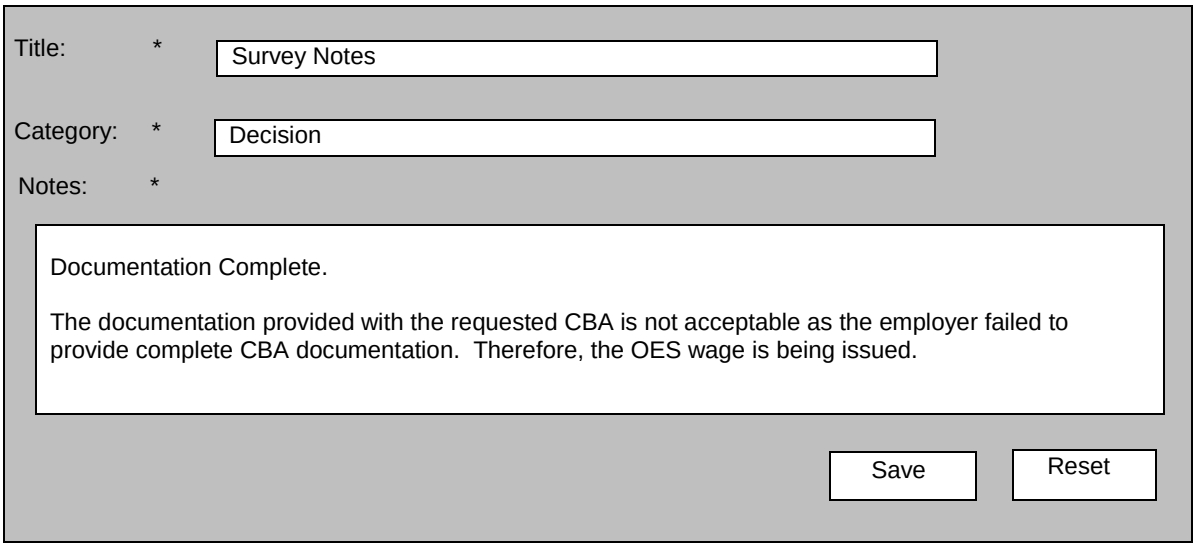


b) Then, create a CO Notes in the "Add Note" Section of the Form ETA-9141, please see example below:



c) Proceed to save the note.

d) Then, create a Case Note in the "Add Note" Section of the Form ETA-9141, please see example below:

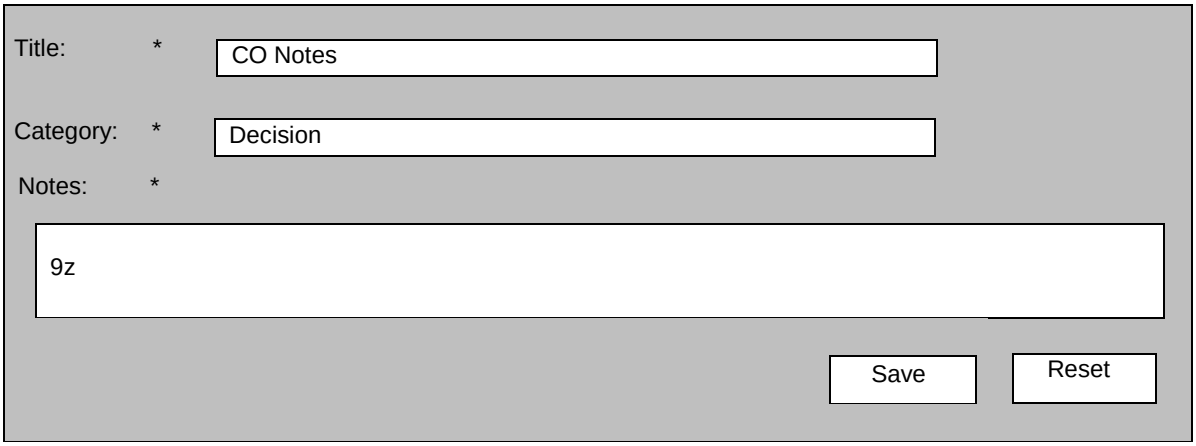


e) Proceed to save the note.

b. If the CBA is to be accepted complete the following:

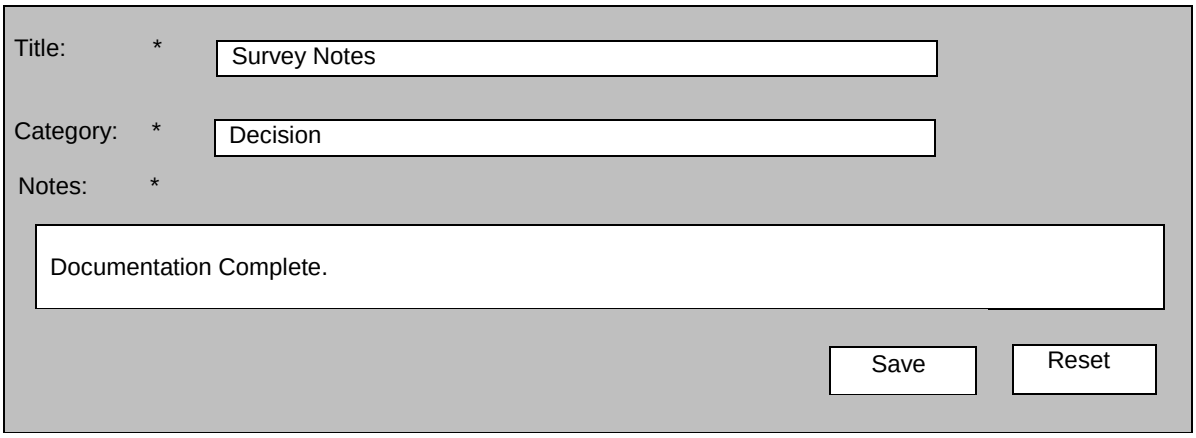
ii. In iCert, click the "Edit Determination" button and complete the following steps:

a) Create a CO Notes in the "Add Note" Section, please see example below:



b) Proceed to save the note.

c) Then, create a Case Note in the "Add Note" Section, please see example below:



d) Proceed to save the note.
e) No Additional Note to the Employer is added when issuing the prevailing wage based on the submitted CBA.

5. In the Final Step, follow the following steps:
   a. Assess the application and verify the assigned occupational classification;
   b. Assess and verify the CBA assigned wage;
   c. In iCert, click the “Issue Determination” button in order to issue the wage determination decision to the employer;
   d. Proceed to the next case in your queue.

Appendix 1 - List of Required Survey Documentation

Survey's Job Description	Detailed job description for duties to be performed by the candidate in the surveyed occupation. The survey's job description must provide a reasonable match to the duties provided by the employer in the submitted Form ETA-9141. This insures that the survey's wage data represents an adequate match to the occupation for workers similarly employed in the area of intended employment.
Survey's Mapping Levels	Mapping of levels may be found as a chart or in the form of analysis along with the survey's job description. Radford for instance, provides a chart with detailed information about the characteristics for the occupation at the different surveyed levels. Mercer on the other hand, provides the leveling characteristics in the form of a statement within the job description.
Survey's Wage Data	By regulation, a prevailing wage determination via an employer submitted survey must be based on the arithmetic mean (weighted average) wage for workers who are similarly employed in the area of intended employment. However, if the survey provides a median wage for workers similarly employed in the area of intended employment and it does not normally provide an arithmetic mean, the median wage may be used as the basis for making a prevailing wage determination.
Area of intended Employment	Area of intended employment means the area within normal commuting distance of the place (address) of intended employment.
List of Survey Participants or Evidence to demonstrate the survey's sample was	The wage data must have been collected across the various industries and it must cover the specific

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taken from a sample of employers across the various industries in the area of intended employment.	occupational category for which the employer is seeking a prevailing wage determination.
Survey Methodology	Primarily information on how the survey was conducted and who was surveyed. The employer must include the methodology used to conduct the survey to show that it is reasonable and consistent with recognized statistical standards and principles in producing a prevailing wage (e.g., contains a representative sample), including its adherence to these standards for the acceptability of employer-provided wage data. It is important to note that a prevailing wage determination based upon the acceptance of employer-provided wage data for the specific job opportunity at issue does not supersede the OES wage rate for subsequent requests for prevailing wage data in that occupation. The universe size refers the survey's sample size in the area of intended employment and it represents the entire population or number of units, employers and workers, which were used to collect the data being reported by the survey. The survey's statistical universe and sample size must contain wage data collected from a sample of at least 3 employers and 30 workers in order to produce an accurate Arithmetic Mean wage data result for all levels for the occupation in the area of intended employment. Therefore, a sample size of a minimum of 3 employers and 30 workers is determined to be large enough for the results to comply with the Central Limit Theorem with reasonable accuracy. A random sample selection from within a population, workers and employers, ensures that the results being reported by the survey are a true representation of the sampled population in the area of intended employment.

AILA Doc. No. 18010230. (Posted 1/2/18)

Appendix 2 – Survey Checklist

SURVEY CHECKLIST

Case No:

No.	Item	Yes	No	NA
1.	Is this a published survey?			
2.	Is this an employer conducted survey?			
3.	Was the data collected within 24 months of publication or date of submittal?			
	3a. Is this the most current edition of the survey?			
	3b. Was the survey published within the last 24 months?			
4.	Is the data from the area of intended employment?			
5.	Is the survey sample size sufficient?			
	5a. Are there at least three (3) employers?			
	5b. Are there at least thirty (30) workers?			
6.	Was any expansion done due to lack of employers (3) or workers (30) in the occupation?			
	6a. Did the expansion broaden the geographic area of intended employment?			
	6b. Does the expansion broaden the occupation rather than expand the area of intended employment?			
7.	Is the methodology included?			
8.	Was the sample size determined by the universe size?			
9.	Was the sample selected randomly?			
10.	Was the data collected cross industry?			
11.	Does the survey limit the nature of the employer?			
12.	Is the position with a Higher Education (ACWIA) employer?			
	12a. Does the survey only use ACWIA employers?			
13.	Is an arithmetic mean listed?			
14.	Is a median listed?			
15.	Does the description of the occupation or equivalent reasonably match the one on the application?			
16.	Is the survey leveling description included?			
	16a. Do the leveling characteristics from the survey reasonably match the application's duties and major requirements?			
	16b. Are there any atypical requirements or duties listed?			
17.	Is the Education Requirement a reasonable match the one on the application?			
18.	Is the Experience Requirement a reasonable match the one on the application?			
19.	Are all portions of the documentation from the same survey and edition (year)?			

Survey Notes:

Appendix 3 - Survey Checklist Instructions

Once you have verified that the survey documentation and/or information were submitted, proceed to performing the survey analysis and completion of the Survey Review Worksheet.

d. To complete the survey analysis and review worksheet, the Federal Analyst must ensure that the following criteria are met:

xviii. Is this a published survey? Published surveys are commercially available surveys conducted by companies or organizations such as Radford, Mercer and Towers Watson and available for purchase by the general public. If this is a published survey mark Yes, if not, then mark No.

xix. Is this an employer conducted survey? Employer conducted surveys are survey conducted by the employer or by an entity commission by the employer to conduct the survey and is not usually available for purchase by the general public. By regulation employer conducted surveys must be based on data collected within 24 months of submission to the NPWC. If this is an employer conducted survey mark Yes, if not, then mark No.

xx. Was the data collected within 24 months of publication or date of submittal? If the survey data was collected within 24 months of publication mark Yes, if not, then mark No. If non applicable then mark NA, however, please note this will rarely occur and may only be the case for surveys which are published or updated on a daily basis;

d) Is this the most current edition of the survey? If this is the most current edition of the survey mark Yes, if not, then mark No. If non applicable then mark NA, please note this will occur when the survey is an employer conducted survey; and

e) Was the survey published within the last 24 months? If, the survey was published within the last 24 months mark Yes, if not, then mark No. If non applicable then mark NA, please note this will occur when the survey is an employer conducted survey.

xxi. Is the data from the area of intended employment? Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. If the data is from the area of intended employment mark Yes, if not, then mark No.

The survey's statistical universe and sample size must contain wage data collected from a sample of at least 3 employers in order to produce an accurate Arithmetic Mean wage data result for all levels for the occupation in the area of intended employment. Therefore, a sample size of a minimum of 3 employers and 30 workers is determined to be large enough for the results to comply with the Central Limit Theorem with reasonable accuracy.

xxii. Is the survey sample size sufficient? If the survey sample size is sufficient mark Yes, if not, then mark No.

a. Are there at least (3) three employers? If there are at least 3 employers mark Yes, if not, then mark No.

b. Are there at least (30) thirty workers? If there are at least 3 employers mark Yes, if not, then mark No.

xxiii. Was any expansion done due to the lack of employers (3) or workers (30) in the occupation? **Please note this may apply in instances where the area of intended employment was expanded to a state, sub-regional, regional or national level due to the lack of an acceptable sample size.** If the area was expanded due to the lack of an acceptable sample size mark Yes, if not, then mark No.

b) Did the expansion broaden the geographic area of intended employment? **This may apply to instances where the employer, through the submitted documentation, expanded the area of intended employment due to the lack of an acceptable sample size (e.g. the area of intended employment was expanded for the Dallas-Fort Worth, Texas area to the State level, Texas, due to the lack of employers (3) or workers (30) in the area of intended employment). Please note that not all surveys provide wage data specific to a metropolitan area, therefore, close attention should be given to the survey's methodology in order to determine the most detailed level presented by the survey for which wage data is available.** If question 6 was marked Yes, then conduct an analysis of the survey. If the expansion broaden the area of intended employment mark Yes, if not, then mark No. If question 6 was marked No, then mark NA.

c) Did the expansion broaden the occupation rather than expand the area of intended employment? This may apply in instances where the employer expanded the sample size to include functional all-encompassing survey occupational groupings (e.g. Financial Analysis Generalist functional grouping where occupations such as Financial Analyst, Accountant and Auditor may be grouped into this functional grouping). If question 6 was marked Yes, then conduct an analysis of the surveyed occupation. If the expansion broaden the occupation mark Yes, if not, then mark No. If question 6 was marked No, then mark NA.

The employer must include the methodology used for the survey to show that it is reasonable and consistent with recognized statistical standards and principles in producing a prevailing wage (e.g., contains a representative sample), including its adherence to these standards for the acceptability of employer-provided wage data. It is important to note that a prevailing wage determination based upon the acceptance of employer-provided wage data for the specific job opportunity at issue does not

supersede the OES wage rate for subsequent requests for prevailing wage data in that occupation.

xxiv. Is the survey methodology included? If the methodology is included then mark Yes, if not, then mark No.

The universe size refers the survey's sample size in the area of intended employment and it represents the entire population or number of units, employers and workers, which were used to collect the data being reported by the survey. As such, the universe size could consist of all workers and employers or a segment of these groups in the geographical location at the national, regional, sub-regional, state or local area of intended employment were the employment will take place.

xxv. Was the sample size determined by the universe size? If the sample size was determined by the universe size mark Yes, if not, then mark No. Please note NA would be applicable when all available employers within the universe are included within the survey sample.

xxvi. Was the sample selected randomly? A random sample selection from within a population, workers and employers, ensures that the results being reported by the survey are a true representation of the sampled population in the area of intended employment. If the sample was randomly selected mark Yes, if not, then mark No. Please note NA would be applicable when the sample includes H-2B industry specific employers (e.g. Seafood Processing).

xxvii. Was the data collected cross industry? The wage data must have been collected across the various industries in which a candidate may perform the specific occupation duties and it must cover the specific occupational category for which the employer is seeking a prevailing wage determination. If the data was collected cross industry mark Yes, if not, then mark No. Please note NA would be applicable when the data collected is from H-2B industry specific employers (e.g. H-2B Seafood Processing).

xxviii. Does the survey limit the nature of the employer? This may be the cases in instances where a survey sample size is limited to the specific field in which the employer conducts business (e.g. Architectural Firms). If the survey limited the sample to the nature of the employer mark Yes, if not, mark No. Please note NA would be applicable for Medical and Veterinarian Residents and Interns.

By statute, the NPWC must issue an ACWIA wage when the employer seeking a prevailing wage determination is an entity covered by ACWIA provisions. Such entities include: institutions of higher education; an affiliate or related nonprofit entity; a nonprofit research organization; or a governmental research organization. Therefore, the prevailing wage determination should only take into account ACWIA wage levels for

employees and entities covered by ACWIA provisions in the area of intended employment.

xxix. Is the position with a Higher Education (ACWIA) employer? If the position is with an institution of higher education mark Yes, if not, then mark No. Please note NA would apply to H-2b employers ONLY.

a. Does the survey only use ACWIA employers? If the survey only uses ACWIA employers mark Yes, if not, then Mark No. If you marked No on the previous question then mark NA.

xxx. Is an arithmetic mean listed? If the arithmetic mean or weighted average wage is listed mark Yes, if not, then mark No.

xxxi. Is a median listed? If the survey provides a median wage of workers similarly employed in the area of intended employment and the survey does not normally provide an arithmetic mean, the median wage may be used as the basis for making a prevailing wage determination. If the median wage is listed mark Yes, if not, then mark No.

xxxii. Does the description of the occupation or equivalent reasonably match the one on the application? If the survey's job description represents a reasonable match to the one on the application mark Yes, if not, then mark No. Please note NA would be applicable when the survey follows the taxonomy from OES job descriptions (e.g. Medical and Veterinarian Residents and Interns.)

xxxiii. Is the survey leveling description included? If the survey leveling description is included mark Yes, if not, then mark No. Please note NA would apply when the survey does not typically provide leveling characteristics for the surveyed occupation. (e.g. H-2B Seafood Processing employers).

a. Do the leveling characteristics from the survey reasonably match the application's duties and major requirements? If the survey leveling characteristics reasonably match the application mark Yes, if not, then mark No. Please note NA would apply as noted on question 16 above.

b. Are there any atypical requirements or duties listed? Atypical requirements are conditions for employment within the job opportunity which are not normal to the occupation (e.g. language requirement, licenses and certifications). Please note these conditions are rarely listed within the survey. If there are atypical requirements or duties listed mark "Yes", If not, then mark "No". Please note NA would apply as noted on question 16 above.

xxxiv. Is the education requirement a reasonably match the one on the application? If the survey's education requirement is a reasonable match to the application's requirement mark Yes, if not, then mark No. Please note NA would apply when the survey's leveling characteristics do not include education (e.g. Towers Watson).

xxxv. Is the experience requirement a reasonably match the one on the application? If the survey's experience requirement is a reasonable match the application's requirement mark Yes, if not, then mark No. Please note NA would apply when the survey's leveling characteristics do not include experience (e.g. Towers Watson).

xxxvi. Are all portions of the documentation from the same survey and edition (year)? If all portions of the survey documentation submitted by the employer are from the same survey and within the same edition (year of publication) mark Yes, if not, mark No.

Appendix 4 - SURVEY CHECKLIST

Case No: This section should include the Prevailing Wage Determination case number for the survey being reviewed.

No.	Item	Yes	No	NA
1.	Is this a published survey?	If this is a published survey mark "Yes".	If not, then mark "No".	
2.	Is this an employer conducted survey?	If this is an employer conducted survey mark "Yes".	If not, then mark "No".	
3.	Was the data collected within 24 months of publication or date of submittal?	If the survey data was collected within 24 months of publication mark "Yes".	If not, then mark "No".	If non applicable then mark "NA", however, please note this will rarely occur and may only be the case for surveys which are published or updated on a daily basis.
	3a. Is this the most current edition of the survey?	If this is the most current edition of the survey mark "Yes".	If not, then mark "No".	If non applicable then mark "NA", please note this will occur when the survey is an employer conducted survey.
	3b. Was the survey published within the last 24 months?	If, the survey was published within the last 24 months mark "Yes".	If not, then mark "No".	If non applicable then mark "NA", please note this this will occur when the survey is an employer conducted survey.
4.	Is the data from the area of intended employment?	If the data is from the area of intended employment mark "Yes".	If not, then mark "No".	
5.	Is the survey's sample sufficient?	If the survey sample size is sufficient mark "Yes".	If not, then mark "No".	

	5a. Are there at least three (3) employers?	If there are at least 3 employers mark "Yes".	If not, then mark "No".	
	5b. Are there at least thirty (30) workers?	If there are at least 30 workers mark "Yes".	If not, then mark "No".	
6.	Was any expansion done due to lack of employers (3) or workers (30) in the occupation?	If the area was expanded due to the lack of an acceptable sample size mark "Yes".	If not, then mark "No".	
	6a. Did the expansion broaden the geographic area of intended employment?	If question 6 is marked "Yes", then conduct an analysis of the survey. If the expansion broaden the area of intended employment, mark "Yes".	If not, then mark "No".	If you marked "No" on question 6, then mark "NA".
	6b. Did the expansion broaden the occupation rather than expand the area of intended employment?	If question 6 is marked "Yes", then conduct an analysis of the surveyed occupation. If the expansion broaden the occupation mark "Yes".	If not, then mark "No".	If you marked "No" on question 6, then mark "NA".
7.	Is the methodology included?	If the methodology is included then mark "Yes".	If not, then mark "No".	
8.	Was the sample size determined by the universe size?	If the sample size was determined by the universe size mark "Yes".	If not, then mark "No".	NA would be applicable when all available employers within the universe are included within the survey sample.
9.	Was the sample selected randomly?	If the sample was randomly selected mark "Yes".	If not, then mark "No".	NA would be applicable when the sample includes H-2B industry specific employers (e.g. Seafood Processing).
10.	Was the data collected cross industry?	If the data was collected cross industry mark "Yes".	If not, then mark "No".	NA would be applicable when the data collected is from H-2B industry specific employers (e.g. H-2B Seafood Processing).
11.	Does the survey limit the nature of the	If the survey limited the sample to the	If not, then mark	NA would be applicable

	employer?	nature of the employer mark "Yes".	"No".	for Medical and Veterinarian Residents and Interns.
12.	Is the position with a Higher Education (ACWIA) employer?	If the position is with an institution of higher education mark "Yes".	If not, then mark "No".	NA would apply to H-2b employers ONLY.
	12a. Does the survey only use ACWIA employers?	If the survey only uses ACWIA employers mark "Yes".	If not, then mark "No".	If you marked "No" on question 12, then mark "NA".
13.	Is an arithmetic mean listed?	If the arithmetic mean or weighted average wage is listed mark "Yes".	If not, then mark "No".	[redacted]
14.	Is a median listed?	If the median wage is listed mark "Yes".	If not, then mark "No".	
15.	Does the description of the occupation or equivalent reasonably match the one on the application?	If the survey's job description represents a reasonable match to the one on the application mark "Yes".	If not, then mark "No".	NA would be applicable when the survey follows the taxonomy from OES job descriptions (e.g. Medical and Veterinarian Residents and Interns.)
16.	Is the survey leveling description included?	If the survey leveling description is included mark "Yes".	If not, then mark "No".	NA would apply when the survey does not typically provide leveling characteristics for the surveyed occupation. (e.g. H-2B Seafood Processing employers).
	16a. Do the leveling characteristics from the survey reasonably match the application's duties and major requirements?	If the survey leveling characteristics reasonably match the application mark "Yes".	If not, then mark "No".	NA would apply as noted above.
	16b. Are there any atypical requirements or duties listed?	If there are atypical requirements or duties listed mark "Yes".	If not, then mark "No".	NA would apply as noted above.
17.	Is the Education Requirement a reasonable match the one on the	If the survey's education requirement is a reasonable match to the application's	If not, then mark "No".	NA would apply when the survey's leveling

	application?	requirement mark “Yes”.		characteristics do not include education (e.g. Towers Watson).
18.	Is the Experience Requirement a reasonable match the one on the application?	If the survey’s experience requirement is a reasonable match to the application’s requirement mark “Yes”.	If not, then mark “No”.	NA would apply when the survey’s leveling characteristics do not include experience (e.g. Towers Watson).
19.	Are all portions of the documentation from the same survey and edition (year)?	If all portions of the survey documentation submitted by the employer are from the same survey and within the same edition (year of publication) mark “Yes”.	If not, then mark “No”.	[redacted]

*****Please refer to Appendix 3- Survey Checklist Instructions for more detailed explanation of each question. *****

Survey Notes: This section should include the reviewer’s notes on decision process for the employer-provided survey. Additionally, any clarifications on the survey worksheet responses should be noted in this section.

Appendix 5- List of Required CBA Documentation

When the job opportunity is covered by a Collective Bargaining Agreement (CBA), the employer must submit the following at the time it submits the Form ETA-9141:

CBA Documentation	A copy of the relevant portions of the actual CBA with evidence of the validity dates for the agreement.
Employer Letter	A letter, on letterhead, from the employer, stating the relevant section of the CBA, the CBA job title, and the appropriate wage; and
Collective Bargaining Unit's (Union) Authorized Representative Provided Letter	A letter, on letterhead, from the collective bargaining unit's (union) authorized representative, stating the relevant section of the CBA, the CBA job title, and the appropriate wage.

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Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE EVENT LOG

PW15 – Survey and CBA Determinations

Revision Date	Section Number	Comments
2/02/2016	**5.b.i.a**	add text stating what survey level was assigned in the additional notes
6/16/2016	**All**	**General updates and review throughout; Added Appendices 4,5,6**

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Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW25
EFFECTIVE DATE: 24 October 2016
SUBJECT: All Other SOCs SOP – Analyst Review

Purpose: To clarify use of All Other SOCs

Directives: The O*NET SOC User Guide defines All Other SOC codes (generally ending in 9) as a residual, occupation, placed in the structure when it is determined that the detailed, distinct occupations comprising a broad occupation group do not account for all of the workers in the group with a Direct Title Match. Only Workers who perform activities not described in any distinct detailed occupation in the SOC structure should be coded in an appropriate "All Other" or residual occupation. Accordingly, use of All Other SOC codes should be limited.

Guidelines for use of All Other SOC Codes

1. Direct Title Match – NPWC Guidance Revised November 2009 and the SOC User Guide identify the Direct Title Match as the first step
2. Job duties - The SOC User Guide states users "should assign workers to the most detailed occupation possible". If the employer's job duties cannot be reasonably matched to a distinct SOC, All Other Codes may be considered.

Process: Recommender Initiated Request (Case Pending Recommender Level)

1. Recommender identifies a case and proposes an All Other code
2. Send an email to the Contract SME for the proposed All Other code and Team Lead. The email should include:
    a. An explanation as to how the job duties are not a reasonable fit with a distinct detailed occupation and how they are a better match with an All Other SOC.
    b. Provide the Direct Title Match from the 2010 Direct Title Match File that fits with the application.
3. Once approved by the Contract Team Lead, prepare and send an email to the appropriate Federal SMEs incorporating the Contract team analysis and recommendation.
4. Add a case note in iCERT with the following (See "Case Awaiting Guidance Codes Reference Sheet" for codes):
    Title: [Insert Code] Case Awaiting Guidance
    Category: HOLD

Note: All Other: [Add a brief note as to why the recommended SOC should be an All Other SOC].

5. Move the case to the HOLD queue
6. The Federal SME will review the request and forward it to the All Other Senior Analyst as appropriate. In turn, the All Other Senior Analyst will review the request and forward it to the Post Determination-Information Services (PD-IS) Team as appropriate.
7. One of the PD-IS Team members will respond to all approving/disapproving the All Other SOC. If a decision has not been provided within 10 business days after the request was initially sent to the Federal SMEs, send a follow-up email to the Federal SMEs with a copy to the All Other Senior Analyst.
8. After the PD-IS Team has responded, the Contract Team Lead will reply to all on the email and complete the following:
    a. Release the case from hold
    b. Add the respective case note (Refer to the contractor Case Note Coding chart)
    c. Upload the documented decision in iCERT.
9. Recommender will proceed with processing the case.

Case Notes:

1. When using an All Other SOC: Per PWRA, "Consider using 11-9199.00 Managers, All Other when the job duties match the tasks from the break out occupations below and cannot be reasonably classified elsewhere" OR "Direct Title Match to 29-1069."
2. When an All Other SOC is requested and not used: Considered 15-1199.09 Information Technology Project Managers, but duties can be reasonably classified as 11-3021.

Additional Note:

When assigning an All Other SOC, enter an additional note in Section F.7 of the Form ETA-9141 with the eight digit O*NET occupation assigned. For example, "The All Other SOC is assigned based on the extension [15-1199.01 - Software Quality Assurance Engineers and Testers]."

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Employment and Training Administration
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STANDARD OPERATING PROCEDURE EVENT LOG

PW25 – All Other SOCs – Analyst Review

Revision Date	Section Number	Comments
10/24/2016	Entire document	Removing Addendum 2 from SOP PW 08 Analyst Review to be replaced with this stand-alone SOP PW25 – All Other SOCs – Analyst Review
2/22/2017	Recommender Initiated Request	Items 6 and 8 - replaced “Federal Supervisors” with “PD-IS” for the approval process.
2/22/2017	Recommender Initiated Request	Item 4 - Inserted reference to the “Case Awaiting Guidance Codes Reference Sheet”

OFLC Internal Use Only

Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE
NUMBER: PW26
EFFECTIVE DATE: 24 October 2016
SUBJECT: All Other SOCs SOP – Federal Review

Purpose: To clarify use of All Other SOCs

Directives: The O*NET SOC User Guide defines All Other SOC codes (generally ending in 9) as a residual, occupation, placed in the structure when it is determined that the detailed, distinct occupations comprising a broad occupation group do not account for all of the workers in the group with a Direct Title Match. Only Workers who perform activities not described in any distinct detailed occupation in the SOC structure should be coded in an appropriate "All Other" or residual occupation. Accordingly, use of All Other SOC codes should be limited.

Guidelines for use of All Other SOC Codes

1. Direct Title Match – NPWC Guidance Revised November 2009 and the SOC User Guide identify the Direct Title Match as the first step
2. Job duties - The SOC User Guide states users "should assign workers to the most detailed occupation possible". If the employer's job duties cannot be reasonably matched to a distinct SOC, All Other Codes may be considered.

Process: Federal Reviewer Initiated Request (Case Pending Determination or Post Determination)

1. Federal Reviewer identifies the case and proposes an All Other code
2. Send an e-mail to SME for the proposed All Other code, 1 Other Reviewer, and if necessary, the Federal SMEs for the other occupations considered. The email should include an explanation as to how the job duties are not a reasonable fit with a distinct detailed occupation and how they are a better match with an All Other SOC.
3. After the SME and Other Reviewer respond, prepare and send the All Other request email to the All Other Senior Analyst. Include the All Other table (see example below) with the following:
    a. Incorporate the SME and Other Reviewer responses.
    b. If applicable, provide the Direct Title Match occupation from the 2010 Direct Title Match File that fits with the employer's job duties.
4. If the All Other Senior Analyst agrees, the All Other Senior Analyst will send an e-mail to the Post Determination-Information Services (PD-IS) Team and copy the

SME, the Other Reviewer, and the Contract staff (Contract Supervisor and Team Leads).

5. Federal Reviewer adds a case note in iCERT with the following (See "Case Awaiting Guidance Codes Reference Sheet" for codes):
   Title: [Insert Code] Case Awaiting Guidance
   Category: HOLD
   Note: All Other: [Add a brief note as to why the recommended SOC should be an All Other SOC].
6. Move the case to the HOLD queue
7. One of the PD-IS Team members will respond to all approving/disapproving the All Other SOC. If a decision has not been provided within 10 business days after the request was sent to the All Other Senior Analyst, send a follow-up email to the All Other Senior Analyst.
8. After the PD-IS Team has responded, the Contract Team Lead or Supervisor will reply to all on the email and complete the following:
   a. Release the case from HOLD
   b. Add the respective case note (Refer to the contractor Case Note Coding chart)
   c. Upload the documented decision in iCERT.
9. Federal Reviewer will proceed with issuing the decision.

Process: Federal SME Response to Recommender Initiated Request (Case Pending Recommender Level)

1. Recommender identified a case, suggested an All Other code, placed the case on hold, and sent an email to the Federal SMEs for guidance on the proposed All Other code
2. Federal SME for the proposed All Other code, initiates a separate email and discusses the proposed All Other code with at least 1 Other Reviewer and any other appropriate Federal SMEs.
3. Federal SME for the proposed All Other code gathers the Federal staff responses and prepares and sends the All Other request email to the All Other Senior Analyst. The email should include the All Other table (see example below) with the following:
   a. Incorporate the Federal SMEs and Other Reviewer responses.
   b. If applicable, provide the Direct Title Match occupation from the 2010 Direct Title Match File that fits with the employer's job duties.
4. If the All Other Senior Analyst agrees, the All Other Senior Analyst will send an e-mail to the PD-IS Team and copy the Federal SMEs, the Other Reviewer, the initial Recommender and the Contract staff (Supervisor and Team Leads).
5. One of the PD-IS Team members will respond to all approving/disapproving the All Other SOC. If a decision has not been provided within 10 business days after the request was initially sent to the Federal SMEs, the Recommender will send a follow-up email to the Federal SMEs with a copy to the All Other Senior Analyst.
6. After the PD-IS Team has responded, the Contract Team Lead or Supervisor will reply to all on the email and complete the following:

a. Release the case from hold
b. Add the respective case note (Refer to the contractor Case Note Coding chart)
c. Upload the documented decision in iCERT.

7. Recommender will proceed with processing the case.

PWRA:

1. Add a note to the General Reference Section of the PWRA
   a. Topic: All Other SOCs
   b. Sub-Topic: SOC Codes ending in 9
   c. Action: All Other SOCs should be used rarely. Use if the SOC Direct Title match reasonably matches the job title and the duties cannot be reasonably classified elsewhere
2. Occupation Page for All Other Series should contain similar wording
   a. Consider using 11-9199.00 Managers, All Other when the job duties match the tasks from the break out occupations below and cannot be reasonably classified elsewhere.
   b. List of occupations to consider. Ex: Per Direct Title Match, use this SOC for Tattoo Artists. As such, okay to use for Body Art Artists and Mehndi/Henna Artists as well.

Case Notes:

1. When using an All Other SOC: Per PWRA, "Consider using 11-9199.00 Managers, All Other when the job duties match the tasks from the break out occupations below and cannot be reasonably classified elsewhere " OR "Direct Title Match to 29-1069."
2. When an All Other SOC is requested and not used: Considered 15-1199.09 Information Technology Project Managers, but duties can be reasonably classified as 11-3021.

Additional Note:

When an All Other SOC is assigned, confirm the additional note in Section F.7 of the Form ETA-9141 was entered with the assigned eight digit O*NET occupation. For example, "The All Other SOC is assigned based on the extension [15-1199.01 - Software Quality Assurance Engineers and Testers]."

All Other Request Sample Table

Case Number:		
Employer Job Title:		
Employer suggested SOC:		
Similar to "Direct Title Match":		
Proposed and Recommended SOC:		
Job Duties:		
Overall Discussion for proposed SOC:		
Special Skill Requirements:		
Consensus For:		
Consensus Against:		
SOCs considered:		
Minimum Education:		
Minimum Experience:		

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Employment and Training Administration
Office of Foreign Labor Certification

STANDARD OPERATING PROCEDURE EVENT LOG

PW26 – All Other SOCs – Federal Review

Revision Date	Section Number	Comments
10/24/2016	Entire document	Removing Appendix 2 from SOP PW 10 – Federal Review to be replaced with this stand-alone SOP PW26 – All Other SOCs – Federal Review
2/22/2017	Entire document	Replaced “Federal Supervisors” with “PD-IS” for the approval process.
2/22/2017	Federal Reviewer Initiated Request	Item 5 - Inserted reference to the “Case Awaiting Guidance Codes Reference Sheet”

Office of Foreign Labor Certification Training Prevailing Wage Determinations:

Policy Guidance for Nonagricultural Immigration Programs

AILA Doc. No. 18010230. (Posted 1/2/18)

DIVISION OF FOREIGN LABOR CERTIFICATION

Goals of this Session:

Promoting an Understanding of:

- Department of Labor's Role
- Regulations
- Prevailing Wage Determination Process
  - Common Concepts
  - Details by Wage Source
- Making Determinations Using a Step-by-Step Process

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OFLC Programs

OFLC provides labor certifications to employers seeking to bring foreign workers into the United States. Certification may be obtained in cases where it can be demonstrated that there are insufficient qualified U.S. workers available and willing to perform the work at wages that meet or exceed the prevailing wage paid for the occupation in the area of intended employment.

Foreign labor certification programs are designed to ensure that the admission of foreign workers into the United States on a permanent or temporary basis will not adversely affect the job opportunities, wages, and working conditions of U.S. workers.

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Prevailing Wage

The prevailing wage rate is defined as the average wage paid to similarly employed workers in the requested occupation in the area of intended employment. This wage rate is usually obtained by filing a prevailing wage request with the NPWC.

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Regulations

- PERM – 20 CFR 656.40 (subpart D)
- H-1B, H-1B1, E-3 – 20 CFR 655.731(a)(2)
- H-2B 20 CFR 655.10, 11
- Definitions - § 655.715 and § 656.3

Programs Affected

- Permanent Labor Certification Program
- H-1B and H-1B1 professionals in specialty occupations or as fashion models
- E-3 treaty alien in specialty occupations from Australia
- H-2B temporary nonagricultural labor certification programs

Other References

- Policy Guidance issued November, 2009
- Foreign Labor Certification Web sites
  - http://www.foreignlaborcert.doleta.gov/
  - http://www.foreignlaborcert.doleta.gov/wages.cfm
  - http://www.flcdatacenter.com/

Common Concepts in Prevailing Wages

- Validity Period
- Area of Intended Employment
- Job Coding or Classifying

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Prevailing Wage Validity Period

A Prevailing Wage is valid for:

- Not less than 90 days
- Not more than 1 Year

Validity Period is per 656.40(c)

Validity Period Length is Based on Anticipated Update of the Wage Source

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Prevailing Wage Factors

- Nature of the Job Offer
- Similarly Employed
- Area of Intended Employment

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Nature of the Job Offer

- Requirements of the employer's job offer
- Occupational classification

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Similarly Employed

- Substantially comparable jobs in the occupational category
- Jobs requiring substantially similar level of skills within the area of intended employment
- Substantially comparable jobs in the occupational category with employers outside of the area of intended employment

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ACWIA Employers

- an institution of higher education, or
- an affiliated or related nonprofit entity,
- a nonprofit research organization, or
- a governmental research organization

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Area of Intended Employment

- Normal commuting distance to the place (address) of intended employment
- Statistical Areas defined by the Office of Management and Budget (OMB)
  - Metropolitan and Micropolitan Areas (MA or MSA)
  - All of MSA, if near the core
  - CSA is often reasonable
- The borders of MAs are not necessarily controlling

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Determine Occupational Classification

- Use OWL www.flcdatacenter.com or
- O*NET OnLine http://online.onetcenter.org
- Occupational Search
  - Keyword
  - Drop-down Menu
- Crosswalk Search

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Review the Nature of the Job

O*NET OnLine Summary Report

- Description
- Tasks
- Knowledge
- Work Activities
- Skills
- Job Zones

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Rules for Determining Prevailing Wages

- Collective Bargaining Agreements
- Employer-provided Surveys
- BLS OES Wage Survey

- *Adjust PW for Federal Minimum Wage Only*

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BLS OES Wage Survey

- Provided at four levels
- Level determined by:
  - Experience
  - Education
  - Skills
- Area of Intended Employment

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Process for Determining Wage Level

- Determine the Occupational Code
- Review the Nature of the Job Offer
- Compare Employer Requirements to the:
  - experience,
  - education and
  - skills

  generally required for Wage Level

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O*NET Job Zone

- Overall Experience
- Education and Training
  - We do not use the general statements made in this section
- SVP Range
  - Used for determination the ranges for Experience plus Training

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Wage Levels – Level I

- Entry Level Workers: trainees, interns, post-doctoral fellows & medical residents
- Workers Perform Routine Tasks
- Limited Cause to Exercise Judgment
- Closely Supervised

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Wage Levels – Level II

- Qualified Workers
- Perform Moderately Complex Tasks
- Exercise Limited Judgment

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Wage Levels – Level III

- Experienced Workers
- Exercise Judgment
- Coordinate Work Flow
- May Perform Supervisory Duties
- Key Words in Job Title: lead, senior, head, chief

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Wage Levels – Level IV

- Fully Competent in all Aspects of the Job
- Plan and Conduct Work
- Exercise Judgment and Independent Thinking
- Solve Complex Problems

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Process for Determining Wage Level

- 5- Step Process
- Assign Points based on Employer Job Requirements
- Use a Work Sheet (PWD Reference Application)
- Point Totals = Wage Level

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Worksheet

Appendix C: **Worksheet for Use in Determining OES Wage Level**
Employer's Job Title:
O*NET Title:
O*NET Code:

Date:
Reviewer:

Indicator	Job Offer Requirements	O*NET-Usual Requirements	Comments	Wage Level Result
Step 1. Requirements				1
Step 2. Experience				
Step 3. Education				
Step 4. Special Skills, License or Certification? (Y/N)				
Step 5. Supervisory duties (Y/N)				
			Sum:	

AILA Doc. No. 18010230. (Posted 1/2/18)

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Step 1 – O*NET Normal

- Enter Employer Job Requirements
- Enter the O*NET Occupation Information
- Enter the Usual or General Experience & Training
- Enter the Usual Education
- Enter the Normal Special Skills
  - License
  - Travel
- Enter the Normal Supervision

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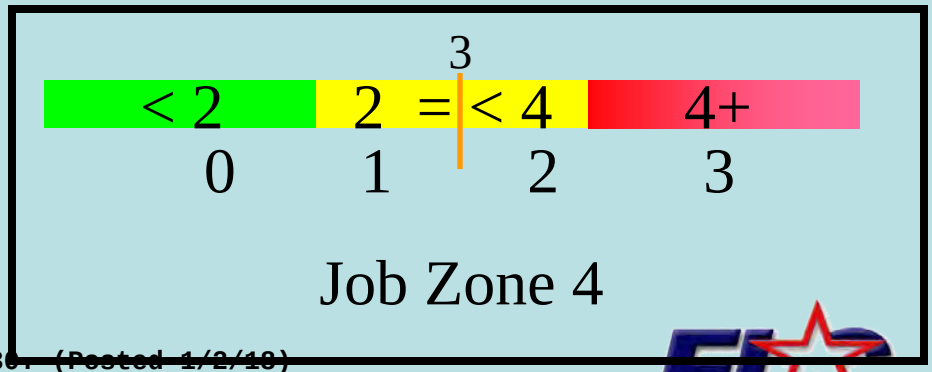
Step 2 - Experience

- Job Zone 1
  - SVP 1 (short demonstration), enter 0
  - SVP 2 (>short demo < 1 month) enter 1
  - SVP 3 (> 1month > 3 months) enter 2
  - SVP 4 (>3 months > 6 months) enter 3
- Job Zone 2 – 5
  - Low range, enter 1
  - High range, enter 2
  - Over the range, enter 3



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Below/Low/High/Greater Experience for Job Zones

Job Zone	SVP Range	Add 0 Below	Add 1 Low	Add 2 High	Add 3 Above
1	Below 4.0	short demonstration **(0)**	Up to 1 Month **(1)**	More than 1 Month Up to 3 Months **(2-3)**	More than 3 Months **(4+)**
2	4.0 < 6.0	Up to 3 Months **(0-3)**	More than 3 Months Up to 7.5 Months **(4-7)**	More than 7.5 Months Up to 1 year **(8-12)**	More than 1 year **(13+)**
3	6.0 < 7.0	Up to 1 Year **(0-12)**	More than 1 Year Up to 18 Months **(13-18)**	More than 18 Months Up to 2 years **(19-24)**	More than 2 years **(25+)**
4	7.0 < 8.0	Up to 2 Years **(0-24)**	More than 2 Years Up to 3 Years **(25-36)**	More than 3 Years Up to 4 Years **(37-48)**	More than 4 Years **(49+)**
5	8.0 +	Up to 4 Years **(0-48)**	More than 4 Years Up to 7 Years **(49-84)**	More than 7 Years Up to 10 Years **(85-120)**	More than 10 Years **(121+)**

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Experience or Education

- Job Zones 1 and 2 – OJT and experience
- Job Zones 4 and 5 – Education
- Job Zone 3 – a mixture of long term training and/or 2 year degrees

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Step 3 - Education

- Professional Occupations (Appendix D in Guidance; Appendix A in Regulation)
  - Requirements exceed by 1 category enter a 1
  - Requirements exceed by >1 category enter 2
- All Other Occupations
  - Look at O*Net Details page
  - Use PWD Referance Application

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Step 3 – Education Thumb Rules

- JZ 1 and 2 the norm is High School
- JZ 3
  - Look at O*Net Details page
    - Some College is the same as Associates
  - Use PWD Reference Application
- JZ 4 the norm is Bachelor's, a few are lower
- JZ 5 the minimum is Bachelor's, most are Master's and above

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Step 4 – Special Skills

- Compare O*NET to Employer Requirements
- Consider occupational license or certification requirements
- Enter 1 if employer requires additional skills than are generally required
- For Travel – See the PWD Reference Application
  - Most occupations it is not normal
  - Some normally travel locally
  - Some travel nationally
  - Few travel internationally

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Step 5 – Supervisory Duties

- For Non-Supervisory Occupations
  - If supervision or supervisory duties are required, enter a 1
  - Some professional occupation can supervise subordinate occupations
- For Supervisory Occupations (First-line Supervisors and Managers)
  - If supervision or supervisory duties are a usual task for the occupation, enter 0

Wage Level

- Sum the Points Awarded
- Total = Wage Level
- Totals of 4 or greater warrant wage level of 4

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Combination of Duties

- Is this a Chef that also trains or is it a Trainer who is a Chef?
- Is this a Accountant who does financial systems analysis or a Systems Analyst who does accounting?

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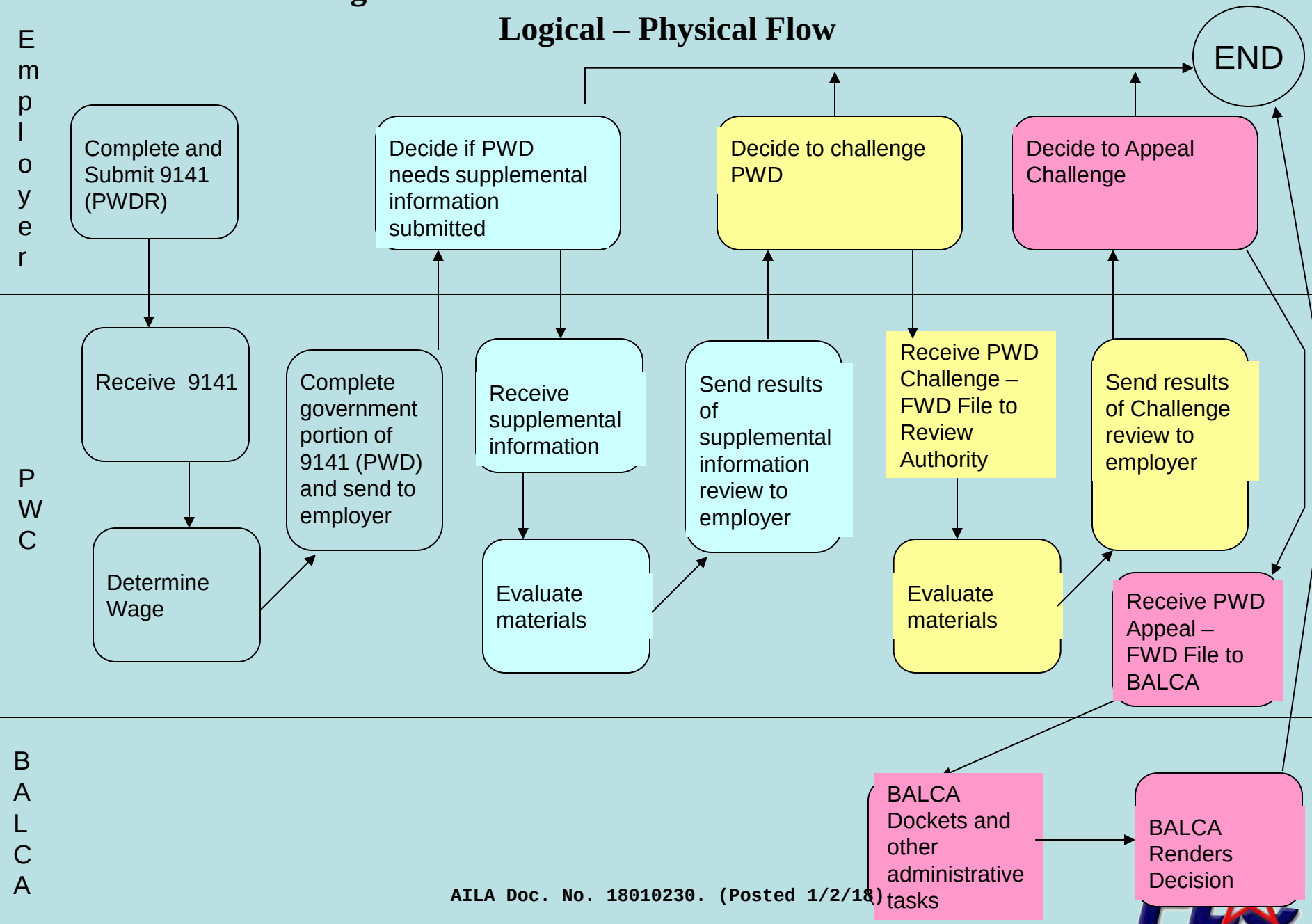
Redetermination, Challenges and Appeals

- Must be in Writing
- Filed Timely
- Contain Complete Information

High Level Full Process Flow of the PWDR-PWD
Logical – Physical Flow



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Questions???

May 6, 2010 **For Internal Use Only**

Internal Directive: PWD Processing Directive No.03

To: All NPWHC Personnel

From: Bill Rabung
Center Director

Subject: ACWIA Eligible Institutions and Wage Assignments

I. Issue

ACWIA requires the Department to issue wages to Institutions of higher education and research entities based upon a separate labor market.

In computing the prevailing wage for a job opportunity in an occupational classification in an area of intended employment for an employee of an institution of higher education, or an affiliated or related nonprofit entity, a nonprofit research organization, or a Governmental research organization, the prevailing wage level takes into account the wage levels of employees only at such institutions and organizations in the area of intended employment.

These employers do not have the option to use all industries data. NPWHC must issue a wage based upon the ACWIA higher education data from OES when it is known the employer is part of this separate labor market.

The OES ACWIA Higher Education database does not contain data for all occupations. In these instances the NPWHC will use wages for the closest occupation where an ACWIA Higher Education wage is available. When the employer's job duties contain a combination of occupations and only one of the occupations has the ACWIA Higher Education wage, the occupation will be coded with the SOC that corresponds with the primary job duties, but will be assigned the wage of the occupation with the ACWIA Higher Education wage. An explanation of the wage assigned will be entered into the Additional Notes block of the application.

II. Eligible Employers.

Employers that meet any of the following criteria may be an ACWIA wage employer:

1) Have 'College' or 'University' in their name.

2) Have a government agency in their name.

3) Have a NAICS of
   A) 611310
   B) 622110

C) 622310
D) 541712
E) 541711

4) Is a research organization and indicated their affiliation and non-profit status.

5) Includes a statement requesting the ACWIA wage.

III. Procedure

1) Look up the employer's EIN in the ACWIA Reference Application
A) If found and the employer is NOT eligible then issue the All Industries wage.
B) If found and the employer is eligible then issue the ACWIA wage.
C) In cases where the employer is not listed in the ACWIA Reference Application and the employer is a known state college or university, the ACWIA wage is to be issued. (Send an e-mail as described in Section III.)
D) If none of the above applies, then send the e-mail as described in Section III and wait for the e-mail response.

2) If the employer is eligible for the ACWIA wage and the occupation for the application is not in the ACWIA table then use one of the following steps:
A) If the position is a combination of occupations and the non-coded occupation has an ACWIA wage, use that wage and enter in the Additional Notes:
The occupation [coded occupation] does not currently have an ACWIA Higher Education wage available through OES; the wage for [other occupation] was used as the duties described are a combination of the occupations. (See Example 1 below).
B) When there are other candidate occupations with ACWIA wages and the job might have been coded as one of those occupations, with only minor changes to the job duties or requirements, then use the code and wage of the candidate occupation. (See Example 2 below).
C) If the position is not a combination of occupations, then find the occupation in the ACWIA Reference Application and use the listed Occupation for Wage. Enter in the Additional Notes block:
The occupation [coded occupation] does not currently have an ACWIA Higher Education wage available through OES; the wage for [other occupation] was used as this is the closest occupation where OES has an ACWIA Higher Education wage entry. (See Example 3 below).
D) If the occupation does not have an ACWIA Higher Education wage and does not have an Occupation for Wage entry then send the e-mail as described in Section IV and wait for the e-mail response.

Examples

1) Combination of occupations: A family physician who teaches is a combination of duties of the occupations 29-1062 and 25-1071. Since only 25-1071 has an ACWIA wage, code the job as 29-1062, use the wage for 25-1071 and enter in

the Additional Notes block:
The occupation 29-1062, Family and General Practitioners does not currently have an ACWIA Higher Education wage available through OES; the wage for 25-1071 Health Specialties Teachers, Postsecondary was used as the duties described are a combination of the occupations.

2) Other candidate occupations: 21-1015, Rehabilitation Counselors is the occupation chosen, but it does not have an ACWIA wage. The other candidate occupation was 21-1014, Mental Health Counselors and the employer's job duties and requirements can reasonably fall into the 21-1014 occupation. Code the application as 21-1014 and issue the ACWIA wage.

3) Job is not a combination of occupations: The position described is a 27-4014, Sound Engineering Technicians for which there is no ACWIA wage but the ACWIA Reference Application has an Occupation for Wages of 27-4099, Media and Communication Equipment Workers, All Other. Code the job as 27-4014, but use the wage for 27-4099 and enter in the Additional Notes block:
The occupation 27-4014, Sound Engineering Technicians does not currently have an ACWIA Higher Education wage available through OES; the wage for 27-4099, Media and Communication Equipment Workers, All Other was used as this is the closest occupation where OES has an ACWIA Higher Education wage entry.

III. Process to Establish and Maintain a Listing of ACWIA Wage Employers

1) The NPWHC database administrator will search the iCert data for application where the terms Higher Education, ACWIA or 656.40(e) appear in order to create a base list of employers.

2) The NPWHC PW CO will review the list to find questionable entries.

3) Pending verification these questionable entries will be marked as NOT Eligible.

4) All other entries will be marked as eligible.

5) This list will be turned into an Access ACWIA Reference Application to allow lookup by EIN and employer name and will display EIN, employer name, and status (Eligible or NOT Eligible).

6) When an employer, who is not in the list, asks for the ACWIA wage or appears to be covered in an analyst's or CO Reviewer's opinion send an e-mail to the ACWIA SMEIC with a CC to the alternate and the PW CO-
ACWIA SMEIC – Cheryl Beasley
Alternate ACWIA SMEIC – Vilas Savargaonkar
PW CO – Paul Gotte

7) The ACWIA SMEIC or alternate will research the employer and determine eligibility, possibly through an RFI. Once the employer's status has been decided the ACWIA Reference Application will be used to update the list.

8) If an RFI is required, the application will be placed on hold with a case note with the subject of "Held for ACWIA status RFI" and the RFI SOP will be used. Results will be documented in the case notes before it is released back into processing.

9) If an RFI is not required the ACWIA SMEIC or alternate will reply to the original e-mail with the decision.

IV. Process to Establish and Maintain Occupation Used for Wages when the Coded Occupation has no ACWIA Wage Entry in OWL/OES/iCert

1) The ACWIA Reference Application will include a listing of all occupations in both the All Industries and the ACWIA Higher Education table from OWL.

2) The application will allow an occupation look up to find the appropriate occupation to be used for determining the wage.

3) The PW CO will establish the initial list for frequently used and expected occupations.

4) When an analyst or CO Reviewer finds an occupation where there is no ACWIA wage in OWL and no wage occupation in the ACWIA Reference Application, send an e-mail to the PW CO (Paul Gotte) who will evaluate the occupation and determine which occupation to use for the wage.

5) The PW CO will update the ACWIA Reference Application and reply to the initiating e-mail.

V. Questions.

Contact your Team leader or a Federal Certifying Officer as appropriate.

Revision of Combination of Duties:

Pre-K- Secondary Schools

Purpose

- Revision of the combination of duties process for pre-kindergarten through secondary school teachers.

- New guideline and steps to process combinations with SOC codes:
  - 25-2011(Preschool Teachers, Except Special Education)
  - 25-2012 (Kindergarten Teachers, Except Special Education)
  - 25-2021 (Elementary School Teachers, Except Special Education)
  - 25-2022 (Middle School Teachers, Except Special and Career/Technical Education)
  - 25-2031 (Secondary School Teachers, Except Special and Career/Technical Education).

Background: Licensing

- Through research into the licensing standards of several states it has been determined that majority provide two licenses.
- One generally covering the grades considered kindergarten through middle school (grades K-8) .
- The other covering the grades generally considered middle and secondary school (grades 6-12).

Background: New Process

- Since there would be one license to teach grades K-8 and grades 6-12, it was determined that a combination of duties would not be appropriate when teachers are teaching students within those grade ranges.
- Consequently a new process has been implemented to choose the SOC with the highest prevailing wage.

ONET Definitions/Requirements

25-2011.00 - Preschool Teachers, Except Special Education

- Instruct preschool-aged children in activities designed to promote social, physical, and intellectual growth needed for primary school in preschool, day care center, or other child development facility.
- Ages between 3 to 5
- No certification/license required to teach at this level.

25-2012.00 - Kindergarten Teachers, Except Special Education

- Teach elemental natural and social science, personal hygiene, music, art, and literature to kindergarten students. Promote physical, mental, and social development.
- Ages between 5 to 6
- Must have state certification.

25-2021.00 - Elementary School Teachers, Except Special Education

- Teach students basic academic, social, and other formative skills in public or private schools at the elementary level.
- Ages between 6 to 11
- Grades 1-5
- Must have state certification.

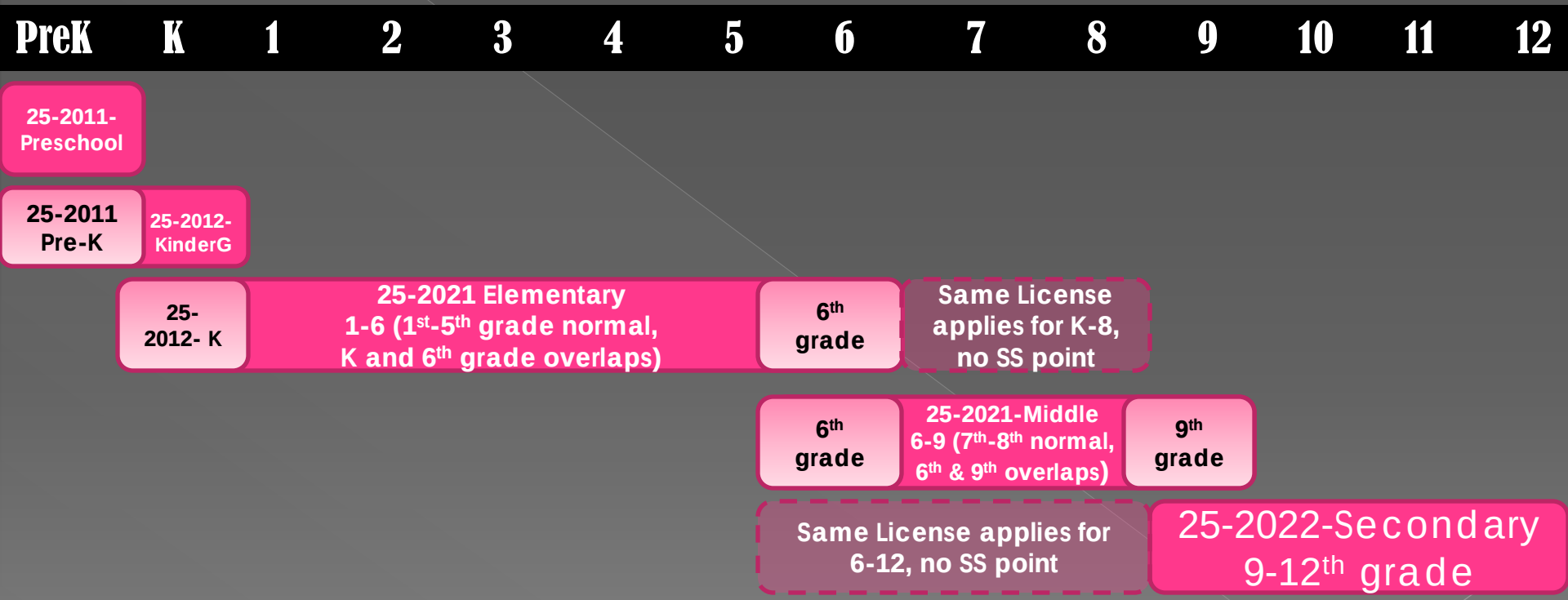
25-2022.00 - Middle School Teachers, Except Special and Career/Technical Education

- **Teach students in one subject** in public or private schools at the middle, intermediate, or junior high level, which falls between elementary and senior high school as defined by applicable laws and regulations. If more than one subject (area) is being taught, add a special skill point for each additional subject beyond the first.
- Ex: Teaching 7th grade Math and English. Action: One special skill point should be added for the additional subject, English.
- Ages between 11 to 14
- Grades 6-9
- Must have state certification.

25-2031.00 - Secondary School Teachers, Except Special and Career/Technical Education

- **Teach students in one subject,** such as English, mathematics, or social studies at the secondary level in public or private schools. May be designated according to subject matter specialty. If more than one subject (area) is being taught, add a special skill point for each additional subject beyond the first.
- Ex: Teaching 10th grade Math and English. Action: One special skill point should be added for the additional subject, English.
- Ages between 14 thru 18
- Grades 9-12
- Must have state certification.

PreK-12 Grade License Overlap Diagram



- Shaded areas show grade overlap within SOC codes
- Dashed boxes- No SS point should be added for combinations of K-8th grade or 6-12 grade

Example #1: PreK- K

- Teach preschool through kindergarten in Cook County, Illinois. The job requires a Bachelor's degree and 12 months of experience.

Wage Level Worksheet

SOC Code: 25-2011.00 - SOC Title: Preschool Teachers, Except Special Education

*** Exp. & Train: 13-24 - 12 - Below, 0**

*** Education: High School - Bachelor's - Two Above, 2**

*** Supervision: Limited - None - Below, 0**

*** Special Skills: 0**

Travel: 0

Frequency: Incidental - Incidental, O

Area: Local - Local, O

License: No, 0

Language: No, 0

Other Special: No, 0

Other Special Details:

--Analyst Notes: The job duties represent a combination of two occupations (25-1011 and 25-2012). In accordance with the teacher coding guidelines, no combination is appropriate and the higher wage occupation will be assigned. The Level III wage is $29,536 per year.

Worksheet Continued

Wage Level Worksheet

SOC Code: 25-2012.00 - SOC Title: Kindergarten Teachers, Except Special Education

*** Exp. & Train: 25-48 - 12 - Below, 0**

*** Education: Bachelor's - Bachelor's - Equal, 0**

*** Supervision: Limited - None - Below, 0**

*** Special Skills: 0**

Travel: 0

Frequency: Incidental - Incidental, O

Area: Local - Local, O

License: No, 0

Language: No, 0

Other Special: No, 0

Other Special Details:

--Analyst Notes: The job duties represent a combination of two occupations (25-1011 and 25-2012). In accordance with the teacher coding guidelines, no combination is appropriate and the higher wage occupation will be assigned. The Level I wage is $29,470 per year.

Example #1- Step by Step

- Determine the wage level: In this case, it is a level III preschool teacher and a level one kindergarten teacher.
- Determine which occupation has the higher wage: The preschool teacher has the highest wage.
- The assigned SOC will be 25-2011 and the assigned wage is $29,536.

Example #2: K- Elementary

- Teach kindergarten through elementary in Arlington County, Virginia. The job requires a Master's degree and 24 months of experience.

Wage Level Worksheet

SOC Code: 25-2021.00 - SOC Title: Elementary School Teachers, Except Special Education

*** Exp. & Train: 25-48 - 24 - Below, 0**

*** Education: Bachelor's - Master's - One Above, 1**

*** Supervision: Limited - None - Below, 0**

*** Special Skills: 0**

Travel: 0

Frequency: Incidental - Incidental, O

Area: Local - Local, O

License: No, 0

Language: No, 0

Other Special: No, 0

Other Special Details:

--Analyst Notes: The job duties represent a combination of two occupations (25-2012 and 25-2021), In accordance with the teacher coding guidelines, no combination is appropriate and the higher wage occupation will be assigned. The level II wage for the kindergarten teacher is $45,483 per year and the level II wage for the elementary school teacher is $56,100 per year so the assigned SOC is 25-2021.

Worksheet Continued

Wage Level Worksheet

SOC Code: 25-2012.00 - SOC Title: Kindergarten Teachers, Except Special Education

* Exp. & Train: 25-48 - 24 - Below, 0

* Education: Bachelor's - Master's - One Above, 1

* Supervision: Limited - None - Below, 0

* Special Skills: 0

Travel: 0

Frequency: Incidental - Incidental, O

Area: Local - Local, O

License: No, 0

Language: No, 0

Other Special: No, 0

Other Special Details:

--Analyst Notes: The job duties represent a combination of two occupations (25-2012 and 25-2021), In accordance with the teacher coding guidelines, no combination is appropriate and the higher wage occupation will be assigned. The level II wage for the kindergarten teacher is $45,483 per year and the level II wage for the elementary school teacher is $56,100 per year so the assigned SOC is 25-2021.

Example #2- Step by Step

- Determine the wage level: In this case, both occupations are wage level II
- Determine which occupation has the higher wage: The elementary school teacher has the higher wage.
- The assigned SOC will be 25-2021 and the wage will be $56,100.

Example #3: Elementary-Middle

- Teach elementary and middle school French in Putman County, New York. The job requires a Bachelor's degree and 36 months of experience

Wage Level Worksheet
SOC Code: 25-2021.00 - SOC Title: Elementary School Teachers, Except Special Education
*** Exp. & Train: 25-48 - 36 - Low, 1**
*** Education: Bachelor's - Bachelor's - Equal, 0**
*** Supervision: Limited - None - Below, 0**
*** Special Skills: 1**
Travel: 0
Frequency: Incidental - Incidental, O
Area: Local - Local, O
License: No, 0
Language: Yes, 1
Other Special: No, 0
Other Special Details: The person will be teaching French. Since elementary school language instruction is not normal, a SS point is assigned.
--Analyst Notes: The job duties represent a combination of two occupations (25-2021 and 25-2022). In accordance with the teacher coding guidelines, no combination is appropriate and the higher wage occupation will be assigned. The job is specifically that of a foreign language teacher. Language instruction is not normal at the elementary school level, so a point is assigned for the language requirements raising the elementary school wage to level III. The middle school teacher is coded as level II because language instruction is normal and no language point is appropriate. The level III wage for the elementary school teacher is $63,857 per year and the level II wage for the middle school teacher is $62,670 per year so the assigned SOC is 25-2022.

Worksheet Continued

Wage Level Worksheet

SOC Code: 25-2022.00 - SOC Title: Middle School Teachers, Except Special and Vocational Education

* Exp. & Train: 25-48 - 36 - Low, 1

* Education: Bachelor's - Bachelor's - Equal, 0

* Supervision: None - None - Equal, 0

* Special Skills: 0

Travel: 0

Frequency: Incidental - ,

Area: Local -

License: No, 0

Language: No, 0

Other Special: No, 0

Other Special Details:

--Analyst Notes: The job duties represent a combination of two occupations (25-2021 and 25-2022). In accordance with the teacher coding guidelines, no combination is appropriate and the higher wage occupation will be assigned. The job is specifically that of a foreign language teacher. Language instruction is not normal at the elementary school level, so a point is assigned for the language requirements raising the elementary school wage to level III. The middle school teacher is coded as level II because language instruction is normal and no language point is appropriate. The level III wage for the elementary school teacher is $69,697 per year and the level II wage for the middle school teacher is $62,670 per year so the assigned SOC is 25-2022.

Example #3- Step by Step

- Determine the wage level: Level III for 25-2021 and level II for 25-2022
- Determine which occupation has the higher wage: The higher wage is 25-2021.
- The assigned SOC is 25-2021 and the assigned wage is $69,697.

Example #4: Elementary-Secondary

- Teach 5-12 grade (elementary, middle and high school) math and english in Putman County, New York. The job requires a Bachelor's degree and 24 months of experience.

Worksheet 1: 25-2021Elementary School

Wage Level Worksheet

SOC Code: 25-2021.00 - SOC Title: Elementary School Teachers, Except Special Education

* Exp. & Train: 25-48 - 24 - Below, 0
* Education: Bachelor's - Bachelor's - Equal, 0
* Supervision: Limited - Subordinate Occupation - Equal, 0
* Special Skills: 1

Travel: 0

Frequency: Incidental - Incidental, O

Area: Local - Local, O

License: Yes, 1

Language: No, 0

Other Special: No, 0

Other Special Details: SS point for teaching elementary and middle- high school grades (6-12 license). No SS point for teaching more than one subject as it is inherent to elementary teachers to teach more than one.

--Analyst Notes: The job duties represent a combination of three occupations (25-2021, 25-2022 and 25-2031). In accordance with the teacher coding guidelines, no combination is appropriate and the higher wage occupation will be assigned. However, a SS point is assigned for teaching elementary and middle- high school. The level II wage for the elementary school teacher is $ 58,083 per year, the level III wage for the middle school teacher is $75,000 and the level III high school teacher is $75,300 per year. So the highest wage is SOC 25-2031 high school teacher- level III $75,3000.

Worksheet 2:
25-2022- Middle School

Wage Level Worksheet

SOC Code: 25-2022.00 - SOC Title: Middle School Teachers, Except Special and Vocational Education

* Exp. & Train: 25-48 - 24 - Below, 0

* Education: Bachelor's - Bachelor's - Equal, 0

* Supervision: None - None - Equal, 0

* Special Skills: 2

Travel: 0

Frequency: Incidental - Incidental, O

Area: Local - Local, O

License: Yes, 1

Language: No, 0

Other Special: Yes, 1

Other Special Details: 2 SS point for teaching elementary students (falls under elementary k-8 license) and second subject.

--Analyst Notes: The job duties represent a combination of three occupations (25-2021, 25-2022 and 25-2031). In accordance with the teacher coding guidelines, no combination is appropriate and the higher wage occupation will be assigned. However, a SS point is assigned for teaching elementary and middle- high school. The level II wage for the elementary school teacher is $ 58,083 per year, the level III wage for the middle school teacher is $75,000 and the level III high school teacher is $75,300 per year. So the highest wage is SOC 25-2031 high school teacher- level III $75,300.

Worksheet 3:
25-2031- Secondary School

- Wage Level Worksheet
- SOC Code: 25-2031.00 - SOC Title: Secondary School Teachers, Except Special and Vocational Education
- * Exp. & Train: 25-48 - 24 - Below, 0
- * Education: Bachelor's - Bachelor's - Equal, 0

* Supervision: None - None - Equal, 0

- * Special Skills: 2
- Travel: 0

Frequency: Incidental - Incidental, O

- Area: Local - Local, O
- License: Yes, 1
- Language: No, 0
- Other Special: Yes, 1
- Other Special Details: 2 SS point for teaching elementary students and second subject.
- --Analyst Notes: The job duties represent a combination of three occupations (25-2021, 25-2022 and 25-2031). In accordance with the teacher coding guidelines, no combination is appropriate and the higher wage occupation will be assigned. However, a SS point is assigned for teaching elementary and middle- high school. The level II wage for the elementary school teacher is $ 58,083 per year, the level III wage for the middle school teacher is $75,000 and the level III high school teacher is $75,300 per year. So the highest wage is SOC 25-2031 high school teacher- level III $75,300.

Example #4: Step by Step

- Determine the wage level: Level II for 25-2021 and level III for 25-2022 and 25-2031
- Determine which occupation has the higher wage: The higher wage is 25-2031.
- The assigned SOC is 25-2031 and the assigned wage is $75,300.
- Add a combination of duties note for 25-2021.

NPWC
REDETERMINATION TRAINING

U.S. Department of Labor

Employment and Training Administration
Office of Foreign Labor Certification, National Prevailing Wage Center

AILA Doc. No. 18010230. (Posted 1/2/18)

Redetermination Requests

- When an employer disagrees with a prevailing wage determination (PWD) under the PERM or H-1B program, the employer may request a redetermination; e.g., the employer may challenge the assigned SOC, wage level, or wage
- An employer can make a request for redetermination via iCERT, e-mail to the NPWC Help Desk, or U.S. mail
- Requests for redetermination must be made within 30 days of the date the PWD was initially issued
- Redeterminations are processed in FIFO order based on the redetermination request date; processing times vary depending on the workload

Receiving Redetermination Requests

- Redetermination Requests via iCERT
  - If an employer requests a redetermination via their iCERT portal account, the employer will be prompted to:
    - Select the reason type for the request, e.g., Incorrect SOC Assigned;
    - Provide a note detailing the reason(s) for the request; and
    - If desired, upload supporting documentation with the request.
  - Once entered, the case status will change from "Determination Issued" to "Pending Redetermination"
- Redetermination Requests via e-mail or U.S. mail
  - If an employer requests a redetermination in writing via e-mail or U.S. mail, the NPWC Contract staff will perform the following in iCERT:
    - Select the reason type for the request e.g., Incorrect SOC Assigned;
    - Enter a note paraphrasing the reason for the request;
    - Upload the employer's written request;
    - Upload any supporting documentation the employer provided with the request; and
    - Move the case into the "Pending Redetermination" queue.

Redetermination Report

- In iCERT, redeterminations are listed in the Redetermination queue in order of the initial application submission date, not the redetermination request date
- Since redeterminations are processed in FIFO order based on the redetermination request date, redeterminations are assigned and processed using the weekly Redetermination Report
- Every Monday, the contract staff sends an email to the Post Determination Team with a link to the Redetermination Report and a summary of how many redeterminations are pending and need to be processed that week

Redetermination Report

- The Redetermination Report is an Excel spreadsheet listing all of the cases in pending redetermination status
- To assign cases, enter your name on the spreadsheet and save it
  - As a rule, try not to assign more than 5 cases at a time
  - Since the spreadsheet is a shared document, it is important to save it every time a change is made
- Additionally, as you are processing redeterminations, update the spreadsheet with the case status and notes regarding the decision

Assigning Redeterminations in iCERT

- After selecting cases from the Redetermination Report, go to iCERT to reassign the cases to your queue
- In iCERT, go to the PW Utilities tab, enter the case number, and select "Pending Redetermination Review – Unassigned" status to search for the case
- Once the case appears, check the box to select the case, click the "Reassign" button, and select your name from the dropdown menu
- The case will be reassigned to the PD Reviewer and will appear in your "PW Queue"

Reviewing Redeterminations in iCERT

- Upon opening the case in iCERT, go to the "Redetermination" worksheet panel
- In the top section of the worksheet, the employer's reason for the request is provided
  - The reason for the request can vary from simple to long and detailed, and the employer may indicate supplementation documentation is also provided
  - The reason for the request can also be found in the iCERT case notes
- Go to the "Correspondence" and "Case Document" panel to view any supporting documentation the employer may have submitted with their redetermination request
  - Always check the Correspondence and Case Document panels for supporting documentation even if the employer's case note does not indicate supplemental documentation is provided
  - In instances where the redetermination request was submitted via U.S. mail or email, the Contract Staff will have uploaded the supporting documentation
  - If there is any indication that supporting documentation should be uploaded, but it is not, request a RFI for the missing documentation

Reviewing Redeterminations in iCERT

- Invalid redetermination requests
  - Employer's may not revise, edit, or remove information from the Form ETA-9141
  - Redeterminations requesting to revise information that employer provided initially, are considered invalid redetermination requests. If the case is in the redetermination queue, it should be returned to the previous status of "Determination Issued" and the Help Desk should send notification to the employer
- Requests for corrections
  - If the employer is requesting to correct a NPWC error, the request should be treated as a correction, not a redetermination
  - As such, the case should be returned to the previous status, the PDIS Team will make the correction, and the Help Desk should respond to the employer with the corrected Form ETA-9141. See the Corrections Process SOP for further details.

Reviewing Redeterminations in iCERT

- When reviewing redetermination requests, we can only address the issues the employer raised
  - If the employer disagrees with the assigned wage level, we may only address the wage level (we cannot change the SOC code)
  - If the employer disagrees with the SOC code, we may change the code. We are not limited to only the employer suggested SOC code, i.e., we may revise the SOC code to whichever is the most appropriate. Also, when revising the SOC code, the wage level should be reassessed based on the new SOC code
  - While an employer may explain job duties or requirements in their redetermination request, the employer may not revise, edit, or remove any information provided on the Form ETA-9141. Thus, careful consideration must be given when reviewing the employer's argument
- Additionally, we must review the totality of the PW request including:
  - The information provided on the Form ETA-9141
  - RFI responses
  - The Recommender and Reviewer's case notes
  - Multiple filings/previous determinations (Consider using the Code Contrary/Breaking Consistency Process when necessary)
  - The employer's redetermination argument and supplemental documentation

Reviewing Redeterminations in iCERT

- In making a decision on a redetermination request, we must consider the employer's argument as well as:
  - Prevailing Wage regulations
  - NPWC Guidance
  - O*NET
  - PWRA
  - Processing directives e.g., All Other SOC codes, Triple SOC Combinations, etc.
  - OOH, when necessary. When OOH and O*NET conflicts, O*NET takes precedence
- Survey redetermination requests:
  - Employer's disagreeing with a survey rejection or disagreeing with the survey wage issued, may request a redetermination and provide supplemental survey documentation.
  - If the employer's initial request for a PWD did not include a survey, the employer cannot submit a survey for the first time at redetermination.

Affirming Redeterminations in iCERT

- If you agree with the initial PWD, a detailed rationale for the affirmation needs to be provided to the employer in the iCERT redetermination email.
  - Due to iCERT time restrictions, it is best to draft the redetermination response in MS Word to be copied and pasted into the iCERT email
- The Redetermination Language document provides standard template language for various redetermination reasons. The template language must be customized to address the employer's specific redetermination request
- For SOC code challenges, the redetermination response should:
  - Include a statement why the employer's job duties are beyond the scope of, or are not consistent with, the employer's suggested SOC code
  - Quote specific job duties from the Form ETA-9141
  - Quote specific tasks from the SOC definition and O*NET defined tasks that are relevant

Affirming Redeterminations in iCERT

- For Wage Level challenges, the redetermination response should:
  - Include a statement that all prevailing wage determinations start with a level I
  - Include the assigned Job Zone and E&TC code for wage level increases due to experience or education, and:
    - Explain how the employer's experience requirement is below, in the low end, in the high end, or above the experience range
    - Explain how many wage levels were added due to the employer's experience requirement
    - Explain how many wage levels were added due to the employer's education requirement
  - Explain how many wage levels were added due to other special skills or requirements, conditions of employment, supervision, etc.

Affirming Redeterminations in iCERT

- All redetermination responses must include "appeal rights" language informing the employer that if it disagrees with the redetermination, the employer may request Center Director Review within 30 days of the redetermination. The appeal language is included in the Redetermination Language document
- In iCERT, provide a detailed case note with the appropriate code and an explanation as to why the redetermination is affirmed. The case note codes can be found in the Redetermination Standard Coding document.

Modifying Redeterminations in iCERT

- If you disagree with the initial PWD, and are modifying the PWD to what the employer requested, a detailed redetermination response to the employer is not necessary. However, when a modification to a SOC code results in a change to the wage level, an explanation for the new wage level should be provided to the employer in the iCERT redetermination email
- If you disagree with the initial PWD, but also disagree with the employer's request, e.g., you are selecting a different SOC code than what the employer requested, a detailed rationale for the modification needs to be provided to the employer in the iCERT redetermination email. Similar to an affirmation email, the modification email should include explanations regarding the SOC code requested versus the SOC code assigned and/or explanations regarding the assigned wage level.

Modifying Redeterminations in iCERT

- Modifying a redetermination in iCERT may include:
  - Assigning a new SOC code
  - Revising the worksheet checklist to correct the wage level
  - Updating the wage for the primary worksite and each additional location
  - Adding or Revising the 'Additional Notes' to the employer, when necessary
- All redetermination responses must include "appeal rights" language informing the employer that if it disagrees with the redetermination, the employer may request Center Director Review within 30 days of the redetermination. The appeal language is included in the Redetermination Language document
- In iCERT, provide a detailed case note with the appropriate code and an explanation as to why the redetermination is being modified, as well as a new wage level worksheet. The case note codes can be found in the Redetermination Standard Coding document.

Resources

- Redetermination Report: S:\CO Use\Redeterminations\Redeterminations Reports
- Redetermination Standard Language: S:\CO Use\Redeterminations\Redetermination standard language\Redetermination Language 2017.docx
- Redetermination Standard Coding: S:\Standard Operating Procedures\Production\Post-Determination Federal Review Notes Standard Coding.docx
- Redetermination Standard Operating Procedures: S:\Standard Operating Procedures\Production\PW11 Redeterminations Revised 11-19-15.docx
- O*NET
- OWL
- OOH
- NPWC Guidance
- 20 CFR §§ 656.40 and 656.41 - PERM/H-1B PW Regulations
- PW FAQS
- 2010 SOC Direct Match Title File
- O*NET Database (for No E&TC assigned or E&TC 4)

SOPs	Send with Current Request Y/N?	SOP Retrieved and Uploaded Y/N or N/A?
PW06 - RFI	Y	Y
PW07 - ACWIA	Y	Y
PW08 - Analyst Review	Y	Y
PW09 - Analyst Guide-PWRA	Y	Y
PW10 - Federal Review	Y	Y
PW 11 - Redeterminations	Y	Y
PW 12 - Center Director Review	Y	Y
PW13 - BALCA Appeal	Y	Y
PW15 - Survey CBA	Y	Y
PW25 - Use of All Other SOCs Analyst Review	Y	Y
PW26 - Use of All Other SOCs Federal Review	Y	Y

Regulations/Guidance	Send with Current Request Y/N?	Document Retrieved and Uploaded Y/N or N/A?
PERM Preamble	Y	Y
Consolidated Appropriations Act of 2005	Y	Y
NPWC Policy Guidance 2009	Y	Y

Training Materials	Send with Current Request Y/N?	Document Retrieved and Uploaded Y/N or N/A?
PWD Presentation (OES Training)	Y	Y
Area of Intended Employment (Non-OES Training)	Y	Y
Cross Industry and Nature of Employer (Non-OES Training)	Y	Y
Experience For Job Zones (OES Training)	Y	Y
Travel Explanation PowerPoint (OES Training)	Y	Y
Supervision PowerPoint (OES Training)	Y	Y
Survey Presentation (Non-OES Training)	Y	Y
Redetermination PowerPoint (PDIS Team Training)	Y	Y

SME/Occupation Specific (OES Training and Team Lead Training (see entries below))	[redacted]	
11-0000 Management Occupations	Y	Y
13-0000 Business & Financial Operations Occupations	Y	Y
15-0000 Other Mathematical Occupations	Y	Y
"Introduction to IT Occupations" - 15-0000 Computer and Mathematical Occupations	Y	Y
Software Developers Training	Y	Y
17-0000 Architecture and Engineering Occupations	Y	Y
19-0000 Life, Physical, and Social Science Occupations	Y	Y
31-0000, 35-0000, and 45-0000 Occupations	Y	Y
37-0000 Building, Grounds, and Maintenance	Y	Y
Revision of Combination of Duties - Pre-K - Secondary Schools (25-0000)	Y	Y
29-1000 Health Diagnosing and Treating Practitioners	Y	Y
Financial Managers Project Spreadsheet (Financial Managers vs Accountants and Auditors)	Y	Y

Directives/Processing Guidance	Send with Current Request Y/N?	SOP Retrieved and Uploaded Y/N or N/A?
Center Guidance: Preferences vs. Requirements (3/27/17)	Y	Y
Center Guidance: PWRA for JD LLM and State Bar license (3/24/17)	Y	Y
Policy Directive - Skill Level Indicators in Job Title (Final 082016)	Y	Y
Center Directive: 29 Series Number of Months of Training for Fellowships (8/15/17)	Y	Y
Center Directive: 25-2021.00 - Elementary School Teachers, Except Special Education PWRA update and Guidance Change (6/12/17)	Y	Y

Center Directive: 11-9033.00 - Education Administrators, Postsecondary - PWRA Update and Guidance Change (4/27/17)	Y	Y
PWD Processing Directive No.03 - ACWIA Eligible Institutions and Wage Assignments (2/6/10)	Y	Y

Converted to PDF Y/N?	Sent to N.O. FOIA Team Y/N?	Page Count
Y	Y	12
Y	Y	15
Y	Y	13
Y	Y	46
Y	Y	20
Y	Y	13
Y	Y	12
Y	Y	29
Y	Y	30
Y	Y	3
Y	Y	5

Need to Convert to PDF Y/N?	Sent to N.O. FOIA Team Y/N?	Page Count
N	Y	1
N	Y	658
N	Y	36

Converted to PDF Y/N?	Sent to N.O. FOIA Team Y/N?	Page Count
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Y	Y	9
Y	Y	1
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Y	Y	17
Y	Y	16

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Y	Y	25
Y	Y	18
Y	Y	4

Converted to PDF Y/N?	Sent to N.O. FOIA Team Y/N?	Page Count
Y	Y	1
Y	Y	1
Y	Y	9
Y	Y	1
Y	Y	1

Y	Y	1
Y	Y	4

Total Page Count	1311

Comments
Does this training make reference to occupation specific trainings? What current training material does OES team use for retraining employees and interoperability training? SOC coding/leveling. See below for occupation specific trainings presented by OES team.
Check w/Non-OES team for survey training.
Does survey presentation include references to other training? No, just general references.

Defined "current" as calendar year 2017. Use the presentations the OES Team used during 2017 training and the TL training presenations (29 series and Financial Mgr vs Accountant). Review the materials to ensure related to Guidance, coding, etc.
SME/Occupation specific training; calendar year 2017.
SME/Occupation specific training; calendar year 2017.
SME/Occupation specific training; calendar year 2017.
SME/Occupation specific training; calendar year 2017.
SME/Occupation specific training; calendar year 2017.
SME/Occupation specific training; calendar year 2017.
SME/Occupation specific training; calendar year 2017.
SME/Occupation specific training; calendar year 2017.
SME/Occupation specific training; calendar year 2017.
SME/Occupation specific training; calendar year 2017.
Team Lead presented 29 series occupation training; calendar year 2017.
Team Lead presented 11-3031 vs 13-2011; calendar year 2017

Comments

Directive referenced in SOP PW07

Training Materials	Send with Current Request	Document Retrieved and Uploaded Y/N or N/A?	Converted to PDF Y/N?
PWD Overview Presentation (PDIS for ETLS)	N	N/A	N
Survey Publisher specific training?	N	N	
PDIS Team Overview (NPWC staff meeting presentation)	N	N	
Various SOC coding documents from BLS?	N	N	
ACWIA	N	Y	
Directives/Processing Guidance	Send with Current Request Y/N?	SOP Retrieved and Uploaded Y/N or N/A?	Converted to PDF Y/N?
PWD Processing Directive 01 - Wages Not Listed in OES (OWL). Low paying and high paying occupations. (2/4/10)	N	N	
PWD Processing Directive No.02 - Alternate Requirements (2/4/10)	N	N	

PWD Processing Directive No.04 - Wage Level Worksheet (1/6/11)	N	N	
PWD Processing Directive No.05 - Applications without an OFLC Visa Type Selected (1/6/11)	N	N	
PWD Processing Directive No.06 - SOC Variances in O*Net and OWL and iCERT (4/21/11)	N	N	
Center Directive for Cases Awaiting Guidance (1/11/17)	N	N	
Center Directive: Center Plan for SME Guidance Requests (3/30/17)	N	N	
Center Directive 12/12/2016: Federal SME Guidance Hold	N	N	
CENTER DIRECTIVE – Managing use of multiple OES Codes (01-02-2016)	N	N	
UPDATED GUIDANCE_ CENTER DIRECTIVE – Managing use of multiple OES Codes (01-02-2016)	N	Y	Y
Center Directive_ Change in SS for COBOL (6/17/16)	N	Y	Y
Center Directive: Substantive PWRA Update for Senior/Lead Job Title (6/12/17)	N	Y	Y

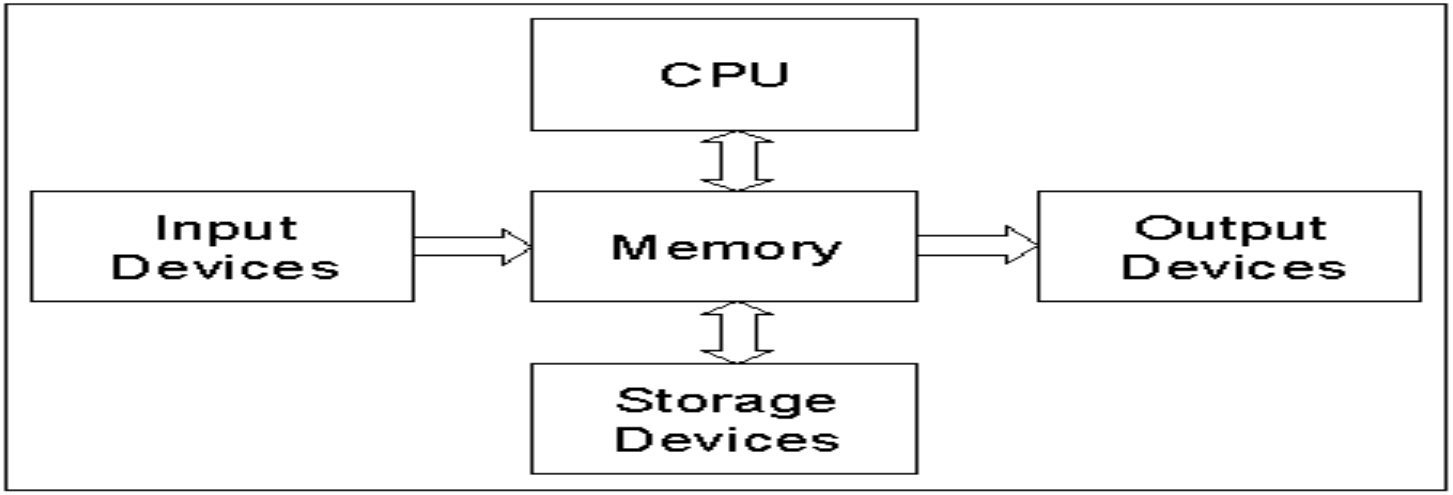
Sent to N.O. FOIA Team Y/N?	Page Count	Comments
N		Not needed; duplicates OES training.
N		Non-responive. Trainings focus on how to review each survey instrument and are not related to 2009 Guidance.
N		Non-responsive.
N		Non-responsive; reference materials. OES training folder included an Introduction to the SOC document. That document as well as others we use for coding, e.g., the 2010 DMTF, SOC coding structure, etc. are referneces materials found on BLS website: https://www.bls.gov/soc/home.htm.
N		Check w/Cheryl on ACWIA training in calendar year 2017. if it's not responsive don't release. What does the presentation cover? E.g., ACWIA elgibility and ACWIA SOC coding? **Update:** Non-responsive. The presentation only covers eligibility, analyzing ACWIA proactive report, RFI for eligibility, etc. Document is ACWIA SME training. Does not include ACWIA SOC coding. The ACWIA SOP covers ACWIA case processing and will be included.
Sent to N.O. FOIA Team Y/N?	Page Count	Comments
		FAQ for high paying occupations.
		Guidance still in affect.

		Outdated guidance. Incorporated into SOP PW08 and PW09
		Outdated guidance? RFI/Void for data entered applications. iCERT flag for employer submitted?
		Outdated guidance specific to 2010 SOCs
		Updated version of this directive sent out the same day is included with the responsive documents.
	1	Non-responsive, not issued in calendar year 2017.
	1	Non-responsive, not issued in calendar year 2017.
	1	Non-responsive, not issued in calendar year 2017.

Software Developers, Applications Vs Software Developers, Systems Software

AILA Doc. No. 18010230. (Posted 1/2/18)

What is a computer system?



A **computer system** consists of hardware components that have been carefully chosen so that they work well together and software components or programs that run in the **computer**. The main software component is itself an operating **system** that manages and provides services to other programs that can be run in the **computer**.

Computer Occupations

Most commonly used Computer SOCs

- 15-1132-Software Developers, Applications
- 15-1133-Software Developers, Systems Software
- 15-1121-Computer Systems Analyst
- 15-1131-Computer Programmers
- 15-1134-Web Developers
- 15-1199.01 -Software Quality Assurance Engineers and Testers
- 15-1199.11 - Video Game Designers

15-1132- Software Developer, Applications- Develop, create, and modify general computer applications software or specialized utility programs. Analyze user needs and develop software solutions. Design software or customize software for client use with the aim of optimizing operational efficiency.

Key Words: Software system validation or testing. Design, write functional specifications for software, applications, user interfaces, web applications, enterprise applications, unit testing, regression testing, white box testing, code review

15-1133.00 - Software Developers, Systems Software-
Research, design, develop, and test operating systems-level software, compilers, and network distribution software for medical, industrial, military, communications, aerospace, business, scientific, and general computing applications. Set operational specifications and formulate and analyze software requirements. May design embedded systems software. Apply principles and techniques of computer science, engineering, and mathematical analysis.

Key Words: embedded, drivers, shell scripts (script written for the shell or command line interpreter of an OS), compilers, assembler, networking software, TCP/IP, parsing, Linux kernel, device driver

Other SOCs

15-1131 – Computer Programmer – Convert project specifications and statements of problems and procedures to detailed logical flow charts for coding into computer language. Develop and write computer programs to store, locate, and retrieve specific documents, data, and information. May program web sites.

Key Words: program, code, write, convert specifications to computer language. Do not design or gather requirements.

15-1134.00 - Web Developers-
Design, create, and modify Web sites. Analyze user needs to implement Web site content, graphics, performance, and capacity. May integrate Web sites with other computer applications. May convert written, graphic, audio, and video components to compatible Web formats by using software designed to facilitate the creation of Web and multimedia content.

Key Words: limited to websites

15-1121 - Computer Systems Analyst – Analyze science, engineering, business, and all other data processing problems for application to electronic data processing systems. Analyze user requirements, procedures, and problems to automate or improve existing systems and review computer system capabilities, workflow, and scheduling limitations.

Key Words: analysis, design, implement, design modules, configure modules, design security, coordinate, business and technical consulting, automated test procedures, modify existing software, IT auditing, conduct studies, software systems performance, technology risk, model validation, reporting tools, third party software

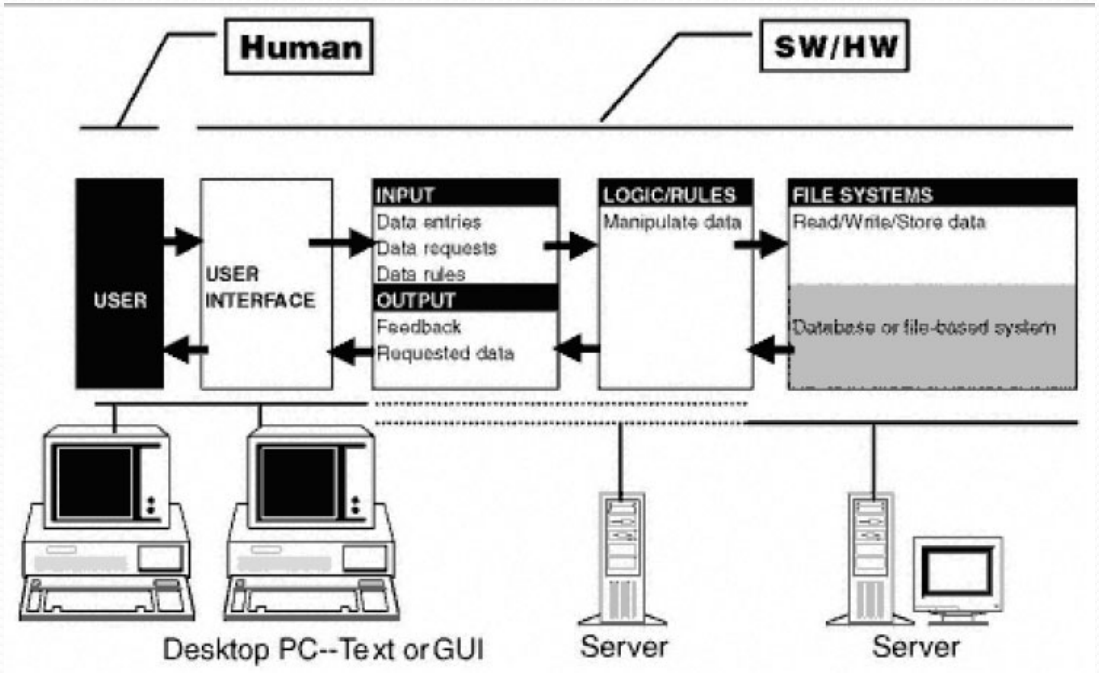
15-1199.01 - Software Quality Assurance Engineers and Testers
Develop and execute software test plans in order to identify software problems and their causes.

Key Words: test plans, develop testing programs , error or bug retests

15-1199.11 - Video Game Designers
Design core features of video games. Specify innovative game and role-play mechanics, story lines, and character biographies. Create and maintain design documentation. Guide and collaborate with production staff to produce games as designed.

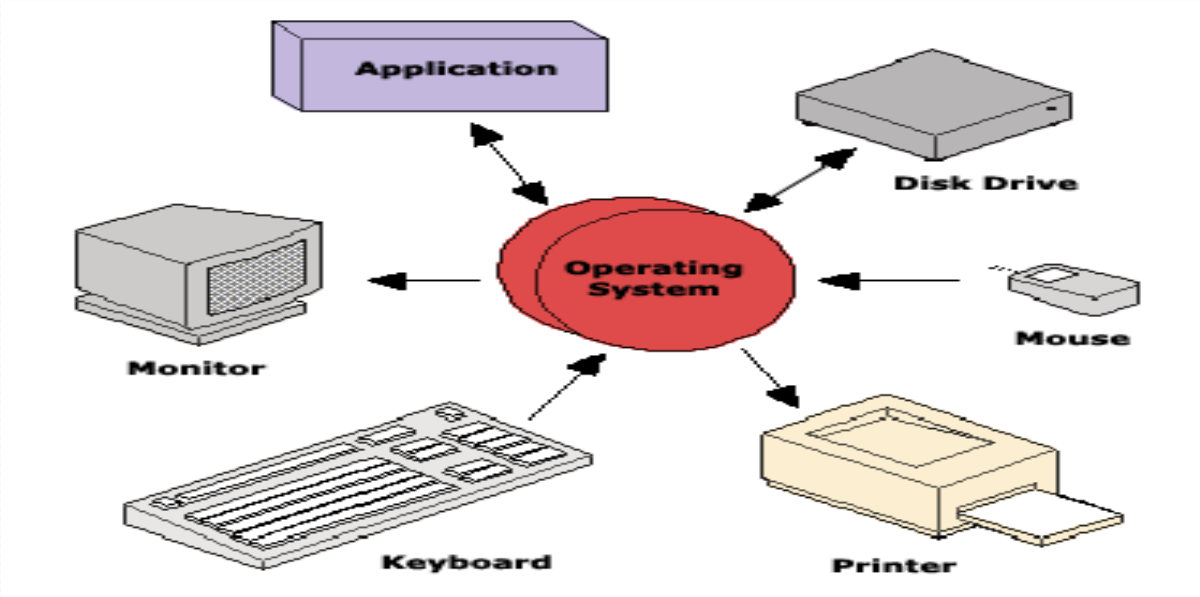
Key Words: story lines, role-play , wireframe mock-ups

Software Systems: Operating systems level software vs applications level software



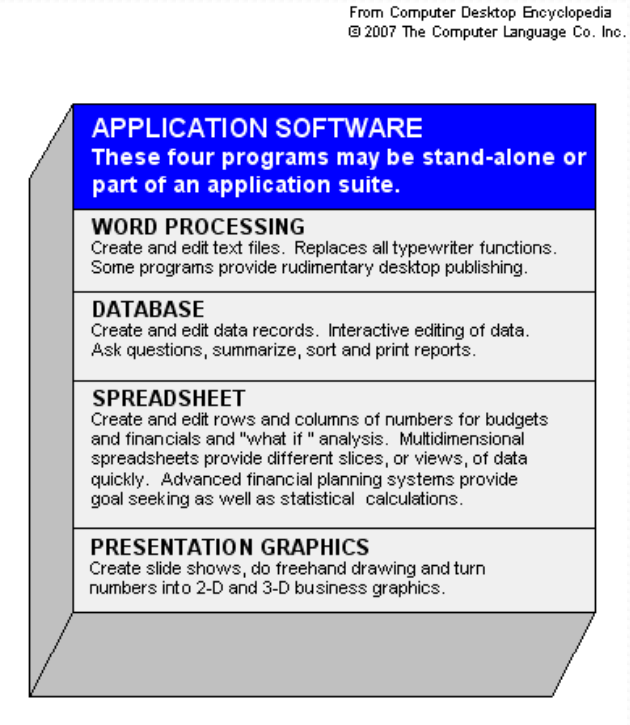
- Operating systems software focuses on behind the scenes operations. OS software tells computer components how to work, tells memory devices where to store/retrieve information, tells network systems how to package data for transmission across the network, and translates programming languages into the binary system the machine understands.
- Applications software allows the user to interact with the computer. The user has a vested interest in how this software functions and can "see" the function of the program.

Operating Systems Software



- Software Developer Systems software designs and develops the operating system, the compilers that translate software into bits and bytes, the firmware that tells the microprocessors how to operate and the network operating software that directs the format and transmission of data across the network
- Operating systems software: Windows OS, Android OS, Iphone iOS
- Firmware: embedded software that directs computer components - interprets keystrokes and mouse movements, directs the CPU or your remote control
- Compiler: translates programming languages into binary language (1,0) that is the basis of all computer communication
- Networking software: formats and directs network traffic to a specific switch or router

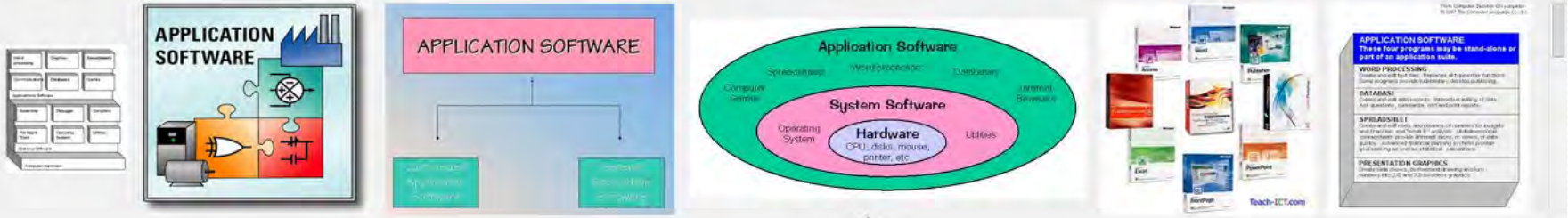
Applications Software

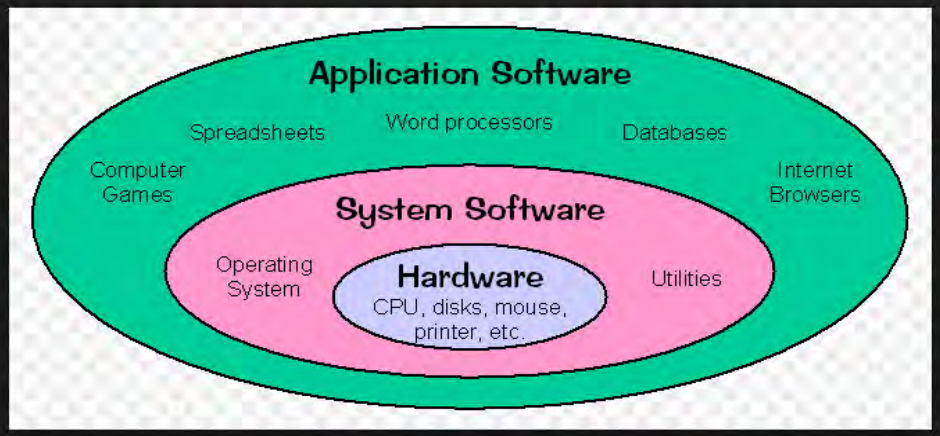


- Software Developer Applications Software designs and develops the software that users interact with
- Software includes video games, social networking sites like Facebook, databases, search engines like Google and word processors
- Applications accept user input to perform specific functions or complete an activity
- Applications may be custom developed to perform a specific function or third party software like Microsoft Office that will be used as is

PLC Version 2 Custom | Foreign Labor Certification - | application software - Google

https://www.google.com/search?q=application+software&espv=210&es_sm=93&source=lnms&tbm=isch&sa=X&ei=V5IMU96wD8r40wHJ84D4Ag&sqi=2





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System software acts as an interface between the hardware of the computer and the application software that users need to run on the computer.

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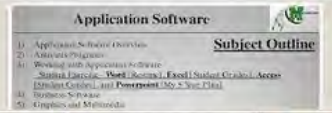

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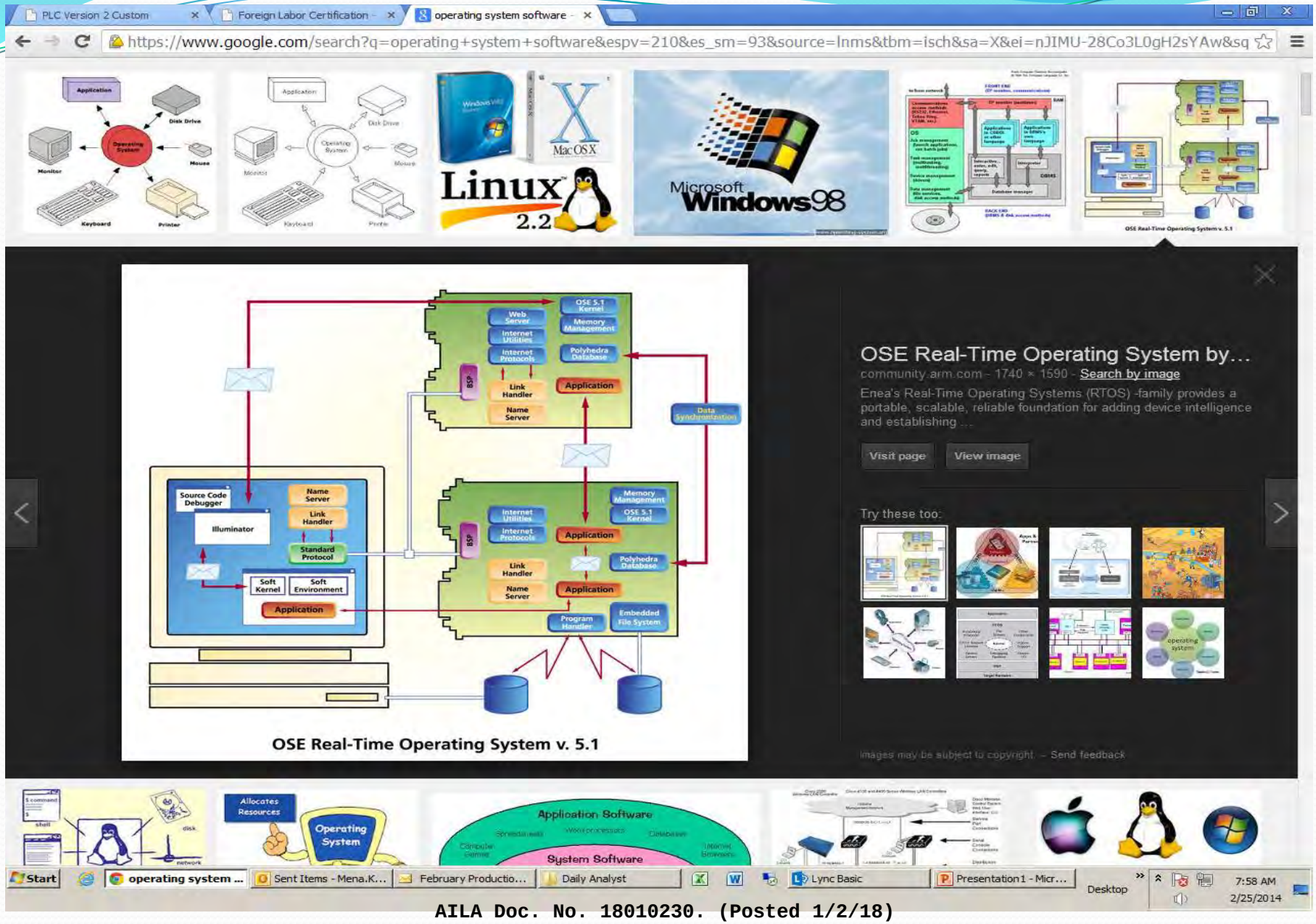
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Keyboard
Printer
Mac OS X
Linux 2.2
Microsoft Windows98
OSE Real-Time Operating System v. 5.1
Web Server
Internet Utilities
Internet Protocols
OSE 5.1 Kernel
Memory Management
Polyhedra Database
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Link Handler
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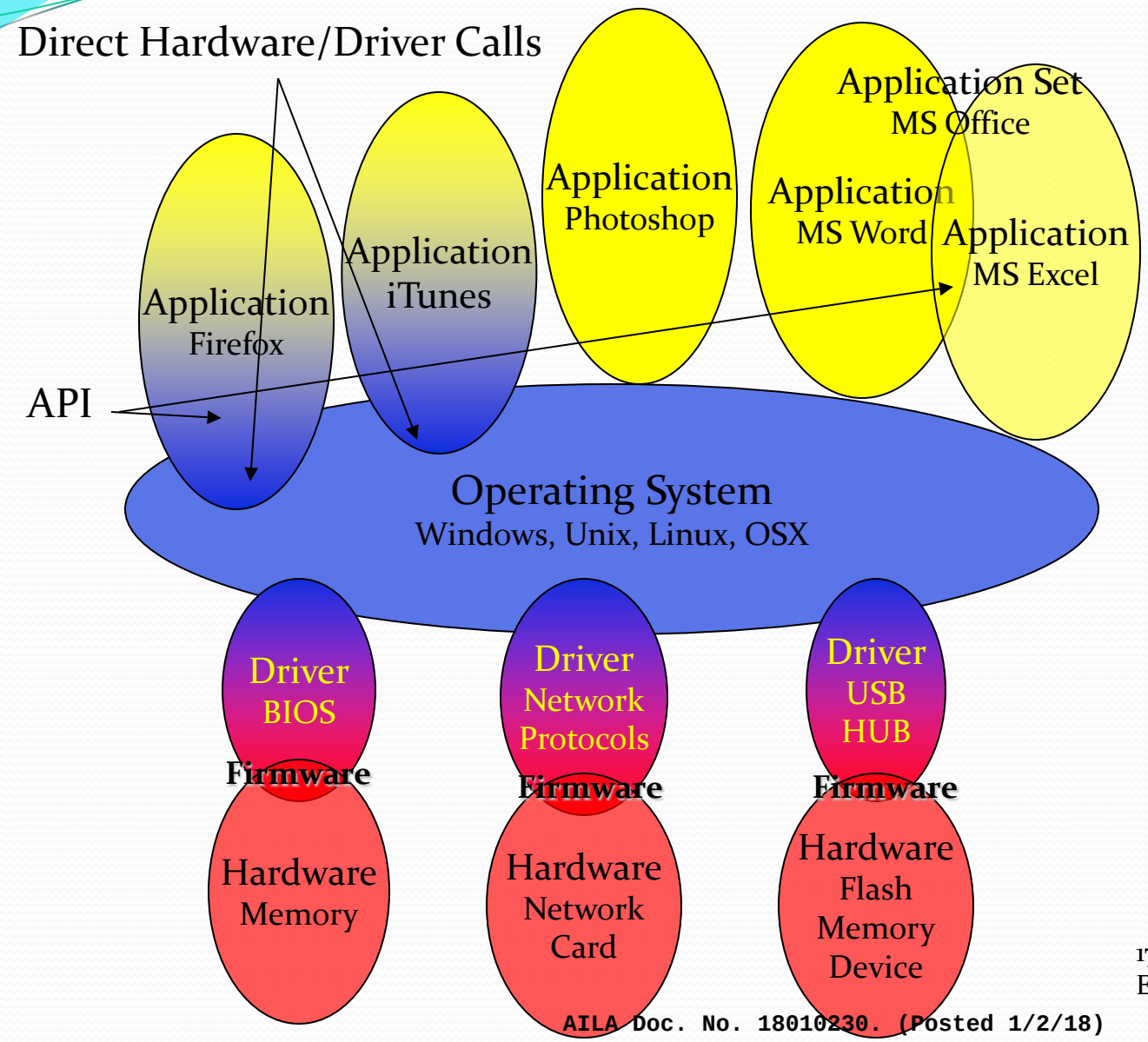
Difference between Application and System Software

Still confused? Watch this short clip below!

https://youtu.be/YkUkG8A9gWI

Software Levels and Occupations, Simplified



15-1132.00 Software Developers, Applications

15-1133.00 - Software Developers, Systems Software

17-2061.00 - Computer Hardware Engineers (unusual)

17-2072.00 - Electronics Engineers Except Computer

Sample Case

- **Case No:** P-100-14281-849785
- Design, develop and implement robust and extensible ETL solutions to support key business data flows. Analyze business data requirements to create relevant ETL deliverables, including technical specifications, source and target schema maps, transformation rules and ETL flows. Participate in technical discussions with senior application developers and architects to ensure seamless integration with application design requirements. Provide estimates, project and deliverable status, and communicates progress updates to project and department managers. Identify, document and communicate BI and ETL best practices and industry accepted development methodologies and techniques. Collaborate with business users and analysts to identify opportunities for improved processes and/or access to meaningful data-driven reports and reporting tools. Responsible for supporting all test activities, researching and resolving bugs, assessing and reporting impact of changes to testing timelines. Provides support to production applications; works to resolve operations issues and provide ETL support for mission critical processes. Defines, prepares and executes migration packages for new ETL objects. Configures and maintains scheduled ETL jobs. Provides batch execution support during testing and QA.

Sample Case Notes

- Case No: P-100-14281-849785
- Recommended as: 15-1141
- Determined as: 15-1132

- **Analysis:** 15-1132 based on employer's job duty indicated that the employee will "Design, develop and implement robust and extensible ETL solutions to support key business data flows." The job duties focus on the design and development of ETL systems for the purpose of creating database. The creation of data warehousing systems and databases are the duties of the SD,A. Development of ETL programs necessitate coding as a SD,A.

Sample Case

- **Case No:** P-100-16049-272816
- Design, develop and modify client applications using mathematical models to predict and measure the outcome of the application; build tools and content management applications focused on NodeJS and express stacks; translate business and functional requirements into documented technical specifications; develop and direct testing and validation procedures, programming and documentation; coordinate software system installation to ensure specifications are met.

Sample Case

- P-100-16049-272816

- Design, develop and modify client applications using mathematical models to predict and measure the outcome of the application; build tools and content management applications focused on NodeJS and express stacks; translate business and functional requirements into documented technical specifications; develop and direct testing and validation procedures, programming and documentation; coordinate software system installation to ensure specifications are met.

Sample Case Notes

- P-100-16049-272816
- EE will "Design, develop and modify client applications using mathematical models to predict and measure the outcome of the application; build tools and content management applications focused on NodeJS and express stacks." In line with 15-1132. No supervision or travel indicated.Onet: Develop, create, and modify general computer applications software or specialized utility programs. Analyze user needs and develop software solutions. Design software or customize software for client use with the aim of optimizing operational efficiency.

Sample Case

- Case No: P-100-14262-918444

- Perform analysis, design, development, testing, and implementation of financial applications and systems for the regulatory, financial control and compliance group at Morgan Stanley. Analyze business requirements to design physical and logical data models with efficient data patterns. Develop and maintain relational database management systems (RDBMS) utilizing Sybase, Oracle, structured query language (SQL), and MS SQL server. Optimize database performance by tuning queries, stored procedures and packages. Perform data sourcing, data loading and data transformation from various systems using ETL Informatica. Write scripts using Perl and UNIX Shell scripts in Linux distributed operating systems. Engage in SE projects using C++ / C# programming language to build large, multi-threaded and globally distributed applications. Utilize Autosys to schedule the various jobs as per the business and technical requirements. Work with vendor software systems and integrate them with the firm's internal systems complying with all the firm wide security models. Perform regression and user acceptance testing (UAT). Work with support/QA teams to resolve critical production issues and provide business support interacting with system users and provide customized solutions to each business. Utilize Perforce and dbx.

Sample Case Notes

- **Case No: P-100-14262-918444**
- **Determined as: 15-1132**
- **Analysis:** The word "systems" is used, but there is no indication that means operating systems rather than applications systems. Since all of the duties point to applications level work, 15-1132 is the best choice.

Sample Case

- P-100-16067-083342

- Develop for all layers of the software stack including: Independently develop algorithms and data structures for user (analysts) operations to optimize search with minor downtime, and to make the entire backend more fault-tolerant; Using advanced knowledge, build new features based on user requirements and make revisions to features based on feedback from business development teams; and Work with quality engineers to debug and optimize features prior to their release.

  From Box E.b.1b. - Fields of Study: Computer Science, Computer Engineering, Mathematics, or closely-related

  From Box E.b.5. - Special Requirements: Fluent in one of the following object-oriented languages: Java, C#, C++, or Javascript. Background in implementing algorithms in large-scale distributed environments, and storing them in appropriate data structures while maintaining concurrency. Understanding of writing software on both the back-end and front-end (UI). Knowledge of Linux, Linux commands, and bash script. Knowledge of SQL and secure integration with Oracle, SQLServer, and PostgreSQL.

Sample Case Notes

- P-100-16067-083342

- The duties are directly in line with 15-1133. The candidate will be responsible for working at the system level and will "Develop for all layers of the software stack including: Independently develop algorithms and data structures for user (analysts) operations to optimize search with minor downtime, and to make the entire backend more fault-tolerant." In addition, the candidate will be required to have an understanding of writing software on both the back-end and front-end (UI). Knowledge of Linux, Linux commands. A software stack is a group of programs that work in tandem to produce a result or achieve a common goal. Software stack also refers to any set of applications that works in a specific and defined order toward a common goal, or any group of utilities or routine applications that work as a set. Installable files, software definitions of products and patches can be included in a software stack. One of popular Linux-based software stack is LAMP (Linux, Apache, MYSQL, Perl or PHP or Python) .WINS (Windows Server, Internet Explorer, .NET, SQL Server). Android is a software stack for mobile devices that includes an operating system, middleware and key applications.

Sample Case

- Research, design, develop, and test operating systems-level software, compilers, and network distribution software. Plan, architect, deploy and/or support complex client/server or database software systems. Work in partnership with developers, testers, and program managers to design, operate, grow, and improve large-scale, computer-based services offered to external customers. Set operational specifications and formulate and analyze software requirements. Track problems by using standard and custom problem management tools and processes.

Sample Case Notes

- The employee will participate in multiple phases of project life cycle development which may include requirement gathering, software design, development, testing, and deployment for system level software. Job duties states “Research, design, develop, and test operating systems-level software, compilers, and network distribution software.” Onet: Research, design, develop, and test operating systems-level software, compilers, and network distribution software for medical, industrial, military, communications, aerospace, business, scientific, and general computing applications.

Programming Languages

AILA Doc. No. 18010230. (Posted 1/2/18)

APPLICATIONS SOFTWARE

- **Microsoft Silverlight** is an application framework for writing and running rich Internet applications
- **C#** is intended to be suitable for writing applications for both hosted and embedded systems, ranging from the very large that use sophisticated operating systems, down to the very small having dedicated functions.
- **Ajax** (shorthand for Asynchronous JavaScript and XML)-is a group of interrelated web development techniques used on the client-side to create interactive web applications.
- **Cascading Style Sheets** (**CSS**) is a style sheet language used to describe the presentation semantics (the look and formatting) of a document written in a markup language. Its most common application is to style web pages written in HTML and XHTML, but the language can also be applied to any kind of XML document, including SVG and XUL.
- **graphical user interface (GUI),** often pronounced *gooey* is a type of user interface that

SYSTEMS SOFTWARE

web service is typically an application programming interface (API) or **Web API** that is accessed via Hypertext Transfer Protocol (HTTP) and executed on a remote system, hosting the requested service.

Linux kernel is an operating system kernel used by the Linux family of Unix-like operating systems

assembly language is a low-level programming language for computers, microprocessors, microcontrollers, and other integrated circuits. Modern assemblers, especially for RISC based architectures, such as MIPS, Sun SPARC, and HP PA-RISC, as well as x86(-64), optimize instruction scheduling to exploit the CPU pipeline efficiently

TCP/IP - Internet Protocol Suite is the set of communications protocols used for the Internet and other similar networks
VHDL (**VHSIC hardware description language**) is a hardware description language used in electronic design automation to describe digital and mixed-signal systems such as field-programmable gate arrays and integrated circuits.

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AILA Doc. No. 18010230. (Posted 1/2/18)

Prevailing Wage Determinations

Alternative Wage Source Request with Surveys or Collective Bargaining Agreement (CBA)

AILA Doc. No. 18010230. (Posted 1/2/18)

Authority

- The employer may provide a survey for use in the H-1B (H-1B1 and E-3), H-2B or PERM programs that meets the requirements in the Department's regulation 20 CFR §§655.731(b)(3)(iii)(B), 655.10(f), or 656.40(g), as applicable.
- 2009 Prevailing Wage Guidance:

> If the job opportunity is in an occupation not covered by a collective bargaining agreement, the NPWHC shall also consider wage data that has been furnished by the employer; i.e., wage data contained in a published wage survey that has been provided by the employer, or wage data contained in a survey that has been conducted or funded by the employer. The employer can elect to use a current wage determination in the area of intended employment under the Davis-Bacon or McNamara-O'Hara Service Contract Acts. An employer survey can be submitted either initially or after the NPWHC issues a prevailing wage determination. If the employer provides a wage survey after the NPWHC makes a prevailing wage determination, the new wage data from the employer-provided survey shall be considered a new prevailing wage request.
>
> The use of such employer-provided wage data is an employer option. However, in each case where the employer submits wage data for consideration, it will be incumbent upon the employer to make a written showing that the survey or other wage data meet the criteria outlined below. The employer must provide the NPWHC with enough information about the survey methodology (e.g., sample size and source, sample selection procedures, survey job descriptions) to allow the NPWHC to make a determination with regard to the adequacy of the data provided and the validity of the statistical methodology used in conducting the survey.

Training Agenda

- Survey Training Objectives
- Reviewing Survey Criteria
- Reviewing Elements of a Survey
- Reviewing a Survey's Date of Publication
- Reviewing the Area of Intended Employment (Key Concept Breakout)
- Reviewing Survey Sample Size
- Reviewing What Cross-Industry Survey Data Is and Nature of the Employer (Key Concept Breakout)
- A Note about ACWIA Surveys
- Reviewing Collective Bargaining Agreements
- Reviewing Most Commonly Employer Submitted Surveys

Survey Training Objectives

- Overall Learning Objective:
  - Be able to process cases with Radford and Mercer surveys as a standard.
  - Four to five cases an hour is the normal rate.
  - Quality will be 92 to 95%.
  - Normally the cases will be worked independently but when unusual situations arise peers are consulted and the case may be escalated if the issue cannot be resolved.
- Enabling Learning Objective (Survey Overview):
  - Be able to identify the criteria used to evaluate the suitability of surveys in the PERM and LCA programs as a basis for understanding the tool used to evaluate surveys.
  - No cases are expected thus no rate or quality standards apply.
  - Concepts will continue to be discussed between peers and trainers.
- Enabling Learning Objective (Second Week):
  - Be able to use the tools provided to make determination on cases requesting the use of the Radford survey concentrating on understanding the *how* and *what* with the expectation that exposure will lead to speed and quality.
  - A rate of 1-2 case per hour is desirable. Quality will be checked before each case is issued. As the week progresses, there should be less reliance on mentors during the initial review with only a few questions being asked before review at the end of the week.

Survey Criteria

- Employers may submit an already published survey or they may conduct their own survey;
- All survey documentation submitted to the NPWC must be from the same survey source and within the same date of publication;
- Wage data must be for the area of intended employment, it must be weighted and it must contain the arithmetic mean of workers;
- Survey sample size must consist of at least 3 employers and 30 employees;
- Survey must be cross-industry;
- Survey must not limit the nature of the employer; and
- Survey methodology must demonstrate that data collection methods are reasonable and consistent with recognized statistical standards.

Elements of a Survey

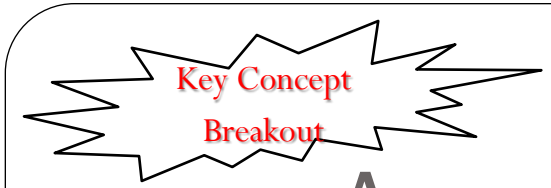
- Survey's Job Description:
  - The survey's job description must provide a reasonable match to the duties provided by the employer in the submitted Form ETA-9141. This insures that the survey's wage data represents an adequate match to the occupation for workers similarly employed in the area of intended employment.
- Survey's Wage Data:
  - By regulation, a prevailing wage determination via an employer submitted survey must be based on the arithmetic mean (weighted average) wage for workers who are similarly employed in the area of intended employment.
  - If the survey provides a median wage of workers similarly employed in the area of intended employment and does not normally provide an arithmetic mean, the median wage may be used as the basis for making a prevailing wage determination.

Elements of A Survey Continued

- Survey's Mapping Levels:
  - A survey's mapping of levels description varies across different surveys, however, analysis of this section of the survey is necessary, as this section outlines the experience, education and other characteristics set for each level of the surveyed occupation within the survey.
- Survey Methodology:
  - Must demonstrate that data collection methods are reasonable and consistent with recognized statistical standards.
- List of Survey Participants:
  - The wage data must have been collected across the various industries and it must cover the specific occupational category for which the employer is seeking a prevailing wage determination.

Survey's Date of Publication

- Been published **within 24 months** of the date of submission of the prevailing wage request;
- Be the most **current** edition of the survey;
- Be **based on data collected within 24 months** of the date of the publication of the survey.



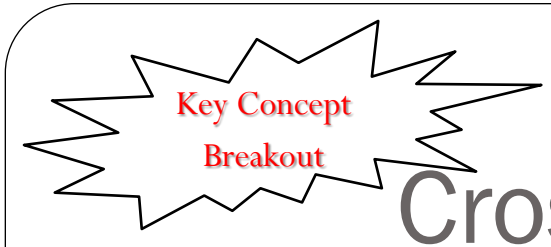
Area of Intended Employment

- **Area of Intended Employment:**

  - The definition of "area of intended employment" at 20 CFR 656.3 states: Area of intended employment means the area within normal commuting distance of the place (address) of intended employment.
  - The area covered by the survey or relevant portion and an explanation of any expansion of the area beyond normal commuting distance, when applicable;

Survey Sample Size

- The survey's statistical universe and sample size must contain wage data collected from a sample of at least 3 employers and 30 employees in order to produce an accurate arithmetic mean wage data result for all levels for the occupation in the area of intended employment.
- A sample size of a minimum of 3 employers and 30 workers is determined to be large enough for the results to comply with the Central Limit Theorem with reasonable accuracy.
- The universe size refers to the survey's sample size in the area of intended employment and it represents the entire population or number of units, employers and workers, which were used to collect the data being reported by the survey.



Cross-Industry Survey Data

- The wage data must have been collected across the various industries and it must cover the specific occupational category for which the employer is seeking a prevailing wage determination. (Key Concept Breakout)
- The survey sample must not limit the nature of the employer: (Key Concept Breakout)
  - If the survey sample limits the labor segment to the type of entity or organization, the survey does not meet the Departmental regulations.
  - The survey needs to provide a representation of wages for substantially comparable jobs in the occupational category as the data must be collected across the various industries in the area of intended employment.
- Data must be a random sample selection from within a population, workers and employers, to ensure that the results being reported by the survey are a true representation of the sampled population in the area of intended employment.

ACWIA Surveys

- The National Prevailing Wage Policy Guidance issued November 2009 states:
  - "in computing the prevailing wage for a job opportunity in an occupational classification in an area of intended employment for an employee of: an institution of higher education; an affiliated or related nonprofit entity; a nonprofit research organization; or a governmental research organization, the prevailing wage level should take into account the wage levels of employees only at such institutions and organizations found in the area of intended employment."
- ACWIA eligible employer may seek a prevailing wage determination via a survey, however, all survey participants must be ACWIA eligible employers.

Collective Bargaining Agreements

- The employer may request a prevailing wage determination via a Collective Bargaining Agreement (CBA) if the position for which the employer is seeking the determination is covered by an existing CBA negotiated between the employer and an union.
- When the job opportunity is covered by a CBA, the employer must submit the following at the time it submits the Form ETA-9141:
  - A copy of the relevant portions of the actual CBA with evidence of the validity dates for the agreement;
  - A letter, on letterhead, from the employer, stating the relevant section of the CBA, the CBA job title, and the appropriate wage; and
  - A letter, on letterhead, from the collective bargaining unit's (union) authorized representative, stating the relevant section of the CBA, the CBA job title, and the appropriate wage.

Most Commonly Employer Submitted Surveys

- Radford Global Technology Survey
- Radford Global Sales Survey
- US Mercer Benchmark Database Survey
- Towers Watson Data Services Survey
- Dietrich Engineering Salary Survey
- HRA-NCA Compensation Survey
- The Survey Group
- American Association of American Colleges (AAMC)
- American Association of Veterinarian Colleges (AAVMC)
- Custom Reports from APWD

Survey SOP

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Looking Ahead

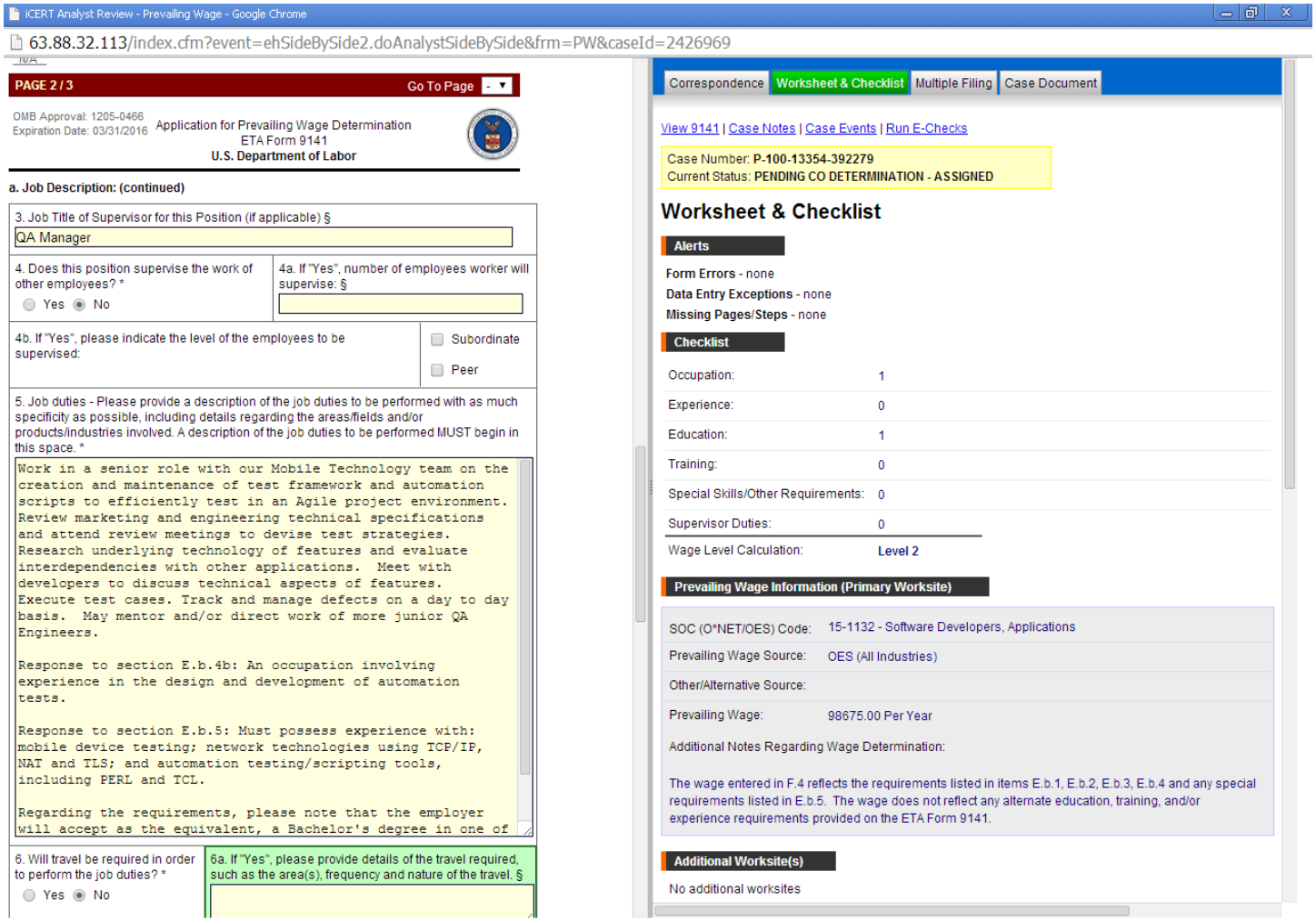
- Review of Related Survey worksheets/Worksheet Instructions /Survey Checklist /and Survey Specific RFI and Rejection Language.
- Overview of Radford Surveys and CBA
- Initial Survey Demonstrations and small groups
- Initial Shadowing and small groups
- Demonstration and Shadowing and small groups (2nd and 3rd week)

Questions…

AILA Doc. No. 18010230. (Posted 1/2/18)

Supervision

Supervision marked ‘no’, but Job duties include supervisory tasks – direct work of engineers. Evaluate as supervision.



iCERT Analyst Review - Prevailing Wage - Google Chrome

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OMB Approval: 1205-0466
Expiration Date: 03/31/2016

Application for Prevailing Wage Determination
ETA Form 9141
U.S. Department of Labor

a. Job Description: (continued)

3. Job Title of Supervisor for this Position (if applicable) §
QA Manager

4. Does this position supervise the work of other employees? * Yes No

4a. If "Yes", number of employees worker will supervise: §

4b. If "Yes", please indicate the level of the employees to be supervised: Subordinate Peer

5. Job duties - Please provide a description of the job duties to be performed with as much specificity as possible, including details regarding the areas/fields and/or products/industries involved. A description of the job duties to be performed MUST begin in this space. *

Work in a senior role with our Mobile Technology team on the creation and maintenance of test framework and automation scripts to efficiently test in an Agile project environment. Review marketing and engineering technical specifications and attend review meetings to devise test strategies. Research underlying technology of features and evaluate interdependencies with other applications. Meet with developers to discuss technical aspects of features. Execute test cases. Track and manage defects on a day to day basis. May mentor and/or direct work of more junior QA Engineers.

Response to section E.b.4b: An occupation involving experience in the design and development of automation tests.

Response to section E.b.5: Must possess experience with: mobile device testing; network technologies using TCP/IP, NAT and TLS; and automation testing/scripting tools, including PERL and TCL.

Regarding the requirements, please note that the employer will accept as the equivalent, a Bachelor's degree in one of

6. Will travel be required in order to perform the job duties? * Yes No

6a. If "Yes", please provide details of the travel required, such as the area(s), frequency and nature of the travel. §

Correspondence | Worksheet & Checklist | Multiple Filing | Case Document

View 9141 | Case Notes | Case Events | Run E-Checks

Case Number: P-100-13354-392279
Current Status: PENDING CO DETERMINATION - ASSIGNED

Worksheet & Checklist

Alerts

Form Errors - none
Data Entry Exceptions - none
Missing Pages/Steps - none

Checklist

Occupation:	1
Experience:	0
Education:	1
Training:	0
Special Skills/Other Requirements:	0
Supervisor Duties:	0
Wage Level Calculation:	Level 2

Prevailing Wage Information (Primary Worksite)

SOC (O*NET/OES) Code:	15-1132 - Software Developers, Applications
Prevailing Wage Source:	OES (All Industries)
Other/Alternative Source:	
Prevailing Wage:	98675.00 Per Year

Additional Notes Regarding Wage Determination:

The wage entered in F.4 reflects the requirements listed in items E.b.1, E.b.2, E.b.3, E.b.4 and any special requirements listed in E.b.5. The wage does not reflect any alternate education, training, and/or experience requirements provided on the ETA Form 9141.

Additional Worksite(s)

No additional worksites

javascript:void(0)

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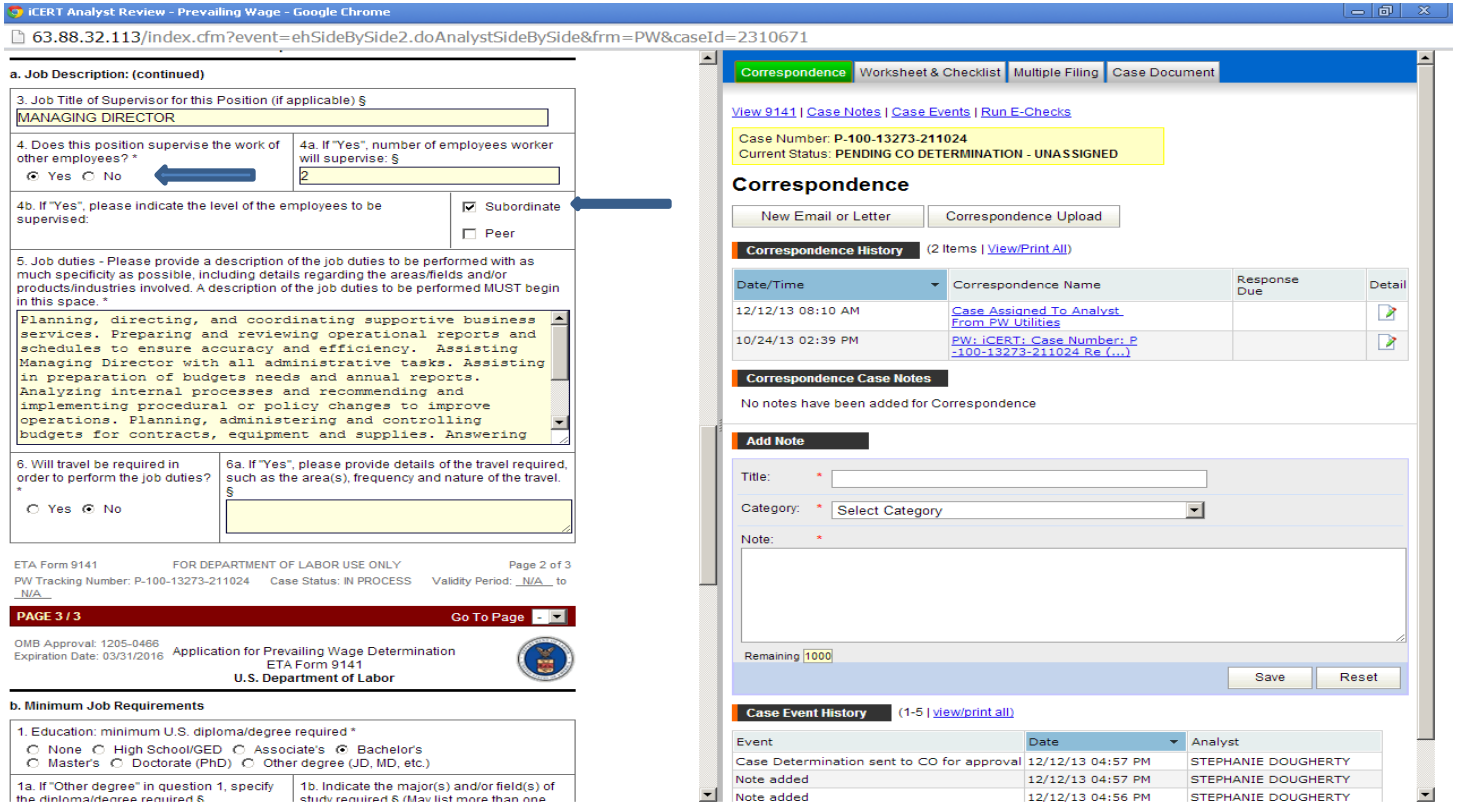
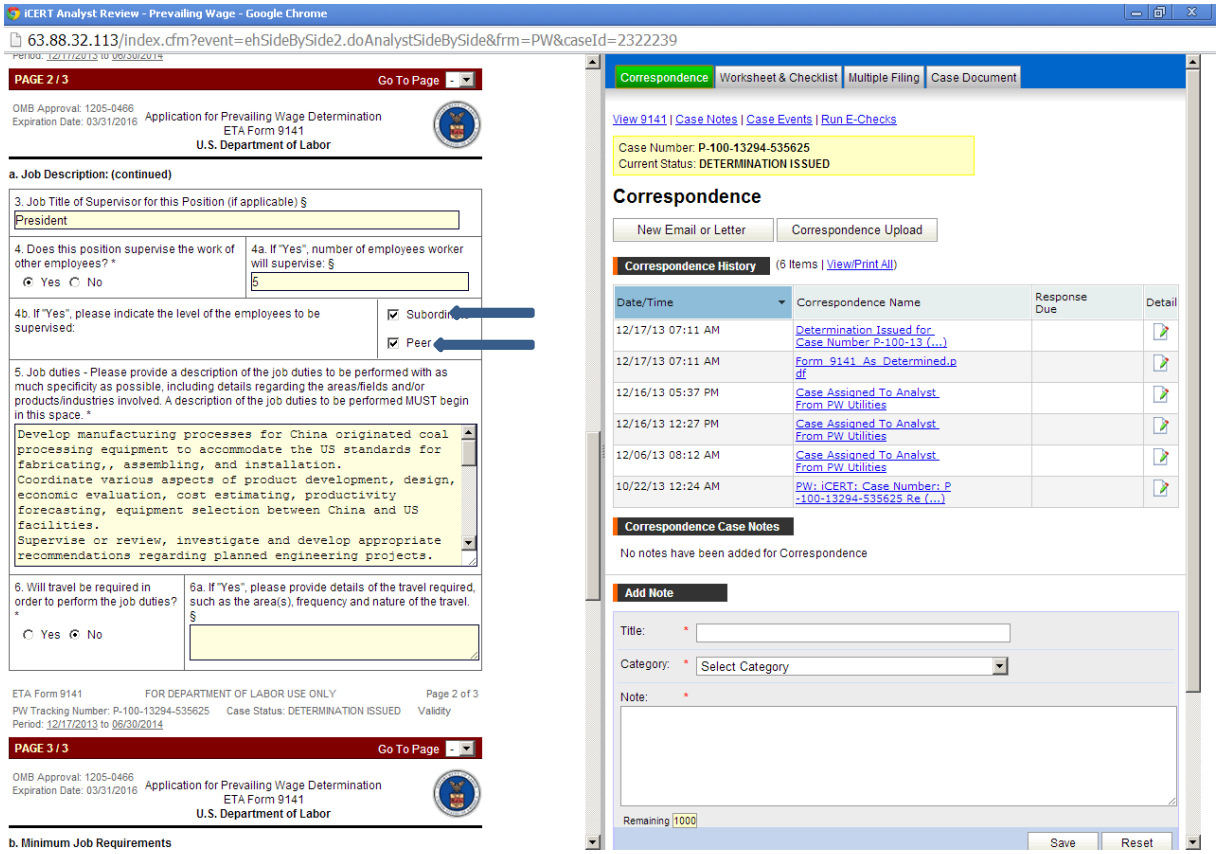
Gerald's cases.xlsx | AUDIT_LOG.xls [Shared... | 10i_Supervision report 2... | Microsoft Access - PW R... | HELP DESK TRACKER | Presentation1 - Microsof...

Supervision = yes, subordinate – The job duties must indicate the occupation of the supervised employees. If not or supervised employees are called staff or team (general description), then send RFI to employer requesting occupations of supervised employees



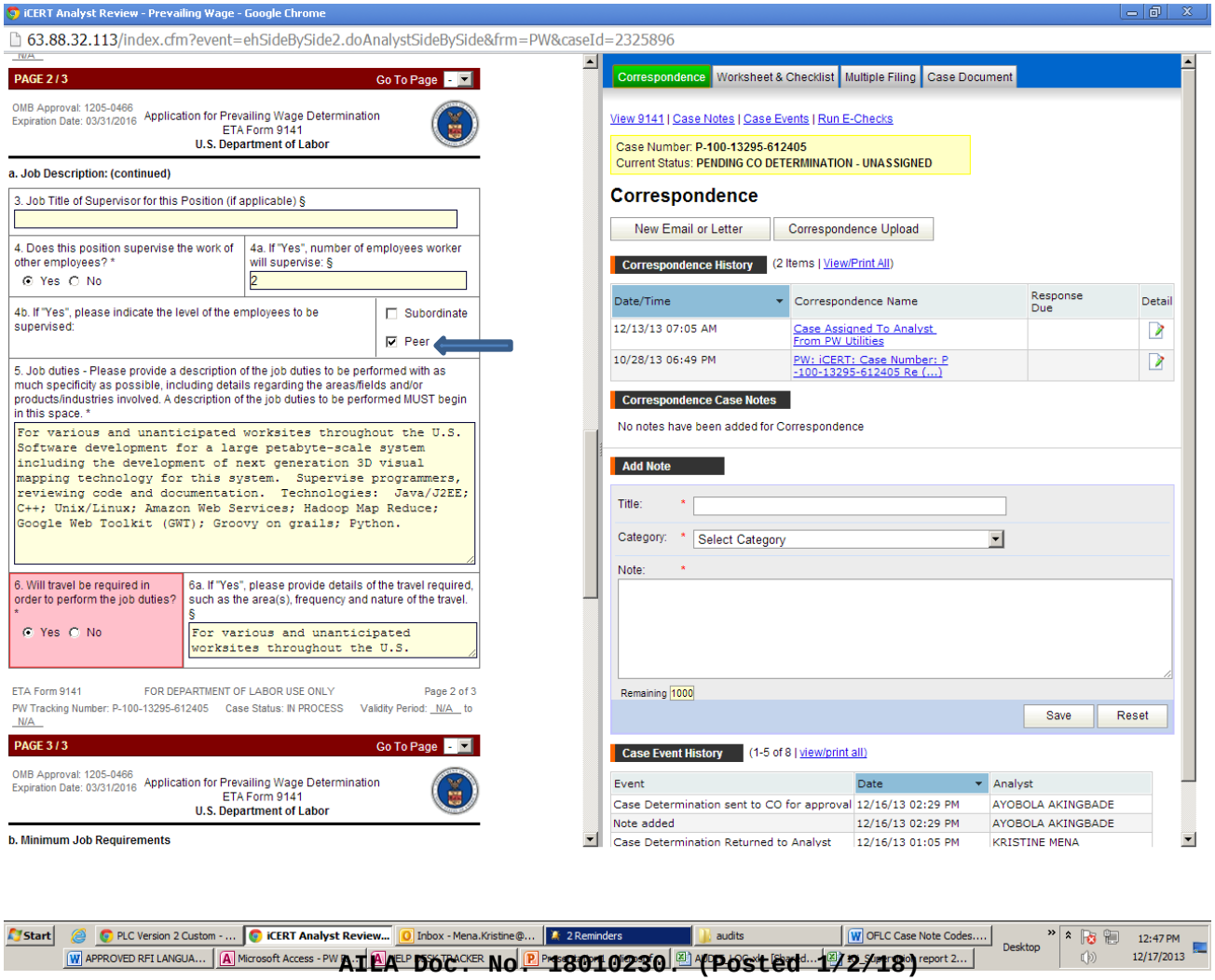
9141 Supervision

Supervision = yes and both Subordinate and Peer are chosen, evaluate as same level

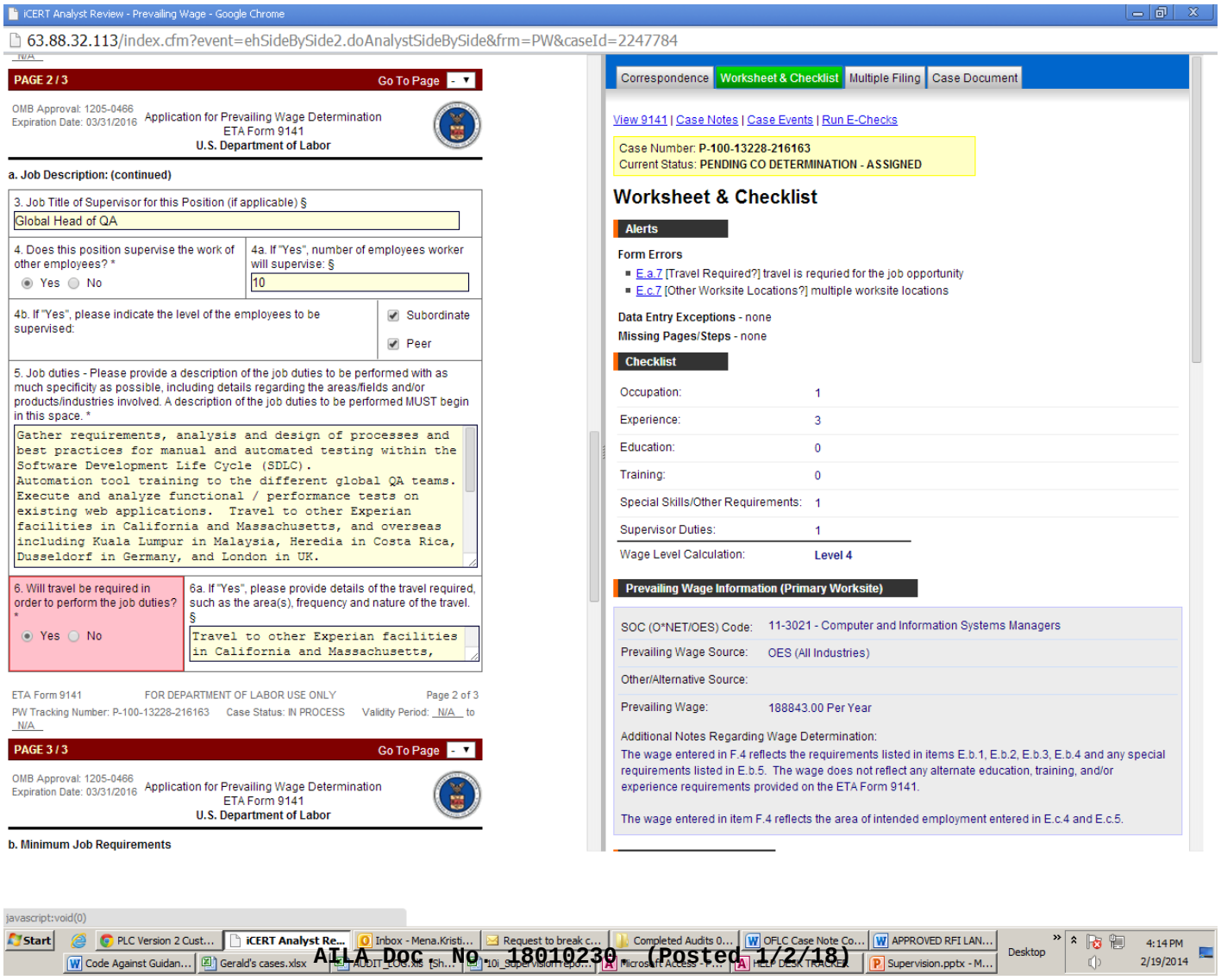


9141 Supervision

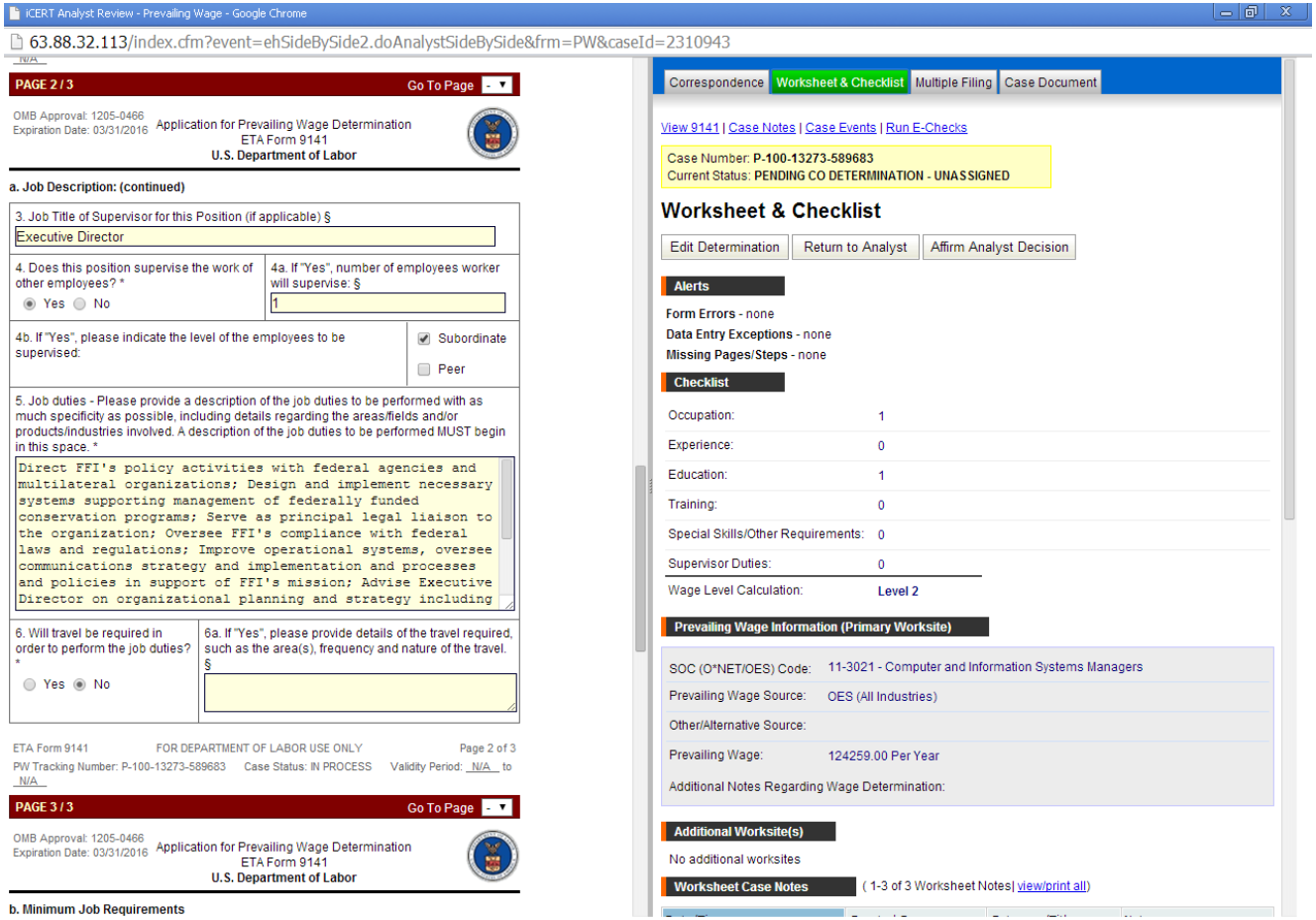
Supervision = yes and Peer is chosen – Evaluate as same level



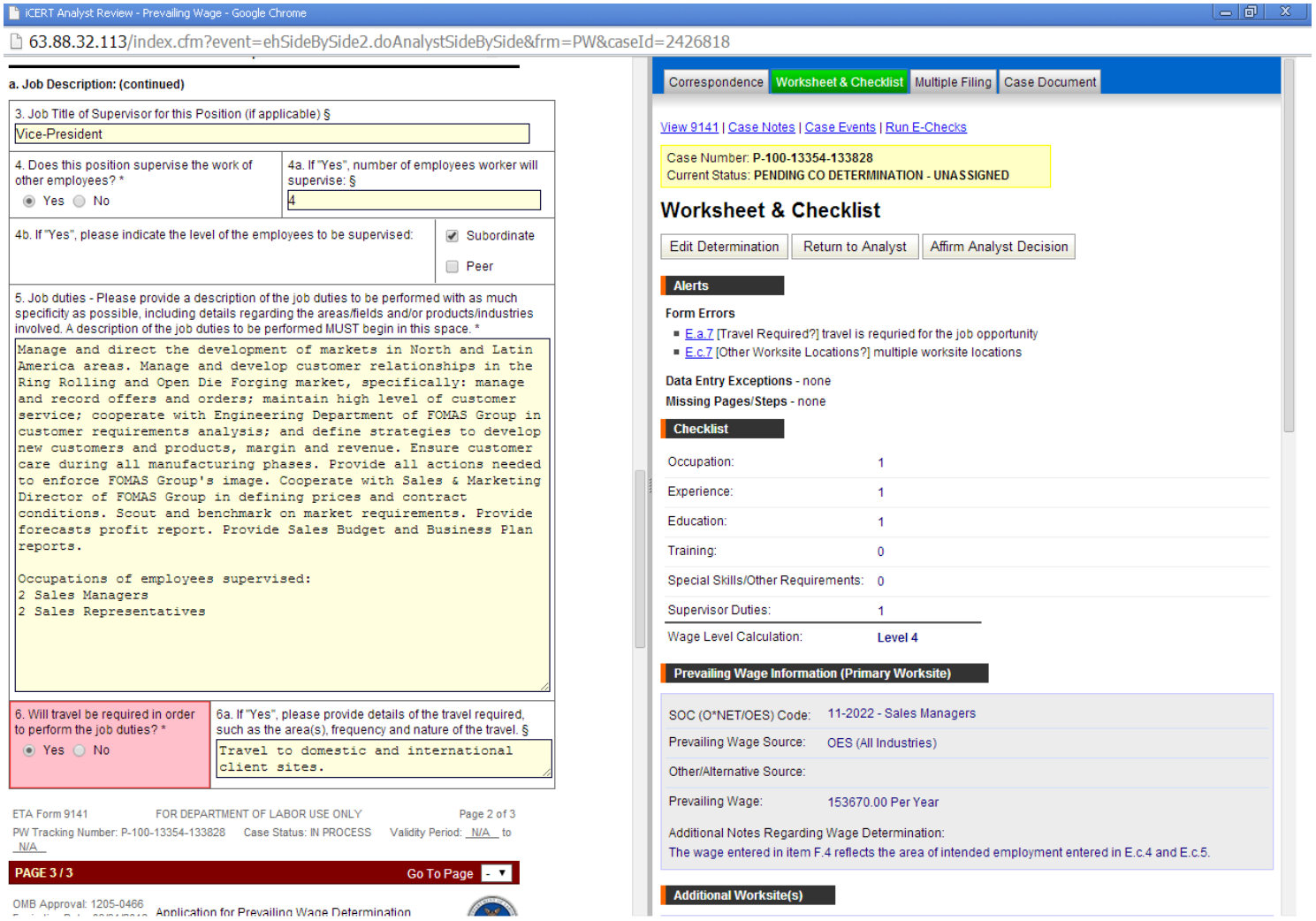
Managers supervising peers merits a supervision point. This may be entered in the Supervision field as Peer as below or in the context of the job duties.



Manager supervising subordinates – assume supervised employees are subordinate unless the job duties indicate supervising other managers.



Supervision marked subordinate but E.a.5 shows supervising other managers – add supervision point for same level



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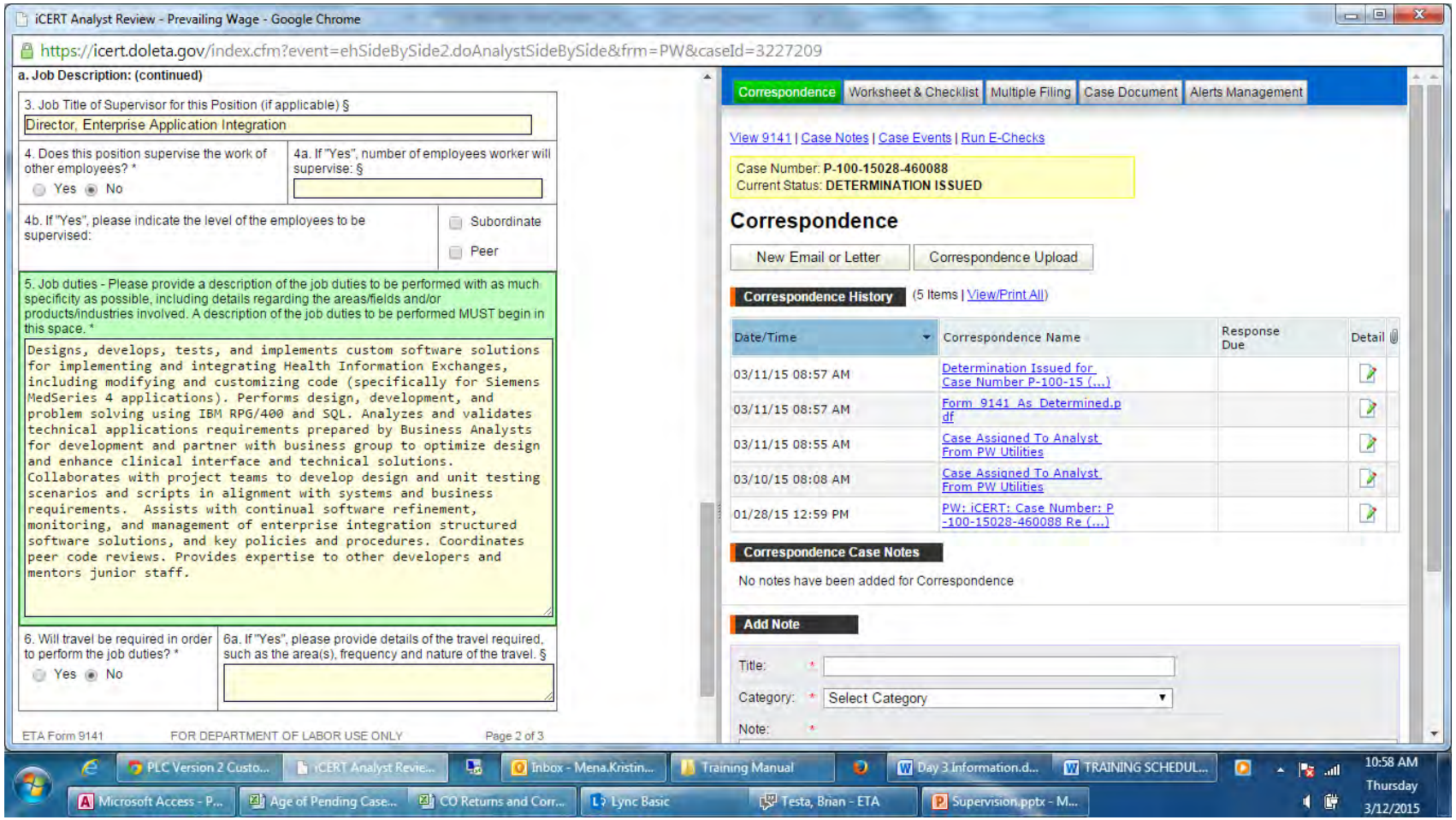
Supervision marked ‘no’ and job duties include mentoring of other staff. If the wage assigned will be wage level 1, add a special skills point as mentoring is not common in an entry level position. If the wage level is 2 or higher, no point is needed.



Travel Explanation

Descriptor	Percent	Notes – this takes precedence over %
Incidental	1% or so	[occasionally] attend/present at professional/scientific conferences; up to several days a few times a year
Little	Up to 24%	intermittent travel; more than several up to 13 weeks (60ish days); no normal days per week; no normal weeks per month.
Limited	25% up to 49 %	more than 13 weeks up to 26 weeks per year, 1 week per month, 1-2 days every week.
Some	50% up to 79%	more than 26 weeks up to 41 weeks per year, 2-3 weeks per month, 3-4 days each week.
Extensive	80% or more	42+ weeks per year, 4-5 weeks per month 4-5 days per week

Federal Register

Friday,
December 19, 2008

Part V

Department of Labor

Employment and Training Administration

20 CFR Parts 655 and 656

Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes; Final Rule

AILA Doc. No. 18010230. (Posted 1/2/18)

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

RIN 1205–AB54

Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes

AGENCY: Employment and Training Administration, Department of Labor, in concurrence with the Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL or the Department) is amending its regulations to modernize the procedures for the issuance of labor certifications to employers sponsoring H–2B nonimmigrants for admission to perform temporary nonagricultural labor or services and the procedures for enforcing compliance with attestations made by those employers. Specifically, this Final Rule re-engineers the application filing and review process by centralizing processing and by enabling employers to conduct pre-filing recruitment of United States (U.S.) workers. In addition, the rule enhances the integrity of the H–2B program through the introduction of post-adjudication audits and procedures for penalizing employers who fail to comply with program requirements. This rule also makes technical changes to the regulations relating to both the H–1B program and the permanent labor certification program to reflect operational changes stemming from this regulation.

Although Congress has conferred the statutory authority to enforce H–2B program requirements on the Department of Homeland Security (DHS), recent discussions between DHS and the Department have yielded an agreement for the delegation of H–2B enforcement authority from DHS to the Department. This Final Rule contains the Wage and Hour Division (WHD) regulations establishing the H–2B enforcement procedures that the Department will institute pursuant to that agreement. Separately, this Final Rule institutes conditions and procedures for the debarment of employers, attorneys, and agents participating in the H–2B foreign labor certification process. As discussed further below, the Department intends to exercise its inherent authority under case law and general principles of program administration to determine what entities practice before it.

DATES: This Final Rule is effective January 18, 2009.

FOR FURTHER INFORMATION CONTACT: For information on the H–2B labor certification process governed by 20 CFR 655.1 to 655.35, contact William L. Carlson, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210. Telephone: (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For information on the H–2B enforcement process governed by 20 CFR 655.50 to 655.80, contact Michael Ginley, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3502, Washington, DC 20210. Telephone (202) 693–0745 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Leading to the NPRM

A. Statutory Standard and Current Department of Labor Regulations

Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (INA or the Act) defines an H–2B worker as a nonimmigrant admitted to the U.S. on a temporary basis to perform temporary nonagricultural labor or services. 8 U.S.C. 1101(a)(15)(H)(ii)(b).

Section 214(c)(1) of the INA requires DHS to consult with ''appropriate agencies of the Government'' before granting any H–2B visa petition submitted by an employer. 8 U.S.C. 1184(c)(1). The regulations for the U.S. Citizenship and Immigration Services (USCIS), the agency within DHS charged with the adjudication of nonimmigrant benefits such as H–2B status, currently require, at 8 CFR 214.2(h)(6), that the intending employer (other than in the Territory of Guam) first apply for a temporary labor certification from the Secretary of Labor (the Secretary) advising USCIS whether U.S. workers capable of performing the services or labor are available, and whether the employment of the foreign worker(s) will adversely affect the wages and working conditions of similarly employed U.S. workers.

The Department's role in the H–2B visa program stems from its obligation, outlined in DHS regulations, to certify, upon application by a U.S. employer intending to petition DHS to admit H–2B workers, that there are not enough able and qualified U.S. workers available for the position sought to be filled and that the employment of the foreign worker(s) will not adversely affect the wages and working conditions of similarly employed U.S. workers. 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 U.S.C. 1184(c)(1); see also 8 CFR 214.2(h)(6).

The Department's role in the H–2B process is currently advisory to DHS. 8 CFR 214.2(h)(6)(iii)(A). DHS regulations provide that an employer may not file a petition with DHS for an H–2B temporary worker unless it has received a labor certification from the Department (or the Governor of Guam, as appropriate), or received a notice from either that a certification cannot be issued. 8 CFR 214.2(h)(6)(iii)(C), (iv)(A), (vi)(A).

Currently, the Department's regulations at 20 CFR part 655, Subpart A, ''Labor Certification Process for Temporary Employment in Occupations other than Agriculture, Logging or Registered Nursing in the United States (H–2B Workers),'' govern the H–2B labor certification process. Applications for labor certification are processed by the Office of Foreign Labor Certification (OFLC) in ETA, the agency to which the Secretary of Labor has delegated her advisory responsibilities described in the DHS H–2B regulations, after they are processed by the State Workforce Agency (SWA) having jurisdiction over the area of intended employment.[1] The SWA reviews the employer's application and job offer (comparing the employer's offered wage against the prevailing wage for the position); supervises U.S. worker recruitment; and forwards completed applications to OFLC for further review and final determination.

Under current procedures, the employer must demonstrate that its need for the services or labor is temporary as defined by one of four regulatory standards: (1) A one-time occurrence; (2) a seasonal need; (3) a

[1] The SWAs are agencies of State Government that receive Federal Workforce Investment Act (WIA), Wagner-Peyser Act, and other funds to administer our nation's state-based employment services system and perform certain activities on behalf of the Federal Government.

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peakload need; or (4) an intermittent need. 8 CFR 214.2(h)(6)(ii)(B). The employer or its authorized representative must currently submit to the SWA a detailed statement of temporary need and supporting documentation with the application for H–2B labor certification. Such documentation must provide a description of the employer's business activities and schedule of operations throughout the year, explain why the job opportunity and the number of workers requested reflects its temporary need, and demonstrate how the employer's need meets one of these four regulatory standards. Based on longstanding practice and DOL program guidance, the employer must also establish that the temporary position is full-time and that the period of need is generally one year or less, consistent with the standard under DHS regulations at 8 CFR 214.2h(6). This Final Rule clarifies that full-time employment, for purposes of temporary labor certification employment, means at least 30 hours per week, except that where a State or an established practice in an industry has developed a definition of full-time employment for any occupation that is less than 30 hours per week, that definition governs.

Additionally, the employer must recruit from the U.S. labor market to determine if a qualified U.S. worker is available for the position. In addition, in order to ensure an adequate test of the labor market for the position sought to be filled, the employer must comply with other program requirements. For example, it must offer and subsequently pay throughout the period of employment a wage that is equal to or higher than the prevailing wage for the occupation at the skill level and in the area of intended employment; provide terms and conditions of employment that are not less favorable than those offered to the foreign worker(s); and not otherwise inhibit the effective recruitment and consideration of U.S. workers for the job.

Historically, the Department's review and adjudication of permanent and temporary labor certification applications (including H–2B) took place through ETA's Regional Offices. However, in December 2004, the Department opened two new National Processing Centers (NPCs), one each located in Atlanta, Georgia, and Chicago, Illinois, to centralize processing of permanent and temporary foreign labor certification cases at the Federal level. The Department published a notice in the **Federal Register**, at 70 FR 41430, Jul. 19, 2005, clarifying that employers seeking H–2B labor certifications must file two originals of Form ETA 750, Part A, directly with the SWA serving the area of intended employment. Once the application is reviewed by the SWA and after the employer conducts its required recruitment, the SWA sends the complete application to the appropriate NPC. The NPC Certifying Officer (CO) issues a labor certification for temporary employment under the H–2B program, denies the certification, or issues a notice including the reasons why such certification cannot be made. Prior to June 1, 2008, the NPCs shared responsibility for processing of temporary labor certification applications; each NPC had jurisdiction over and processed applications from a different subset of states and territories. Effective June 1, 2008, the NPCs specialized, each assuming responsibility for different types of applications. Now, H–2B temporary labor certification applications approved by the SWAs are processed exclusively by the Chicago NPC. 73 FR 11944, Mar. 5, 2008.

Currently, the Department has no enforcement authority or process to ensure H–2B workers who are admitted to the U.S. are employed in compliance with H–2B labor certification requirements. Congress vested DHS with that enforcement authority in 2005. See 8 U.S.C. 1184, as amended by the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005, Public Law 109–13, 119 Stat. 231. As described more fully below, the Department in this Final Rule establishes the H–2B regulatory enforcement regime proposed in the NPRM, consistent with the agreement for a delegation of enforcement authority reached by the Department and DHS pursuant to 8 U.S.C. 1184(c)(14)(B). This enforcement regime also includes debarment procedures for ETA and the Employment Standards Administration, Wage and Hour Division (WHD), under the Department's inherent debarment authority, which is explained in greater detail below.

B. Earlier Efforts To Reform the H–2B Regulatory Process

On January 27, 2005, DHS and the Department issued companion NPRMs to significantly revise each agency's H–2B processing procedures. 70 FR 3984, Jan. 27, 2005; 70 FR 3993, Jan. 27, 2005. As proposed, those changes to both agencies' regulations would have eliminated in whole the Department's adjudicatory role, ending the current labor certification process for most H–2B occupations and requiring employers to submit labor-related attestations directly to USCIS as part of a revised supplement accompanying the H–2B petition.

The two agencies received numerous comments on the joint NPRMs in 2005. Most commenters opposed the proposals to move the program adjudication to USCIS and to eliminate the Department's role in reviewing the need of employers and the recruitment of U.S. workers except in post-adjudication audits. Commenter concerns focused in part on the loss of the Department's experience in adjudicating issues of temporary need and the potential adverse impact on U.S. workers. Based on the significant concerns posed in those comments, and after further deliberation within each agency, the Department and DHS have not pursued their 2005 proposals. Consequently, the NPRM published by the Department on January 27, 2005 (RIN 1205–AB36) was withdrawn in the Department of Labor's Fall 2007 Regulatory Agenda. See *http://www.reginfo.gov/public/do/eAgendaViewRule?ruleID=221117*.

As stated in the May 22, 2008, NPRM preceding this Final Rule, the Department continued, however, to closely review the H–2B program procedures in order to determine appropriate revisions to the H–2B labor certification process. This ongoing systematic review was accelerated in light of considerable workload increases for both the Department and the SWAs (an approximate 30 percent increase in applications in Fiscal Year (FY) 2007 over those received in FY 2006, and a similar increase during the first half of FY 2008) as well as limited appropriations funding program-related operations.

On April 4, 2007, ETA issued Training and Employment Guidance Letter (TEGL) No. 21–06, 72 FR 19961, Apr. 20, 2007, to replace its previous guidance for the processing of H–2B applications (General Administration Letter No. 1–95, 60 FR 7216, Feb. 7, 1995) and update procedures for SWAs and NPCs to use in the processing of temporary labor certification applications. The Department then held national briefing sessions in Chicago and Atlanta on May 1 and May 4, 2007, respectively, to inform employers and other stakeholders of the updated processing guidance contained in TEGL 21–06. Attendees at those briefing sessions raised important questions and concerns with regard to the effective implementation of TEGL 21–06 by the SWAs and ETA's National Processing Centers (NPCs). In response to the

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substantive concerns that were raised, the Department further refined the process of reviewing applications in TEGL 27–06 (June 12, 2007), providing special procedures for dealing with forestry related occupations, and TEGL No. 21–06, Change 1 (June 25, 2007), and updating procedures by allowing the NPC Certifying Officer (CO) to request additional information from employers to facilitate the processing of H–2B applications. 72 FR 36501, Jul. 3, 2007; 72 FR 38621, Jul. 13, 2007. Several issues were not addressed by those refinements, particularly concerns relating to increasing workload and processing delays, which required regulatory changes. This Final Rule addresses a number of those unresolved issues.

C. Current Process Involving Temporary Labor Certifications and the Need for a Redesigned System

As described in the May 22, 2008, NPRM, the process for obtaining a temporary labor certification has been described to the Department as complicated, time-consuming, inefficient, and dependent upon the expenditure of considerable resources by employers. The current, duplicative process requires the employer to first file a temporary labor certification with the SWA, which reviews the application, compares the wage offer to the prevailing wage for the occupation, oversees the recruitment of U.S. workers, and then transfers the application to the applicable ETA NPC, which conducts a final review of the application. This process has been criticized for its length, overlap of effort, and resulting delays. Application processing delays, regardless of origin, can lead to adverse results with serious repercussions for a business, especially given the numerical limitation or ''cap'' on visas under this program, as a result of which any processing delay may prevent an employer from securing visas for H–2B workers during any given half year period for which numbers are available. This occurs because employer demand for the limited number of visas greatly exceeds their supply, and all visas are typically allocated in the early weeks of availability. See 8 U.S.C. 1184(g)(1)(B) (setting H–2B annual visa cap at 66,000) and 8 U.S.C. 1184(g)(10) (setting a cap of 33,000 as the number of H–2B visas that may be allocated during each 6-month period of a fiscal year).

The increasing workload of the Department and SWAs poses a growing challenge to the efficient and timely processing of applications. As stated in the NPRM, the H–2B foreign labor certification program continues to increase in popularity among employers. While the annual number of visas available is limited by statute, the number of labor certifications is not. The number of H–2B labor certification applications has increased 129 percent since FY 2000. In FY 2007, the Department experienced a nearly 30 percent increase in H–2B temporary labor certification application filings over the previous fiscal year. This increasing workload is exacerbated because the INA does not authorize the Department to charge a fee to employers for processing H–2B applications.[2] At the same time, appropriated funds have not kept pace with the increased workload at the State or Federal level. This has resulted in significant disparities in processing times among the SWAs. Some observers have noted these disparities among States unfairly advantage one set of employers (those in which the SWAs are able to timely process applications) over others (those in which SWAs experience delays due to backlogs resulting from inadequate staffing or funding, or other causes).[3]

In light of these recurring experiences, this Final Rule institutes several significant measures to reengineer the Department's administration of the program. These changes improve the process by which employers obtain labor certification and where our program experience has demonstrated additional measures would assist the Department in protecting the job opportunities and wages of U.S. workers. The Final Rule also provides greater accountability for employers through penalties, up to and including debarment, as an additional safeguard against abuse of the program.

D. Overview of Redesigned H–2B Foreign Labor Certification Process

As proposed in the NPRM and finalized in this rule, the redesigned application process will require employers to complete recruitment steps similar to those now required, but will require them to do so prior to filing the application for labor certification. Once recruitment is complete, this Final Rule maintains the requirement proposed in the NPRM that the completed application be submitted directly to DOL instead of being filed with a SWA. This Final Rule eliminates the SWA duplicative review of the H–2B application. In association with this Final Rule, the Department has redesigned the application form currently used for the H–2A and H–2B temporary labor certification programs and proposed a new ETA Form 9142. Additional information about the new application form appears in the Administrative Information section of this preamble. This rule does not eliminate or federalize SWA activities (*e.g.*, the job order and interstate clearance process) that may ultimately support an employer's H–2B application but are funded and governed independently under the Wagner-Peyser Act. This rule does federalize prevailing wage determinations, previously performed by the SWAs under this program.

To test the U.S. labor market appropriately, employers will be required to first obtain from the Chicago NPC a prevailing wage rate to be used in the recruitment of U.S. workers. To make this request, employers in the non-agricultural labor certification programs will use a new ETA Form 9141, which was designed and will be implemented in conjunction with this Final Rule. As with the Form 9142, additional information about the Form 9141 appears in the Administrative Information section of the preamble. The employer will then follow recruitment steps similar to those required under the current program. The NPRM proposed increasing the number of required advertisements to three. However, in response to comments, the Final Rule returns to the current requirement of two advertisements, although it retains the proposed requirement that one of those advertisements be placed on a Sunday.

Consistent with the NPRM, this Final Rule requires the employer to attest to and enumerate its recruitment efforts as part of the application but does not require the employer to submit

[2] On June 17, 2008, the Department transmitted draft legislation to the Congress that would amend the INA to provide the Department with authority to charge and retain a fee to recoup the costs of administering the H–2B labor certification program.

[3] The growth in the number of applications is explained in part by the increasing desire of employers for a legal temporary workforce and by legislation that permitted greater numbers of H–2B workers into the U.S. by exempting from the 66,000 annual cap any H–2B worker who had been counted against the numerical cap in previous years. See Save Our Small and Seasonal Businesses Act of 2005, Public Law 109–13, Div. B, Title IV, 119 Stat. 318 (effective May 11, 2005) (exempting from numerical cap for FY 2005 and FY 2006 returning H–2B workers who had counted against the cap in one of the three fiscal years preceding the fiscal year in which the visa petition was filed), and Save Our Small and Seasonal Businesses Act of 2006, included in the Defense Authorization Act for FY 2007, Sec. 1074, Public Law 109–364 (making amendment retroactive to October 1, 2006, and extending the exemption through FY 2007). These returning worker provisions expired September 30, 2007. 8 U.S.C. 1184(g)(9) (2007); INA sec. 214(g)(9); see also Sec. 14006, Public Law 108–287, 118 Stat. 951, 1014 (August 6, 2004) (exempting some fish roe occupations from the cap).

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supporting documentation with its application. To ensure the integrity of the process, the Final Rule requires the employer to retain documentation of its recruitment, as well as other documentation specified in the regulations, for 3 years from the date of certification. The employer will be required to provide this documentation in response to a request for additional information by the Certifying Officer (CO) before certification or by ETA pursuant to an audit or in the course of an investigation by the Wage and Hour Division (WHD) after a determination on the application has been issued. The Department has set the document retention requirement at 3 years rather than the proposed 5 years in response to comments received expressing concerns that five years would impose an unnecessary burden on small employers, especially those that are mobile or have a mobile component.

Employers or their authorized representatives (attorneys or agents) will be required to submit applications using a new form designed to demonstrate the employer's compliance with the obligations of the H–2B program. As described in the NPRM and the Final Rule, the application form will collect, in the form of attestations, information that is largely required already by the current H–2B labor certification process. These attestations are required from the employer to ensure adherence to program requirements and to establish accountability. As with recruitment, employers are required to retain records documenting their compliance with all program requirements. An application that is complete will be accepted by the NPC for processing and will undergo final review by the Department.

Based on the Department's experience, and in response to concerns voiced in public comments about the need for H–2B stakeholder guidance and ETA staff training, we have added a transition period to the Final Rule at new § 655.5. Although the Final Rule takes effect 30 days from publication, it phases in implementation based on employment start dates listed in the application. Employers with a date of need on or after October 1, 2009, will be governed by these new regulations. Employers with a date of need on or after the rule's effective date but prior to October 1, 2009, will follow the transitional process described in § 655.5. Additional information about the transition process appears below.

In order to further protect the integrity of the program, specific verification steps, such as verifying the employer's Federal Employer Identification Number (FEIN) to ensure the employer is a bona fide business entity, will occur during processing to ensure the accuracy of the information supplied by the employer. If an application does not appear to be complete or merit approval on its face but requires additional information in order to be adjudicated, the CO will issue a Request for Further Information (RFI), a process the program already employs. After Departmental review, an application will be certified or denied.

As proposed in the NPRM and adopted in the Final Rule, the introduction of new post-adjudication audits will serve, along with WHD investigations, as both a quality control measure and a means of ensuring program compliance. Audits will be conducted on adjudicated applications meeting certain criteria, as well as on randomly-selected applications. In the event of an audit or WHD investigation, employers will be required to provide information supporting the attestations made in the application. Failure to meet the required standards or to provide information in response to an audit or investigation may result in an adverse finding on the application in question, initiate Departmental supervised recruitment in future applications, and penalties.[4]

As stated in the NPRM, the Department expects the modernized processing of applications will yield a reduction in the overall average time needed to process H–2B labor certification applications. This process is expected to lead to greater certainty and predictability for employers by reducing processing times which have exceeded our historical 60-day combined State and Federal processing timeframe.

II. Discussion of Comments on the Proposed Rule

In response to the proposed rule, the Department received 134 comments, of which 88 were unique and another 46 were duplicate form comments. Commenters represented a broad range of constituencies for the H–2B program, including individual employers, agents, industry coalitions and trade groups, advocacy and legal aid organizations, labor unions, a bar association, congressional oversight and authorizing committees, and individual members of the public.

The Department received comments both in support and opposition to the proposed regulation. Comments supported, for example, the anticipated efficiencies of the proposed streamlined process and the potential conversion to electronic filing. Broadly, other commenters opposed the rule because they felt it would undermine program integrity or weaken worker protections and U.S. worker access to job opportunities. Still others believed the rulemaking untimely, given the general weakening of the economy, or that the proposed rule failed to address what they believed to be key problems underlying the program. Several of those problems, such as the annual cap of 66,000 H–2B visas per year, are statutory and cannot be changed through regulation.

In addition, as described in greater detail below, the Department received comments raising a variety of concerns with specific proposals and provisions within the rule. After reviewing those comments thoughtfully and systematically, the Department has modified several provisions and retained others as originally proposed in the NPRM.

Provisions of the NPRM that received comments are discussed below; provisions that were not commented on or revised for technical reasons have been adopted as proposed. The Department has made some technical changes to the regulatory text for clarity and to improve readability, but those changes were not designed to alter the meaning or intent of the regulation.

A. Section 655.2—Territory of Guam

In the Final Rule, the Department has revised the discussion on the authority of the Governor of Guam to clarify that the enforcement of the provisions of the H–2B visa program in Guam resides with the Governor, pursuant to DHS regulations.

B. Section 655.4—Definitions

Of the definitions proposed in the NPRM, comments were received on the definitions for ''agent,'' ''attorney,'' ''employ,'' ''employer,'' ''full time,'' ''representative,'' and ''United States worker.''

The proposed rule defined an agent as ''a legal entity or person which is authorized to act on behalf of the employer for temporary agricultural labor certification purposes, and is not itself an employer as defined in this subpart. The term 'agent' specifically excludes associations or other organizations of employers.'' In response to comments, the Department has corrected the typographical error and replaced ''agricultural'' with ''nonagricultural.''

Some commenters supported the proposed definition of agent with regard to its barring of associations or organizations of employers. One bar

[4] Further sanctions may be imposed by DHS. See 8 U.S.C. 1184(c)(14).

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association commented there had been many abuses by agents in the past, including the unauthorized practice of law, and recommended the Department adopt the definition under DHS regulations at 8 CFR 292.1. We have reviewed the guidelines under that section and concluded it is inappropriate for the labor certification process. The standard set by 8 CFR 292.1 is not tailored to the Department's needs. For example, it includes, among others, law students and ''reputable individuals.'' We have determined such persons may not be appropriate to practice before the Department, in particular for purposes of foreign labor certification activities. That definition was designed to fit the needs of another Federal agency and would eliminate many current individuals who act on behalf of employers in the labor certification process with the Department.

The Department acknowledges that allowing agents who are not attorneys does not fit into the categories recognized by DHS and creates a difference between the two agencies. The Department has permitted agents who do not meet these criteria to appear before it for decades. Agents who are not attorneys have represented claimants before the Department in a wide variety of activities since long before the development of H–2A program, and DOL's programs, where they intersect with those of DHS, permit a broader range of representation. To change such a long-standing practice in the context of this rulemaking would represent a major change in policy that the Department is not prepared to make at this time and was suggested in the NPRM seeking comments. Consequently, the Department has not adopted this recommendation. The Department will maintain its long-standing practice and policy with respect to who may represent employers.

For greater clarity, a definition for ''Administrator, Wage and Hour Division (WHD)'' has been added to the definition section of the regulation to distinguish this official from the ''Administrator, Office of Foreign Labor Certification (OFLC).'' Regulatory text has been added where needed to distinguish between these officials.

The proposed rule defined an attorney as:

> Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, or commonwealth of the U.S., or the District of Columbia, and who is not under suspension or disbarment from practice before any court or before DHS or the U.S. Department of Justice's Executive Office for Immigration Review. Such a person is permitted to act as an attorney or representative for an employer under this part; however, an attorney who acts as a representative must do so only in accordance with the definition of ''representative'' in this section.

In the Final Rule, the Department has reworded the definition to provide more clarity regarding the bodies or courts that could suspend or disbar an attorney. The Department has also revised the final sentence in the definition to read: ''Such a person is permitted to act as an agent or attorney for an employer and/or foreign worker under this subpart.''

In the NPRM, the Department added a definition for ''employ'' and made revisions to the definition of ''employer.'' A trade association suggested that the Department eliminate the definition of ''employ'' but retain the definition of ''employer,'' stating that the definition of ''employ'' adds nothing to clarify status or legal obligations under the H–2B program and insinuates broad legal concepts that add unnecessary confusion. As suggested by commenters, the Department has deleted the definition of ''employ.'' We agree this definition did not provide any additional clarification regarding status or legal obligations related to the H–2B program and may generate some confusion with other statutes.

The Department received comments that the requirement for a Federal Employer Identification Number (FEIN) as incorporated in the definition of ''employer'' could be problematic for some employers. One commenter recommended the use of the DUNS number as a complement to the FEIN. The ''data universal numbering system'' (DUNS), which is operated by Dunn & Bradstreet, issues nine-digit numbers that serve as unique identifiers and are used, in cases, by the Federal Government or individual businesses to track business entities. The Department has decided to retain the definition as proposed, and notes that it is easy for employers to obtain FEINs, which have the advantage of being assigned by the Internal Revenue Service, although in paragraph (1)(iii) of the definition we have added the phrase ''for purposes of the filing of an application,'' to clarify the FEIN is information gathered specifically at the point of application for H–2B labor certification. In paragraph (1)(i) of the definition, the Department has replaced ''may'' with ''must'' to clarify U.S. workers must be referred to a U.S. location for employment.

Commenters supported the inclusion of a definition for ''full time.'' The Department agrees with one commenter's assertion that, consistent with program practice, the definition should not be construed to establish an actual obligation of the number of hours that must be guaranteed each week. The parameters set forth in the definition of ''full time'' refer to the number of hours that are generally perceived to constitute that type of employment, as distinguished from ''part time,'' and are not a requirement that an employer offer a certain number of hours or any other terms or conditions of employment.

The Department has also made changes to the definition of a job contractor for purposes of clarity. The changes make clear that the job contractor, rather than the contractor's client, must control the work of the individual employee.

One trade association commented that to the extent the intent of the rule is to define the respective liability of agents and representatives, it should articulate a clear set of standards for liability. The association found the definition of ''representative'' to be problematic and suggested deleting or revising it. The commenter questioned whether the intent of the regulation was to make the representative liable for any misrepresentations in an attestation made on behalf of an employer. Because of potential overlaps with the definition and role of agent, the commenter also requested the rule clarify if, and under what circumstances, an agent is liable for activities undertaken on behalf of an employer. The commenter recommended the Department delete the provision on the representative's role in the consideration of U.S. workers, questioning what rationale the Department had for dictating under what circumstances an attorney or other person can interview U.S. applicants for the job, and why the Department is ''singling out'' attorneys within the definition.

The Department disagrees with the commenter's interpretation of the liability of an agent or attorney for the acts of the employer. The duties of an agent or attorney may vary widely and not all duties that an agent or attorney undertakes may lead to liability. The Department recognizes, however, that some of an agent's or attorney's duties in representing an employer may put the agent or attorney in the role of the employer and be a basis for assigning liability for the employer's acts or omissions. For example, in undertaking to represent an employer in the H–2A program, an agent or attorney not only performs administrative tasks but also

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submits attestations regarding the employer's obligations under the program. Attorneys and agents undertake a significant duty in making such representations. They are, therefore, responsible for reasonable due diligence in ensuring that employers understand their responsibilities under the program and are prepared to execute those obligations. Agents and attorneys do not themselves make the factual attestations and are not required to have personal knowledge that the attestations they submit are accurate. They are, however, required to inform the employers they represent of the employers' obligations under the program, including the employers' liability for making false attestations, and the prohibition on submitting applications containing attestations they know or should know are false. Failure to perform these responsibilities may render the agent or attorney personally liable for false attestations. The Department has decided to retain the definition as proposed.

One commenter believed that the definition of ''United States worker'' presented in the NPRM was too narrow and that there are other persons in the United States legally entitled to work in addition to those in the categories listed. The Department disagrees and has retained the proposed definition, as it is inclusive and consistent with other provisions of immigration law and regulations that define U.S. workers and persons authorized to work in the U.S.

The Department also added definitions for the terms ''Administrative Law Judge,'' ''Chief Administrative Law Judge,'' ''Department of Homeland Security,'' and ''United States Citizenship and Immigration Services,'' mirroring the definitions in the Department's H–2A Final Rule. These terms and definitions were inadvertently omitted from the proposed rule.

The Department has added a definition of the term ''*strike*'' to the Final Rule. The definition clarifies that the Department will evaluate whether job opportunities are vacant because of a strike, lockout, or work stoppage on an individualized, position-by-position basis.

The Department also has added a definition of ''successor in interest'' to make clear that the Department will consider the facts of each case to determine whether the successor and its agents were personally involved in the violations that led to debarment in determining whether the successor constitutes a ''successor in interest'' for purposes of the rule.

C. Section 655.5—Transition

The Department recognizes that implementing the provisions of the Final Rule may be somewhat difficult for employers who have already filed their applications with the SWA to begin recruiting U.S. workers. Even though the NPRM put current and future users of H–2B workers on notice regarding the Department's intention to publish a Final Rule, the rule represents a departure from the current administration of the program. H–2B employers, including those who expressed concern regarding the time frame for a Final Rule, will require some period of time to prepare and adjust their requests for nonimmigrant workers to perform temporary or seasonal nonagricultural services or labor, particularly in tandem with changes to DHS processing of cases, and understand how to complete the Department's new forms for requesting a prevailing wage and applying for temporary employment certification.

In response to comments, the Department is accordingly adopting a transition period, outlined in new § 655.5 (previously reserved). Employers filing applications for H–2B workers on or after the effective date of these regulations where the date of need for the services or labor to be performed is before October 1, 2009, will be required to obtain a prevailing wage determination from the SWA serving the area of intended employment, rather than the NPC, but must meet all of the other pre-filing recruitment requirements outlined in this regulation before an *Application for Temporary Employment Certification* can be filed with the NPC. However, employers filing applications on or after the effective date of these regulations where the date of need for H–2B workers is on or after October 1, 2009, must obtain a prevailing wage determination from the NPC and comply with all of the obligations and assurances detailed in this subpart. The SWAs will no longer accept for processing applications filed by employers for H–2B workers on or after the effective date of these regulations. Rather, the SWAs will assist the Department's transition efforts by issuing prevailing wage determinations where the employer's need for H–2B workers is prior to October 1, 2009. This will allow the rest of the pre-filing recruitment requirements, obligations and assurances to become effective immediately. During this transition period, the Department expects that SWAs will continue to allow employers to file prevailing wage requests on forms they currently use in other visa programs in order to minimize any confusion and expedite the prevailing wage review process.

In order to complete the processing of applications filed with the SWAs prior to the effective date of these regulations, the transition procedures require the SWAs to continue to process all active applications under the former regulations and transmit all completed applications to the NPC for review and issuance of a final determination. In circumstances where the SWA has already transmitted the completed application to the NPC, the NPC will complete its review in accord with the former regulations and issue a final determination. OFLC intends to conduct several national stakeholder briefings to familiarize program users with these requirements.

D. Section 655.6—Temporary Need

Congress mandated the H–2B program be used to fill only the temporary needs of employers where no unemployed U.S. workers capable of performing the work can be found. 8 U.S.C. 1101(a)(15)(H)(ii)(b). Therefore, as explained in the NPRM, the Department will continue to determine whether the employer has demonstrated that it has a need for foreign labor that cannot be met by U.S. workers and that the need is temporary in nature.

The controlling factor continues to be the employer's temporary need and not the nature of the job duties. *Matter of Artee Corp.*, 18 I&N Dec. 366 (Comm. 1982); *cf. Global Horizons, Inc.* v. *DOL*, 2007–TLC–1 (Nov. 30, 2006) (upholding the Department's position that a failure to prove a specific temporary need precludes acceptance of temporary H–2A application).

DHS regulations at 8 CFR 214.2(h)(6)(ii)(B) provide that a petitioner's need be one of the following: (1) A one-time occurrence, in which an employer demonstrates it has not had a need in the past for the labor or service and will not need it in the future, but needs it at the present time; (2) a seasonal need, in which the employer establishes that the service or labor is recurring and is traditionally tied to a season of the year; (3) a peakload need, in which the employer needs to supplement its permanent staff on a temporary basis due to a short-term demand; or (4) an intermittent need, in which the employer demonstrates it occasionally or intermittently needs temporary workers to perform services or labor for short periods.

As proposed in the NPRM, for purposes of a one-time occurrence, under this Final Rule the Department will consider a position to be temporary

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as long as the employer's need for the duties to be performed is temporary or finite, regardless of whether the underlying job is temporary or permanent in nature, and as long as that temporary need—as demonstrated by the employer's attestations, temporary need narrative, and other relevant information—is less than 3 consecutive years. This interpretation is consistent with the rule proposed by USCIS on August 20, 2008, 73 FR 49109, which is being finalized in conjunction with this regulation.

Consistent with the final USCIS regulations, the Department proposed—and the Final Rule permits—a one-time occurrence to include one-time temporary events that have created the need for temporary workers for up to 3 years. The Final Rule requires those employers to request annual labor certifications based on new tests of the U.S. labor market. As stated in the NPRM, we believe this is the best method by which to ensure U.S. worker access to these job opportunities, but recognize that an employer's need for workers to fill positions could, in some cases, last more than one year.

The Department received a number of comments in response to the proposed expansion of the one-time occurrence definition. A job contractor commented that it did not believe the Department needed to specifically authorize the possibility of a 3-year, one-time need, since it could be inferred as already having the authority to certify such situations as long as the employer's situation as described in the application was compelling. However, the commenter believed that establishing a maximum 3-year stay may be limiting under certain circumstances such as rebuilding after natural disasters. It also creates confusion and complexity for the employer applicants who may not understand the distinction between a 3-year labor need broadly speaking and a one-time occurrence. Under the NPRM and this Final Rule, the extension of the temporary need definition from 1 year or less to potentially up to 3 years does not apply to all categories of need. The Department believes employers should understand that an H–2B visa will only be granted for longer than 1 year in the case of a one-time occurrence.

Neither the Department nor DHS is changing the long-established definition of one-time occurrence which encompasses both unique non-recurring situations but also any ''temporary event of a short duration [that] has created the need for a temporary worker.'' For example, an employer could utilize the H–2B program to secure a worker to replace a permanent employee who was injured. Further, if that permanent employee, upon returning to work, subsequently suffered another injury, the same employer could utilize the H–2B program again to replace the injured employee on the basis of a one-time occurrence. A one-time occurrence might also arise when a specific project creates a need for additional workers over and above an employer's normal workforce. For example, if a shipbuilder got a contract to build a ship that was over and above its normal workload, that might be a one-time occurrence. However, the Department would not consider it a one-time occurrence if the same employer filed serial requests for H–2B workers for each ship it built.

The NPRM required that employers request recertification annually where their one-time occurrence extends beyond 1 year. The Department agrees with public comments that, where the need is one-time only, the added burden and expense of an additional labor market test does not make sense where the total period of need is less than 18 months. Therefore, an employer with a one-time need that has been approved for more than 1 year but less than 18 months will receive a labor certification covering the entire period of need, and will not be required to conduct another labor market test for the portion of time beyond 12 months. An employer requesting certification based on a one-time occurrence it expects to last 18 months or longer, however, will be required to conduct one or more additional labor market tests.

A number of individual small business commenters were concerned that the proposed changes went beyond the original intent of the program and would leave the seasonal and peakload businesses for which it was intended without adequate numbers of visas. They raised longstanding concerns with what many believe is an arbitrarily low visa cap and the strong competition among industries for the limited visas. These commenters posited that expanding the term to 3 years would open up the program to a wider number of industries, further increasing competition for visas and effectively crowding out those employers for which these commenters believe the visa was intended. One small employer thought it would allow high tech businesses to participate in the H–2B program to use up all the visas and leave other employers with real peakload needs wanting. This employer also thought it would create a security threat by letting visas be sold on the black market. SWAs commenting also questioned the change in definition as being what they described as a significant program change. While most employers of highly skilled workers currently avail themselves of the H–1B visa program, they are not precluded from seeking, as an alternative, H–2B nonimmigrant status, if they otherwise meet the requirements of the H–2B program. None of the changes proposed by the Department would make the H–2B visa program any more or less available to highly skilled workers or provide employers who might wish to use such persons as H–2B workers with any greater advantage than other H–2B employers. In addition, with respect to visas issued by the State Department based on an approved DHS petition, the Department is unaware of any contemplated change in this or the DHS rulemaking that would create an automatic 3-year H–2B visa. Depending on reciprocity schedules, under current State Department regulations, an initial H–2B visa is generally issued for a year or less, or for the validity period of the approved H–2B petition, but can be extended for additional periods of time to correspond to any period of time DHS might extend such H–2B petition. Nothing in this rule would change that.

Several Members of Congress submitted separate comments on behalf of congressional committees. One U.S. Senator opposed the expansion of the definition of a one-time occurrence as contrary to the 1987 legal opinion of the Department of Justice, Office of the Legal Counsel. The comment stated that the Department of Justice considered various views of the proposed construction of ''temporarily'' in the context of the H–2A visa program and declined to define temporary as up to 3 years. According to the comment, the Justice opinion concluded that the statutory text, Congressional intent, and sound policy compelled a definition of temporary to be 1 year or less for all H–2 classifications. The comment also pointed to the Department's and DHS's proposed rules on the H–2A program that retained the one year or less definition of temporary (absent extraordinary circumstances) as evidence that the current construction should be retained. The commenter was concerned that the regulation would lead to abuse of the H–2B program by encouraging some employers who want to take advantage of the program to characterize long-term or permanent jobs as temporary. The commenter believed that these longer-term jobs should be filled by U.S. workers and, if none are available, only then through the employment-based immigration visa process.

Several labor unions also commented on this provision, largely in opposition.

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One believed the proposal to be at odds with years of precedent and immigration and workforce policy, as well as current law. The commenter asserted that expanding the definition conflicts with DHS regulations, runs counter to the purpose of the H–2B program, and undermines the Congressional mandate to protect U.S. workers. Another labor organization contended that if an employer's need is longer than a short duration it is not a temporary need, and a period longer than a year is not of short duration. This commenter opposed the inclusion of this provision and urged the Department to withdraw this proposed change. Another union proposed temporary employment be limited to six months and ''certainly no longer than [1] year.'' Another labor organization opposing the proposed provision did not believe that the requirement that employers retest the labor market each year represented a meaningful safeguard for domestic workers, particularly if the Department were to adopt an attestation-based system where recruitment of U.S. workers is not actively supervised by the SWAs. It recommended the H–2B program be made consistent with the H–2A program concerning the definition of temporary.

Several worker advocacy organizations also opposed this provision, indicating their belief it was not in keeping with the objectives of the program and would open most construction jobs in the country to be potentially part of the program. An individual employer commented that seasonal should mean 8 months or less so as to not compete with local permanent jobs.

A law firm commented that the proposed changes went beyond what it believed Congress intended and claimed anecdotally it would directly and proportionally adversely affect the industries for which it felt the program was designed. It believed that the problems with the program are more associated with the delays and uncertainties related to the inadequate number of visas as well as inadequate budget and staffing at all levels of the application process. The commenter recommended these problems would be best addressed by Congress and by increased fees at each step. It also believed that this expansion of the definition would encourage additional industries, most notably the information technology industry, to participate and to put undue pressure on an already pressured program.

Conversely, several employer and trade associations supported the expanded provision. One employer association welcomed the change as long in coming. Another supported it as a means to provide greater flexibility across industries and regions. Still another recommended that the 3-year provision be expanded beyond ''one-time need'' to the other three categories of temporary need.

A legal association supported the proposal to expand temporary need but suggested the Department rethink the requirement that employers retest the market each year. According to the comment, requiring employers to get a new prevailing wage and perform additional recruitment and filing each year would increase workload for the Department, increase costs to employers, and fails to recognize the advantages of the employer having the availability of trained, experienced workers. It recommended that a reasonable alternative would be for employers to check the prevailing wage determination annually to ensure that the workers are being paid the appropriate wage but not to have to undertake further recruitment efforts.

Many SWAs commented on the proposed rule. On the issue of temporariness, one SWA stated its support for retesting the labor market each year. An employer association supported retesting the labor market each year only in situations where there was a significant time period beyond the ordinary 10-month period left on the labor certification. It believed that this requirement would be too onerous on employers if applied to jobs lasting only 18 months, for example.

Finally, a worker advocacy group recommended the addition of a process either through the Department or the SWAs under which workers could challenge the determination that the jobs are temporary.

The Department defers to the Department of Homeland Security and will use their definition of temporary need as published in their Final Rule on H–2B. Currently, that definition, including the four categories of need, appears at 8 CFR 214.2(h)(6)(ii), and requires the employer show extraordinary circumstances in order to establish a need for longer than 1 year. DHS's Final Rule amends 8 CFR 214.2(h)(6)(ii)(B) to eliminate the requirement for extraordinary circumstances and clarify that a temporary need is one that ends in the near, definable future, which in the case of a one-time occurrence could last longer than 1 year and up to 3 years. Accordingly, we have deleted the definitions we had in our regulatory text in the NPRM and instead provided a reference to the DHS regulations.

E. Section 655.10—Determination of Prevailing Wage for Labor Certification Purposes

1. Federalizing Prevailing Wage Determinations

The Department proposed a new reengineered system to federalize the issuance of prevailing wages, under which employers would obtain the prevailing wage for the job opportunity directly from the NPC. As proposed, the new federalized process would allow employers to file prevailing wage requests with the appropriate NPC—designated as the Chicago NPC for prevailing wage requests—no more than 90 days before the start of recruitment. The proposed rule also clarified the validity period for wage determinations. Based on annual updates to the Occupational Employment Survey (OES) database, and depending on the time of year that the prevailing wage determination (PWD) was obtained from the Department, relative to the date of the most recent update, the wage determination provided could be valid from several months up to 1 year. The NPRM sought comments from employers who had utilized the program in the past on the efficacy of this proposed action.

The Department received numerous comments on this new process. After consideration of all comments, we have decided to implement the PWD process as proposed in the NPRM. However, to reflect the transition from the current system to the new, the Final Rule now clarifies that employers with a date of need on or after October 1, 2009, must seek a PWD from the Chicago NPC prior to beginning recruitment, while employers with prior dates of need will continue to seek PWDs from the SWAs. However, consistent with the Department's intent to immediately implement the Final Rule, and as set forth in § 655.5 of this Final Rule, SWAs will be required to follow the procedures instituted under § 655.10 for any prevailing wage determination requests submitted on or after the date this Final Rule takes effect.

Overwhelmingly, commenters were concerned about the capability of the NPC to provide timely and accurate prevailing wage determinations. Commenters supporting the new centralized process included trade associations, employer-based organizations, businesses, and individual professionals with significant experience in the foreign labor certification field. Of those, some requested reassurance that the Department would allocate sufficient resources and training to the PWD

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activity at the NPCs to prevent processing delays. They urged the Department to institute mechanisms to ensure consistency between NPCs and across job titles, descriptions, and requirements; and to offer comprehensive training to employers, attorneys, and agents prior to implementation.

Many commenters, including labor unions, advocacy organizations, academic institutions, and SWAs expressed concern that the NPC staff would not possess the same level of expertise, particularly locally-oriented expertise, required to provide accurate, context-appropriate prevailing wage determinations as the SWA staff. They believed this could lead to reduced scrutiny, inaccuracy, backlogs, and delays, and adversely affect U.S. worker wages and job opportunities. The SWAs that commented on this issue were concerned that transferring the determination to the NPCs would also degrade customer service, and some questioned whether OES really keeps pace with changes in local standards. One state has had success with its own system and recommended the Department replicate that system on a national scale.

One advocacy organization expressed the view that centralization would be particularly harmful to amusement park industry workers, which currently use a weekly rate rather than an hourly rate. One employer was concerned that NPC-issued PWDs would be inaccurate and biased in favor of higher wages, raising program costs. Several commenters opposed PWD federalization in its entirety and proposed full funding of SWAs for these activities. In the alternative, they recommended that, if the Department were to move forward, it hire staff with strong PWD backgrounds and create a separate PWD unit within the NPC.

To guard against potential delays, some commenters requested that a timeframe for the process be established, or recommended adjustments to the process as proposed. A small business coalition recommended the Department permit employers to recruit without first getting the PWD from the NPC, so long as the employer accompanied its H–2B application with a printout of a current and appropriate wage from O*NET, which is the Internet wage survey the Department updates on an annual basis. A large trade association made a similar recommendation, with a proviso that if the employer has not used the correct wage from the database, it would be required to restart the application process after obtaining a PWD from the NPC. The Department also received a suggestion that employers be allowed to get the OES rate themselves unless they want a safe harbor which would be provided by getting the wage rate from the NPC or SWA. Another commenter was concerned that employer surveys do not provide the same safe harbor as SWA determinations and another commenter was concerned that eliminating the SWA from the process meant that the safe harbor would also be eliminated.

This Final Rule establishes rules under which employers may provide their own information. Apart from those instances, the Department believes there is greater value and potential for greater consistency and efficiency in having the NPC provide the wage. The Department believes that continued oversight at the Federal level is essential to ensuring that the job opportunities are advertised and paid at the required wage and therefore does not adversely affect U.S. worker wages.

A number of commenters urged that within this new process, the Department provide a vehicle for communication between program users and NPC staff to resolve disagreements on the job opportunity or wage level and educate program users on the Department's methodology. One trade association recommended the Department disclose its methodology for a PWD upon request from an employer with sufficient time to avoid delaying the application. Other organizations conditioned their support of the new process specifically on the creation of a mechanism for communicating or interacting with the public. Some commenters observed that the appeal process for wage determinations can be quite lengthy, and not a viable option in the context of H–2B or H–1B, where timing is critical; those commenters were particularly concerned that without such communication the timeframe for resolving any prevailing wage determination issues would be lengthened.

The Department recognizes its responsibility to provide an efficient process for prevailing wage determinations. Now that the backlog in the permanent labor program has been eliminated, resources are being redirected to other OFLC priorities, including offsetting some costs associated with the re-engineering of the temporary labor certification programs. As the new program design is implemented, we will allocate available appropriated resources to key activities, including the PWD function. As part of this process, the Department will focus on identifying areas where improvements could be made, including developing and providing needed training. The Department will also look to its stakeholder community for input and suggestions for improvements.

The Department will provide stakeholder briefings on H–2B Final Rule, is updating its Prevailing Wage Guidance for agricultural and nonagricultural programs, and will provide additional training and educational material as appropriate.

The Department will, to the extent feasible and within available resources, seek to hire qualified staff, will train staff already on board, and if appropriate, will consider establishing a separate PWD unit at the Chicago NPC. In addition, the Department will strive to provide timely, appropriate guidance to program users and SWAs to ensure a successful transition and implementation. We remain confident that federalizing the prevailing wage application component will instill a high level of efficiency and consistency in the process which has been a past problem. This increased efficiency and consistency will help ensure more accurate wage determinations, which result in improved protections for U.S. workers.

As stated in the NPRM, the Department strongly believes that shifting wage determination activities to NPC staff will reduce the risk of job misclassification because of centralized staff experience, thereby not only strengthening program integrity, but also ensuring consistency in classification across States, resulting in improved protections for U.S. workers.

As discussed in the NPRM, the Department has received numerous reports that in cases where job descriptions are complex and contain more than one different and definable job opportunity, some SWAs have made inconsistent classifications that resulted in inconsistent PWDs. Furthermore, where H–2B workers are required to work in several different geographic areas that may be in the jurisdiction of several SWAs (examples include the New York, New Jersey, Connecticut ''Tri-state Region'' or the Washington, DC-Maryland-Virginia metropolitan area), questions have arisen about where to file a prevailing wage request and how that wage should be determined. Utilizing a federalized system will alleviate such confusion. Moreover, the Department's current prevailing wage guidance requires SWAs refer—with certain exceptions—to federally provided OES data to determine the appropriate prevailing wage for jobs. Therefore, the NPC can provide the data

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and there is no requirement for any local input or expertise.

The Department understands the desire for a fixed timeframe within which an employer will receive a prevailing wage determination. The timeframe depends on a number of factors, including the volume and timing of requests received, the method by which the requests are received (whether paper or electronic), the complexity of the request, and the resources available. Nevertheless, the Department has committed as part of the Final Rule to processing employer requests for prevailing wage determinations within 30 days of receipt.

However, the Department acknowledges that this process of obtaining a prevailing wage may endure a period of processing time fluctuation as a result of the transition. We therefore recommend that, as an initial matter, employers filing H–2B applications should file a Prevailing Wage Determination Request, Form 9141, with the NPC at least 60 days in advance of their initial recruitment efforts. The Department will make every effort to process these requests within the 60 days. The Department will analyze its experience with application patterns and workload, as the NPCs take on the prevailing wage determinations in the other programs handled by OFLC. During that time, the Department will review not only the level of requests it receives, but the information contained in the requests and whether the information received is typically sufficient to be able to generate accurate prevailing wages, or whether employers are providing deficient information. The Department's intent is to substantially reduce the response time for prevailing wage determinations and to design procedures, based upon the results of its analyses to provide employers with greater certainty in their expectation of response time from the NPC.

One commenter thought the prevailing wages would be based on a national average as a result of the centralization in the NPC. That commenter misunderstood the proposal; the wages will continue to be based on applicable data for the area of intended employment. The Department did not propose any change to the methodology used to determine the wage rates under the H–2B program and continues to support the use of OES data as the basis for the prevailing wage determinations. The OES program produces occupational estimates by geographic area and by industry. Estimates based on geographic areas are available at the national, State, and metropolitan area levels. Industry estimates are available for over 450 industry classifications at the national level. The industry classifications correspond to the sector, 3, 4, and 5-digit North American Industry Classification System industrial groups. The OES program also provides data at the substate level in addition to the State level. Data is compiled for each metropolitan statistical area and for additional areas that completely cover the balance of each state. It also offers the ability to establish four wage-level benchmarks commonly associated with the concepts of experience, skill, responsibility and difficulty variations within each occupation.

In the Final Rule, the Department has revised § 655.10(d) to clarify that where the duration of a job opportunity is less than one year or less, the prevailing wage determination will be valid for the duration of the job opportunity.

2. Automating the PWD Process

Initially the PWD process will be a manual process. It is the Department's goal to allow the PWD activity eventually to be conducted electronically between the NPC and the employer. The Department sought comment from potential program users on all aspects of its PWD proposal, but in particular regarding the required use of an online prevailing wage system and corresponding form for interaction with the NPC.

The Department received several comments in support of an electronic process. One commenter suggested the centralization of prevailing wage determinations be delayed until the electronic process was available. Another commenter suggested the electronic process should not be mandatory for all employers, since not all employers have access to the Internet. One commenter expressed concern that employers would use an electronic system to ''shop'' for occupations with the lowest wages to use in describing their job opportunities. The Department disagrees with the suggestion we delay implementation of the prevailing wage function until an electronic version is available. If and when the Department implements an electronic application system, it customarily makes special provisions for those who cannot access the electronic system, and advises the public accordingly. The Department appreciates the input on an electronic system and will take the comments into consideration should a new system be proposed.

3. Extending the PWD Model to PERM, H–1B/H–1B1, E–3, and H–1C Programs

The Department received comments on its proposal to extend the federalized wage determination process to other permanent and temporary worker programs. Some believed that the Department should not include other programs in an H–2B rulemaking. One commenter suggested that the process should not be extended until the new system has proven to be workable. Another commenter was concerned that extending the process to these other programs would result in the total elimination of the States when enforcement capacity is best kept at the State level. One commenter who supported the federalization mentioned that the assignment of occupational codes from the Standard Occupational Classification (SOC) system is also key and should be reviewed. The SOC system is used by many Federal agencies to classify workers into occupational categories.

a. H–1B and PERM Programs

As proposed in the NPRM, for consistency and greater efficiency across non-agricultural programs, this Final Rule extends the new prevailing wage request processing model to the permanent labor certification program, as well as to the H–1B, H–1B1, H–1C and E–3 specialty occupation nonimmigrant programs. As stated in the NPRM, the new process will not alter the substantive requirements of foreign labor certification programs, and we anticipate that, at least in the foreseeable future, the methodology for determining appropriate wage rates will remain much the same as it stands today. Our intent is to modernize, centralize, and make the mechanics and analysis behind wage determination more consistent. Much as the SWAs do now, the NPCs will evaluate the particulars of the employer's job offer, such as the job duties and requirements for the position and the geographic area in which the job is located, to arrive at the correct PWD based on OES data, CBA rates, employer-provided surveys, or other appropriate information. The Department's current prevailing wage guidance for non-agricultural foreign labor certification programs has been in effect since 2005 and is posted in the form of a memorandum on the OFLC Web site. In the near term, the Department will update and formalize its guidance for making prevailing wage determinations to maintain some existing procedures and revise others such as to conform to these regulations. As program experience administering

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the PWD process grows, the Department may revise its guidance to explain and assist employers in navigating the process.

To implement and standardize the new process, ETA has developed a new standard Prevailing Wage Determination Request (PWDR) form for employers to use in requesting the applicable wage regardless of program or job classification. As stated in the NPRM, the Department is considering means by which eventually such requests could be submitted, and a prevailing wage provided, electronically.

For purposes of the permanent labor certification (PERM) program, this rule amends the regulations at 20 CFR part 656 to reflect the transfer of prevailing wage determination functions from the SWAs to the NPCs and makes final the technical changes described in the proposed rule.

For purposes of the H–1B program, this rule amends the regulations at 20 CFR part 655 to reflect the transfer of PWD functions from the SWAs to the NPCs and makes final the technical changes described in the proposed rule. Department regulations covering the H–1B program also govern the H–1B1 and E–3 programs, which both require the filing and approval of a ''Labor Condition Application,'' or LCA, rather than a ''labor certification application.'' The Final Rule also amends § 655.1112 governing the H–1C program, to provide for the federalization of prevailing wage determinations.

As described in the NPRM and included in the Final Rule, under the new process, for purposes of H–2B job classifications, NPC staff will follow the requirements outlined under new §§ 655.10 and 655.11 when reviewing each position and determining the appropriate wage rate. These new regulatory sections are consistent with existing provisions at 20 CFR 656.40 and the Department's May 2005 Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, but would supersede current regulations and guidance for the H–2B program to the extent there are any perceived inconsistencies.

These new regulatory sections supersede current regulations and guidelines for all prevailing wage requests in the H–1B, H–1B1, E–3 and PERM programs made on or after January 1, 2010, and for H–1C prevailing wage requests made on or after the effective date of this Final Rule. The Department appreciates that employers will require some time to become accustomed to the new method of securing a prevailing wage determination. The SWAs will also need a time of transition to complete pending prevailing wage determination requests, just as the NPC will require a corresponding time to fully implement the new form and process. The Department believes keeping PWD activities with the SWAs for PERM, H–1B and related programs until January 2010 will facilitate the transition of Federal staff and program users to complete federalization of prevailing wage determinations. Therefore, the Chicago NPC will begin to provide prevailing wage determinations in programs other than H–2B and H–1C on January 1, 2010. Given the limited size of the H–1C program, and the possibility it may sunset in 2009, the Department believes it can begin processing prevailing wage determination requests shortly after this Final Rule takes effect. Prevailing wage requests under the H–1C program made prior to the effective date of this Final Rule will be governed by the Department's current procedures and its 2005 guidance. Any prevailing wage requests for other non-H–2B programs governed by this regulation made prior to January 1, 2010, must be submitted to the SWA having jurisdiction over the area of intended employment and will be valid for the period listed on the determination issued by the SWA. Prevailing wage determinations issued prior to January 1, 2010, by a SWA will be valid after October 1, 2010, if so determined by the SWA issuing them, and fully enforceable as determined by the applicable regulation (H–1B, H–1B1, E–3, H–1C or PERM).

b. H–1C Program

In the same way that the Department is in this Final Rule establishing national processing for the obtaining of prevailing wages through its National Processing Center for both H–1B (and by extension H–1B1 and E–3) and PERM, it will also amend its H–1C regulations to incorporate the same changes. This program, whose prevailing wage processing amendments were inadvertently removed from the NPRM, previously lapsed, but was reauthorized in December 2006, and is scheduled to sunset again in December 2009.[5] The Department has determined that it is administratively prudent to move the prevailing wage determination function to the Chicago NPC in the H–1C program as in the other programs. This affects a very small number of employers (only 14 hospitals are eligible to participate) and is consistent with the reasoning for federalizing prevailing wage determinations that applies to the other programs. As stated in the preamble to the NPRM, the conversion to a federalized prevailing wage system has no effect on the substantive requirements of foreign labor certification programs or on the methodology by which the NPC will determine the prevailing wage for workers to be admitted under any of the applicable visas. This applies equally to H–1C. In fact, the majority of prevailing wage determinations in the H–1C program are based on the wages contained in collective bargaining agreements, making the need to obtain a wage determination by the NPC frequently unnecessary. Facilities may begin submitting H–1C prevailing wage requests to the Chicago NPC on the date this Final Rule takes effect.

4. Section 655.10(b)(3)—Paying the Highest Prevailing Wage Across MSAs

As proposed in the NPRM, this Final Rule requires that, where a job opportunity involves multiple worksites in areas of intended employment and cross multiple Metropolitan Statistical Areas (MSAs) in multiple counties or States with different prevailing wage rates, an employer must pay the highest applicable wage rate of the applicable MSAs throughout the term of employment. The U.S. worker responding to recruitment and the foreign H–2B worker are entitled to know and rely on the wage to be paid for the entire period of temporary employment.

The Department received comments on this requirement, both in support and in opposition. One trade association supported the proposal, concluding it would strengthen protections for U.S. workers while not adding burden to its members, whom it said already paid the highest prevailing wage rate in every MSA. A number of other employer associations opposed the proposal, stating it was arbitrary, unfair, would artificially increase costs for H–2B labor, and would undermine the basic decision-making of many employers, who locate in areas with low labor costs in order to save money.

The Department has decided to retain the requirement that employers advertise and pay the highest of the applicable prevailing wages when the job opportunity involves multiple worksites across multiple MSAs with varying prevailing wage rates for that occupation and at those worksites. This provision is retained because it provides greater consistency and predictability

[5] The Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005, Public Law 109–423, took effect December 20, 2006. The Act reauthorized the H–1C nonimmigrant nurses program, a program originally created by the Nursing Relief for Disadvantaged Areas Act of 1999.

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for both employers and the workers and ensures that U.S. workers who are interested in the job opportunity would not be deterred due to varying wage rates. It also ensures greater protection for workers against possible wage manipulation by unscrupulous employers.

5. General Process or Data Integrity Concerns

Some commenters raised concerns about the integrity of the data currently being used for prevailing wage determinations and recommended changes to the OES survey itself. Others commented on different aspects of the methodology and procedures. One commenter suggested that the Department set the minimum wage rate for H–2B workers at or above the wage (presumably the adverse effect wage rate) for H–2A workers in that State. Another commenter suggested the Department require employers in the construction industry to use, first, the Davis-Bacon Act (DBA) survey wage rate; second, if no DBA wage existed, the collective bargaining agreement rate; and as a last resort, the OES rate, if neither of the other rates was available. Another commenter suggested that the provision regarding when an employer may utilize a wage determination under the Davis-Bacon Act also cover when an employer can choose not to utilize that wage rate. One commenter believed that the proposal did not correct what they claimed was a problem with the Department's Bureau of Labor Statistics (BLS) wage rates being 2 years out of date and also expressed concerns that piece rate policies have led to depressed wages and suggested that the Department should require advance written disclosure of piece rates on the job orders.

The Department appreciates these suggestions and concerns. However, the Department did not propose changes to the sources of data to be used for prevailing wage determinations and, therefore, these comments are beyond the scope of the current rulemaking. The Department notes that the proposed procedures that were retained in the Final Rule already cover the use of wages specified in a collective bargaining agreement. Similarly, these procedures provide that an employer may use the Davis-Bacon wage and that such use is at the employer's option unless the employer is a Federal construction contractor. There is a similar provision that applies to Service Contract Act wage rates.

Some commenters suggested that employers should not be allowed to submit their own wage surveys. The Department, however, believes that employers should continue to have the flexibility to submit pertinent wage information and therefore, the Final Rule continues the Department's policy of permitting employers to provide an independent wage survey under certain guidelines. It also continues to provide for an appeal process in the event of a dispute over the applicable prevailing wage.

F. Section 655.15—Employer Conducted Pre-Filing Recruitment

Under the Final Rule, employers will continue to be required to test the labor market for qualified U.S. workers at prevailing wages no more than 120 days before the date the work must begin (''date of need''). This will ensure the jobs are made available to U.S. workers most likely to qualify for the positions in question. As described in the NPRM and finalized under this rule, U.S. worker recruitment will continue to consist of prescribed steps designed to reflect what the Department has determined, based on program experience, are most appropriate to test the labor market. These steps are similar to those required under the current H–2B program. However, application processing and consistency will be improved by having employers conduct the recruitment before forwarding the recruitment report and application to the Department for review. Additionally, we will continue the Department's current requirement that recruitment take place no more than 120 days before the date of need to ensure jobs are advertised to U.S. workers with adequate notice.

This Final Rule retains the requirement in the proposal that employer recruitment efforts be documented and retained for production to the Department or other Federal agencies. As stated in the NPRM, the recruitment documentation requirements will be satisfied by copies of the pages containing the advertisement from the newspapers in which the job opportunity appeared and, if appropriate, correspondence signed by the employer demonstrating that labor or trade organizations were contacted. Documentation of a SWA job order will be satisfied by copies of the job order downloaded from the Internet showing the beginning and the ending date of the posting or a copy of the job order provided by the SWA with the dates of posting listed, or other proof of publication from the SWA containing the text of the job order. However, in response to public comments, the Final Rule requires record retention for 3 years, which is 2 years less than the Department originally proposed.

As proposed, the Final Rule permits employers to place their own newspaper advertisements. The Department has revised the proposed requirement of three advertisements and will in this Final Rule revert to the current requirement of two advertisements. The Department, however, has maintained in this Final Rule the proposed requirement that one of the two advertisements must be placed in a Sunday edition of a newspaper closest to the area of intended employment. The Department has also added a clarification that the newspaper chosen needs to have a reasonable distribution.

The Department received several comments that supported the shift to a pre-filing recruitment model. One of these commenters recommended that the job order process should also be centralized or that timelines for posting job orders should be established and SWAs should have staff dedicated to working with H–2B job orders. The centralization of the job order process was not envisioned by this regulation, and would require separate rulemaking. Moreover, posting job orders and referring individuals to those jobs is a core function of the SWAs and one that remains at the local level in this rule. Additionally, the Department believes the SWAs must have the flexibility to assign their limited resources based on needs and priorities and declines to establish a timeline for SWAs to post job orders.

The Department received a number of comments about the proposed timeframe for pre-filing recruitment; some opposing recruitment so far in advance of the date of need and others suggesting the timeframe be lengthened. The commenters who were opposed to the proposal generally believed that U.S. workers would not be able or willing to commit to temporary jobs so far ahead of the actual start date or would indicate they would accept the jobs but then fail to report on the actual start date. These commenters believed this would result in delays, additional costs to employers and the Department, and the late arrival of H–2B workers because new applications would have to be filed. One commenter opposed the early pre-filing recruitment and believed the result would be a false indication that no U.S. workers were available. Another commenter opined that employer compliance would be reduced due to the pre-filing recruitment. One SWA recommended that the period for recruitment be shortened because 120 days in advance is not suitable when serious job seekers are looking for

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temporary employment and stating their view that those U.S. workers who apply are rarely offered employment because the employer knows foreign workers are available. The commenter was further concerned that the U.S. workers who are hired that far in advance of the date of need are not reliable and will not report for work. In contrast, two commenters suggested a longer recruitment period—one recommended 180 days in advance of the date of need—to provide employers with greater flexibility. The Department declines to extend the period of recruitment to 180 days prior to the date of need because we do not believe recruitment that far in advance would be effective given the concerns expressed by some of the commenters and our own extensive program experience.

One commenter was concerned that the proposed pre-filing recruitment period, when combined with a prevailing wage determination request submission 90 days prior to the recruitment start date, advanced the timeframe for beginning the application to more than 6 months prior to the date of need. This commenter stated this was not characteristic of a user-friendly program. The Department understands that there are trade-offs when designing a new system. In this case, in order to provide the employer more flexibility and eliminate an extra layer of government bureaucracy, the process must begin earlier.

One commenter was concerned about the validity of the pre-filing recruitment when, after completing the recruitment and submitting the application, the employer's needs change and it requires a modification to a term or condition on the application. This commenter questioned whether the recruitment would be considered a valid test of the labor market since, unlike the current process, the underlying application and job order will not have been approved prior to the recruitment effort. The commenter recommended that the Department provide in the regulation that as long as the recruitment was conducted based on the job description and offered wage as determined by the CO and the job order was accepted by the SWA, the recruitment would be considered valid irrespective of any required modifications. It is unclear what kind of modifications would be warranted and, therefore, the Department cannot respond directly to this comment. For example, if a timely-filed application requires a technical modification, but the modification cures the defect and allows the application to resume processing, then the recruitment will continue to be valid for as long as the petition is pending at the NPC and valid for purposes of a final determination. However, if an employer's needs change in a way that requires a substantive correction in one or more key terms and conditions of employment—for example, wages or occupation—the NPC will require that the position be readvertised. Changes in terms of employment contained in the underlying job offer will trigger a requirement for a new labor market test.

The Department's requirement that the employer submit an acceptable job order to the appropriate SWA for posting mandates that the employer complete and submit information regarding all of the job duties and terms and conditions of the job offer: The job duties, the minimum qualifications required for the position (if any), any special requirements, and the rate of pay. This information is normally submitted to the SWA for acceptance prior to the employer's recruitment; as long as the employer's advertisements do not depart from the descriptions contained in the accepted job order, they will be deemed acceptable by the Department. At the same time, the SWA will be the arbiter of the job's acceptability for the job order, and as the job order must be accepted prior to the commencing of recruitment in this Final Rule, all recruitment must reflect the job as accepted by the SWA as well.

The Department has decided to eliminate the document retention requirement in its entirety with respect to applications not certified; therefore, any employer whose application has been denied can discard the records relevant to the denied application immediately upon receiving the denial notice or whenever the decision becomes final if the employer appeals the decision. If the denial is overturned, the application becomes subject to the document retention requirements for approved cases. The Department determined that a document retention requirement in such cases serves no governmental purpose and is unnecessarily burdensome on employers. The Department would, in virtually all such cases, already have copies of the employer's supporting documentation rendering such a retention requirement unnecessary.

1. Section 655.15(g)—Unions as a Source of Labor

As proposed, the rule would have required that if the job opportunity were in an industry, region and occupation in which union recruitment is customary, the appropriate union organization must be contacted. A number of commenters were concerned that the proposed provision placed too great a reliance on the employer's ability to determine what the Department will later decide is ''appropriate for the occupation and customary to the industry and area of intended employment.'' One of these commenters suggested that even if contacting a union may be appropriate in some industries, it would be entirely inappropriate in the construction industry and, at a minimum, the construction industry should be expressly excluded from this requirement under a Final Rule. Another commenter suggested that the requirement was unnecessary, as the required newspaper advertising would reach the same pool of applicants. Another commenter believed the requirement was not authorized by statute and the Department has no basis to impose it. Additionally, the commenter expressed concern that the requirement also has the potential to subject non-unionized employers to ''salting'' campaigns, during which union organizers retain employment in union shops for the sole purpose of organizing the workforce. According to this commenter, the requirement could unfairly and unnecessarily inject the Department into an area in which it should not be involved.

One specialty bar association opined that the requirement to use unions as a recruitment source would be unworkable in practice, stating that in their experience, unions will not refer workers to non-union shops. The commenter recommended the regulation instead use the approach of the permanent labor certification program, which requires union contact for unionized employers only.

The Department has considered these comments and agrees with the many concerns raised about the proposed requirement, in particular concerns about vagueness and ambiguity, and the dilemma employers would face in trying to interpret and implement the requirement. Accordingly, we have revised the provision to require an employer to contact a labor organization only in cases where the employer is already a party to a collective bargaining agreement that covers the occupation at the worksite that is the subject of the H–2B application. The employer's obligation is only to contact the local affiliate of labor organization that is party to the existing collective bargaining agreement that covers the occupation at the worksite that is the subject of the H–2B application.

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2. Section 655.15(i)—Referral of U.S. Workers and SWA Employment Verification

To strengthen the integrity of the Secretary's determination of the availability of U.S. workers, and to help bolster employers' confidence in their local SWAs and the H–2B program, the Department proposed that SWAs verify the employment eligibility of U.S. workers they refer for nonagricultural employment services with the SWA. The Department received a significant number of comments on the practicality of this provision.

Comments on this subject were received from national associations, numerous SWAs, several labor advocacy organizations, and members of Congress. Commenters generally opposed the proposal for a variety of legal, programmatic, resource-related, and policy-based reasons.

Most of the commenters were SWAs that noted the burden this new provision would create. Many saw it as an unfunded Federal mandate in violation of the Unfunded Mandates Reform Act. More than one referred to the Department's recent inclusion of the requirement as a condition for receiving further labor certification grant funding.

As stated in the preamble to the NPRM, the Department is not insensitive to the resource constraints facing state agencies in their administration of the H–2B program. However, as we stated in the NPRM, we do not believe that the requirement will result in a significant increase in workload or administrative burden not covered by Department-provided resources.

In addition, notwithstanding funding limitations, there is a strong, longstanding need for a consistent verification requirement at the State government level. The Department is not leaving States to their own devices. Precisely to ensure that available Federal funding supports verification activities, the Department has added the verification requirement as an allowable cost under the foreign labor certification grant agreement. The Department also funds State employment services under the Wagner-Peyser Act, and for many years States have made Wagner-Peyser grant funding a part of their annual financial plan. To the extent that State functions related to foreign labor certification depend extensively on activities that are already part and parcel of the employment service system, State labor agencies can continue to rely on Wagner-Peyser to support that portion of activity. Ultimately, while cognizant of the challenges posed by funding limitations, we expect States to comply as they do with other regulatory requirements and other terms and conditions of their foreign labor certification grant.

SWAs also expressed concern about possible discrimination suits. The requirement to verify employment eligibility does not violate constitutional prohibitions against disparate impact. The eligibility requirement is similar to verification requirements to gain access to other similar public benefits.

One SWA said it would be impossible to implement verification of work eligibility because they have a virtual one-stop system that is self-service for both employers and job seekers and the SWA would be unable to certify that applicants referred to those job orders are employment-eligible. While we do not disagree that an in-person verification requirement may impact the decisions of a limited number of otherwise eligible workers, such impact does not outweigh the significant value of verification. Moreover, SWAs can respond to any possible inconvenience to workers by designating or creating additional in-person locations where eligibility can be verified. This is not a problem unique to SWAs—workers may be required to travel great distances to reach a prospective employer, who then (absent a SWA certification) would be required to verify work eligibility. In the end, although employment eligibility verification does require some amount of extra time and effort, the Department has determined that simple convenience must cede to the overarching goal of a legal workforce and has drafted its regulations accordingly.

Several SWAs also pointed out that under the new regulations it will be impossible to identify H–2B job orders, especially now that the SWA will no longer receive a copy of the application or determine prevailing wages and be only responsible for placing the job order. The Final Rule now requires the job order carry a notation identifying it as a job order to be placed in connection with a future application for H–2B workers.

Several other commenters supported the contention made by the SWAs that this requirement will drain SWA resources. A few commenters seem to have interpreted this requirement as mandating the use of the ''E-Verify'' electronic system. However, although both the NPRM and the Final Rule require the use of the DHS process, which requires the completion of I–9 forms and process, the use of the electronic E-verify system is optional.

The Department's expectation is that SWAs will not expend public resources to refer undocumented workers to H–2B job opportunities. The employment verification provisions included in this regulation are part of a concerted effort—one that includes regulation, written guidance, and ongoing outreach and education—to address longstanding weaknesses and to strengthen the integrity of the program.

3. Section 655.15(h)—Layoff Provisions

Under the NPRM, an employer seeking to employ H–2B workers would have been required to attest that it is not displacing any similarly employed permanent U.S. worker in the occupation in the area of intended employment within the period beginning 120 days before the date of need and throughout the entire employment of the H–2B worker(s). The Department received a number of comments from various groups on this provision. We have addressed those below, in conjunction with comments on the layoff provisions at § 655.22(k).

G. Section 655.17—Advertising Requirements

As proposed in the NPRM, the Final Rule requires employers to advertise for available U.S. workers. The advertisement must: (1) Identify the employer with sufficient clarity to notify the potential pool of U.S. workers (by legal and trade name, for example); (2) provide a specific job location or geographic area of employment with enough specificity to apprise applicants of travel or commuting requirements, if any, and where applicants will likely have to reside to perform the services or labor; (3) provide a description of the job with sufficient particularity to apprise U.S. workers of the duties or services to be performed and whether any overtime will be available; (4) list minimum education and experience requirements for the position, if any, or state that no experience is required; (5) list the benefits, if any, and the wage for the position, which must equal or exceed the applicable prevailing wage as provided by the NPC; (6) contain the word ''temporary'' to clearly identify the temporary nature of the position; (7) list the total number of job openings that are available, which must be no less than the number of openings the employer lists on the application (ETA Form 9141); and (8) provide clear contact information to enable U.S. workers to apply for the job opportunity. The advertisement cannot contain a job description or duties which are in addition to or exceed the duties listed on the Prevailing Wage Determination Request or on the application, and must not contain terms and conditions of

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employment which are less favorable than those that would be offered to an H–2B worker.

The Department received multiple comments on the newspaper advertising requirements. Several commenters believed that the requirements, especially the requirement for three ads that was proposed in the NPRM (rather than the two required under the current program), would increase employer costs and time devoted to the application process but not yield additional U.S. workers. The requirement for advertising in a Sunday edition of a newspaper was seen as particularly objectionable due to the higher costs for Sunday ads and the belief that many nonprofessional workers do not read Sunday newspaper editions. Some commenters suggested employers should have the flexibility to use other recruitment methods, such as Web sites that have proved successful in locating seasonal workers. Others were concerned that without SWA guidance, employers would have to guess as to the correctness of their ads, risking that if the CO subsequently determined there were errors in the advertisements, it would be too late to get the workers needed. One commenter was concerned that no process was provided for requiring an employer to revise its ad if the content was determined to be unduly restrictive.

As previously discussed, this Final Rule requires two newspaper advertisements which must include one Sunday edition. Sunday editions have traditionally provided the most comprehensive job advertisements and many U.S. workers potentially seeking employment would normally choose the Sunday paper to review. Employers can, however, always conduct more recruitment than is required, such as posting the opportunity on job search Web sites.

One commenter inquired about the process for employers to follow in selecting an alternate publication in lieu of one of the newspaper ads. Other commenters were concerned about the choice of the specific newspaper in which to advertise and believed that the NPC would not be able to determine the most appropriate newspaper in all cases. One commenter suggested that the SWA should be involved in the process and provide guidance regarding newspaper choices. Another commenter asked whether there would be specific guidance regarding advertisements for live-in jobs, such as those for housekeepers, child monitors, and similar positions. The Department believes that staff at the NPC will be able to handle such issues. The Department declines in the Final Rule to specify the requirements to a high level of detail, as appropriate publication may vary, for example by industry or industry practice, and as the Department normally issues such guidance in the form of Standard Operating Procedures or other policy guidance.

H. Section 655.20—Direct Filing With the NPC and Elimination of SWA Role

Consistent with the proposed rule, the Final Rule eliminates the role of the SWAs in accepting and reviewing H–2B labor certification applications. Once the Final Rule is effective, employers will file H–2B applications directly with the NPC, consistent with the transition provisions of the regulation and with the Department's specialization of its two processing centers effective June 1, 2008. Employers with dates of need prior to October 1, 2009, will submit prevailing wage determination requests SWA, which will process them under the PWD procedures established under § 655.10 of this Final Rule. In the long term, under these regulations, each employer will continue to be required to place a job order with the appropriate SWA as part of pre-filing recruitment, and SWAs will continue to place H–2B-associated job orders in their respective Employment Service systems. This proposal received comments from a broad range of constituencies, including employers, employer associations, advocacy organizations, labor unions, State agencies, and elected officials. Most of the commenters opposed this provision.

Many commenters remarked that the elimination of the SWA portion of the process only shifted activities previously performed by the SWAs to the NPCs without actually improving the process. These commenters believed that eliminating the duplicate SWA review and increasing the Federal role in reviewing applications would result in increased delays, particularly when the Department has acknowledged that its funding has not kept pace with increased workloads in the H–2B program. Others also mentioned possible processing delays and were especially concerned that those industries with later dates of need could be locked out of the program.

Other commenters were concerned the new process would result in the loss of local labor market and prevailing practice expertise in the review process, including checks and balances now in the system, and would increase the potential for fraud. These commenters asserted that the knowledge and expertise of local staff in reviewing and processing applications was essential to the integrity of the H–2B certification process. Some commenters also criticized the NPCs for what they view as ''ignoring their own regulations'' and ''misconstruing the certification process.'' Several commenters also believed elimination of the duplicate SWA review would result in decreased assistance for employers. One SWA stated that employers would be left without a source for guidance which would drive up the demand for agents, thereby increasing the costs to employers. An employer expressed the opinion that the new process would replace longstanding relationships with SWA employees and reliable determinations with unpredictable determinations and potentially overly stringent penalties.

The Department remains committed to modernizing the application process and continues to believe that the submission of applications directly to the NPC is the most effective way of accomplishing this goal. Processing of H–2B applications by NPC staff will allow for greater consistency for employers, regardless of their industry or location, in both the time required and quality of the application review. The Department believes that by specializing in H–2B application processing, NPC staff will have greater program expertise than SWA staff who are often required to implement a number of diverse programs during the course of their workday, and will generate additional efficiencies in application processing. Therefore, this federalized review of applications will lead to more efficient processing, greater consistency of review, and more effective administration. It will also enable the Department to better identify and implement program improvements.

Eliminating the SWAs' participation in the application review process will provide more efficient review of applications, as well as greater consistency of review. The Department disagrees that NPC staff have insufficient knowledge to undertake this role given that they already perform it. In fact, NPC reviewers who currently review H–2B applications have, in some cases, more experience with such applications than many SWA staff.

Moreover, the SWAs have not been removed from the process—they will continue their traditional role in the recruitment process and working with employers on the specifics of the job order. SWAs will be responsible for clearing and posting job orders, both intrastate and interstate, thus reducing the risk for employers to make mistakes with respect to job descriptions,

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minimum requirements, and other application particulars. SWAs will, as part of these duties, review the job offer, its terms and conditions, any special requirements, and the justifications as part of the SWAs' duties to clear and post such orders.

I. Section 655.20—Form Submission and Electronic Filing

The Final Rule requires employers to submit applications on paper, through an information collection (form) modified significantly from the current form to reflect an attestation-based filing process. As stated in the NPRM, the Department will consider in the future an electronic submission system similar to that employed in other programs administered by OFLC, should resources be made available.

The Department received a number of comments from SWAs, a specialty bar association, a large trade association, a small-business coalition, and several industry groups largely supportive of the potential conversion to electronic applications. One commenter encouraged prompt migration to electronic filing, as the commenter felt this would make program data easier to gather, more accurate, and more shareable across federal agencies. A few comments expressed concern that electronic filing would be mandatory for everyone, and recommended that, in the event the Department converted to electronic submission, it maintain paper filing as an option. Two commenters were concerned making electronic submission mandatory could cause undue hardship to employers that do not have Internet access, are not computer literate, or do not have access to a computer. One bar association recommended the Department not require electronic filing until the system was error-free, that any electronic filing system not include system-generated denials as the PERM system does, and that any defects receive an RFI. The Department takes seriously these recommendations. We will determine appropriate timing for the development and implementation of an electronic system based on program need and available resources. We have learned—as have programs users—from our experience with the electronic filing process used in the permanent program, and will apply those lessons to any system we institute for the H–2B program.

J. Section 655.21—Supporting Evidence of Temporary Need

As proposed, this Final Rule provides the employer a variety of options for documenting the basis of its temporary need, to be retained by the employer and submitted in the event of a Request for Further Information (RFI), a post-adjudication audit, a WHD investigation, or another agency investigation. As explained in the NPRM, for most employers participating in the H–2B program, demonstrating a seasonal or peakload temporary need can best be evidenced by summarized monthly payroll records for a minimum of one previous calendar year that identify, for each month and separately for full-time permanent and temporary employment in the requested occupation, the total number of workers employed, the total hours worked. Such records, however, are not the only means by which employers can choose to document their temporary need. The proposed regulation accordingly leaves it to the employer to retain other types of documentation, including but not limited to work contracts, invoices, client letters of intent, and other evidence that demonstrates that the job opportunity that is the subject of the application exists and is temporary in nature. Contracts and other documents used to demonstrate temporary need would be required to plainly show the finite nature of that need by clearly indicating an end date to the activity requested.

The Department's new H–2B temporary labor certification application form is designed to require both a short narrative on the nature of the temporary need and responses to questions to determine the time of need and the basis for the need. The narrative will enable the employer to demonstrate in its own words the scope and basis of the need in a way that will enable the Department to confirm the need meets the regulatory standard, with additional questions on the form providing context and clarification. If further clarification is required, the RFI process will be employed. The form also contains an attestation to be signed under penalty of perjury to confirm the employer's temporary H–2B need.

As explained in the NPRM and consistent with current program practice, employers should be wary of using documents demonstrating a ''season'' in general terms (hotel occupancy rates, weather charts, newspaper accounts); in the Department's experience, such generalized statements fail to link a season to a specific position sought to be filled by the employer, which is required under the program. The Department also recognizes that conventional evidence such as payroll information may not be sufficient to demonstrate a one-time or intermittent need, or seasonal or peakload need in cases in which the employer's need has changed significantly from the previous year. In such cases, the employer should retain other kinds of documentation with the application that demonstrates the temporary need.

K. Section 655.22—Obligations of H–2B Employers and Attestation-Based Application

The Department proposed, and this Final Rule institutes, the shift to an attestation-based filing system. The new application form contains a series of attestations to confirm employers' adherence to its obligations under the H–2B program. The information and attestations on the form will provide the necessary assurances for the Department to initially verify program compliance. As described in the NPRM, the Department anticipates the shift to an attestation-based application will have a number of benefits, including a reduction in processing times while maintaining program integrity.

The Department received numerous comments, many of them negative, on the move to an attestation-based application. Some commenters believed that an attestation-based application would reduce the role of the SWA and thus eliminate local expertise; decrease employer compliance; increase erroneous approvals; and increase the likelihood that the Department will simply ''rubber stamp'' the certifications and weaken U.S. worker protections. The Department disagrees with these assumptions and conclusions. The Department believes that an attestation-based application, backed by audits, is within the Secretary's statutory discretion to implement and is an effective means to ensure that all statutory and regulatory criteria are met and all program requirements are satisfied. Similar approaches have been used successfully by the Department in other contexts, such as in the current permanent labor certification process.

One commenter suggested the Department require that the employer always be the applicant, even if an agent is used, because neither an agent nor the employer would be able to attest to all of the required obligations. This commenter also feared that an employer could shield itself from responsibility by using an agent for such prohibited acts as requiring recruitment fees to be paid by the foreign worker. The Department disagrees with this commenter. In the H–2B program, the agent simply represents the employer in the labor certification process. The employer is ultimately responsible for its obligations under the program and it

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is the employer who signs the application form, and attests to the veracity of the information provided and that it will meet all of its obligations.

One commenter appeared to confuse the H–2B and H–2A programs. This commenter referred to the 50 percent rule, an H–2A program feature, and requested that the Department include a grace period for a foreign worker to find another employer if dismissed under the 50 percent rule. In the current H–2A temporary agricultural program, employers must hire a qualified U.S. worker who applies for a position certified under a temporary labor certification, if that worker applies during the first half of the certified period of employment. The H–2B program has no such provision and the Department declines to impose one, especially as this was not proposed in the NPRM.

The Department received a number of comments on the specific obligations of H–2B employers outlined in the proposed rule. One commenter pointed out a semantic error in proposed § 655.22(a), which stated the employer must attest that ''no U.S. workers'' are available. The commenter correctly pointed out that an employer cannot possibly have such broad knowledge and that the statute does not require such knowledge. The Department has deleted that provision. There were other comments about word choice and semantics and, where appropriate, the Department has changed the wording to make the attestations easier to understand.

The Department has also added language to the provision, in § 655.22(a), that requires that H–2B job opportunities offer terms and working conditions that are ''normal to U.S. workers similarly employed'' to clarify that normal is synonymous with not unusual. This is within the range of generally accepted meanings of the term. See, e.g., Black's Law Dictionary 1086 (8th ed. 2004) (''The term describes not just forces that are constantly and habitually operating but also forces that operate periodically or with some degree of frequency. In this sense, its common antonyms are *unusual* and *extraordinary*.''); Webster's Unabridged Dictionary 1321 (2d ed. 2001) (supplying ''not abnormal'' as one of several definitions). Thus, ''normal'' does not require that a majority of employers in the area use the same terms or working conditions. If there are no other workers in the area of intended employment who are performing the same work activity, the Department will look to workers outside the area of intended employment to assess the normality of an employer's proposed productivity standard.

Unless otherwise noted, no substantive change is intended. Below, we respond to comments on specific obligations and describe substantive changes made to those subsections. In cases where the Final Rule deletes or adds provisions, the numbering has changed accordingly from that published in the NPRM.

1. Section 655.22(a)—U.S. Worker Unavailability

The Department proposed that employers seeking to hire H–2B workers attest there were no U.S. workers in the area of intended employment capable of performing the temporary services or labor in the job opportunity. Comments on this provision reflected strong concern that employers cannot attest to the actual unavailability of U.S. workers, but simply that the employer has tested the labor market appropriately and in good faith to demonstrate that capable U.S. workers did not respond to its recruitment efforts or ultimately were not available (either due to lawful rejection by the employer, failure on the worker's part to follow through or remain on the job, etc.) to perform the labor or services. The Department agrees and has deleted this provision from the Final Rule.

2. Section 655.22(f)—Worker Abandonment and Employer Notification to the Department and DHS

The Department's NPRM would have required employers to notify the Department and DHS within 48 hours if an H–2B worker separated from employment prior to the end date of employment in the labor certification. This notification requirement would have also applied if the H–2B worker absconded from or abandoned employment prior to the end date of employment. This requirement was included to ensure that if the basis for the worker's status ended before the end date on the application, both DHS and the Department could take appropriate action to monitor the program.

The Department received a number of comments in opposition to this requirement, primarily from employers and employer and trade associations. Several employer associations shared the concern that, in their view, the requirement represented a new and unfair liability for employers, opening them up to potential legal action from H–2B employees if the employee left to pursue other legal employment before the end of the contract period. One association found it problematic, given the perception that this worker population is more transient than the workforce at large. It also was concerned about the administrative burden on employers to comply with the requirement. It asserted that employers were unlikely to know the real circumstances of the worker's departure, if it was a legal extension or change of status or something else. Consistent with a number of other comments either seeking or recommending clarification to the notice requirement, this association stated that such status determinations are complex legal issues and employers should not be required to make them. It also believed that the reporting requirement was unlikely to accomplish anything without imposing additional significant burdens on employers and that it was unlikely that DHS would pursue individuals who are the subject of these reports. A small business association agreed about the unreasonableness of the potential burden on employers and was concerned that the requirement would ask small businesses to become unpaid Immigration Service agents responsible for enforcing immigration laws.

A trade association found the required 48 hours for notification to be an extremely limited period of time for notification, and a burden on employers. It recommended that, if the requirement were continued, it should be extended to 30 days. Further, this trade association recommended that DHS create a simple reporting method to allow employers to provide the information directly through the Internet or by telephone. The requirement was described as too vague and not providing enough specifics as to when the employer would be required to do such notification.

An individual employer found insufficient safeguards in the proposal, as there was no indication of actions that the bureaucracy at the Department or DHS would take based on the information. The employer wanted the two departments to be more specific as to how the information was to be used.

An employer agent believed the requirement was inappropriate in these regulations, as it was tangential to the Department's role regarding the availability of U.S. workers or preventing adverse affect on U.S. workers, and believed that it created additional confusion and potential liability for employers. Similarly, an employer association thought the requirement inappropriate and did not clearly outline the process by which employers would make such notifications. Additionally, the employer association asked for

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additional guidance as to what information would be required for employers to document separation or job abandonment and was concerned that violations of this provision could lead to debarment from future participation in the program.

The Department reviewed the comments received on this specific reporting requirement and the concerns raised by the employers and associations on its implementation. The Department acknowledges that many of these concerns have merit, and has therefore sought to provide clarifications and limitations in the Final Rule to address these concerns. The Department did not, however, discern sufficient justification from these comments to eliminate the requirement in its entirety. The notification is necessary in all circumstances because the early separation of a worker impacts not only the rights and responsibilities of the employer and worker but also implicates DOL's and DHS's enforcement responsibilities. Although any abscondment is a loss to the employer, the Government requires notification to be able to better track workers who are in the country on a temporary basis with limited work authorization.

The Department acknowledges the need for clarification in the provision to ensure that the 48-hour requirement begins to run only when the abandonment is actually discovered. The Department has therefore added language to the provision clarifying that the employer must notify DOL no later than 2 work days after such abandonment or termination is discovered by the employer. The Department has added further clarification to ensure that employers must meet the identical standards for notification to DOL as to DHS, so that an abscondment occurs when the worker has not reported for work for a period of 5 consecutive work days without the consent of the employer to that non-reporting. This is intended to clarify for the employer that the same standard of reporting applies across both agencies, making it easier on the employer to make the report. There is no requirement that the notification be made by certified mail, however. A file copy of a letter sent by normal U.S. mail, with notation of the posting date, will suffice. However, in addition, the Department revised the notification requirement to reflect a time period of no later than 2 work days after the employer discovers the employee has absconded, which, consistent with DHS, has been defined as 5 consecutive work days of not reporting for work. To make the standard further consistent across agencies, for purposes of this provision the Department will defer to DHS on the definition of the term ''working day.''

3. Section 655.22(g)—Deductions and Prohibition on Transfer of Costs

The NPRM prohibited deductions by the employer or any third party, including a recruiter, for any expenses including recruitment fees and any other deductions not expressly permitted by law. Both worker advocacy organizations and an employer of H–2B workers commented that the provision was confusing and ambiguous. Worker advocates objected that it was unclear whether employees could be required to pay recruiting costs directly, while an employer objected to the payment of recruiting costs that were not clearly defined in the proposal. We agree that the rule as proposed was confusing. The confusion resulted in part from the fact that employer cost shifting is addressed elsewhere in the regulations, in § 655.22(j). Further, cost shifting by third parties presents an identical problem under the H–2A program but was dealt with in a different manner in the NPRM. Accordingly we are revising the language concerning cost shifting by third parties to mirror § 655.105(p) of the H–2A Final Rule to read as follows: ''The employer has contractually forbidden any foreign labor contractor or recruiter whom the employer engages in international recruitment of H–2A workers to seek or receive payments from prospective employees, except as provided for in DHS regulations at 8 CFR 214.2(h)(5)(xi)(A).''

The Final Rule makes clear that recruiters may not pass on expenses to H–2B workers. Examples of exploitation of foreign workers, who in some instances have been required to give recruiters thousands of dollars to secure a job, have been widely reported. The Department is concerned that workers who heavily indebt themselves to secure a place in the H–2B program may be subject to exploitation in ways that would adversely affect the wages and working conditions of U.S. workers by creating conditions akin to indentured servitude, driving down wages and working conditions for all workers, foreign and domestic. We believe that requiring employers to incur the costs of recruitment is reasonable, even when taking place in a foreign country. Employers may easily band together for purposes of recruitment to defray costs. The fact that a recruiter is essential to the securing of such worker does not dissuade the Department from requiring the employer to bear the expense; rather, it underscores the classification of that payment as a cost allocable to the employer.

The Department recognizes that its power to enforce regulations across international borders is constrained. However, it can and should do as much as possible in the U.S. to protect workers from unscrupulous recruiters. Consequently, the Department is requiring that the employer make, as a condition of applying for labor certification, the commitment that the employer is contractually forbidding any foreign labor contractor or recruiter whom the employer engages in international recruitment of H–2B workers to seek or receive payments from prospective employees.

The Department has also revised this section in the Final Rule to omit restrictions on deductions that are already covered in § 655.22(j), and we are incorporating the following language which is identical to the language in 20 CFR 655.104(p) of the H–2A Final Rule: ''The employer must make all deductions from the worker's paychecks that are required by law. The job offer must specify all deductions not required by law that the employer will make from the worker's paycheck. All deductions must be reasonable. However, an employer subject to the FLSA may not make deductions that would violate the FLSA.''

4. Section 655.22(h) [(g) in Final Rule]—Basis for Offered Wage

This provision requires that the offered wage not be based on commission, bonuses, or other incentives unless the employer guarantees that the wage paid will equal or exceed the prevailing wage. The second sentence of the proposed provision further stated that ''the offered wage shall be held to exclude any deductions for reimbursement of the employer or any third party by the employee for expenses in connection with obtaining or maintaining the H–2B employment including but not limited to international recruitment, legal fees not otherwise prohibited by this section, visa fees, items such as tools of the trade, and other items not expressly permitted by law.'' This sentence received several comments. A worker's rights advocacy group claimed the Department will not achieve its objective of protecting foreign workers from paying fees that should be paid by the employer. This commenter provided an example of a practice by one employer who required workers to pay for tests to determine their welding and fitting skills in preparation for employment in the United States. This

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commenter further recommended that this section should clarify that costs paid directly by workers are de facto deductions for the purpose of calculating compliance with the offered wage, even if employers do not directly deduct them and also that DOL should clarify its position on which costs are considered to benefit employers and thus require reimbursement and include specific examples of such costs. This commenter also believed that similar language in the FLSA was confusing. The Department appreciates the detailed analysis provided by this commenter, but we believe the statutory requirements, which are based on decades of administration of the Federal wage and hour laws, are clear and that it is not necessary to make the recommended changes.

5. Section 655.22(i) [(h) in Final Rule]—Position Is Temporary and Full-Time

The Department proposed that an employer seeking to employ H–2B workers be required to attest that the job opportunity is for a full-time, temporary position. One commenter suggested the proposed regulation could harm U.S. workers by guaranteeing full-time work for the period to foreign workers, while there is no such guarantee provided to U.S. workers in any seasonal position. The commenter also stated that while employers can state their intention to hire temporary workers full-time, if the weather does not cooperate, the employer may have no choice but to reduce hours in a particular week and that under this provision, the employer would not be able to do this, causing significant harm to the business and the U.S. workers whose hours would need to be reduced even further in order to ensure that foreign workers were paid a full-time wage. The commenter recommended a revised attestation stating: ''The job opportunity is a bona fide, temporary position and hours worked will be comparable to the full time hours worked by associates in the same position at the employment site.'' As stated in the preamble to the NPRM, the H–2B program has always required that the positions being offered be temporary and full-time in nature, and the Department recognizes that some industries, occupations and States have differing definitions of what constitutes full-time employment. For example, certain landscaping positions are often classified as full-time for a 35-hour work week. To provide additional clarity, the Department, in § 655.4 has provided a definition of full-time employment that reflects our experience in the administration of this program. We will continue to make determinations of whether work is full-time for foreign labor certification purposes based on the facts, program experience, customary practice in the industry, and any investigation of the attestation. The Department has therefore decided to retain the proposed language.

6. Section 655.22(k) [(i) in Final Rule]—Layoff Provisions

Under the NPRM, an employer seeking to employ H–2B workers would have been required to attest that it is not displacing any similarly employed U.S. worker(s) in the occupation in the area of intended employment within the period beginning 120 days before the date of need and throughout the entire employment of the H–2B worker. The Department received a number of comments from various groups on this provision.

A number of commenters favored the requirement, noting that it assisted efforts to ensure that employers cannot lay off U.S. workers after seeking to hire H–2B workers to perform the same services. Other commenters, however, had concerns regarding the implementation of the prohibition and the potential liability.

Several commenters were concerned that the requirement to contact former employees who had been laid off would be onerous, given the difficulties in reaching what is purportedly a transient population, making such contact unduly burdensome. The Department finds this argument unpersuasive. The commenter did not support the summary statements that all temporary or seasonal help is transient and rootless in the communities in which the work is performed. Even assuming that such workers do not have lasting ties to the employer, employers generally maintain continuing contact with former employees for many purposes—including, but not limited to, the provision of payroll tax information the following year and the transfer or disposition of benefits (including unemployment benefits). Moreover, by limiting the requirement for such contact to the 120 days or less before the employer's date of need for the H–2B workers, the employer's last contact information would likely be current, making such contact, generally speaking, relatively simple.

One commenter asserted that the layoff provision conflicts with the definition of seasonality, noting that by definition a seasonal employee will always be laid off within the period set forth in an annual cycle. An employer association also objected to the provision on the ground that requiring the consideration of U.S. workers would force employers who laid off U.S. workers at the end of one season to hire them again at the commencement of the next season because the timing would put the next season within the 120-day window.

In response to these comments, the Department has limited the applicability of the layoff provision to 120 days on either side of the date of need. This broad period of time, covering two thirds of the year, will protect U.S. workers near the time of recruiting for and hiring H–2B workers, which is when U.S. workers are most vulnerable, but avoids the complications of overlapping seasons noted by some commenters.

The Department notes that much of the concern of those commenters regarding the re-hiring of U.S. workers stems from a belief that such workers will not show up or be interested in being re-hired. But, by limiting the applicability of the provision to within 120 days of the date of need (as well as the actual occupation and the area of intended employment of the sought-after H–2B certification), this provision affords laid off workers a reasonable opportunity to apply for vacancies for which they qualify, striking an appropriate balance between worker protection and employer needs.

Some commenters noted the need for a strengthening of the layoff provision, calling for additional safeguards against massive layoffs of U.S. workers by strengthening requirements for how employers will demonstrate they have made efforts to contact former employees. The Department declines to do so at this time. Employers will be allowed to document their contact of former employees using any objective means at their disposal in a manner guaranteed to ensure a good faith contact effort has been made. The Department does not have evidence at this time that employers will engage in fraudulent behavior with respect to this requirement. The Department will monitor this attestation, and all other employer attestations, through post-certification audits and will note the need for program modifications through that process.

7. Section 655.22(l) [(j) in Final Rule]—Prohibition Against Payments

As in the proposal, the Final Rule requires that an employer attest that it has not and will not shift the costs of preparing or filing the H–2B temporary labor certification application to the temporary worker, including the costs of domestic recruitment or attorneys' and agent fees. The domestic recruitment, legal, and other costs associated with

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obtaining the labor certification are business expenses necessary for or, in the case of legal fees, desired by, the employer to complete the labor certification application and labor market test. The employer's responsibility to pay these costs exists separate and apart from any benefit that may accrue to the foreign worker. Prohibiting the employer from passing these costs on to foreign workers allows the Department to protect the integrity of the process and protect the wages of the foreign worker from deterioration by unwarranted deduction. The Department will continue to permit employers, consistent with the Fair Labor Standards Act (FLSA), to make deductions from a worker's pay for the reasonable cost of furnishing housing and transportation, as well as worker expenses such as passport and visa fees (see fuller discussion below concerning transportation costs under the FLSA).

This section, pertaining to the receipt of payments by the employer from the employee or a third party, received many comments. Some of the commenters opposed the provision in its entirety, arguing it will make the program prohibitively expensive for employers. Other commenters were concerned the requirement would eliminate the current practice of having the employee pay for part of the recruiting and visa costs as an incentive for the workers not to leave the employer. Others supported this provision in its entirety, while still others agreed with the intent of the provision but found the language ambiguous. One specialty bar association not only supported the prohibition on cost-shifting for recruitment, but asked the Department to strengthen the prohibition language. However, this commenter was adamantly opposed to the prohibition against foreign workers paying the attorney's fees. The Department disagrees with the comments opposing this provision. We believe that these expenses are the costs of doing business and should be borne by the employer. The Department took all comments into consideration and modified the provision to clarify and strengthen the prohibition. The Final Rule applies the prohibition to attorneys and agents, not simply to employers. As rewritten, the provision eliminates reference to payments from ''any other party;'' it applies only to payments from the employees.

This section in the NPRM also would have prohibited the employer from receiving payments ''of any kind for any activity related to the labor certification'' process. The Department received a comment arguing that the phrase ''received payment * * * as an incentive or inducement to file'' is ambiguous. The Department took this comment into consideration and removed reference to incentive or inducement.

In addition, and based upon the comments received, the Department has revised the provision on cost-shifting for greater clarity. As mentioned above, the Department has eliminated the qualifying language regarding the incentive and inducement to filing, again to simplify for all employers engaging in recruitment activities what is prohibited. By simplifying the provision to prohibit employers who submit applications from seeking or receiving payment for any activity related to the recruitment of H–2B workers, the Department hopes to achieve consistent and enforceable compliance.

With regard to the application of the FLSA to H–2B workers' inbound subsistence and transportation costs, we note that a number of district courts have issued decisions on this question. See *De Leon-Granados* v. *Eller & Sons Trees Inc.,* 2008 WL 4531813 (N.D. Ga., Oct. 7, 2008); *Rosales* v. *Hispanic Employee Leasing Program,* 2008 WL 363479 (W.D. Mich. Feb. 11, 2008); *Rivera* v. *Brickman Group,* 2008 WL 81570 (E.D. Pa. Jan. 7, 2008); *Castellanos-Contreras* v. *Decatur Hotels, LLC,* 488 F. Supp. 2d 565 (E.D. La. 2007); *Recinos-Recinos* v. *Express Forestry Inc.,* 2006 WL 197030 (E.D. La. Jan. 24, 2006). These district courts have referenced the appellate court's decision in *Arriaga* v. *Florida Pacific Farms, L.L.C.,* 305 F.3d 1228 (11th Cir. 2002), which held that growers violated the minimum wage provisions of the FLSA by failing to reimburse farmworkers during their first workweek for travel expenses (and visa and immigration fees) paid by the workers employed by the growers under the H–2A program. Under the FLSA, pre-employment expenses incurred by workers that are properly business expenses of the employer and primarily for the benefit of the employer are considered ''kick-backs'' of wages to the employer and are treated as deductions from the employees' wages during the first workweek. 29 CFR 531.35. Such deductions must be reimbursed by the employer during the first workweek to the extent that they effectively result in workers' weekly wages being below the minimum wage. 29 CFR 531.36. Although the employer in the *Arriaga* case did not itself make direct deductions from the workers' wages, the Court held that the costs incurred by the workers amounted to ''de facto deductions'' that the workers absorbed, thereby driving the workers' wages below the statutory minimum. The Eleventh Circuit reasoned that the transportation and visa costs incurred by the workers were primarily for the benefit of the employer and necessary and incidental to the employment of the workers and stated that ''[t]ransportation charges are an inevitable and inescapable consequence of having H–2A foreign workers employed in the United States; these are costs which arise out of the employment of H–2A workers.'' Finally, the court held that the growers' practices violated the FLSA minimum wage provisions, even though the H–2A regulations provide that the transportation costs need not be repaid until the workers complete 50 percent of the contract work period. The Eleventh Circuit noted that the H–2A regulations require employers to comply with applicable federal laws, and in accepting the contract orders in this case, the ETA Regional Administrator informed the growers in writing that their obligation to pay the full FLSA minimum wage is not overridden by the H–2A regulations.

The Department believes that the better reading of the FLSA and the Department's own regulations is that relocation costs under the H–2A program are not primarily for the benefit of the employer, that relocation costs paid for by H–2A workers do not constitute kickbacks within the meaning of 29 CFR 531.35, and that reimbursement of workers for such costs in the first paycheck is not required by the FLSA.

The FLSA requires employers to pay their employees set minimum hourly wages. 29 U.S.C. 206(a). The FLSA allows employers to count as wages (and thus count toward the satisfaction of the minimum wage obligation) the reasonable cost of ''furnishing [an] employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees.'' 29 U.S.C. 203(m). The FLSA regulations provide that ''[t]he cost of furnishing 'facilities' found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable [costs within the meaning of the statute] and may not therefore be included in computing wages.'' 29 CFR 531.3(d)(1). The FLSA regulations further provide examples of various items that the Department has deemed generally to be qualifying facilities within the meaning of 29 U.S.C. 203(m) (see also 29 CFR 531.32(a)), as well as examples of

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various items that the Department has deemed generally not to be qualifying facilities (see 29 CFR 531.3(d)(2), 29 CFR 531.32(c)).

Separate from the question whether items or expenses furnished or paid for by the employer can be counted as wages paid to the employee, the FLSA regulations contain provisions governing the treatment under the FLSA of costs and expenses incurred by employees. The regulations specify that wages, whether paid in cash or in facilities, cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally, or ''free and clear.'' 29 CFR 531.35. Thus, ''[t]he wage requirements of the Act will not be met where the employee 'kicks-back' directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the 'kick-back' is made in cash or in other than cash. For example, if the employer requires that the employee must provide tools of the trade that will be used in or are specifically required for the performance of the employer's particular work, there would be a violation of the Act in any workweek when the cost of such tools purchased by the employee cuts into the minimum or overtime wages required to be paid him under the Act.'' *Id.* The regulations treat employer deductions from an employee's wages for costs incurred by the employer as though the deductions were a payment from the employee to the employer for the items furnished or services rendered by the employer, and applies the standards set forth in the ''kick-back'' provisions at 29 CFR 531.35 to those payments. Thus, ''[d]eductions for articles such as tools, miners' lamps, dynamite caps, and other items which do not constitute 'board, lodging, or other facilities' '' are illegal ''to the extent that they reduce the wages of the employee in any such workweek below the minimum required by the Act.'' 29 CFR 531.36(b).

In sum, where an employer has paid for a particular item or service, under certain circumstances it may, pursuant to 29 U.S.C. 203(m), count that payment as wages paid to the employee. On the other hand, when an employee has paid for such an item or service, an analysis under 29 CFR 531.35 is required to determine whether the payment constitutes a ''kick-back'' of wages to the employer that should be treated as a deduction from the employee's wages.

The *Arriaga* court seems to have assumed that all expenses necessarily fall into one of these two categories—that either they qualify as wages under 29 U.S.C. 203(m) or they constitute a ''kick-back'' under 29 CFR 531.35. See *Arriaga*, 305 F.3d at 1241–42 (stating that if a payment ''may not be counted as wages'' under 29 U.S.C. 203(m), then ''the employer therefore would be required to reimburse the expense up to the point the FLSA minimum wage provisions have been met'' under 29 CFR 531.35 and 29 CFR 531.36). That is incorrect. For example, if an employer were to give an employee a valuable item that was not ''customarily furnished'' to his or her employees, the employer would not be able to count the value of that item as wages under 29 U.S.C. 203(m) unless the employer ''customarily furnished'' the item to his or her employees. Nevertheless, since the employee paid nothing for that item, it clearly would not constitute a ''kick-back'' of wages to the employer that would have to be deducted from the employee's wages for purposes of determining whether the employer met its minimum wage obligations under 29 U.S.C. 206(a). Similarly, if a grocery employee bought a loaf of bread off the shelf at the grocery store where he or she worked as part of an arms-length commercial transaction, the payment made by the employee to the employer would not constitute a ''kick-back'' of wages to the employer, nor would the loaf of bread sold by the employer to the employee be able to be counted toward the employee's wages under 29 U.S.C. 203(m). Both parties would presumably benefit equally from such a transaction—it would neither be primarily for the benefit of the employer, nor would it be primarily for the benefit of the employee.

Expenses paid by an employer that are primarily for the employer's benefit cannot be counted toward wages under 29 U.S.C. 203(m). See 29 CFR 531.3(d). Similarly, expenses paid by an employee cannot constitute a ''kick-back'' unless they are for the employer's benefit. See 29 CFR 531.35. An analysis conducted under 29 U.S.C. 203(m) determining that a particular kind of expense is primarily for the benefit of the employer will thus generally carry through to establish that the same kind of expense is primarily for the benefit of the employer under 29 CFR 531.35. Each expense, however, must be analyzed separately in its proper context.

The question at issue here is whether payments made by H–2B employees for the cost of relocating to the United States, whether paid to a third party transportation provider or paid directly to the employer, constitutes a ''kick-back'' of wages within the meaning of 29 CFR 531.35. If the payment does constitute a ''kick-back,'' then the payment must, as the *Arriaga* court decided, be counted as a deduction from the employee's first week of wages under the FLSA for purposes of determining whether the employer's minimum wage obligations have been met.

The Department does not believe that an H–2B worker's payment of his or her own relocation expenses constitutes a ''kick-back'' to the H–2B employer within the meaning of 29 CFR 531.35. It is a necessary condition to be considered a ''kick-back'' that an employee-paid expense be primarily for the benefit of the employer. The Department need not decide for present purposes whether an employee-paid expense's status as primarily for the benefit of the employer is a sufficient condition for it to qualify as a ''kick-back,'' because the Department does not consider an H–2B employee's payment of his or her own relocation expenses to be primarily for the benefit of the H–2B employer.

Both as a general matter and in the specific context of guest worker programs, employee relocation costs are not typically considered to be ''primarily for the benefit'' of the employer. Rather, in the Department's view, an H–2B worker's inbound transportation costs either primarily benefit the employee, or equally benefit the employee and the employer. In either case, the FLSA and its implementing regulations do not require H–2B employers to pay the relocation costs of H–2B employees. *Arriaga* and the district courts that followed its reasoning in the H–2B context misconstrued the Department's regulations and are wrongly decided.

As an initial matter, any weighing of the relative balance of benefits derived by H–2B employers and employees from inbound transportation costs must take into account the fact that H–2B workers derive very substantial benefits from their relocation. Foreign workers seeking employment under the H–2B nonimmigrant visa program often travel great distances, far from family, friends, and home, to accept the offer of employment. Their travel not only allows them to earn money—typically far more money than they could have in their home country over a similar period of time—but also allows them to live and engage in non-work activities in the U.S. These twin benefits are so valuable to foreign workers that these workers have proven willing in many instances to pay recruiters thousands of dollars (a practice that the Department is now taking measures to curtail) just to gain access to the job opportunities, at times

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going to great lengths to raise the necessary funds. The fact that H–2B workers travel such great distances and make such substantial sacrifices to obtain work in the United States indicates that the travel greatly benefits those employees.

Most significantly, however, the Department's regulations explicitly state that ''transportation furnished employees between their homes and work where the travel time does not constitute hours worked compensable under the Act and the transportation is not an incident of and necessary to the employment'' are qualifying ''facilities'' under 29 U.S.C. 203(m). 29 CFR 531.32(a). As qualifying facilities, such expenses cannot by definition be primarily for the benefit of the employer. 29 CFR 531.32(c). The wording of the regulation does not distinguish between commuting and relocation costs, and in the context of the H–2B program, inbound relocation costs fit well within the definition as they are between the employee's home country and the place of work.

The *Arriaga* court ruled that H–2A relocation expenses are primarily for the benefit of the employer in part because it believed that under 29 CFR 531.32, ''a consistent line'' is drawn ''between those costs arising from the employment itself and those that would arise in the ordinary course of life.'' 305 F.3d at 1242. The court held that relocation costs do not arise in the ordinary course of life, but rather arise from employment. *Id.* Commuting costs and relocation costs cannot be distinguished on those grounds, however. Both kinds of expenses are incurred by employees for the purpose of getting to a work site to work. Moreover, an employee would not rationally incur either kind of expense but for the existence of the job. Both the employer and the employee derive benefits from the employment relationship, and, absent unusual circumstances, an employee's relocation costs to start a new job cannot be said to be primarily for the benefit of the employer.

That is not to say that travel and relocation costs are never properly considered to be primarily for the benefit of an employer. The regulations state that travel costs will be considered to be primarily for the benefit of the employer when they are ''an incident of and necessary to the employment.'' 29 CFR 531.32(c). This might include, for example, a business trip, or an employer-imposed requirement that an employee relocate in order to retain his or her job. Relocation costs to start a new job will rarely satisfy this test, however.

In a literal sense it may be necessary to travel to a new job opportunity in order to perform the work, but that fact, without more, does not render the travel an ''incident'' of the employment. Inbound relocation costs are not, absent unusual circumstances, any more an ''incident of * * * employment'' than is commuting to a job each day. Indeed, inbound relocation costs are quite similar to commuting costs in many respects, which generally are not considered compensable. Cf. DOL Opinion Letter WH–538 (Aug. 5, 1994) (stating that travel time from home to work is ''ordinary home-to-work travel and is not compensable'' under the FLSA); *Vega ex rel. Trevino* v. *Gasper,* 36 F.3d 417 (5th Cir. 1994) (finding travel to and from work and home not compensable activity under Portal-to-Portal Act). In fact, there is no reason to believe that the drafters of 29 U.S.C. 203(m) and 206(a) ever intended for those provisions to indirectly require employers to pay for their employees' relocation and commuting expenses. To qualify as an ''incident of * * * employment'' under the Department's regulations, transportation costs must have a more direct and palpable connection to the job in question than merely serving to bring the employee to the work site.

Taking the *Arriaga* court's logic to its ultimate conclusion would potentially subject employers across the U.S. to a requirement to pay relocation expenses for all newly hired employees—or at least to pay relocation expenses for all newly hired foreign employees, since international relocation is perhaps less ''ordinary'' than intranational relocation. That simply cannot be correct. The language of 29 U.S.C. 203(m) and 206(a) and their implementing regulations provide a very thin reed on which to hang such a seismic shift in hiring practices, particularly so many years after those provisions have gone into effect. Nor does the fact that H–2B workers are temporary guest workers change the equation. Even assuming that H–2B workers derive somewhat less benefit from their jobs because they are only temporary, that fact alone would not render the worker's relocation expenses an ''incident'' of the temporary job. If it did, ski resorts, camp grounds, shore businesses, and hotels would all be legally required to pay relocation costs for their employees at the beginning of each season—again, a result that is very difficult to square with the language and purpose of 29 U.S.C. 203(m) and 29 CFR 531.35.

A stronger argument could be made, perhaps, that employers derive a greater-than-usual benefit from relocation costs when they hire foreign guest workers such as H–2B workers, because employers generally are not allowed to hire guest workers unless they have first attempted but failed to recruit U.S. workers. Thus, such employers have specifically stated a need to hire non-local workers. Given the substantially greater benefit that foreign guest workers generally derive from work opportunities in the United States than they do from employment opportunities in their home countries, however, the Department believes that this at most brings the balance of benefits between the employer and the worker into equipoise. Moreover, the employer's need for non-local workers does nothing to transform the relocation costs into an ''incident'' of the job opportunity in a way that would render the employee's payment of the relocation expenses a ''kick-back'' to the employer. If it did, courts would soon be called upon every time an employer hired an out-of-state worker to assess just how great the employer's need for the out-of-state employee was in light of local labor market conditions. Conversely, the courts would also have to inquire into the employee's circumstances, and whether the employee had reasonably comparable job prospects in the area from which the employee relocated. Again, the Department does not believe such a result is consistent with the text or the intent of the FLSA or the Department's implementing regulations.

It is true, of course, that H–2B employers derive some benefit from an H–2B worker's inbound travel. To be compensable under the FLSA, however, the question is not whether an employer receives some benefit from an item or paid-for cost, but rather whether they receive the primary benefit. Significantly, despite the fact that employers nearly always derive some benefit from the hiring of state-side workers as well, such workers' relocation costs generally have not been considered to be ''primarily for the benefit of the employer.'' That is so because the worker benefits from the travel either more than or just as much as the employer.

In sum, the Department believes that the costs of relocation to the site of the job opportunity generally is not an ''incident'' of an H–2B worker's employment within the meaning of 29 CFR 531.32, and is not primarily for the benefit of the H–2B employer. The Department states this as a definitive interpretation of its own regulations and expects that courts will defer to that interpretation.

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8. Section 655.22(m) [(k) in Final Rule]—Bona Fide Inquiry

As proposed in the NPRM, the Final Rule at § 655.22(k) requires an employer that is a job contractor to attest that if it places its employees at the job sites of other employers, it has made a written bona fide inquiry into whether the other employer has displaced or intends to displace a similarly employed U.S. worker within the area of intended employment within the 120 days of the date of need. To comply with this attestation, the Department is requiring the employer to inquire in writing to and receive a written response from the employer where the relevant H–2B worker will be placed. This can be done by exchange of correspondence or attested to by the secondary employer in the contract for labor services with the employer petitioning to bring in H–2B workers. This proposed attestation at § 655.22(k) also requires the employer to attest that all worksites where the H–2B employee will work are listed on the *Application for Temporary Employment Certification.*

The Department received several comments on this secondary placement attestation provision. While some were in favor of the requirement, some employer associations expressed concern that making such an inquiry of their clients was unfair and unduly burdensome. The Department acknowledges that this attestation imposes an additional level of inquiry between job contractors and their clients where the contractor will be providing H–2B workers at a client site. The INA's mandate of the unavailability of persons capable of performing the job duties for which the H–2B workers are sought is at the heart of this requirement.

It is the H–2B worker's job activity, rather than the identity of the H–2B worker's employer, which is required to be measured against the availability of U.S. workers; the H–2B worker can be admitted only upon assurances of the unavailability of unemployed persons able to take the H–2B job opportunity. As a result, an H–2B worker performing duties at company X, for which company Y has hired him and pays him, may have an adverse effect not only on employees at the petitioning job contractor company employing him but also the company benefiting from his or her services. The limitations imposed by the Department—area of intended employment, occupation, and timing—provide parameters to reassure employers while at the same time enabling them to ensure full compliance with the mandates of the H–2B program.

One commenter agreed with this provision but did not believe a labor contractor should be held liable for the statements provided by those entities. The Department believes this commenter misinterpreted this section. The job contractor should make a bona fide inquiry and document the inquiry and response. If it later turns out that the employer who received the H–2B worker from the job contractor displaced a U.S. worker during the stated timeframe, proof of the employer's negative response to the job contractor's bona fide inquiry will relieve the job contractor of liability for that violation.

Another commenter requested that we strike this provision in its entirety because it does not allow for change in circumstances that would warrant displacing U.S. workers. The Department sees no reason why the U.S. worker would have to be displaced over the foreign worker and therefore, declines to eliminate this provision.

Finally, an industry association commented that H–2B workers employed by carnivals and circuses are constantly being placed on job sites of other employers as they travel the circuit and that this requirement is too difficult to comply with. It is difficult for the Department to discern, from the manner in which this comment was written, whether the H–2B workers are being paid by one petitioning employer throughout the itinerary or whether these H–2B workers are placed on the payroll of the fixed-site employer at each location. The Department has not made any changes to this section, as no compliance challenge was clearly communicated.

9. Section 655.22(o) [(m) in Final Rule]—Notice to Worker of Required Departure

Under the Final Rule, employers have a responsibility to inform foreign workers of their duty to leave the United States at the end of the authorized period of stay, and to pay for the return transportation of the H–2B worker if that worker is dismissed early. As stated in the NPRM, DHS will establish a new land-border exit pilot program for certain H–2B and other foreign workers to help ensure that departure follows the end of work authorization, regardless of whether it flows from a premature end or from the end of the authorized labor certification.

The Department received one comment on the duty to inform the worker of the obligation to depart from the country. This commenter opined that it is not the responsibility of employers to become unpaid immigration officers. The Department is not suggesting that it is placing any burden on employers to act as immigration officers. The Department has retained the requirement, while clarifying it to be consistent with DHS's regulations on this issue.

10. Section 655.22(p) [(n) in Final Rule]—Representation of Need

The Final Rule requires the employer to attest that it truly and accurately stated the number of workers needed, the dates of need, and the reasons underlying the temporary need in its labor certification request. The Department received two comments on this provision. One requested that we change the words ''truly and accurately'' to ''reasonable and good faith'' based on estimates from information available at the time of filing the certification. The Department has considered this change but declines to amend the regulatory language. The concern of the commenter of the need for flexibility is found in the provision in both the NPRM and this Final Rule regarding amendments (§ 655.34(c)(2)) of the start date of the certification. Any need for additional flexibility on the part of the Department must be balanced against the Department's need to ensure integrity in an attestation-based program; giving freedom to change its dates of need allows unscrupulous employers to submit applications not based on an actual need, thus circumventing the entire process in an attempt to obtain limited visas.

The second commenter expressed concern with the date of need requirement and requested the Department change several sections on which this attestation is predicated. One of the major concerns of this commenter was the potential need to amend start dates after certification if an employer must wait for visa numbers to become available. The Department has, however, retained the underlying provision for this attestation. While the Department permits amendment of the start date of the certification by the employer both prior to certification (§ 655.34(c)(2)) and after certification to certify a late adjudication (§ 655.34(c)(4)), the reconciliation of the start date becomes an issue for DHS adjudication. The Department notes that a regulatory provision allowing movement of the date of need after certification would be inconsistent with the DHS proposed rule, which would not permit the filing of a petition whose start date was inconsistent with the start date of the labor certification.

This commenter also proposed, in the alternative, that employers be allowed

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to submit their I–129 labor certification applications to DHS with a note that they have submitted their request for an amendment to the Department and that the Department be required to adjudicate the request for amendment within five days. The Department considered the comment and has decided not to establish a deadline for the processing of amendment requests. We defer to DHS to determine what is appropriate for its adjudication of I–129 petitions which falls exclusively under its jurisdiction.

L. Retention of Supporting Documentation

The Final Rule contains a modified requirement that employers retain specified documentation outlined in the proposed regulations to demonstrate compliance with program requirements. The proposed retention period was for 5 years. This documentation must be provided in the event of an RFI, post-adjudication audit, WHD investigation or other similar activity. The Department received a few comments in response to this proposed requirement. One small business coalition expressed its support, while another organization expressed concern that a 5-year document retention requirement was too long, especially for small employers, or employers like circuses and carnivals that are mobile or have a mobile component. Another commenter requested the Department prepare and provide a list to H–2B employers in one place, in plain language—perhaps as part of broad stakeholder compliance assistance—the documentation that should be retained. In response to concerns about the length of time for records retention, the Department has reduced the requirement from 5 years to 3 years. The documentation required will support specific attestations by the employer under the program. We will provide additional guidance in the course of individual and broad-based technical assistance and educational outreach to the employer community, including on the OFLC Web site. We will consider the issuance of additional written guidance, as appropriate.

M. Section 655.23(c)—Request for Further Information

The Department proposed to issue a Request for Further Information (RFI) within 14 days of receiving the application, if needed, for the purpose of adjudicating the application for labor certification. All of those who commented on this provision requested that the timeframes be changed, but most also recommended an additional provision that would obligate the Department to process and respond to the information received through the RFI within a certain period of time. The Department agrees and shortened both the issuance and response time to 7 days. The Department also has added a provision that obligates the CO to issue a Final Determination within 7 business days of receiving the employer's response, or by 60 days before the date of need, whichever is greater.

N. Section 655.24—Post-Adjudication Audits

The Department proposed to use various selection criteria for identifying applications for audit review after the application has been adjudicated in an effort to maintain and enhance program integrity. The audits are meant to permit the Department to ensure compliance with the terms and conditions by an employer and to fulfill the Secretary's statutory mandate to certify applications only where unemployed U.S. workers capable of performing such services cannot be found. Failure by an employer to respond to the audit could lead to debarment from the program as could a finding by the Department that the employer has not been complying with the terms and conditions attested to in the application. The Department received many comments on this provision. They were equally divided between those that opposed post-adjudication audits and those that believed audits are an effective tool to enhance integrity. Those who opposed the post-adjudication audits did not make any alternative suggestions on how the Department could determine compliance with the program. Therefore, with no other alternatives available, the Department believes its initial analysis is correct and, therefore, has not made any substantive changes to this section, save for including the option for the CO to refer any findings that an employer violated the terms and conditions of the program with respect to eligible U.S. workers to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices, as suggested by one commenter.

O. Section 655.30—Supervised Recruitment

The Department proposed to require certain employers to engage in supervised pre-filing recruitment to ensure compliance with recruitment requirements. One comment was received on this provision. The commenter believes that the NPC will be unable to handle such a responsibility as effectively and as efficiently as did the local SWAs and that it will affect the integrity of the program. The Department respectfully disagrees with this commenter and has retained the provision as proposed. We believe that centralizing the process will provide uniformity and expertise that will enhance program integrity. Further, in the permanent labor certification program, supervised recruitment is conducted under Federal guidance and not SWA supervision.

P. Section 655.31—Debarment

The Department's NPRM proposed a mechanism allowing the Department to debar an employer/attorney/agent from the H–2B program for a period of up to 3 calendar years. Debarment from the program is a necessary and reasonable mechanism to enforce H–2B labor certification requirements and ensure compliance with the program's statutory requirements. Further, debarment and other enforcement mechanisms, *e.g.*, audits, are necessary and reasonable program compliance checks to balance the transition to an attestation-based filing system. The proposed rule would permit the Department to debar an employer, attorney, and/or agent for a period of up to 3 calendar years for misrepresenting a material fact or for making a fraudulent statement on an H–2B application, for a material or substantial failure to comply with the terms of the attestations, for failure to cooperate with the audit process or ordered supervised recruitment, or if the employer/attorney/agent has been found by a court of law, WHD, DHS, or the DOS to have committed fraud or willful misrepresentation involving any OFLC employment-based immigration program.

Upon further consideration, based in part upon the Department's recent efforts to modernize its H–2A labor certification regulations, the Department has decided to modify the debarment provision so that it more closely parallels the debarment provision for the H–2A regulation at 20 CFR 655.118, given the similarity of the H–2A and H–2B labor certification programs. While many of the grounds for debarment are substantially similar in the Final Rule as in the NPRM, the Final Rule contains additional safeguards for both workers and employers, which are explained in greater detail below.

1. Debarment Authority

An advocacy organization questioned the Department's authority to debar attorneys, agents, or employers from the H–2B program and asserted that a determination of a violation should only be made after notice of violation and an

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opportunity for a hearing. The debarment of entities from participating in a government program is an inherent part of an agency's responsibility to maintain the integrity of that program. As the Second Circuit found in *Janik Paving & Construction, Inc.* v. *Brock,* 828 F.2d 84 (2d Cir. 1987), the Department possesses an inherent authority to refuse to provide a benefit or lift a restriction for an employer that has acted contrary to the welfare of U.S. workers. In assessing the Department's authority to debar violators, the court found that ''[t]he Secretary may * * * make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions * * * as [s]he may find necessary and proper in the public interest to prevent injustice of undue hardship or to avoid serious impairment of the conduct of Government business.'' *Id.* at 89.

In addition, although the Administrative Procedure Act provides that parties are entitled to appear before the agency with legal counsel, see 5 U.S.C. 555(b), this provision ''leaves intact the agencies' control over both lawyers and non-lawyers who practice before them,'' Attorney General's Manual on the APA (1947) at 65. The Department's debarment of attorneys and agents under the H–2B program is also consistent with the Department's longstanding practice of regulating attorneys and representatives who appear before the agency. See, *e.g., In re judicial inquiry re Miroslaw Kusmirek,* 2000–INA–116 (Sept. 18, 2002) (sanctioning a representative for providing forged documents to the Department of Labor).

In order to encourage compliance, the regulatory scheme for the H–2B program relies on attestations, audits, investigations and the remedial measure of debarment. Use of debarment as a mechanism to encourage compliance has been endorsed in the INA for a number of foreign labor certification and attestation programs. Ensuring the integrity of a statutory program enacted to protect U.S. workers is an important part of the Department's mission.

As part of the Department's inherent debarment authority, the Department may determine the particular procedures that may apply to the process. Accordingly, it is within the Department's authority to require the OFLC Administrator to issue a Notice of Intent to Debar no later than 2 years after the occurrence of the violation; offer the employer an opportunity to submit evidence in rebuttal; and if the rebuttal evidence is not timely filed or if the Administrator determines that the employer, attorney, or agent more likely than not meets one or more of the bases for debarment, issue a *Notice of Debarment* which may be subject to administrative appeal through the Department's Board of Alien Labor Certification Appeals (BALCA). Like the NPRM, the Final Rule provides that the *Notice of Debarment* shall be in writing, state the reason for the debarment finding and duration of debarment, and identify the appeal rights. Additionally, the Final Rule provides that the debarment will take effect on the start date identified in the *Notice of Debarment* unless the administrative appeal is properly filed within 30 days of the date of the Notice, thereby, staying the debarment pending the outcome of the appeal.

2. Grounds for Debarment

While a union and a state agency expressed their support for the debarment provisions, a law firm asserted that the debarment was an unduly strict sanction for minor violations of new procedures, the details of which are still not clear. We disagree with the commenter's characterization of violations warranting debarment as ''minor.'' The Department will not debar for ''minor'' violations. Rather most of the violations that will be the basis of potential debarment actions require a pattern or practice of acts that: (1) Are significantly injurious to the wages or benefits offered under the H–2B program or working conditions of a significant number of the employer's U.S. or H–2B workers; (2) reflect a significant failure to offer employment to each qualified domestic worker who applied for the job opportunity for which certification was being sought, except for lawful job-related reasons; (3) reflect a significant failure to comply with the employer's obligations to recruit U.S. workers; (4) reflect a significant failure to comply with the RFI or audit process; (5) reflect the employment of an H–2B worker outside the area of intended employment, or in an activity/activities not listed in the job order (other than an activity minor and incidental to the activity/activities listed in the job order), or after the period of employment specified in the job order and any approved extension; or (6) reflect a significant failure to comply with supervised recruitment. However, the Department recognizes that there are some acts which the Department would have no other available remedy to enforce would warrant debarment even without a pattern or practice. These acts are set forth separately under § 655.31(d)(2) through (5). These acts are: Fraud; the failure to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection or law enforcement function; the failure to comply with one or more sanctions or remedies imposed by the ESA, or with one or more decisions of the Secretary or court; and a single heinous act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected.

As to the details of the violation not being clear, we believe that the regulations are quite clear in setting forth the various grounds under which an employer, attorney or agent may be debarred. The Department understands the seriousness of debarment as a penalty and, in considering the comments received in response to the NPRM, believes that the resulting debarment provision upholds the integrity of the H–2B labor certification program and puts employers on notice of what violations are sufficiently serious that could result in potential debarment.

Additionally, the law firm requested a provision for training prior to being subject to sanctions such as debarment. While we do not think that it is necessary to address such training directly in the regulation, OFLC will issue further guidance, as appropriate, to orient stakeholders and staff to these new provisions.

3. Debarment of Attorneys and Agents

An international recruiting company requested that the Department apply a different standard for the debarment of attorneys and agents from the debarment of employers. In particular, the commenter asserted that the evidence to debar the agent or attorney would need to be legally significant since they do not share in the task of employment and stated that many agents accept information from the employer at face value and accept information as true. While attorneys and agents are not strictly liable for all actions of the employers they represent they do have responsibilities attendant to their participation in the program. Employers, agents, and attorneys each must remain aware of their particular responsibilities under the labor certification process and of the consequences of submitting false or misleading information to a Federal agency. Accordingly, the regulation provides that the Administrator may debar agents and attorneys not only for participating in, but also having knowledge of, or having reason to know of, the employer's substantial violation.

An advocacy organization objected to the omission of appeal rights for

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attorneys and agents with respect to a *Notice of Debarment.* The commenter stressed that since attorneys and agents may themselves be subject to a *Notice of Debarment,* they ought to have recourse to correct a conceivably incurred or unfair decision. The commenter also noted that there may be certain instances where the interests of an employer and attorney or agent may diverge with respect to pursuing an appeal and the latter would be harmed due to the lack of appeal rights. The commenter also noted that the Department's permanent labor certification regulations provide not only the employer but any debarred person or entity the right to appeal the debarment decision. We agree with commenter's concern and have included references to attorneys' and agents' rebuttal and appeal rights, in additional to that of employers.

4. Use of Labor Contractors

An advocacy organization expressed a concern that employers would manipulate their legal identities resulting in abuses that would not be cured by debarment. In particular, the commenter set forth a scenario in which a company would retain a labor contractor or temporary agency to serve as the ''employer'' for a group of foreign workers at the company's work site. The commenter was concerned that the company would take advantage of a labor contractor's false claim that no domestic workers could be found, yet only the labor contractor would be debarred as the ''employer,'' thus allowing the company to hire another labor contractor to repeat the same abuses.

The commenter seems to presume all labor contractors would commit violations of the program, which is a generalization that unfairly portrays law abiding labor contractors in a negative light. Nonetheless, this is a situation that would be of concern to the Department and, if appropriate, we would pursue administrative means to ascertain the veracity of applications and information submitted to the Department.

5. Review of Debarment Determinations

The Department did not receive comments about the procedures for the review of the Administrator, OFLC's debarment determinations. However, to ensure consistency across programs, the Department has included in the Final Rule procedures, identical to those set forth in the Department's H–2A Final Rule, for hearings before an administrative law judge and review of the administrative law judge's decision by the Administrative Review Board. Under the Final Rule, a debarred party may request a hearing which would be governed by the procedures in 29 CFR part 18, and administrative law judge decisions would not be required to be issued within a set period of time. We believe that this process provides a period of time that is both sufficient for thorough consideration of the grounds for debarment and expedient enough so as to allow the Department to debar bad actors before they can cause any additional harm while also minimizing the period of uncertainty for employers in the case of a successful appeal.

Q. Section 655.32—Labor Certification Determinations

The proposed language delineated the criteria by which the Administrator of OFLC will certify or deny applications. The commenters, though citing this particular section of the NPRM, actually commented on the attestation-based process in general. Their comments were incorporated into that discussion above.

R. Section 655.33—Appeals to the BALCA

The Department's and DHS's NPRMs proposed a new model for the adjudication of H–2B applications. Under current procedures, the Department does not provide for any administrative review of decisions either denying H–2B labor certification applications or rendering a non-determination. Currently, the Department's decisions are advisory to DHS and employers whose applications are denied or issued a non-determination by the Department may submit countervailing evidence to DHS and have access to administrative review under DHS procedures. Under the DHS NPRM, the countervailing evidence process is eliminated and employers seeking to file H–2B visa petitions will be required to present an approved labor certification from DOL. Since DOL decisions denying H–2B labor certification will no longer be subject to additional review outside of the Department, we concluded that it would be appropriate to provide an employer whose labor certification application is denied an opportunity to seek review in the Department. The Department's NPRM included such a procedure providing for administrative review before the BALCA.

The Department received a number of comments on this portion of the NPRM, the majority of which expressed dissatisfaction with the proposal. We have carefully reviewed these comments and made several changes in response. Several commenters expressed satisfaction with the current appeal process and requested that it not be changed. To the extent these comments related to concerns about the length of that process, that question is discussed below. To the extent the commenters expressed a preference for the retention of the current practice in which countervailing evidence can be submitted to DHS when an H–2B labor certification application is denied, similar comments were submitted to DHS in response to its NPRM and DHS made no change in its Final Rule. We defer to and adopt DHS's response on this issue. Likewise, the concern expressed by one commenter that the time spent utilizing the Department's appeals procedures will delay employers getting into the queue at DHS for the limited number of available H–2B visas, is a matter that is addressed by DHS in their Final Rule.

With regard to matters directly related to the Department's proposal, a number of commenters objected to the provision that precluded the submission of new evidence to the BALCA. We believe these commenters do not recognize the totality of the proposal. The NPRM provides that before a CO can deny an H–2B application, the CO must issue an RFI that apprises the employer of the grounds for the proposed denial and provides an opportunity to submit additional information. The Department does not see any reason to provide another opportunity to submit necessary information. In addition, providing such an opportunity would inevitably delay issuance of final decisions from the BALCA. Concerns about delays at the BALCA were expressed by a number of commenters even in the absence of any authorization for the submission of new evidence.

Several commenters expressed concern that the appeal process before the BALCA would take too long. One noted specifically that no time limit was contained for the BALCA to issue its docketing statement and a briefing schedule. It was also pointed out that the NPRM provided merely that the BALCA ''should'' notify the employer of its decision within 20 days of the filing of the CO's brief. In response to comments reflecting concerns about the timeliness of the appeal process, the Final Rule reflects significantly shorter time frames, with the BALCA decision due no later than 15 business days after the request for review is filed.

One commenter suggested the possibility of allowing worker representatives to participate in the administrative appeal process. We have rejected that suggestion. Generally, the

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Department's labor certification procedures do not involve participation by third parties and we do not believe that their involvement would enhance the process given the nature of the labor certification determination.

S. Section 655.34(c)—Amendments

The Department received several comments on the provision requiring the amendment of labor certifications if the start dates change and/or the number of workers change. All commenters opposed this change. One commenter admitted that employers set their start date based on the availability of visa numbers. Other commenters claimed that this provision makes it impracticable to adjust to market fluctuations during the season. The Department appreciates the candid comments about the difficulties this new requirement will create. However, the Department's experience is that many times dates of need or number of workers needed are changed to such a degree that the recruitment previously done is stale by the time USCIS receives the application. Changes to start dates, especially as the practice has become more common, also raise a concern that U.S. workers who might indeed be available for work on the new start date were not given the chance to apply originally. Therefore, this requirement represents a reasonable and logical solution. The only changes made to the section were for clarification purposes.

T. Section 655.35—Required Departure

In consultation with DHS, the Department proposed to include, as part of the employer's obligations, the requirement that employers provide notice to the H–2B workers of their required departure at the end of their authorized stay or separation from employment, whichever occurs first. This section was designed in anticipation of DHS establishing a registration of departure program. The provision requires employers to inform their H–2B workers of their obligation to register their departure at the port of exit. The Department received one comment suggesting that we eliminate this provision because it is unworkable due to the requirement for specific entry and exit points, which is inevitably a guarantee for violations occurring. This commenter also suggested we work with DHS instead. The Department respectfully declines to eliminate this language. The entry-exit ports and requirements continue to be matters of immigration under DHS's jurisdiction; this language simply makes it an employer's obligation to inform foreign workers of the workers' responsibility. The Department did consult with DHS on this language to establish this employer obligation and lay the appropriate groundwork as DHS continues to build their next-generation entry-exit system.

U. Delegation of Enforcement Authority

As previously discussed, the INA provides the Department no direct authority to enforce any conditions concerning the employment of H–2B workers, including the prevailing wage attestation. DHS possesses that authority pursuant to secs. 103 and 214(a) and (c) of the INA. 8 U.S.C. 1103 and 8 U.S.C. 1184(c)(14)(A). DHS may also delegate its authority to the Department under secs. 103(a)(6) and 214(c)(14)(B) of the INA. 8 U.S.C. 1103(a)(6) and 8 U.S.C. 1184(c)(14)(B). DHS has chosen to delegate its enforcement authority to DOL, which provides the basis for the new enforcement provisions of this subpart. The delegation will not take effect until this rule becomes effective.

V. Section 655.50(c)—Availability of Records in the Enforcement Process

Language has been added to § 655.50(c) to describe the employer's responsibility to make records available when those records are maintained in a central office.

W. Section 655.60—Compliance With Application Attestations

The NPRM proposed a WHD enforcement program addressing H–2B employers' compliance with attestations made as a condition of securing authorization to employ H–2B workers. The proposed enforcement program also covered statements made to DHS as part of the petition for an H–2B worker on the DHS Form I–129, Petition for a Nonimmigrant Worker. Compliance with attestations and the DHS petition are designed to protect U.S. workers and would be reviewed in WHD enforcement actions. This Final Rule adopts this proposal.

A trade union and U.S. Senator commented that the proposal did not include a mechanism for accepting complaints of potential violations. The Department intends to accept complaints, as it does under other statutes it administers such as the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.,* which does not have a specific regulatory mechanism for the acceptance of complaints. Thus, the Department has not added a specific regulatory procedure here.

Another trade union commented that the Department should adopt the definition of ''employ'' found in the FLSA, which defines the term to include ''suffer or permit to work.'' In fact, the proposed regulations included such a definition. However, the terms ''employer'' and ''employee'' were defined in terms of the common law test of employment which does not include ''suffer or permit to work.'' Since the two concepts are different and the use of the ''suffer or permit'' test is precluded by the U.S. Supreme Court opinion in *Nationwide Mutual Ins.* v. *Darden,* 503 U.S. 318, 322–323 (1992), the reference to ''suffer or permit to work'' has been removed.

X. Section 655.65—Remedies for Violations of H–2B Attestations

1. Section 655.65(a) and (b)—Assessment of Civil Money Penalties

Under the proposed rule, the WHD would assess civil monetary penalties in an amount not to exceed $10,000 per violation for a substantial failure to meet conditions of the H–2B labor condition application or of the DHS Form I–129, Petition for a Nonimmigrant Worker for an H–2B worker; or for a willful misrepresentation of a material fact on the DOL application or DHS petition; or a failure to cooperate with a Department of Labor audit or investigation. No comment addressed this provision and it is adopted in the Final Rule, with one change—in accordance with the statutory provisions, the Final Rule clearly reflects that the WHD Administrator may access civil money penalties when appropriate.

2. Section 655.65(i)—Reinstatement of Illegally Displaced U.S. Workers

Under the NPRM the WHD would seek reinstatement of similarly employed U.S. workers who were illegally laid off by the employer in the area of intended employment. Such unlawful terminations are prohibited if they occur less than 120 days before the date of requested need for the H–2B workers or during the entire period of employment of the H–2B workers. No comments addressed this proposal and it is adopted in the Final Rule.

3. Section 655.65(i)—Other Appropriate Remedies

WHD may seek remedies under other laws that may be applicable to the work situation including, but not limited to, remedies available under the FLSA (29 U.S.C. 201 *et seq.*), the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 *et seq.*), and the McNamara-O'Hara Service Contract Act (41 U.S.C. 351 *et seq.*). WHD also may seek other administrative remedies for violations as it determines to be appropriate.

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The Department sought public comments on whether back wages can be assessed under the H–2B program when an employer fails to pay the prevailing wage rate. The most extensive comments received were from a U.S. Senator asserting that the lack of back pay as a remedy is a ''weakness of the Department's enforcement proposal'' and that back pay is ''an essential make-whole remedy for both H–2B program participants and American workers * * * [and] would provide a key incentive for otherwise vulnerable workers to come forward and protect their rights.'' The Senator also stated that ''[t]here is ample authority establishing that similarly broad grants of remedial authority are sufficient to authorize an award of back [pay], even when this remedy is not specifically enumerated.''

The Department has carefully considered whether Congress has provided authority to assess back wages under the H–2B provisions. The Department concludes that the H–2B statutory provisions provide the Secretary with the authority to seek back wages for failure to pay the required wage even though the statute does not specifically list this remedy. The INA broadly authorizes DHS to, ''in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties * * *) as the Secretary of Homeland Security determines to be appropriate[.]'' 8 U.S.C. 1184(c)(14)(i). As noted above, that authority has been delegated to the Department of Labor. Awarding back pay is unquestionably the most appropriate remedy for failure to pay the required wage. It is also consistent with the statutory grant of authority and will further the purposes of the H–2B program because it will reduce employers' incentives to bypass U.S. workers in order to hire and exploit H–2B foreign workers, and guard against depressing U.S. workers' wage rates.

A number of courts have concluded that, under similarly broad grants of remedial authority, the Secretary may establish back pay as an appropriate sanction even in the absence of explicit statutory authority. See, *e.g.*, *Commonwealth of Kentucky Dept. of Human Resources* v. *Donovan*, 704 F.2d 288, 294–96 (6th Cir. 1983) (ruling that the Secretary of Labor had authority to award back pay under Comprehensive Employment and Training Act (CETA) both prior to the 1978 statutory and regulatory amendments and pursuant to the 1978 amendments); *City of Philadelphia* v. *U.S. Dept. of Labor*, 723 F.2d 330, 332 (3d Cir. 1983); *United States* v. *Duquesne Light Co.*, 423 F. Supp. 507, 509 (W.D. Pa. 1976) (in government contracting case, back pay appropriate under E.O. 11246).

The preamble to the NPRM, 73 FR 29946, noted that the H–1B provisions of the INA, unlike the H–2B provisions, contain a separate provision requiring that the Secretary assess back wages in cases where an employer has failed to pay the LCA-specified wages. 8 U.S.C. 1182(n)(2)(D) (''If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the [LCA] * * * the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the [H–1B] requirements * * * whether or not [other penalties have] been imposed.''). The H–1B back pay provision is, however, different from either programs' general, broad grant of remedial authority by being mandatory and by imposing no standard for the severity of wage violations (*e.g.*, willfulness or ''substantial violation'') for the collection of back wages. Therefore, the failure to include the mandate in H–2B simply means that the Secretary is not required to seek back pay in cases where the employer has failed to pay the LCA-specified wages; it does not bear on the Secretary's discretion to seek back pay in such cases. The Department concludes that the statutory language of the H–2B program provides the Secretary with the discretionary authority to seek back pay, provided there is a finding of a ''substantial violation'' or willfulness, in cases where the employer has failed to pay the LCA-specified wages. See 8 U.S.C. 1184(c)(14)(A)(i). The Department has modified the Final Rule accordingly.

Y. Comments Beyond the Scope

In addition to those discussed above, the Department received numerous comments that were beyond the scope of or not directly relevant to the proposed regulation. We did not respond to these comments, but find it appropriate to note them. They included: Calls for the Department to work with Congress to extend the Save Our Small and Seasonal Business Act returning workers provision; calls for the Congress to raise the H–2B 66,000 annual visa cap, or to allocate visa numbers more equitably across States; calls for the government to ''recapture'' H–2B visa numbers that expire the same year they are issued so they can be used for different workers; calls for the Congress to increase funding for all Federal agencies administering the H–2B visa program, and the SWAs, either through appropriations, or applications or fraud preventions fees; requests that DHS establish a special fraud investigative unit for certain visa related crimes and offenses; concerns about the requirement that workers use DHS's designated entry-exit system, and about the burdens and policies behind such a system; a request that foreign workers be given a two-month grace period between employers when the worker needs an extension but the workers' visas terminate before the beginning of their next employment; a request that employers have the authority to activate or deactivate the H–2B visa like a credit card to allow immediate action and loss of status if the worker fails to comply with the terms of the H–2B contract; calls for the government to require that H–2B workers (over whom the Department has no jurisdiction save for the areas covered in this Final Rule) purchase travel insurance or prohibit H–2B workers from identifying themselves as ''self-employed'' on their federal tax forms, or to eliminate the requirement that H–2B workers pay Social Security or Medicare; opinions that the United States has sufficient foreign workers to meet the needs of U.S. employers, especially at a time when the economy is slowing down and many U.S. workers are unemployed; calls for U.S. employers to provide higher wages and better working conditions; and a call for H–2B workers to be permitted representation by Federally-funded legal services corporations, and that resources for such counsel be increased.

III. Administrative Information

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (E.O.) 12866, the Department must determine whether a regulatory action is ''significant'' and therefore, subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). Section 3(f) of the E.O. defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues

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arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The Department determined that this regulation is a ''significant regulatory action'' under sec. 3(f)(4). This Final Rule implements a significant policy related to the President's policies on immigration. However, the Department determined that this rule is not an ''economically significant'' rule under E.O. 12866 because it will not have an annual effect on the economy of $100 million or more.

Analysis Considerations

The direct incremental costs employers will incur because of this Final Rule, above and beyond the current costs required by the program as it is currently implemented, are not economically significant. The total annual cost associated with this Final Rule is approximately $1,872,769 per year or $166 per employer. The only additional costs on employers resulting from this Final Rule are those involved in (1) the placement of a Sunday advertisement, which replaces one of the former daily advertisement and the additional paperwork costs; (2) the new paperwork and retention requirements; and (3) contacting laid-off workers to notify them of a job opportunity.[6]

Cost of the Sunday Advertisement

The cost range for advertising and recruitment is taken from a recent (October 2008) sample of newspapers in various urban and rural U.S. cities, and reflects approximate costs for placing one 10-line advertisement in those newspapers. The cost of advertising in a Sunday paper instead of during the week is approximately $234, which represents an increase of approximately $31.16 over the weekday advertisement.[7] The additional total cost for the 11,267 employers utilizing the H–2B program of one Sunday ad would average approximately $351,080 assuming that such ads would not have been placed by the business as part of its normal practices to recruit U.S. workers.[8]

Cost of Paperwork and Record Retention Requirements

The paperwork and record retention costs are minimal, as records will require a burden of approximately 1.35 hours per year per application. Based on the median hourly wage rate for a Human Resources Manager ($40.47), as published by the Department's Occupational Information Network, O*Net OnLine, and increased by a factor of 1.42 to account for employee benefits and other compensation, a total cumulative burden of 15,210 hours will result in a total cost of $874,118, or $77.58 per employer.

Cost To Notify Laid-Off Workers of Job Opportunity

A final cost to employers for implementing the requirements of this Final Rule is the cost associated with notifying laid-off workers of a job opportunity. The Department estimates that the total cost to meet this requirement is $647,571 or $57.48 per employer. To make this cost determination, the Department estimated it would take an employer's Human Resources Manager approximately 3 minutes to notify each laid-off worker. The Department does not have data to determine how many laid-off workers an employer would be required to notify. Therefore, the Department projected this number based on the total number of employees requested on the applications. Based on PY 2006 data, employers requested visas for 247,287 foreign workers, for an average of 22 employees per employer. We then multiplied this number by 3 minutes (the time estimate to notify each laid-off worker) to determine that it will take each employer approximately one hour to meet this requirement. Thus, the cost per employer is the hourly salary for the Human Resource Manager to make the calls or $57.47.

Benefits

We also project that employers will experience significant time-savings as a result of the reengineered process. The Department estimates the average time-savings to employers will be at least 28 days from the current process, based on the current average H–2B application processing time of 73 days in the fiscal year (FY) 2007 (October 1, 2006–September 30, 2007). Although the Department cannot estimate the cost savings as a result of this time saved, it believes that employers will experience a variety of economic benefits, including benefits from predictability of workforce size and availability regardless of geographic area, as a result of reengineering the application process.

The Department received seven comments related to the cost of this rulemaking. One comment was directed at the cost to small businesses and has been addressed in Section B of this section of the preamble below. The remaining six comments were related to the costs to the SWAs, which is not a cost calculated in the total cost of this Final Rule because they are considered transfer costs under OMB Circular A–4. Therefore, the Department has addressed those comments in Section C of this section of the preamble. The Department notes, however, that based on the comments, it reduced the number of required advertisements from three in the preamble to two in this Final Rule, which is reflected in the cost analysis above.

B. Regulatory Flexibility Analysis/ SBREFA

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. A significant economic impact is defined as eliminating more than 10 percent of the businesses' profits; exceeding 1 percent of the gross revenue of the entities in a particular sector; or exceeding 5 percent of the labor costs of the entities in the sector. Further under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact. Although the RFA and the SBREFA analyses were included as separate preamble sections in the proposed rule, the Department has included them in one preamble section in this Final Rule to avoid unnecessary duplication. The Department has certified that this Final Rule does not have a significant economic impact on a substantial number of small entities.

1. Definition of a Small Entity

A small entity is one that is ''independently owned and operated and which is not dominant in its field of operation.'' The definition of small business varies from industry to

[6] The Department notes that this cost is not new to the H–2B program because it has been required in program guidance. However, because it is new to the regulation, we have included it in this analysis.

[7] The Department based this average on 10 locations with the highest number of H–2B applications, including the following: Houston, Texas; Orlando, Florida; Vail, Colorado; Orange County, California; Cape Cod, Massachusetts; Detroit, Michigan; Baton Rouge, Louisiana; Houma, Louisiana; Columbus, Ohio; and Washington, DC.

[8] The Department notes that this cost is based on the highest costs in each location. Fees are likely to be lower given that many newspapers offer lower rates for consecutive ads, for placing two ads in the same week, or for purchasing a Sunday and weekday ad.

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industry to the extent necessary to properly reflect industry size differences. An agency must either use the SBA definition for a small entity, or, establish an alternative definition. Given that this rulemaking crosses industry sectors, the Department has adopted the SBA size standards defined in 13 CFR 121.201. The SBA utilizes annual revenue in some industries, while utilizing number of employees in others to determine whether or not a business is considered a small business. Historically however, the Department has not collected information about an employer's industry classification, annual revenues, or number of employees currently on payroll in the H–2B program. Therefore, the Department cannot accurately and comprehensively categorize each applicant-employer for the purpose of conducting the RFA analysis by industry and size standard. In lieu of the industry and size standard analysis, the Department based the estimated costs of the reformed H–2B process assuming all employers-applicants were small entities.

2. Factual Basis for Certification

The factual basis for such a certification is that this Final Rule does not affect a substantial number of small entities and there will not be a significant economic impact on them. The Department receives more than 10,000 applications a year under this program. In FY 2006 (October 1, 2005–September 30, 2006), ETA received from SWAs 11,267 applications from employers seeking temporary labor certification under the H–2B program. As mentioned earlier, the Department does not collect information regarding the numbers of small entities participating in the H–2B program. The Department believes that this rule may potentially affect as many as 11,267 employers participating in this program, assuming that each employer only has one application.

Although there may be a substantial number of small entities impacted by this Final Rule, the Department has determined that this rule will not have a significant economic impact on those small businesses that utilize the program. The RFA and the SBREFA, which amended the RFA, require that an agency promulgating regulations segment and analyze industrial sectors into several appropriate size categories for the industry being regulated. Even though the foreign labor certification programs are open to all industries, the Department does not have sufficient data to analyze the universe of H–2B applicants by industry sector. However, the Department was able to analyze the PY 2006 data to determine that landscape occupations [9] accounted for approximately 31 percent of all the applications filed. According to SBA guidelines for the landscape industry, all employers with annual receipts at or below $6.5 million are considered small businesses. The cost of this rule for those employers at this threshold would be approximately .003 percent of their annual revenues; even for employers with annual receipts of only $500,000, the cost would represent only .036 percent of revenues.[10] The Department also recognizes that there are potentially very small business that might be affected. Therefore, for purposes of comparing costs, this rule would cost small entities that had gross annual receipts of $120,000 and profits of $12,000 approximately .15 percent of their revenues, which would not be significant.

The Department believes that the costs incurred by employers under this Final Rule will not be substantially different from those incurred under the current application filing process. Employers seeking to hire foreign workers on a temporary basis under the H–2B program must continue to establish to the Secretary's satisfaction that their recruitment attempts have not yielded enough qualified and available U.S. workers. Similar to the current process, employers under this H–2B process will file a standardized application but will retain recruitment documentation, a recruitment report, and any supporting evidence or documentation justifying the temporary need for the services or labor to be performed. To estimate the cost of this reformed H–2B process on employers, the Department calculated each employer will pay an additional $31.16 to meet the advertising requirements for a job opportunity, and will spend an additional 1.35 hours staff time preparing the standardized application, narrative statement of temporary need, final recruitment report, and retaining all other required documentation (*e.g.*, newspaper ads, business necessity) for audit purposes or $81.57 per employer. The Department also estimated that it will take an employer approximately one hour to notify laid-off workers of a job opportunity, or $66.46.

Using the RFA standard to determine whether a rule will have a substantial impact on a significant number of small businesses, the Department determined that this Final Rule will not eliminate more than 10 percent of the businesses' profits; exceed 1 percent of the gross revenue of the entities in a particular sector; or exceed 5 percent of the labor costs of the entities in the sector. The total cost per employer is approximately $179, which represents .15 percent of the gross receipts and profits of a small entity with $120,000 in revenues and $12,000 profits. Therefore, this rule will not have a significant impact on a substantial number of small businesses.

The Department received one comment on this section, which generally stated that the rule would increase the cost to employers, especially given the changes to advertising. Although this statement is partly true given that the cost of the rule increased by approximately $179, in light of the other non-quantifiable benefits, the Final Rule will likely represent a cost-savings to the employer. Therefore, for the reasons stated, the Department believes that total costs for any small entities affected by this program will be reduced or stay the same as the costs for participating in the current program. Even assuming that all entities who file H–2B labor certification applications qualify as small businesses, there will be no net negative economic effect.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*) directs agencies to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector to determine whether the regulatory action imposes a Federal mandate. A Federal mandate is defined in the Act at 2 U.S.C. 658(5)–(7) to include any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector which is not voluntary. A decision by a private entity to obtain an H–2B worker is purely voluntary and is, therefore,

[9] The Department notes that this was the only occupation that could be paralleled with the industry classifications required by the SBA and described in 13 CFR 121.201. The landscape industry includes grounds keeping, lawn services, landscaping, tree planting, tree trimming, and tree surgeons. However, the Department does not require employers to list a North American Industry Classification System (NAICS) code for each employment position under the H–2B program, and therefore, the data calculated for this example is not as accurate as it would be with NAICS coding. For instance, some landscaping duties require bricklaying, which we note has been used as a separate employment category on some of the applications. Without the coding it is not possible to categorize occupations accurately. Therefore, the Department notes that we used this industry merely to provide an example of how this rule could affect a category of employers.

[10] The cost of the rule ($166) divided by the projected annual receipts of the business.

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excluded from any reporting requirement under the Act.

The Department received six comments on this section from SWAs related to the increase in cost and workload and/or the lack of funding to support the new H–2B processing requirements. One commenter generally noted that its jurisdiction was neither financially nor functionally prepared to take on this added workload. Three States specifically stated that the funds provided under the Wagner-Peyser Act were insufficient to carry out their H–2B responsibilities prior to the changes in this rule, and the new eligibility verification requirements increased their funding challenges. Three States specifically related the lack of resources to the additional cost of storing and processing the I–9 documents related to the eligibility verification requirements.

The Department disagrees that this Final Rule imposes an unfunded mandate. As noted in the proposed rule, the Department is not insensitive to the resource and time constraints facing SWAs in their administration of H–2B activities and the difficulties inherent in making informed referrals on a population of workers that may be itinerant and difficult to contact. 73 FR 29950, May 28, 2008. However, we do not believe that this requirement will result in a significant workload increase or administrative burden. The Department points out that although there may be some new requirements for SWAs, there are also many requirements for SWAs that have been eliminated in this Final Rule given the reengineered approach. The Department believes reduced burden from the old requirements more than offsets any additional burden finalized here. The SWAs will experience a direct impact on their foreign labor certification activities in the elimination of certain H–2B activities under this Final Rule. These eliminated activities are currently funded by the Department under grants provided under the Wagner-Peyser Act, 29 U.S.C. 49 *et seq.* In addition, other tools will be available to the SWAs to make this requirement relatively easy to implement, such as the E-Verify system. As a result, the net effect of this Final Rule will likely be to ensure the amounts of such grants available to each State correspond or even increase relative to its workload under the H–2B program in the receipt, processing and monitoring of each application.

One State commented that the new eligibility verification requirements could lead to discriminatory practices subject to legal challenge, which in this commenter's opinion, the legal costs associated with any defense also represented an unfunded mandate. The Department believes it is premature to presume that the States will have to bear a significant cost to defend against any potential litigation associated with the implementation of this Final Rule, and which is typically considered part of a grantee's programmatic responsibility, should it occur.

Therefore, for the reasons stated above, the Department finds that this Final Rule does not impose an unfunded mandate.

D. Executive Order 13132—Federalism

Executive Order 13132 addresses the Federalism impact of an agency's regulations on the States' authority. Under E.O. 13132, Federal agencies are required to consult with States prior to and during the implementation of national policies that have a direct effect on the States, the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Further, an agency is permitted to limit a State's discretion when it has statutory authority and the regulation is a national activity that addresses a problem of national significance.

The Department received one comment on this section. This commenter stated that the Department's reversal of a long-standing position on U.S. worker self-attestation creates a Federalism impact. According to this commenter, TEGL 11–07, Change 1, mandates that SWAs perform pre-employment eligibility verifications on every U.S. worker that requests a referral to an H–2A job order. This commenter requests that the Department prepare a summary impact statement and acknowledge that many States currently have attestation-based systems for U.S. worker access to public labor exchange services.

The Department disagrees with this commenter's assessment of a Federalism impact and therefore, the need for a summary impact statement. In this case there is no direct effect on the States because the States are not in the best position to address the needs to re-engineer a Federal program to relieve the backlog that has occurred due to inadequate staffing, funding, or other issues of concern. The issues addressed by the regulations are of national concern to ensure an effective program that regulates temporary alien workers and protects U.S. workers.

As noted elsewhere in this preamble, the Department attempted to reform this program in 2005. To meet the demands of the considerable workload increases for both the Department and the SWAs and limited appropriations, the Department determined that regulatory changes were still necessary. These changes are consistent with the Department's review, program experience, and years of stakeholder feedback on longstanding concerns about the integrity of the prior program. Therefore, as a program of national scope, the Department is implementing requirements that apply uniformly to all States.

Even if there were an argument that the Department should defer to the States on the eligibility verification requirements, the Department is authorized by the INA to implement Federal regulations to ensure consistency across States on immigration matters. Therefore, rather than having separate eligibility verification processes that vary from State to State, the Department is exercising its right under the INA to impose consistent requirements for all participants across the H–2B program. In addition, given that the H–2B program is an immigration-related program, it also is a program of national security and therefore, of national significance with Federal oversight and uniformity. The verification requirement is designed to strengthen the integrity of the temporary labor certification process, afford employers a legal pool of applicants, protect U.S. workers, and improve confidence in and use of the H–2B program.

Further, the relationship the States have with this program and the Federal Government is through grants from the Department to the States for the sole purpose of maintaining consistency across States. As a voluntary Federal program, the Department may change the direction from time to time as dictated by the changes to immigration-related concerns, but at the same time are consistent with the underlying legislation.

Therefore, for the reasons stated, the Department has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a summary impact statement.

E. Executive Order 13175—Indian Tribal Governments

Executive Order 13175 requires Federal agencies to develop policies in consultation with tribal officials when those policies have tribal implications. This Final Rule regulates the H–2B visa program and does not have tribal implications. Therefore, the Department has determined that this E.O. does not apply to this rulemaking. The Department did not receive any comments related to this section.

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F. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Federal regulations and policies on families. The assessment must address whether the regulation strengthens or erodes the stability, integrity, autonomy, or safety of the family.

The Final Rule does not have an impact on the autonomy or integrity of the family as an institution, as it is described under this provision. The Department did not receive any comments related to this section.

G. Executive Order 12630—Protected Property Rights

Executive Order 12630, Governmental Actions and the Interference with Constitutionality Protected Property Rights, prevents the Federal government from taking private property for public use without compensation. It further institutes an affirmative obligation that agencies evaluate all policies and regulations to ensure there is no impact on constitutionally protected property rights. Such policies include rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

The Department did not receive any comments on this section. The Department certifies that this Final Rule does not infringe on protected property rights.

H. Executive Order 12988—Civil Justice Reform

Section 3 of E.O. 12988, Civil Justice Reform, requires Federal agencies to draft regulations in a manner that will reduce needless litigation and will not unduly burden the Federal court system. Therefore, agencies are required to review regulations for drafting errors and ambiguity; to minimize litigation; ensure that it provides a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction.

The rule has been drafted in clear language and with detailed provisions that aim to minimize litigation. The purpose of this Final Rule is to reengineer the H–2B program and simplify the application process. Therefore, the Department has determined that the regulation meets the applicable standards set forth in sec. 3 of E.O. 12988. The Department received no comments regarding this section.

I. Plain Language

Every Federal agency is required to draft regulations that are written in plain language to better inform the public about policies. The Department has assessed this Final Rule under the plain language requirements and determined that it follows the Government's standards requiring documents to be accessible and understandable to the public. The Department did not receive any comments related to this section.

J. Executive Order 13211—Energy Supply

This Final Rule is not subject to E.O. 13211, which assesses whether a regulation is likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, the Department has determined that this rule does not represent a significant energy action and does not warrant a Statement of Energy Effects. The Department did not receive any comments related to this section.

K. Paperwork Reduction Act

1. Summary

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501), information collection requirements, which must be implemented as a result of this regulation, a clearance package containing proposed forms was submitted to OMB on February 14, 2008, along with its proposed rule to reform the H–2A agricultural foreign labor certification program, and then again on May 22, 2008, in conjunction with the H–2B proposed rulemaking preceding this Final Rule. Therefore, the public was given 60 days to comment on this information collection with both submissions, for a total of 120 days. All comments received were taken into consideration and a final package was submitted to OMB. The collection of information for the current H–2B program under the regulations in effect prior to the effective date of this rule were approved under OMB control number 1205–0015 (Form ETA 750).

This Final Rule implements the use of the new information collection, which OMB approved on November 21, 2008 under OMB control number 1205–0466. The Expiration Date is November 30, 2011. The new forms, ETA 9141 and ETA 9142, have a public reporting burden estimated to average 55 minutes for Form ETA 9141 and 2.75 hours for Form ETA 9142 per response or application filed.

This paperwork package applies—as does this Final Rule—to the H–2B, H–1B, H–1B1, H–1C, E–3, and PERM programs. The burden hours associated with the additional programs are a result of the wage determination and retention of document requirements. Under this Final Rule, and the implementation schedule it establishes, employers applying to any of these programs must use the ETA Form 9141, a single, Federal form that replaces the State-specific forms previously used to obtain prevailing wage determinations. There are no additional costs to the employer associated with the implementation of this new form, as costs are defined by the Paperwork Reduction Act. As the Department notes elsewhere in this preamble, the H–1C program was inadvertently removed. Consistent with the proposed rule at 73 FR 29947, May 28, 2008, it was the Department's intention to standardize all forms for better program effectiveness and efficiency in its non-agricultural programs, which necessarily extends also to the H–1C program.

For an additional explanation of how the Department calculated the burden hours and related costs, the Paperwork Reduction Act package for this information collection may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting the Department at: Office of Policy Development and Research, Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210 or by phone request to 202–693–3700 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov*.

The Department received six comments on this section, all related to the H–2B program. One commenter stated that the form ETA 9141 was unnecessarily long and complex and should be simplified. The Department has attempted to shorten the form and make it easier to use. It has been reduced from seven pages to four pages.

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Three of the comments related to the burden associated with the paperwork requirements. Two final commenters stated that they did not have the funding or staff time to manage the record retention requirements or to process and store the paperwork. None of the commenters specifically addressed the issue of our methodology or assumptions, or the other programs to which the ETA 9141 now applies.

The paperwork burden estimate for the form used for the H–2B program under the regulations in effect prior to the effective date of this Final Rule, (form ETA 750—OMB control number 1205–0015) was approximately 1.4 hours. Under this new collection of information, the Department estimates that the burden will be approximately 2.75 hours for Form ETA 9142. We based this calculation on a burden estimate of 1.4 hours for those program requirements that remained the same and allocated approximately 1.35 hours for the additional information requirements.

Although the Department did not receive any comments related to the remaining programs (H–1B, H–1B1, E–3, H–1C, and PERM), it notes that only the Form ETA 9141 applies to these programs. This Form will be used in lieu of the State form for submitting a prevailing wage request. Although the burden hours for each State application vary, the Department estimates the burden hours to complete the State forms to be approximately 1.0 hour. As a result, and for the reasons discussed elsewhere in this preamble, the Department does not expect the paperwork burden hours to increase for these programs.

In sum, without more persuasive analysis rebutting the analysis used by the Department, we assume our calculations are representative of the actual hourly burden for the new collection, which represents no increase for most programs and a minimal increase for the H–2B program.

L. Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at Number 17–273, ''Temporary Labor Certification for Foreign Workers.''

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

20 CFR Part 656

Administrative practice and procedure, Agriculture, Aliens, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Guam, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Students, Unemployment, Wages, Working conditions.

■ For the reasons stated in the preamble, the Department of Labor amends 20 CFR parts 655 and 656 as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Public Law 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Public Law 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Public Law 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Public Law 103–206, 107 Stat. 2428; sec. 412(e), Public Law 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Public Law 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Public Law 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart A issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b), 1103(a), and 1184(a) and (c); and 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart C issued under 8 CFR 214.2(h).

Subparts D and E authority repealed.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); and sec. 323(c), Public Law 103–206, 107 Stat. 2428.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Public Law 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Public Law 105–277, 112 Stat. 2681; and 8 CFR 214.2(h).

Subparts J and K authority repealed.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Public Law 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Public Law 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 2. Revise the heading of Part 655 to read as set forth above.

■ 3. Revise subpart A to read as follows:

Subpart A—Labor Certification Process and Enforcement of Attestations for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers)

Sec.

655.1 Purpose and scope of subpart A.
655.2 Territory of Guam.
655.3 Special procedures.
655.4 Definitions of terms used in this subpart.
655.5 Application Filing Transition.
655.6 Temporary need.
655.7 [Reserved]
655.8 [Reserved]
655.9 [Reserved]
655.10 Determination of prevailing wage for temporary labor certification purposes.
655.11 Certifying officer review of prevailing wage determinations.
655.12 [Reserved]
655.13 [Reserved]
655.14 [Reserved]
655.15 Required pre-filing recruitment.
655.17 Advertising requirements.
655.18 [Reserved]
655.19 [Reserved]
655.20 Applications for temporary employment certification.
655.21 Supporting evidence for temporary need.
655.22 Obligations of H–2B employers.
655.23 Receipt and processing of applications.
655.24 Audits.
655.25 [Reserved]
655.26 [Reserved]
655.27 [Reserved]
655.28 [Reserved]
655.29 [Reserved]
655.30 Supervised recruitment.
655.31 Debarment.
655.32 Labor certification determinations.
655.33 Administrative review.
655.34 Validity of temporary labor certifications.
655.35 Required departure.
655.50 Enforcement process.
655.55 Complaints.
655.60 Violations.
655.65 Remedies for violations.
655.70 WHD Administrator's determination.
655.71 Request for hearing.
655.72 Hearing rules of practice.
655.73 Service of pleadings.
655.74 Conduct of proceedings.
655.75 Decision and order of administrative law judge.
655.76 Appeal of administrative law judge decision.
655.80 Notice to OFLC and DHS.

Subpart A—Labor Certification Process and Enforcement of Attestations for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers)

§ 655.1 Purpose and scope of subpart A.

(a) Before granting the petition of an employer to admit nonimmigrant workers on H–2B visas for temporary

nonagricultural employment in the United States (U.S.), the Secretary of Homeland Security is required to consult with appropriate agencies regarding the availability of U.S. workers. Immigration and Nationality Act of 1952 (INA), as amended, secs. 101(a)(15)(H)(ii)(b) and 214(c)(1), 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184(c)(1).

(b) Regulations of the Department of Homeland Security (DHS) for the U.S. Citizenship and Immigration Services (USCIS) at 8 CFR 214.2(h)(6)(iv) require that, except for Guam, the petitioning H–2B employer attach to its petition a determination from the Secretary of Labor (Secretary) that:

(1) There are not sufficient U.S. workers available who are capable of performing the temporary services or labor at the time of filing of the petition for H–2B classification and at the place where the foreign worker is to perform the work; and

(2) The employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers similarly employed.

(c) This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant foreign workers in the U.S. in occupations other than agriculture and registered nursing.

(1) This subpart sets forth the procedures through which employers may apply for H–2B labor certifications, as well as the procedures by which such applications are considered and how they are granted or denied.

(2) This subpart sets forth the procedures governing the Department's investigatory, inspection, and law enforcement functions to assure compliance with the terms and conditions of employment under the H–2B program. The authority for such functions has been delegated by the Secretary of Homeland Security to the Secretary of Labor and re-delegated within the Department to the Employment Standards Administration (ESA) Wage and Hour Division (WHD). This subpart sets forth the WHD's investigation and enforcement actions.

§ 655.2 Territory of Guam.

Subpart A of this part does not apply to temporary employment in the Territory of Guam, and the Department of Labor (Department or DOL) does not certify to the USCIS of DHS the temporary employment of nonimmigrant foreign workers under H–2B visas, or enforce compliance with the provisions of the H–2B visa program provisions in the Territory of Guam. Pursuant to DHS regulations, 8 CFR 214.2(h)(6)(v) administration of the H–2B temporary labor certification program is performed by the Governor of Guam, or the Governor's designated representative.

§ 655.3 Special procedures.

(a) *Systematic process.* This subpart provides procedures for the processing of H–2B applications from employers for the certification of employment of nonimmigrant positions in nonagricultural employment.

(b) *Establishment of special procedures.* The Office of Foreign Labor Certification (OFLC) Administrator has the authority to establish or to devise, continue, revise, or revoke special procedures in the form of variances for the processing of certain H–2B applications when employers can demonstrate, upon written application to the OFLC Administrator, that special procedures are necessary. These include special procedures currently in effect for the handling of applications for tree planters and related reforestation workers, professional athletes, boilermakers coming to the U.S. on an emergency basis, and professional entertainers. Prior to making determinations under this paragraph (b), the OFLC Administrator may consult with employer and worker representatives.

§ 655.4 Definitions of terms used in this subpart.

For the purposes of this subpart:

Act means the Immigration and Nationality Act or INA, as amended, 8 U.S.C. 1101 *et seq.*

Administrative Law Judge means a person within the Department's Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105, or a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 656 of this chapter, which will hear and decide appeals as set forth in § 655.115.

Administrator, Office of Foreign Labor Certification (OFLC) means the primary official of the Office of Foreign Labor Certification, ETA, or the Administrator's designee.

Administrator, Wage and Hour Division (WHD), Employment Standards Administration means the primary official of the WHD, or the Administrator's designee.

Agent means a legal entity or person authorized to act on behalf of the employer for temporary non-agricultural labor certification purposes that is not itself an employer as defined in this subpart. The term ''agent''' specifically excludes associations or other organizations of employers.

Applicant means a lawful U.S. worker who is applying for a job opportunity for which an employer has filed an *Application for Temporary Employment Certification* (Form ETA 9142).

Application for Temporary Employment Certification means the Office of Management and Budget (OMB)-approved form submitted by an employer to secure a temporary nonagricultural labor certification determination from DOL. A complete submission of the *Application for Temporary Employment Certification* includes the form, all valid wage determinations as required by § 655.101(a)(1) and the U.S. worker recruitment report.

Area of Intended Employment means the geographic area within normal commuting distance of the place (worksite address) of intended employment of the job opportunity for which the certification is sought. There is no rigid measure of distance which constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (*e.g.*, average commuting times, barriers to reaching the worksite, quality of regional transportation network, etc.). If the place of intended employment is within a Metropolitan Statistical Area (MSA), including a multistate MSA, any place within the MSA is deemed to be within normal commuting distance of the place of intended employment. The borders of MSAs are not controlling in the identification of the normal commuting area; a location outside of an MSA may be within normal commuting distance of a location that is inside (*e.g.*, near the border of) the MSA.

Attorney means any person who is currently a member in good standing of the bar of the highest court of any State, possession, territory, or commonwealth of the United States, or the District of Columbia, and who is not under suspension, debarment or disbarment from practice before any court or the Department, the Board of Immigration Appeals, the immigration judges, or DHS under 8 CFR 292.3, 1003.101. Such a person is permitted to act as an agent or attorney for an employer under this subpart.

Board of Alien Labor Certification Appeals (BALCA or Board) means the permanent Board established by part 656 of this chapter, chaired by the Chief Administrative Law Judge, and consisting of Administrative Law Judges assigned to the Department and designated by the Chief Administrative Law Judge to be members of BALCA.

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The Board is located in Washington, DC, and reviews and decides appeals in Washington, DC.

Center Director means the OFLC official to whom the OFLC Administrator has delegated his authority for purposes of National Processing Center (NPC) operations and functions.

Certifying Officer (CO) means the OFLC official designated by the Administrator, OFLC with making programmatic determinations on employer-filed applications under the H–2B program.

Chief Administrative Law Judge means the chief official of the Department's Office of Administrative Law Judges or the Chief Administrative Law Judge's designee.

Date of need means the first date the employer requires services of the H–2B workers as listed on the application.

Department of Homeland Security (DHS) means the Federal agency having jurisdiction over certain immigration-related functions, acting through its agencies, including the U.S. Citizenship and Immigration Services.

Eligible worker means an individual who is not an unauthorized alien (as defined in sec. 274A(h)(3) of the INA, 8 U.S.C. 1324a(h)(3), or in this paragraph (c)) with respect to the employment in which the worker is engaging.

Employee means employee as defined under the general common law of agency. Some of the factors relevant to the determination of employee status include: The hiring party's right to control the manner and means by which the work is accomplished; the skill required to perform the work; the source of the instrumentalities and tools for accomplishing the work; the location of the work; the hiring party's discretion over when and how long to work; and whether the work is part of the regular business of the hiring party. Other applicable factors should be considered and no one factor is dispositive.

Employer means:

(1) A person, firm, corporation or other association or organization:

(i) Has a place of business (physical location) in the U.S. and a means by which it may be contacted;

(ii) Has an employer relationship with respect to H–2B employees or related U.S. workers under this part; and

(iii) Possesses, for purposes of the filing of an application, a valid Federal Employer Identification Number (FEIN).

(2) Where two or more employers each have the definitional indicia of employment with respect to an employee, those employers may be considered to jointly employ that employee.

Employment and Training Administration or ETA means the agency within the Department, which includes the OFLC and has been delegated authority by the Secretary to fulfill the Secretary's mandate under the Act.

ETA National Processing Center (NPC) means a National Processing Center established by the OFLC for the processing of applications submitted in connection with the Department's mandate pursuant to the INA.

Full-time, for purposes of temporary labor certification employment, means 30 or more hours per week, except that where a State or an established practice in an industry has developed a definition of full-time employment for any occupation that is less than 30 hours per week, that definition shall have precedence.

H–2B Petition means the form and accompanying documentation required by DHS for employers seeking to employ foreign persons as H–2B nonimmigrant workers.

INA means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Job contractor means a person, association, firm, or a corporation that meets the definition of an employer and who contracts services or labor on a temporary basis to one or more employers, which is not an affiliate, branch or subsidiary of the job contractor, and where the job contractor will not exercise any supervision or control in the performance of the services or labor to be performed other than hiring, paying, and firing the workers.

Job opportunity means one or more job openings with the petitioning employer for temporary employment at a place in the U.S. to which U.S. workers can be referred. Job opportunities consisting solely of job duties that will be performed totally outside the United States, its territories, possessions, or commonwealths cannot be the subject of an *Application for Temporary Employment Certification*.

Joint employment means that where two or more employers each have sufficient definitional indicia of employment to be considered the employer of an employee, those employers may be considered to jointly employ that employee. An employer in a joint employment relationship to an employee may be considered a ''joint employer'' of that employee.

Layoff means any involuntary separation of one or more U.S. employees without cause or prejudice.

Metropolitan Statistical Area (MSA) means those geographic entities defined by the U.S. Office of Management and Budget (OMB) for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics. A metro area contains a core urban area of 50,000 or more population, and a micro area contains an urban core of at least 10,000 (but less than 50,000) population. Each metro or micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core.

Offered Wage means the highest of the prevailing wage, Federal minimum wage, the State minimum wage, or local minimum wage.

Office of Foreign Labor Certification (OFLC) means the organizational component within ETA that provides national leadership and policy guidance and develops regulations and procedures by which it carries out the responsibilities of the Secretary under the INA, as amended, concerning foreign workers seeking admission to the U.S. in order to work under sec. 101(a)(15)(H)(ii)(b) of the INA, as amended.

Occupational Employment Statistics Survey (OES) means that program under the jurisdiction of the Bureau of Labor Statistics (BLS) that provides annual wage estimates for occupations at the State and MSA levels.

Prevailing Wage Determination (PWD) means the prevailing wage for the position, as described in § 655.10(b), that is the subject of the *Application for Temporary Employment Certification*.

Professional Athlete shall have the meaning ascribed to it in INA sec. 212(a)(5)(A)(iii)(II), which defines ''professional athlete'' as an individual who is employed as an athlete by:

(1) A team that is a member of an association of six or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(2) Any minor league team that is affiliated with such an association.

Representative means an individual employed by or authorized to act on behalf of the employer with respect to the recruitment activities entered into for and attestations made with respect to the *Application for Temporary Employment Certification*. A representative who interviews and/or considers U.S. workers for the job that is subject of the Application must be the person who normally interviews or

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considers, on behalf of the employer, applicants for job opportunities such as that offered in the application, but which do not involve labor certifications.

Secretary means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

Secretary of Homeland Security means the chief official of the Department of Homeland Security or the Secretary of Homeland Security's designee.

Secretary of State means the chief official of the U.S. Department of State or the Secretary of State's designee.

State Workforce Agency (SWA), formerly known as State Employment Security Agency, means the State government agency that receives funds pursuant to the Wagner-Peyser Act to administer public labor exchange delivered through the State's one-stop delivery system in accordance with the Wagner-Peyser Act. (29 U.S.C. 49 *et seq.*).

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations. Whether a job opportunity is vacant by reason of a strike or lock out will be determined by evaluating for each position identified as vacant in the *Application for Temporary Employment Certification* whether the specific vacancy has been caused by the strike or lock out.

Successor in Interest means that, in determining whether an employer is a successor in interest, the factors used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Readjustment Assistance Act will be considered. When considering whether an employer is a successor, the primary consideration will be the personal involvement of the firm's ownership, management, supervisors, and others associated with the firm in the violations resulting in debarment. Normally, wholly new management or ownership of the same business operation, one in which the former management or owner does not retain a direct or indirect interest, will not be deemed to be a successor in interest for purposes of debarment. A determination of whether or not a successor in interest exists is based on the entire circumstances viewed in their totality. The factors to be considered include:

(1) Substantial continuity of the same business operations;

(2) Use of the same facilities;

(3) Continuity of the work force;

(4) Similarity of jobs and working conditions;

(5) Similarity of supervisory personnel;

(6) Similarity in machinery, equipment, and production methods;

(7) Similarity of products and services; and

(8) The ability of the predecessor to provide relief.

United States (U.S.), when used in a geographic sense, means the continental United States, Alaska, Hawaii, the Commonwealth of Puerto Rico, and the territories of Guam, the Virgin Islands, and, as of the transition program effective date, as defined in the Consolidated Natural Resources Act of 2008, Public Law 110–229, Title VII, the Commonwealth of the Northern Mariana Islands.

United States Citizenship and Immigration Services (USCIS) means the Federal agency within DHS making the determination under the INA whether to grant petitions filed by employers seeking H–2B workers to perform temporary nonagricultural work in the U.S.

United States Worker (U.S. Worker) means a worker who is either

(1) A citizen or national of the U.S.; or

(2) An alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee under sec. 207 of the INA, is granted asylum under sec. 208 of the INA, or is an immigrant otherwise authorized (by the INA or by DHS) to be employed in the U.S.

Within [number and type] days will, for purposes of determining an employer's compliance with timing requirements with respect to appeals and requests for review, begin to run on the first business day after the Department sends a notice to the employer by means normally assuring next-day delivery, and will end on the day that the employer sends whatever communication is required by these rules back to the Department, as evidenced by a postal mark or other similar receipt.

§ 655.5 Application Filing Transition.

(a) *Compliance with these regulations.* Except as provided in paragraphs (b) and (c) of this section, employers filing applications for H–2B workers on or after the effective date of these regulations where the date of need for the services or labor to be performed is on or after October 1, 2009, must comply with all of the obligations and assurances in this subpart. SWAs will no longer accept for processing applications filed by employers for H–2B workers for temporary or seasonal nonagricultural services on or after January 18, 2009.

(b) *Applications filed under former regulations.* (1) For applications filed with the SWAs serving the area of intended employment prior to the effective date of these regulations, the SWAs shall continue to process all active applications under the former regulations and transmit all completed applications to the appropriate NPC for review and issuance of a labor certification determination.

(2) For applications filed with the SWAs serving the area of intended employment prior to the effective date of these regulations that were completed and transmitted to the NPC, the NPC shall continue to process all active applications under the former regulations and issue a labor certification determination.

(c) *Applications filed with the NPC under these regulations.* Employers filing applications on or after the effective date of these regulations where their date of need for H–2B workers is prior to October 1, 2009, must receive a prevailing wage determination from the SWA serving the area of intended employment. The SWA shall process such requests in accordance with the provisions of § 655.10. Once the employer receives its prevailing wage determination from the SWA, it must conduct all of the pre-filing recruitment steps set forth under this subpart prior to filing an *Application for Temporary Employment Certification* with the NPC.

§ 655.6 Temporary need.

(a) To use the H–2B program, the employer must establish that its need for nonagricultural services or labor is temporary, regardless of whether the underlying job is permanent or temporary. 8 CFR 214.2(h)(6)(ii).

(b) The employer's need is considered temporary if justified to the Secretary as either a one-time occurrence, a seasonal need, a peakload need, or an intermittent need, as defined by the Department of Homeland Security. 8 CFR 214.2(h)(6)(ii)(B).

(c) Except where the employer's need is based on a one-time occurrence, the Secretary will, absent unusual circumstances, deny an *Application for Temporary Employment Certification* where the employer has a recurring, seasonal or peakload need lasting more than 10 months.

(d) The temporary nature of the work or services to be performed in applications filed by job contractors will be determined by examining the job contractor's own need for the services or labor to be performed in addition to the needs of each individual employer with

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whom the job contractor has agreed to provide workers as part of a signed work contract or labor services agreement.

(e) The employer filing the application must maintain documentation evidencing the temporary need and be prepared to submit this documentation in response to a Request for Further Information (RFI) from the CO prior to rendering a Final Determination or in the event of an audit examination. The documentation required in this section must be retained by the employer for a period of no less than 3 years from the date of the labor certification.

§§ 655.7–655.9 [Reserved]

§ 655.10 Determination of prevailing wage for temporary labor certification purposes.

(a) *Application process.* (1) The employer must request a prevailing wage determination from the NPC in accordance with the procedures established by this regulation.

(2) The employer must obtain a prevailing wage determination that is valid either on the date recruitment begins or the date of filing a complete *Application for Temporary Employment Certification* with the Department.

(3) The employer must offer and advertise the position to all potential workers at a wage at least equal to the prevailing wage obtained from the NPC.

(b) *Determinations.* Prevailing wages shall be determined as follows:

(1) Except as provided in paragraph (e) of this section, if the job opportunity is covered by a collective bargaining agreement (CBA) that was negotiated at arms' length between the union and the employer, the wage rate set forth in the CBA is considered as not adversely affecting the wages of U.S. workers, that is, it is considered the ''prevailing wage'' for labor certification purposes.

(2) If the job opportunity is not covered by a CBA, the prevailing wage for labor certification purposes shall be the arithmetic mean, except as provided in paragraph (b)(4) of this section, of the wages of workers similarly employed at the skill level in the area of intended employment. The wage component of the BLS Occupational Employment Statistics Survey (OES) shall be used to determine the arithmetic mean, unless the employer provides a survey acceptable to OFLC under paragraph (f) of this section.

(3) If the job opportunity involves multiple worksites within an area of intended employment and different prevailing wage rates exist for the same opportunity and staff level within the area of intended employment, the prevailing wage shall be based on the highest applicable wage among all relevant worksites.

(4) If the employer provides a survey acceptable under paragraph (f) of this section that provides a median but does not provide an arithmetic mean, the prevailing wage applicable to the employer's job opportunity shall be the median of the wages of U.S. workers similarly employed in the area of intended employment.

(5) The employer may use a current wage determination in the area determined under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.,* 29 CFR part 1, or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.*

(6) The NPC will enter its wage determination on the form it uses for these purposes, indicate the source, and return the form with its endorsement to the employer within 30 days of receipt of the request for a prevailing wage determination. The employer must offer this wage (or higher) to both its H–2B workers and any similarly employed U.S. worker hired in response to the recruitment required as part of the application.

(c) *Similarly Employed.* For purposes of this section, ''similarly employed'' means having substantially comparable jobs in the occupational category in the area of intended employment, except that, if a representative sample of workers in the occupational category cannot be obtained in the area of intended employment, similarly employed means:

(1) Having jobs requiring a substantially similar level of comparable skills within the area of intended employment; or

(2) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(d) *Validity period.* The NPC must specify the validity period of the prevailing wage, which in no event may be more than 1 year or less than 3 months from the determination date. For employment that is less than one year in duration, the prevailing wage determination shall apply and shall be paid the prevailing wage by the employer, at a minimum, for the duration of the employment.

(e) *Professional athletes.* In computing the prevailing wage for a professional athlete when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations is considered the prevailing wage (see sec. 212(p)(2) of the INA).

(f) *Employer-provided wage information.* (1) If the job opportunity is not covered by a CBA, or by a professional sports league's rules or regulations, the NPC will consider wage information provided by the employer in making a Prevailing Wage Determination. An employer survey can be submitted either initially or after NPC issuance of a PWD derived from the OES survey.

(2) In each case where the employer submits a survey or other wage data for which it seeks acceptance, the employer must provide specific information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow a determination of the adequacy of the data provided and validity of the statistical methodology used in conducting the survey in accordance with guidance issued by the OFLC national office.

(3) The survey must be based upon recently collected data:

(i) Any published survey must have been published within 24 months of the date of submission, must be the most current edition of the survey, and must be based on data collected not more than 24 months before the publication date.

(ii) A survey conducted by the employer must be based on data collected within 24 months of the date it is submitted for consideration.

(4) If the employer-provided survey is found not to be acceptable, the NPC shall inform the employer in writing of the reasons the survey was not accepted.

(5) The employer, after receiving notification that the survey it provided for consideration is not acceptable, may file supplemental information as provided in paragraph (g) of this section, file a new request for a PWD, appeal under § 655.11, or, if the initial PWD was requested prior to submission of the employer survey, acquiesce to the initial PWD.

(g) *Submission of supplemental information by employer.* (1) If the employer disagrees with the wage level assigned to its job opportunity, or if the NPC informs the employer its survey is not acceptable, or if there is another legitimate basis for such a review, the employer may submit supplemental information to the NPC.

(2) The NPC must consider one supplemental submission relating to the employer's survey, the skill level assigned to the job opportunity, or any other legitimate basis for the employer to request such a review. If the NPC does not accept the employer's survey after considering the supplemental information, or affirms its determination concerning the skill level, the NPC must

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inform the employer, in writing, of the reasons for its decision.

(3) The employer may then apply for a new wage determination, appeal under § 655.11, or acquiesce to the initial PWD.

(h) *The prevailing wage cannot be lower than required by any other law.* No PWD for labor certification purposes made under this section permits an employer to pay a wage lower than the highest wage required by any applicable Federal, State, or local law.

(i) *Retention of Documentation.* The employer must retain the PWD for 3 years and submitted to a CO in the event it is requested in an RFI or an audit or to a Wage and Hour representative in the event of a Wage and Hour investigation.

§ 655.11 Certifying officer review of prevailing wage determinations.

(a) *Request for review of prevailing wage determinations.* Any employer desiring review of a PWD must make a written request for such review within 10 days of the date from when the final PWD was issued. The request for review must be sent to the NPC postmarked no later than 10 days after the determination; clearly identify the PWD for which review is sought; set forth the particular grounds for the request; and include all materials submitted to the NPC for purposes of securing the PWD.

(b) *NPC Review.* Upon the receipt of a written request for review, the NPC shall review the employer's request and accompanying documentation, including any supplementary material submitted by the employer.

(c) *Designations.* The Director of the NPC will determine which CO will review the employer's request for review.

(d) *Review on the record.* The CO shall review the PWD solely on the basis upon which the PWD was made and after review may:

(1) Affirm the PWD issued by the NPC; or

(2) Modify the PWD.

(e) *Request for review by BALCA.* Any employer desiring review of a CO's decision on a PWD must make a written request for review of the determination by BALCA within 30 calendar days of the date of the decision of the CO. The CO must receive the written request for BALCA review no later than the 30th day after the date of its final determination including the date of the final determination.

(1) The request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal arguments and only such evidence that was within the record upon which the decision on the PWD by the NPC was based.

(2) The request for review must be in writing and addressed to the CO who made the determination. Upon receipt of a request for a review, the CO must immediately assemble an indexed appeal file in reverse chronological order, with the index on top followed by the most recent document.

(3) The CO must send the Appeal File to the Office of Administrative Law Judges, Board of Alien Labor Certification Appeals, 800 K Street, NW., Suite 400–N, Washington, DC 20001–8002.

(4) The BALCA shall handle appeals in accordance with § 655.33.

§§ 655.12–655.14 [Reserved]

§ 655.15 Required pre-filing recruitment.

(a) *Time of Filing of Application.* An employer may not file an *Application for Temporary Employment Certification* before all of the pre-filing recruitment steps set forth in this section have been fully satisfied, except where specifically exempted from some or all of those requirements by these regulations or special procedures. Applications submitted not meeting this requirement shall not be accepted for processing.

(b) *General Attestation Obligation.* An employer must attest on the *Application for Temporary Employment Certification* to having performed all required steps of the recruitment process as specified in this section.

(c) *Retention of documentation.* The employer filing the *Application for Temporary Employment Certification* must maintain documentation of its advertising and recruitment efforts, including prevailing wage determinations, as required in this subpart and be prepared, upon written request, to submit this documentation in response to an RFI from the CO prior to the CO rendering a Final Determination or in the event of a CO-directed audit examination. The documentation required in this section must be retained by the employer for a period of no less than 3 years from the date of the certification.

(d) *Recruitment Steps.* An employer filing an application must:

(1) Obtain a prevailing wage determination from the NPC in accordance with procedures in § 655.10;

(2) Submit a job order to the SWA serving the area of intended employment;

(3) Publish two print advertisements (one of which must be on a Sunday, except as provided in paragraph (f)(4) of this section); and

(4) Where the employer is a party to a collective bargaining agreement governing the job classification that is the subject of the H–2B labor certification application, the employer must formally contact the local union that is party to the collective bargaining agreement as a recruitment source for able, willing, qualified, and available U.S. workers.

(e) *Job Order.* (1) The employer must place an active job order with the SWA serving the area of intended employment no more than 120 calendar days before the employer's date of need for H–2B workers, identifying it as a job order to be placed in connection with a future application for H–2B workers. Unless otherwise directed by the CO, the SWA must keep the job order open for a period of not less than 10 calendar days. Documentation of this step shall be satisfied by maintaining a copy of the SWA job order downloaded from the SWA Internet job listing site, a copy of the job order provided by the SWA, or other proof of publication from the SWA containing the text of the job order and the start and end dates of posting. If the job opportunity contains multiple work locations within the same area of intended employment and the area of intended employment is found in more than one State, the employer shall place a job order with the SWA having jurisdiction over the place where the work has been identified to begin. Upon placing a job order, the SWA receiving the job order under this paragraph shall promptly transmit, on behalf of the employer, a copy of the active job order to all States listed in the application as anticipated worksites.

(2) The job order submitted by the employer to the SWA must satisfy all the requirements for newspaper advertisements contained in § 655.17.

(f) *Newspaper Advertisements.* (1) During the period of time that the job order is being circulated for intrastate clearance by the SWA under paragraph (e) of this section, the employer must publish an advertisement on 2 separate days, which may be consecutive, one of which must be a Sunday advertisement (except as provided in paragraph (f)(2) of this section), in a newspaper of general circulation serving the area of intended employment that has a reasonable distribution and is appropriate to the occupation and the workers likely to apply for the job opportunity. Both newspaper advertisements must be published only after the job order is placed for active recruitment by the SWA.

(2) If the job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, the

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employer must, in place of a Sunday edition advertisement, advertise in the regularly published daily edition with the widest circulation in the area of intended employment.

(3) The newspaper advertisements must satisfy the requirements contained in § 655.17. The employer must maintain copies of newspaper pages (with date of publication and full copy of advertisement), or tear sheets of the pages of the publication in which the advertisements appeared, or other proof of publication containing the text of the printed advertisements and the dates of publication furnished by the newspaper.

(4) If a professional, trade or ethnic publication is more appropriate for the occupation and the workers likely to apply for the job opportunity than a general circulation newspaper, and is the most likely source to bring responses from able, willing, qualified, and available U.S. workers, then the employer may use a professional, trade or ethnic publication in place of one of the newspaper advertisements, but may not replace the Sunday advertisement (or the substitute permitted by paragraph (f)(2) of this section).

(g) *Labor Organizations.* During the period of time that the job order is being circulated for intrastate clearance by the SWA under paragraph (e) of this section, an employer that is already a party to a collective bargaining agreement governing the job classification that is the subject of the H–2B labor certification application must formally contact by U.S. Mail or other effective means the local union that is party to the collective bargaining agreement. An employer governed by this paragraph must maintain dated logs demonstrating that such organizations were contacted and notified of the position openings and whether they referred qualified U.S. worker(s), including number of referrals, or were non-responsive to the employer's request.

(h) *Layoff.* If there has been a layoff of U.S. workers by the applicant employer in the occupation in the area of intended employment within 120 days of the first date on which an H–2B worker is needed as indicated on the submitted *Application for Temporary Employment Certification,* the employer must document it has notified or will notify each laid-off worker of the job opportunity involved in the application and has considered or will consider each laid-off worker who expresses interest in the opportunity, and the result of the notification and consideration.

(i) *Referral of U.S. workers.* SWAs may only refer for employment individuals for whom they have verified identity and employment authorization through the process for employment verification of all workers that is established by INA sec. 274A(b). SWAs must provide documentation certifying the employment verification that satisfies the standards of INA sec. 274A(a)(5) and its implementing regulations at 8 CFR 274a.6.

(j) *Recruitment Report.* (1) No fewer than 2 calendar days after the last date on which the job order was posted and no fewer than 5 calendar days after the date on which the last newspaper or journal advertisement appeared, the employer must prepare, sign, and date a written recruitment report. The employer may not submit the H–2B application until the recruitment report is completed. The recruitment report must be submitted to the NPC with the application. The employer must retain a copy of the recruitment report for a period of 3 years.

(2) The recruitment report must:

(i) Identify each recruitment source by name;

(ii) State the name and contact information of each U.S. worker who applied or was referred to the job opportunity up to the date of the preparation of the recruitment report, and the disposition of each worker, including any applicable laid-off workers;

(iii) If applicable, explain the lawful job-related reason(s) for not hiring any U.S. workers who applied or were referred to the position.

(3) The employer must retain résumés (if available) of, and evidence of contact with (which may be in the form of an attestation), each U.S. worker who applied or was referred to the job opportunity. Such résumés and evidence of contact must be retained along with the recruitment report for a period of no less than 3 years, and must be provided in response to an RFI or in the event of an audit or an investigation.

§ 655.17 Advertising requirements.

All advertising conducted to satisfy the required recruitment steps under § 655.15 before filing the *Application for Temporary Employment Certification* must meet the requirements set forth in this section and must contain terms and conditions of employment which are not less favorable than those to be offered to the H–2B workers. All advertising must contain the following information:

(a) The employer's name and appropriate contact information for applicants to send résumés directly to the employer;

(b) The geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;

(c) If transportation to the worksite(s) will be provided by the employer, the advertising must say so;

(d) A description of the job opportunity (including the job duties) for which labor certification is sought with sufficient detail to apprise applicants of services or labor to be performed and the duration of the job opportunity;

(e) The job opportunity's minimum education and experience requirements and whether or not on-the-job training will be available;

(f) The work hours and days, expected start and end dates of employment, and whether or not overtime will be available;

(g) The wage offer, or in the event that there are multiple wage offers, the range of applicable wage offers, each of which must not be less than the highest of the prevailing wage, the Federal minimum wage, State minimum wage, or local minimum wage applicable throughout the duration of the certified H–2B employment; and

(h) That the position is temporary and the total number of job openings the employer intends to fill.

§§ 655.18–655.19 [Reserved]

§ 655.20 Applications for temporary employment certification.

(a) *Application Filing Requirements.* An employer who desires to apply for labor certification of temporary employment for one or more nonimmigrant foreign positions must file a completed *Application for Temporary Employment Certification* form, and a copy of the recruitment report completed in accordance with § 655.15(j).

(b) *Filing.* An employer must complete the *Application for Temporary Employment Certification* and send it by U.S. Mail or private mail courier to the NPC. Employers are strongly encouraged to keep receipts of any mailings. The Department will publish a Notice in the **Federal Register** identifying the address or addresses to which applications must be mailed, and will also post these addresses on the Department's Internet Web site at *http://www.foreignlaborcert.doleta.gov/*. The form must bear the original signature of the employer (and that of the employer's authorized attorney or agent if the employer is represented by an attorney or agent). The Department

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may, at a future date, require applications to be filed electronically in addition to or instead of by U.S. Mail or private mail courier.

(c) Except where otherwise permitted under § 655.3, an association or other organization of employers is not permitted to file master applications on behalf of its employer-members under the H–2B program.

(d) Certification of more than one position may be requested on the application as long as all H–2B workers will perform the same services or labor on the same terms and conditions, in the same occupation, in the same area of intended employment, and during the same period of employment.

(e) Except where otherwise permitted under § 655.3, only one *Application for Temporary Employment Certification* may be filed for worksite(s) within one area of intended employment for each job opportunity with an employer.

(f) Where a one-time occurrence lasts longer than one year, but less than 18 months, the employer will be issued a labor certification for the entire period of need. Where a one-time occurrence lasts 18 months or longer, the employer will be required to conduct another labor market for the portion of time beyond 12 months.

§ 655.21 Supporting evidence for temporary need.

(a) *Statement of Temporary Need.* Each *Application for Temporary Employment Certification* must include attestations regarding temporary need in the appropriate sections. The employer must include a detailed statement of temporary need containing the following:

(1) A description of the employer's business history and activities (*i.e.*, primary products or services) and schedule of operations throughout the year;

(2) An explanation regarding why the nature of the employer's job opportunity and number of foreign workers being requested for certification reflect a temporary need;

(3) An explanation regarding how the request for temporary labor certification meets one of the regulatory standards of a one-time occurrence, seasonal, peakload, or intermittent need under § 655.6(b) as defined by DHS under 8 CFR 214.2(h)(6)(ii)(B); and

(4) If applicable, a statement justifying any increase or decrease in the number of H–2B positions being requested for certification from the previous year.

(b) *Request for Supporting Evidence.* In circumstances where the CO requests evidence or documentation substantiating the employer's temporary need through a RFI under § 655.23(c) to support a Final Determination, or notifies the employer that its application is being audited under § 655.24, the employer must timely furnish the requested supplemental information or evidence or documentation. Failure to provide the information requested or late submissions may be grounds for the denial of the application. All such documentation or evidence becomes part of the record of the application.

(c) *Retention of documentation.* The documentation required in this section and any other supporting evidence justifying the temporary need by the employer filing the *Application for Temporary Employment Certification* must be retained for a period of no less than 3 years from the date of the certification.

§ 655.22 Obligations of H–2B employers.

An employer seeking H–2B labor certification must attest as part of the *Application for Temporary Employment Certification* that it will abide by the following conditions of this subpart:

(a) The employer is offering terms and working conditions normal to U.S. workers similarly employed in the area of intended employment, meaning that they may not be unusual for workers performing the same activity in the area of intended employment, and which are not less favorable than those offered to the H–2B worker(s) and are not less than the minimum terms and conditions required by this subpart.

(b) The specific job opportunity for which the employer is requesting H–2B certification is not vacant because the former occupant(s) is (are) on strike or locked out in the course of a labor dispute involving a work stoppage.

(c) The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship, and the employer has conducted the required recruitment, in accordance with the regulations, and has been unsuccessful in locating sufficient numbers of qualified U.S. applicants for the job opportunity for which labor certification is sought. Any U.S. worker applicants were rejected only for lawful, job-related reasons, and the employer must retain records of all rejections.

(d) During the period of employment that is the subject of the labor certification application, the employer will comply with applicable Federal, State and local employment-related laws and regulations, including employment-related health and safety laws;

(e) The offered wage equals or exceeds the highest of the prevailing wage, the applicable Federal minimum wage, the State minimum wage, and local minimum wage, and the employer will pay the offered wage during the entire period of the approved H–2B labor certification.

(f) Upon the separation from employment of H–2B worker(s) employed under the labor certification application, if such separation occurs prior to the end date of the employment specified in the application, the employer will notify the Department and DHS in writing (or any other method specified by the Department or DHS in the **Federal Register** or the Code of Federal Regulations) of the separation from employment not later than 2 work days after such separation is discovered by the employer. An abandonment or abscondment shall be deemed to begin after a worker fails to report for work at the regularly scheduled time for 5 consecutive working days without the consent of the employer. Employees may be terminated for cause.

(g)(1) The offered wage is not based on commissions, bonuses, or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage, or the legal Federal, State, or local minimum wage, whichever is highest. The employer must make all deductions from the worker's paychecks that are required by law. The job offer must specify all deductions not required by law that the employer will make from the worker's paycheck. All deductions must be reasonable. However, an employer subject to the FLSA may not make deductions that would violate the FLSA.

(2) The employer has contractually forbidden any foreign labor contractor or recruiter whom the employer engages in international recruitment of H–2B workers to seek or receive payments from prospective employees, except as provided for in DHS regulations at 8 CFR 214.2(h)(5)(xi)(A). This provision does not prohibit employers or their agents from receiving reimbursement for costs that are the responsibility of the worker, such as government required passport or visa fees.

(h) The job opportunity is a bona fide, full-time temporary position, the qualifications for which are consistent with the normal and accepted qualifications required by non-H–2B employers in the same or comparable occupations.

(i) The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the *Application for*

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Temporary Employment Certification in the area of intended employment within the period beginning 120 calendar days before the date of need through 120 calendar days after the date of need, except where the employer also attests that it offered the job opportunity that is the subject of the application to those laid off U.S. worker(s) and the U.S. worker(s) either refused the job opportunity or was rejected for the job opportunity only for lawful, job-related reasons.

(j) The employer and its attorney or agents have not sought or received payment of any kind from the employee for any activity related to obtaining the labor certification, including payment of the employer's attorneys' or agent fees, *Application for Temporary Employment Certification*, or recruitment costs. For purposes of this paragraph, payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor.

(k) If the employer is a job contractor, it will not place any H–2B workers employed pursuant to the labor certification application with any other employer or at another employer's worksite unless:

(1) The employer applicant first makes a written bona fide inquiry as to whether the other employer has displaced or intends to displace any similarly employed U.S. workers within the area of intended employment within the period beginning 120 days before through 120 calendar days after the date of need, and the other employer provides written confirmation that it has not so displaced and does not intend to displace such U.S. workers, and

(2) All worksites are listed on the certified *Application for Temporary Employment Certification*, including amendments or modifications.

(l) The employer will not place any H–2B workers employed pursuant to this application outside the area of intended employment listed on the *Application for Temporary Employment Certification* unless the employer has obtained a new temporary labor certification from the Department.

(m) Unless the H–2B worker will be sponsored by another subsequent employer, the employer will inform H–2B workers of the requirement that they leave the U.S. at the end of the authorized period of stay provided by DHS or separation from the employer, whichever is earlier, as required in § 655.35 of this part (absent any extension or change of such worker's status or grace period pursuant to DHS regulations), and that if dismissed by the employer prior to the end of the period, the employer is liable for return transportation.

(n) The dates of temporary need, reason for temporary need, and number of positions being requested for labor certification have been truly and accurately stated on the application.

§ 655.23 Receipt and processing of applications.

(a) *Filing Date.* Applications received by U.S. Mail or private courier shall be considered filed when determined by the NPC to be complete. Incomplete applications shall not be accepted for processing or assigned a receipt date, but shall be returned by U.S. Mail to the employer or the employer's representative as incomplete.

(b) *Processing.* The CO will review complete applications for an absence of errors that would prevent certification and for compliance with the criteria for certification. The CO will make a determination to certify, deny, or issue a Request for Further Information prior to making a Final Determination on the application. Criteria for certification, as used in this subpart, are whether the employer has: established the need for the nonagricultural services or labor to be performed is temporary in nature; established that the number of worker positions being requested for certification is justified and represent bona fide job opportunities; made all the assurances and met all the obligations required by § 655.22; and complied with all requirements of the program.

(c) *Request for Further Information.* (1) If the CO determines that the employer has made all necessary attestations and assurances, but the application fails to comply with one or more of the criteria for certification in paragraph (b) of this section, the CO must issue a RFI to the employer. The CO will issue the written RFI within 7 calendar days of the receipt of the application, and send it by means normally assuring next-day delivery.

(2) The RFI must:

(i) Specify the reason(s) why the application is not sufficient to grant temporary labor certification, citing the relevant regulatory standard(s) and/or special procedure(s);

(ii) Specify a date, no later than 7 calendar days from the date of the written RFI, by which the supplemental information and documentation must be received by the CO to be considered; and

(iii) State that, upon receipt of a response to the written RFI, or expiration of the stated deadline for receipt of the response, the CO will review the existing application as well as any supplemental materials submitted by the employer and issue a Final Determination. If unusual circumstances warrant, the CO may issue one or more additional RFIs prior to issuing a Final Determination.

(3) The CO will issue the Final Determination or the additional RFI within 7 business days of receipt of the employer's response, or within 60 days of the employer's date of need, whichever is later.

(4) Compliance with an RFI does not guarantee that the employer's application will be certified after submitting the information. The employer's documentation must justify its chosen standard of temporary need or otherwise overcome the stated deficiency in the application.

(d) Failure to comply with an RFI, including not providing all documentation within the specified time period, may result in a denial of the application. Such failure to comply with an RFI may also result in a finding by the CO requiring supervised recruitment under § 655.30 in future filings of H–2B temporary labor certification applications.

§ 655.24 Audits.

(a) *Discretion.* OFLC will conduct audits of H–2B temporary labor certification applications. The applications selected for audit will be chosen within the sole discretion of OFLC.

(b) *Audit Letter.* When an application is selected for audit, the CO shall issue an audit letter to the employer. The audit letter will:

(1) State the application has been selected for audit and note documentation that must be submitted by the employer;

(2) Specify a date, no fewer than 14 days and no more than 30 days from the date of the audit letter's issuance, by which the required documentation must be received by the CO; and

(3) Advise that failure to comply with the audit process may result in a finding by the CO to:

(i) Require the employer to conduct supervised recruitment under § 655.30 in future filings of H–2B temporary labor certification applications for a period of up to 2 years, or

(ii) Debar the employer from future filings of H–2B temporary labor certification applications as provided in § 655.31.

(c) *Supplemental information.* During the course of the audit examination, the CO may request supplemental information and/or documentation from the employer to complete the audit.

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(d) *Audit violations.* If, as a result of the audit, the CO determines the employer failed to produce all required documentation, or determines that the employer made a material misrepresentation with respect to the application, the employer may be required to conduct supervised recruitment under § 655.30 in future filings of H–2B temporary labor certification applications for up to 2 years, or may be subject to debarment pursuant to § 655.31 or other sanctions. The CO may provide the audit findings and underlying documentation to DHS, WHD, or another appropriate enforcement agency. The CO may refer any findings that an employer discouraged an eligible U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.

§§ 655.25–655.29 [Reserved]

§ 655.30 Supervised recruitment.

(a) *Supervised recruitment.* Where an employer is found to have violated program requirements, to have made a material misrepresentation to the Department, or to have failed to adequately conduct recruitment activities or failed in any obligation of this part, the CO may require pre-filing supervised recruitment.

(b) *Requirements.* Supervised recruitment shall consist of advertising for the job opportunity or opportunities in accordance with the required recruitment steps outlined under § 655.15, except as otherwise provided below.

(1) The CO will direct where the advertisements are to be placed.

(2) The employer must supply a draft advertisement and job order to the CO for review and approval no fewer than 150 days before the date on which the foreign worker(s) will commence work unless notified by the CO of the need for Supervised Recruitment less than 150 days before the date of need, in which case the employer must supply the drafts within 30 days of receipt of such notification.

(3) Each advertisement must comply with the requirements of § 655.17(a).

(4) The advertisement shall be placed in accordance with guidance provided by the CO.

(5) The employer will notify the CO when the advertisements are placed.

(c) *Recruitment report.* No fewer than 2 days after the last day of the posting of the job order and no fewer than 5 calendar days after the date on which the last newspaper or journal advertisement appeared, the employer must prepare a detailed written report of the employer's supervised recruitment, signed by the employer as outlined in § 655.15(i). The employer must submit the recruitment report to the CO within 30 days of the date of the first advertisement and must retain a copy for a period of no less than 3 years. The recruitment report must contain a copy of all advertisements and a copy of the SWA job order, including the dates so placed.

(d) The CO may refer any findings that an employer or its representative discouraged an eligible U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.

§ 655.31 Debarment.

(a) The Administrator, OFLC may not issue future labor certifications under this subpart to an employer and any successor in interest to the debarred employer, subject to the time limits set forth in paragraph (c) of this section, if:

(1) The Administrator, OFLC finds that the employer substantially violated a material term or condition of its temporary labor certification with respect to the employment of domestic or nonimmigrant workers; and

(2) The Administrator, OFLC issues a *Notice of Intent to Debar* no later than 2 years after the occurrence of the violation.

(b) The Administrator, OFLC may not issue future labor certifications under this subpart to an employer represented by an agent or attorney, subject to the time limits set forth in paragraph (c) of this section, if:

(1) The agent or attorney participated in, had knowledge of, or had reason to know of, the employer's substantial violation; and

(2) The Administrator issues the agent or attorney a *Notice of Intent to Debar* no later than 2 years after the occurrence of the violation.

(c) No employer, attorney, or agent may be debarred under this subpart for more than 3 years.

(d) For the purposes of this section, a substantial violation includes:

(1) A pattern or practice of acts of commission or omission on the part of the employer or the employer's agent that:

(i) Are significantly injurious to the wages or benefits offered under the H–2B program or working conditions of a significant number of the employer's U.S. or H–2B workers;

(ii) Reflect a significant failure to offer employment to each qualified domestic worker who applied for the job opportunity for which certification was being sought, except for lawful job-related reasons;

(iii) Reflect a significant failure to comply with the employer's obligations to recruit U.S. workers as set forth in this subpart;

(iv) Reflect a significant failure to comply with the RFI or audit process pursuant to §§ 655.23 or 655.24;

(v) Reflect the employment of an H–2B worker outside the area of intended employment, or in an activity/activities, not listed in the job order (other than an activity minor and incidental to the activity/activities listed in the job order), or after the period of employment specified in the job order and any approved extension; or

(vi) Reflect a significant failure to comply with the supervised recruitment process pursuant to § 655.30.

(2) Fraud involving the *Application for Temporary Employment Certification* or a response to an audit;

(3) A significant failure to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, or law enforcement function under this subpart;

(4) A significant failure to comply with one or more sanctions or remedies imposed by the ESA for violation(s) of obligations under this subpart found by that agency (if applicable), or with one or more decisions or orders of the Secretary or a court order secured by the Secretary; or

(5) A single heinous act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected.

(e) DOL procedures for debarment under this section will be as follows:

(1) The Administrator, OFLC will send to the employer, attorney, or agent a *Notice of Intent to Debar* by means normally ensuring next-day delivery, which will contain a detailed statement of the grounds for the proposed debarment. The employer, attorney, or agent may submit evidence in rebuttal within 14 calendar days of the date the notice is issued. The Administrator, OFLC must consider all relevant evidence presented in deciding whether to debar the employer, attorney, or agent.

(2) If rebuttal evidence is not timely filed by the employer, attorney, or agent, the *Notice of Intent to Debar* will become the final decision of the Secretary and take effect immediately at the end of the 14-day period.

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(3) If, after reviewing the employer's timely filed rebuttal evidence, the Administrator, OFLC determines that the employer, attorney, or agent more likely than not meets one or more of the bases for debarment under § 655.31(d), the Administrator, OFLC will notify the employer, by means normally ensuring next-day delivery, within 14 calendar days after receiving such timely filed rebuttal evidence, of his/her final determination of debarment and of the employer, attorney, or agent's right to appeal.

(4) The *Notice of Debarment* must be in writing, must state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment, and must offer the employer, attorney, or agent an opportunity to request a hearing. The notice must state that to obtain such a review or hearing, the debarred party must, within 30 calendar days of the date of the notice file a written request to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., Suite 400–N, Washington, DC 20001–8002, and simultaneously serve a copy to the Administrator, OFLC. The debarment will take effect 30 days from the date the *Notice of Debarment* is issued, unless a request for a hearing is properly filed within 30 days from the date the *Notice of Debarment* is issued. The timely filing of a request for a hearing stays the debarment pending the outcome of the appeal.

(5)(i) *Hearing.* Within 10 days of receipt of the request for a hearing, the Administrator, OFLC will send a certified copy of the ETA case file to the Chief Administrative Law Judge by means normally assuring next-day delivery. The Chief Administrative Law Judge will immediately assign an ALJ to conduct the hearing. The procedures in 29 CFR part 18 apply to such hearings, except that the request for a hearing will not be considered to be a complaint to which an answer is required.

(ii) *Decision.* After the hearing, the ALJ must affirm, reverse, or modify the Administrator, OFLC 's determination. The ALJ's decision must be provided immediately to the employer, Administrator, OFLC, DHS, and DOS by means normally assuring next-day delivery. The ALJ's decision is the final decision of the Secretary, unless either party, within 30 calendar days of the ALJ's decision, seeks review of the decision with the Administrative Review Board (ARB).

(iii) Review by the ARB.

(A) Any party wishing review of the decision of an ALJ must, within 30 days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition must be served on all parties and on the ALJ. The ARB must decide whether to accept the petition within 30 days of receipt. If the ARB declines to accept the petition or if the ARB does not issue a notice accepting a petition within 30 days after the receipt of a timely filing of the petition, the decision of the ALJ shall be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ shall be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding in person or by certified mail.

(B) Upon receipt of the ARB's notice to accept the petition, the Office of Administrative Law Judges shall promptly forward a copy of the complete hearing record to the ARB.

(C) Where the ARB has determined to review such decision and order, the ARB shall notify each party of:

(*1*) The issue or issues raised;

(*2*) The form in which submissions shall be made (*i.e.*, briefs, oral argument, etc.); and

(*3*) The time within which such presentation shall be submitted.

(D) The ARB's final decision must be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ, in person or by certified mail. If the ARB fails to provide a decision within 90 days from the notice granting the petition, the ALJ's decision will be the final decision of the Secretary.

(f) *Inter-Agency Reporting.* After completion of the appeal process, DOL will inform DHS and other appropriate enforcement agencies of the findings and provide a copy of the *Notice of Debarment*.

§ 655.32 Labor certification determinations.

(a) *COs.* The Administrator, OFLC, is the Department's National CO. The Administrator, and the CO(s) in the NPC (by virtue of delegation from the Administrator), have the authority to certify or deny applications for temporary employment certification under the H–2B nonimmigrant classification. If the Administrator directs that certain types of temporary labor certification applications or specific applications under the H–2B nonimmigrant classification be handled by the National OFLC, the Director of the Chicago NPC will refer such applications to the Administrator.

(b) *Determination.* The CO will make a determination either to grant or deny the *Application for Temporary Employment Certification*. The CO will grant the application if and only if the employer has met all the requirements of this subpart, including the criteria for certification defined in § 655.23(b), thus demonstrating that an insufficient number of qualified U.S. workers are available for the job opportunity for which certification is sought and the employment of the H–2B workers will not adversely affect the benefits, wages, and working conditions of similarly employed U.S. workers.

(c) *Notice.* The CO will notify the employer in writing (either electronically or by U.S. Mail) of the labor certification determination.

(d) *Approved certification.* If temporary labor certification is granted, the CO must send the certified *Application for Temporary Employment Certification* and a Final Determination letter to the employer, or, if appropriate, to the employer's agent or attorney with a copy to the employer. The Final Determination letter will notify the employer to file the certified application and any other documentation required by USCIS with the appropriate USCIS office.

(e) *Denied certification.* If temporary labor certification is denied, the Final Determination letter will:

(1) State the reason(s) certification is denied, citing the relevant regulatory standards and/or special procedures;

(2) If applicable, address the availability of U.S. workers in the occupation as well as the prevailing benefits, wages, and working conditions of similarly employed U.S. workers in the occupation and/or any applicable special procedures;

(3) Offer the employer an opportunity to request administrative review of the denial available under § 655.33, or to file a new application in accordance with specific instructions provided by the CO; and

(4) State that if the employer does not request administrative review in accordance with § 655.33, the denial is final and the Department will not further consider that application for temporary alien nonagricultural labor certification.

(f) *Partial Certification.* The CO may, in his/her discretion, and to ensure compliance with all statutory and regulatory requirements, issue a partial certification, reducing either the period of need, the number of H–2B positions being requested, or both, based upon information the CO receives in the course of processing the temporary labor certification application, an RFI, or otherwise. If a partial labor certification

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is issued, the Final Determination letter will:

(1) State the reason(s) for which either the period of need and/or the number of H–2B positions requested has been reduced, citing the relevant regulatory standards and/or special procedures;

(2) If applicable, address the availability of U.S. workers in the occupation;

(3) Offer the employer an opportunity to request administrative review of the partial labor certification available under § 655.33; and

(4) State that if the employer does not request administrative review in accordance with § 655.33, the partial labor certification is final and the Department will not further consider that application for temporary nonagricultural labor certification.

§ 655.33 Administrative review.

(a) Request for review. If a temporary labor certification is denied, in whole or in part, under § 655.32, the employer may request review of the denial by the BALCA. The request for review:

(1) Must be sent to the BALCA, with a copy simultaneously sent to the CO who denied the application, within 10 calendar days of the date of determination;

(2) Must clearly identify the particular temporary labor certification determination for which review is sought;

(3) Must set forth the particular grounds for the request;

(4) Must include a copy of the Final Determination; and

(5) May contain only legal argument and such evidence as was actually submitted to the CO in support of the application.

(b) Upon the receipt of a request for review, the CO shall, within 5 business days assemble and submit the Appeal File using means to ensure same day or overnight delivery, to the BALCA, the employer, and the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor.

(c) Within 5 business days of receipt of the Appeal File, the counsel for the CO may submit, using means to ensure same day or overnight delivery, a brief in support of the CO's decision.

(d) The Chief Administrative Law Judge may designate a single member or a three member panel of the BALCA to consider a particular case.

(e) The BALCA must review a denial of temporary labor certification only on the basis of the Appeal File, the request for review, and any legal briefs submitted and must:

(1) Affirm the denial of the temporary labor certification; or

(2) Direct the CO to grant the certification; or

(3) Remand to the CO for further action.

(f) The BALCA should notify the employer, the CO, and counsel for the CO of its decision within 5 business days of the submission of the CO's brief or 10 days after receipt of the Appeal File, whichever is earlier, using means to ensure same day or overnight delivery.

§ 655.34 Validity of temporary labor certifications.

(a) *Validity Period.* A temporary labor certification is valid only for the period of time between the beginning and ending dates of employment, as certified by the OFLC Administrator on the *Application for Temporary Employment Certification.* The certification expires on the last day of authorized employment.

(b) *Scope of Validity.* A temporary labor certification is valid only for the number of H–2B positions, the area of intended employment, the specific services or labor to be performed, and the employer specified on the certified *Application for Temporary Employment Certification* and may not be transferred from one employer to another.

(c) *Amendments to Applications.* (1) Applications may be amended at any time, before the CO's certification determination, to increase the number of positions requested in the initial application by not more than 20 percent (50 percent for employers requesting less than 10 positions) without requiring an additional recruitment period for U.S. workers. Requests for increases above the percent prescribed, without additional recruitment, may be approved by the CO only when the request is submitted in writing, the need for additional workers could not have been reasonably foreseen, and the employer's services or products will be in jeopardy prior to the time that new H–2B workers could be secured.

(2) Applications may be amended to make minor changes in the period of employment, only when a written request is submitted to the CO and written approval obtained in advance. In considering whether to approve the request, the CO will review the reason(s) for the request, determine whether the reason(s) are on the whole justified, and take into account the effect(s) of a decision to approve on the adequacy of the underlying test of the domestic labor market for the job opportunity.

(3) Other amendments to the application, including elements of the job offer and the place of work, may be requested, in writing, and will be granted if the CO determines the proposed amendment(s) are justified and will have no significant effect upon the CO's ability to make the labor certification determination required under § 655.32.

(4) The CO may change the date of need to reflect an amended date when delays occur in the adjudication of the *Application for Temporary Employment Certification,* through no fault of the employer, and the certification would otherwise become valid after the initial date of need.

§ 655.35 Required departure.

(a) *Limit to worker's stay.* As defined further in DHS regulations, a temporary labor certification shall limit the authorized period of stay for any H–2B worker whose admission is based upon it. 8 CFR 214.2(h)(13). A foreign worker may not remain in the U.S. beyond the validity period of admission by DHS in H–2B status nor beyond separation from employment, whichever occurs first, absent any extension or change of such worker's status or grace period pursuant to DHS regulations.

(b) *Notice to worker.* Upon establishment of a pilot program by DHS for registration of departure, the employer must notify any H–2B worker starting work at a job opportunity for which the employer has obtained labor certification that the H–2B worker, when departing the U.S. by land at the conclusion of employment as described in paragraph (a) of this section, must register such departure at the place and in the manner prescribed by DHS. This requirement will apply only to H–2B foreign workers entering from ports of entry participating in the DHS pilot program.

§ 655.50 Enforcement process.

(a) *Authority of the WHD Administrator.* The WHD Administrator shall perform all the Secretary's investigative and enforcement functions under secs. 1101(a)(15)(H)(ii)(b), 103(a)(6), and 214(c) of the INA, pursuant to the delegation of authority from the Secretary of Homeland Security to the Secretary of Labor.

(b) *Conduct of investigations.* The Administrator, WHD, shall, either pursuant to a complaint or otherwise, conduct such investigations as may, in the judgment of the Administrator, be appropriate, and in connection therewith, may enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons, and gather such information as deemed necessary by the Administrator to determine compliance

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regarding the matters which are the subject of investigation.

(c) *Employer cooperation/availability of records.* An employer shall at all times cooperate in administrative and enforcement proceedings. An employer being investigated shall make available to the WHD Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records must be made available for inspection and copying within 72 hours following notice from the Secretary, or a duly authorized and designated representative. No employer or representative or agent of an employer subject to the provisions of secs. 1101(a)(15)(H)(ii)(b) and 214(c) of the INA and/or of this subpart shall interfere with any official of the Department who is performing an investigation, inspection, or law enforcement function pursuant to 8 U.S.C. 1101(a)(15)(H)(ii)(b) or 1184(c). Any such interference shall be a violation of the labor certification application and of this subpart, and the Administrator may take such further actions as the Administrator considers appropriate. (Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) *Confidentiality.* The WHD Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under this subpart.

§ 655.60 Violations.

The WHD Administrator, through investigation, shall determine whether an employer has—

(a) Filed a petition with ETA that willfully misrepresents a material fact.

(b) Substantially failed to meet any of the conditions of the labor certification application attested to, as listed in § 655.22, or any of the conditions of the DHS Form I–129, Petition for a Nonimmigrant Worker for an H–2B worker in 8 CFR 214.2(h).

(c) Misrepresented a material fact to the State Department during the visa application process.

§ 655.65 Remedies for violations.

(a) Upon determining that an employer has willfully failed to pay wages, in violation of the attestation required by § 655.22(e) or willfully required employees to pay for fees or expenses prohibited by § 655.22(j), or willfully made impermissible deductions from pay as provided in § 655.22(g), the WHD Administrator may assess civil money penalties that are equal to the difference between the amount that should have been paid and the amount that actually was paid to such nonimmigrant(s), not to exceed $10,000.

(b) Upon determining that an employer has terminated by layoff or otherwise any employee described in § 622.55(k) of this part, within the period described in that section, the Administrator may assess civil money penalties that are equal to the wages that would have been earned but for the layoff at the H–2B rate for that period, not to exceed $10,000. No civil money penalty shall be assessed, however, if the employee refused the job opportunity, or was terminated for lawful, job-related reasons.

(c) The Administrator may assess civil money penalties in an amount not to exceed $10,000 per violation for any substantial failure to meet the conditions provided in the H–2B *Application for Temporary Employment Certification* or the DHS Form I–129, Petition for a Nonimmigrant Worker for an H–2B worker or successor form, or any willful misrepresentation in the application or petition, or a failure to cooperate with a Department audit or investigation.

(d) Substantial failure in paragraph (b) of this section shall mean a willful failure that constitutes a significant deviation from the terms and conditions of the labor condition application or the DHS Form I–129, Petition for a Nonimmigrant Worker for an H–2B worker or successor form.

(e) For purposes of this subpart, ''willful failure'' means a knowing failure or a reckless disregard with respect to whether the conduct was contrary to sec. 214(c) of the INA, or this subpart. See *McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128 (1988); see also *Trans World Airlines* v. *Thurston,* 469 U.S. 111 (1985).

(f) The provisions of this subpart become applicable upon the date that the employer's labor condition application is certified and/or upon the date employment commences, whichever is earlier. The employer's submission and signature on the labor certification application and DHS Form I–129, Petition for a Nonimmigrant Worker for an H–2B worker or successor form constitutes the employer's representation that the statements on the application are accurate and its acknowledgment and acceptance of the obligations of the program. The employer's acceptance of these obligations is re-affirmed by the employer's submission of the petition (Form I–129), supported by the labor certification.

(g) In determining the amount of the civil money penalty to be assessed pursuant to paragraphs (b) and (c) of this section, the WHD Administrator shall consider the type of violation committed and other relevant factors. In determining the level of penalties to be assessed, the highest penalties shall be reserved for willful failures to meet any of the conditions of the application that involve harm to U.S. workers. Other factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the INA and this subpart, and 8 CFR 214.2;

(2) The number of U.S. or H–2B workers employed by the employer and affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the employer in good faith to comply with the INA and regulatory provisions of this subpart and at 8 CFR 214.2(h);

(5) The employer's explanation of the violation or violations;

(6) The employer's commitment to future compliance; and

(7) The extent to which the employer achieved a financial gain due to the violation, or the potential financial loss to the employer's workers.

(h) *Disqualification from approval of petitions.* Where the WHD Administrator finds a substantial failure to meet any conditions of the application or in a DHS Form I–129, or a willful misrepresentation of a material fact in an application or in a DHS Form I–129, as those terms are defined in § 655.31, the Administrator may recommend that ETA debar the employer for a period of no less than 1 year, and no more than 3 years.

(i) If the WHD Administrator finds a violation of the provisions specified in this subpart, the Administrator may impose such other administrative remedies as the Administrator determines to be appropriate, including reinstatement of displaced U.S. workers, or other appropriate legal or equitable remedies. If the WHD Administrator finds that an employer has not paid wages at the wage level specified under the application and required by § 655.22(e), the Administrator may require the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of § 655.22(e).

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(j) The civil money penalties determined by the WHD Administrator to be appropriate are due for payment within 30 days of the assessment by the Administrator, or upon the decision by an administrative law judge where a hearing is timely requested, or upon the decision by the Secretary where review is granted. The employer shall remit the amount of the civil money penalty by certified check or money order made payable to the order of ''Wage and Hour Division, Labor.'' The remittance shall be delivered or mailed to the Wage and Hour Division office in the manner directed in the Administrator's notice of determination. The payment or performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator.

(k) The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), requires that inflationary adjustments to civil money penalties in accordance with a specified cost-of-living formula be made, by regulation, at least every 4 years. The adjustments are to be based on changes in the Consumer Price Index for all Urban Consumers (CPI–U) for the U.S. City Average for All Items. The adjusted amounts will be published in the **Federal Register**. The amount of the penalty in a particular case will be based on the amount of the penalty in effect at the time the violation occurs.

§ 655.70 WHD Administrator's determination.

(a) The WHD Administrator's determination shall be served on the employer by personal service or by certified mail at the employer's last known address. Where service by certified mail is not accepted by the employer, the Administrator may exercise discretion to serve the determination by regular mail.

(b) The WHD Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the Administrator's determination.

(c) The WHD Administrator's written determination shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefore, and in the case of a finding of violation(s) by an employer, prescribe the amount of any back wages and civil money penalties assessed and the reason therefor.

(2) Inform the employer that a hearing may be requested pursuant to § 655.71.

(3) Inform the employer that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, give the addresses of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of Labor (upon whom copies of the request must be served).

(5) Where appropriate, inform the employer that the Administrator will notify ETA and DHS of the occurrence of a violation by the employer.

§ 655.71 Request for hearing.

(a) An employer desiring review of a determination issued under § 655.70, including judicial review, shall make a request for such an administrative hearing in writing to the Chief Administrative Law Judge at the address stated in the notice of determination. In such a proceeding, the Administrator shall be the prosecuting party, and the employer shall be the respondent. If such a request for an administrative hearing is timely filed, the WHD Administrator's determination shall be inoperative unless and until the case is dismissed or the Administrative Law Judge issues an order affirming the decision.

(b) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the employer believes such determination is in error;

(5) Be signed by the employer making the request or by an authorized representative of such employer; and

(6) Include the address at which such employer or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the Chief Administrative Law Judge, at the address stated in the WHD Administrator's notice of determination, no later than 15 calendar days after the date of the determination. An employer which fails to meet this 15-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the administrative law judge.

(d) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting employer's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the employer or authorized representative, shall be filed within 10 days.

(e) Copies of the request for a hearing shall be sent by the employer or authorized representative to the WHD official who issued the WHD Administrator's notice of determination, and to the representative(s) of the Solicitor of Labor identified in the notice of determination.

§ 655.72 Hearing rules of practice.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the ''Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges'' established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ 655.73 Service of pleadings.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the WHD Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2716, Washington, DC 20210, and one copy shall be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following service and includes the last day of the period

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unless it is a Saturday, Sunday, or Federally-observed holiday, in which case the time period includes the next business day.

§ 655.74 Conduct of proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 655.71, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) The administrative law judge shall notify all parties of the date, time and place of the hearing. All parties shall be given at least 14 calendar days notice of such hearing.

(c) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party. Post-hearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party.

§ 655.75 Decision and order of administrative law judge.

(a) The administrative law judge shall issue a decision. If any party desires review of the decision, including judicial review, a petition for Administrative Review Board (Board) review thereof shall be filed as provided in § 655.76. If a petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Board issues an order affirming the decision, or unless and until 30 calendar days have passed after the Board's receipt of the petition for review and the Board has not issued notice to the parties that the Board will review the administrative law judge's decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefore, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator, WHD; the reason or reasons for such order shall be stated in the decision.

(c) In the event that the WHD Administrator assesses back wages for wage violation(s) of § 655.22(e), (g), or (j) based upon a PWD obtained by the Administrator from OFLC during the investigation and the administrative law judge determines that the Administrator's request was not warranted, the administrative law judge shall remand the matter to the Administrator for further proceedings on the Administrator's determination. If there is no such determination and remand by the administrative law judge, the administrative law judge shall accept as final and accurate the wage determination obtained from OFLC or, in the event the employer filed a timely appeal under § 655.11, the final wage determination resulting from that process. Under no circumstances shall the administrative law judge determine the validity of the wage determination or require submission into evidence or disclosure of source data or the names of establishments contacted in developing the survey which is the basis for the PWD.

(d) The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(e) The decision shall be served on all parties in person or by certified or regular mail.

§ 655.76 Appeal of administrative law judge decision.

(a) The WHD Administrator or an employer desiring review of the decision and order of an administrative law judge, including judicial review, shall petition the Department's Administrative Review Board (Board) to review the decision and order. To be effective, such petition shall be received by the Board within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for the Board's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Board in determining whether review is warranted.

(c) Whenever the Board determines to review the decision and order of an administrative law judge, a notice of the Board's determination shall be served upon the administrative law judge, upon the Office of Administrative Law Judges, and upon all parties to the proceeding within 30 calendar days after the Board's receipt of the petition for review. If the Board determines that it will review the decision and order, the order shall be inoperative unless and until the Board issues an order affirming the decision and order.

(d) Upon receipt of the Board's notice, the Office of Administrative Law Judges shall within 15 calendar days forward the complete hearing record to the Board.

(e) The Board's notice shall specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (e.g., briefs); and

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Board shall be filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5220, Washington, DC 20210. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Board until actually received by the Board. All documents, including documents filed by mail, shall be received by the Board either on or before the due date.

(g) Copies of all documents filed with the Board shall be served upon all other parties involved in the proceeding.

(h) The Board's final decision shall be served upon all parties and the administrative law judge.

§ 655.80 Notice to OFLC and DHS.

(a) The WHD Administrator shall, as appropriate, notify DHS and OFLC of the final determination of a violation and recommend that DHS not approve petitions filed by an employer. The Administrator's notification will address the type of violation committed by the employer and the appropriate statutory period for disqualification of the employer from approval of petitions.

(b) The Administrator shall notify DHS and OFLC upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an employer, and no timely request for hearing is made; or

(2) Where, after a hearing, the administrative law judge issues a

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decision and order finding a violation by an employer, and no timely petition for review is filed with the Department's Administrative Review Board (Board); or

(3) Where a timely petition for review is filed from an administrative law judge's decision finding a violation and the Board either declines within 30 days to entertain the appeal, or reviews and affirms the administrative law judge's determination; or

(4) Where the administrative law judge finds that there was no violation by an employer, and the Board, upon review, issues a decision holding that a violation was committed by an employer.

■ 4. Amend § 655.715 by adding a definition for the ''Center Director'' to read as follows:

§ 655.715 Definitions.

* * * * *

Center Director means the Department official to whom the Administrator has delegated his authority for purposes of NPC operations and functions.

* * * * *

■ 5. Amend § 655.731 by revising paragraphs (a)(2) introductory text, (a)(2)(ii), (b)(3)(iii)(A), and (d)(2) and (3) to read as follows:

§ 655.731 What is the first LCA requirement regarding wages?

* * * * *

(a) * * *

(2) The prevailing wage for the occupational classification in the area of intended employment must be determined as of the time of filing the application. The employer shall base the prevailing wage on the best information available as of the time of filing the application. Except as provided in this section, the employer is not required to use any specific methodology to determine the prevailing wage and may utilize a wage obtained from an OFLC NPC (OES), an independent authoritative source, or other legitimate sources of wage data. One of the following sources shall be used to establish the prevailing wage:

* * * * *

(ii) If the job opportunity is in an occupation which is not covered by paragraph (a)(2)(i) of this section, the prevailing wage shall be the arithmetic mean of the wages of workers similarly employed, except that the prevailing wage shall be the median when provided by paragraphs (a)(2)(ii)(A), (b)(3)(iii)(B)(2), and (b)(3)(iii)(C)(2) of this section. The prevailing wage rate shall be based on the best information available. The following prevailing wage sources may be used:

(A) *OFLC National Processing Center (NPC) determination.* Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment shall continue to receive and process prevailing wage determination requests, but shall do so in accordance with these regulatory provisions and Department guidance. On or after January 1, 2010, the NPC shall receive and process prevailing wage determination requests in accordance with these regulations and with Department guidance. Upon receipt of a written request for a PWD on or after January 1, 2010, the NPC will determine whether the occupation is covered by a collective bargaining agreement which was negotiated at arms length, and, if not, determine the arithmetic mean of wages of workers similarly employed in the area of intended employment. The wage component of the Bureau of Labor Statistics Occupational Employment Statistics survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey. The NPC shall determine the wage in accordance with secs. 212(n) and 212(t) of the INA. If an acceptable employer-provided wage survey provides a median and does not provide an arithmetic mean, the median shall be the prevailing wage applicable to the employer's job opportunity. In making a PWD, the Chicago NPC will follow 20 CFR 656.40 and other administrative guidelines or regulations issued by ETA. The Chicago NPC shall specify the validity period of the PWD, which in no event shall be for less than 90 days or more than 1 year from the date of the determination.

(*1*) An employer who chooses to utilize an NPC PWD shall file the labor condition application within the validity period of the prevailing wage as specified in the PWD. Any employer desiring review of an NPC PWD, including judicial review, shall follow the appeal procedures at 20 CFR 656.41. Employers which challenge an NPC PWD under 20 CFR 656.41 must obtain a ruling prior to filing an LCA. In any challenge, the Department and the NPC shall not divulge any employer wage data collected under the promise of confidentiality. Once an employer obtains a PWD from the NPC and files an LCA supported by that PWD, the employer is deemed to have accepted the PWD (as to the amount of the wage) and thereafter may not contest the legitimacy of the PWD by filing an appeal with the CO (see 20 CFR 656.41) or in an investigation or enforcement action.

(*2*) If the employer is unable to wait for the NPC to produce the requested prevailing wage for the occupation in question, or for the CO and/or the BALCA to issue a decision, the employer may rely on other legitimate sources of available wage information as set forth in paragraphs (a)(2)(ii)(B) and (C) of this section. If the employer later discovers, upon receipt of the PWD from the NPC, that the information relied upon produced a wage below the final PWD and the employer was paying the NPC-determined wage, no wage violation will be found if the employer retroactively compensates the H–2B nonimmigrant(s) for the difference between wage paid and the prevailing wage, within 30 days of the employer's receipt of the PWD.

(*3*) In all situations where the employer obtains the PWD from the NPC, the Department will deem that PWD as correct as to the amount of the wage. Nevertheless, the employer must maintain a copy of the NPC PWD. A complaint alleging inaccuracy of an NPC PWD, in such cases, will not be investigated.

(B) *An independent authoritative source.* The employer may use an independent authoritative wage source in lieu of an NPC PWD. The independent authoritative source survey must meet all the criteria set forth in paragraph (b)(3)(iii)(B) of this section.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) A copy of the prevailing wage finding from the NPC for the occupation within the area of intended employment.

* * * * *

* * * * *

(d) * * *

(2) In the event the Administrator obtains a prevailing wage from ETA pursuant to paragraph (d)(1) of this section, and the employer desires review, including judicial review, the employer shall challenge the ETA prevailing wage only by filing a request for review under § 656.41 of this chapter within 30 days of the employer's receipt of the PWD from the Administrator. If the request is timely filed, the decision of OFLC is suspended until the Center Director issues a determination on the employer's appeal. If the employer desires review, including judicial review, of the decision of the NPC Center Director, the employer shall make a request for review of the determination by the Board of Alien Labor Certification Appeals (BALCA) under § 656.41(e) of this chapter within 30 days of the receipt of the decision of

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the Center Director. If a request for review is timely filed with the BALCA, the determination by the Center Director is suspended until the BALCA issues a determination on the employer's appeal. In any challenge to the wage determination, neither ETA nor the NPC shall divulge any employer wage data collected under the promise of confidentiality.

(i) Where an employer timely challenges an OFLC PWD obtained by the Administrator, the 30-day investigative period shall be suspended until the employer obtains a final ruling. Upon such a final ruling, the investigation and any subsequent enforcement proceeding shall continue, with the PWD as determined by the BALCA serving as the conclusive determination for all purposes.

(ii) [Reserved]

(3) For purposes of this paragraph (d), OFLC may consult with the NPC to ascertain the prevailing wage applicable under the circumstances of the particular complaint.

■ 6. Amend § 655.1102 to add the definition of ''Office of Foreign Labor Certification (OFLC)'' to read as follows:

§ 655.1102 What are the definitions of terms that are used in these regulations?

* * * * *

Office of Foreign Labor Certification (OFLC) means the organizational component within the ETA that provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary of Labor under the INA concerning foreign workers seeking admission to the United States.

* * * * *

■ 7. Amend § 655.1112 by revising paragraph (c)(2) to read as follows:

§ 655.1112 Element II—What does ''no adverse effect on wages and working conditions'' mean?

* * * * *

(c) * * *

(2) Determination of prevailing wage for H–1C purposes. In the absence of collectively bargained wage rates, the National Processing Center (NPC) having jurisdiction as determined by OFLC shall determine the prevailing wage for similarly employed nurses in the geographic area in accordance with administrative guidelines issued by ETA for prevailing wage determination requests submitted on or after the effective date of these regulations.

(i) Prior to the effective date of these regulations, the SWA having jurisdiction over the area of intended employment shall continue to receive and process prevailing wage determination requests in accordance with the regulatory provisions and Department guidance in effect prior to January 1, 2009. On or after the effective date of these regulations, the NPC shall receive and process prevailing wage determination requests in accordance with these regulations and with Department guidance. A facility seeking to determine the prevailing wage must request a prevailing wage determination from the NPC having jurisdiction for providing the prevailing wage over the proposed area of intended employment not more than 90 days prior to the date the attestation is submitted to the Department. The NPC must enter its wage determination on the form it uses and return the form with its endorsement to the employer. Once a facility obtains a prevailing wage determination from the NPC and files an attestation supported by that prevailing wage determination, the facility shall be deemed to have accepted the prevailing wage determination as accurate and appropriate (as to both the occupational classification and the wage rate) and thereafter shall not contest the legitimacy of that prevailing wage determination in an investigation or enforcement action pursuant to subpart M of this part.

(ii) A facility may challenge the prevailing wage determination with the NPC having provided such determination according to administrative guidelines issued by ETA, but must obtain a final ruling prior to filing an attestation.

* * * * *

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 8. The authority citation for part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1182(p)(1); sec.122, Public Law 101–649, 109 Stat. 4978; and Title IV, Public Law 105–277, 112 Stat. 2681.

■ 9. Amend § 656.3 by revising the definitions of ''Prevailing wage determination (PWD)'' and ''State Workforce Agency (SWA)'' to read as follows:

§ 656.3 Definitions, for purposes of this part, of terms used in this part.

* * * * *

Prevailing wage determination (PWD) means the prevailing wage provided or approved by an OFLC National Processing Center (NPC), in accordance with OFLC guidance governing foreign labor certification programs. This includes PWD requests processed for purposes of employer petitions filed with DHS under Schedule A or for sheepherders.

* * * * *

State Workforce Agency (SWA), formerly known as State Employment Security Agency (SESA), means the state agency that receives funds under the Wagner-Peyser Act to provide employment-related services to U.S. workers and employers and/or administers the public labor exchange delivered through the state's one-stop delivery system in accordance with the Wagner-Peyser Act.

* * * * *

§ 656.15 [Amended]

■ 10. Amend § 656.15:

■ a. By removing the words ''in duplicate;'' from paragraph (a); and

■ b. By removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

■ 11. Amend § 656.40 by revising paragraphs (a), (b) introductory text, (c), (g), (h) and (i) to read as follows:

§ 656.40 Determination of prevailing wage for labor certification purposes.

(a) *Application process.* The employer must request a PWD from the NPC, on a form or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment shall continue to receive and process prevailing wage determination requests in accordance with the regulatory provisions and Department guidance in effect prior to January 1, 2009. On or after January 1, 2010, the NPC shall receive and process prevailing wage determination requests in accordance with these regulations and with Department guidance. The NPC will provide the employer with an appropriate prevailing wage rate. The NPC shall determine the wage in accordance with sec. 212(t) of the INA. Unless the employer chooses to appeal the center's PWD under § 656.41(a) of this part, it files the Application for Permanent Employment Certification either electronically or by mail with the processing center of jurisdiction and maintains the PWD in its files. The determination shall be submitted to the CO, if requested.

(b) *Determinations.* The National Processing Center will determine the appropriate prevailing wage as follows:

* * *

(c) *Validity Period.* The National Processing Center must specify the validity period of the prevailing wage, which in no event may be less than 90 days or more than 1 year from the

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determination date. To use a prevailing wage rate provided by the NPC, employers must file their applications or begin the recruitment period required by §§ 656.17(e) or 656.21 of this part within the validity period specified by the NPC.

* * * * *

(g) *Employer-provided wage information.* (1) If the job opportunity is not covered by a CBA, or by a professional sports league's rules or regulations, the NPC will consider wage information provided by the employer in making a PWD. An employer survey can be submitted either initially or after NPC issuance of a PWD derived from the OES survey. In the latter situation, the new employer survey submission will be deemed a new PWD request.

(2) In each case where the employer submits a survey or other wage data for which it seeks acceptance, the employer must provide the NPC with enough information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow the NPC to make a determination about the adequacy of the data provided and validity of the statistical methodology used in conducting the survey in accordance with guidance issued by the OFLC national office.

(3) The survey submitted to the NPC must be based upon recently collected data.

(i) A published survey must have been published within 24 months of the date of submission to the NPC, must be the most current edition of the survey, and the data upon which the survey is based must have been collected within 24 months of the publication date of the survey.

(ii) A survey conducted by the employer must be based on data collected within 24 months of the date it is submitted to the NPC.

(4) If the employer-provided survey is found not to be acceptable, the NPC will inform the employer in writing of the reasons the survey was not accepted.

(5) The employer, after receiving notification that the survey it provided for NPC consideration is not acceptable, may file supplemental information as provided by paragraph (h) of this section, file a new request for a PWD, or appeal under § 656.41.

(h) *Submittal of supplemental information by employer.* (1) If the employer disagrees with the skill level assigned to its job opportunity, or if the NPC informs the employer its survey is not acceptable, or if there are other legitimate bases for such a review, the employer may submit supplemental information to the NPC.

(2) The NPC will consider one supplemental submission about the employer's survey or the skill level the NPC assigned to the job opportunity or any other legitimate basis for the employer to request such a review. If the NPC does not accept the employer's survey after considering the supplemental information, or affirms its determination concerning the skill level, it will inform the employer of the reasons for its decision.

(3) The employer may then apply for a new wage determination or appeal under § 656.41 of this part.

(i) Frequent users. The Secretary will issue guidance regarding the process by which employers may obtain a wage determination to apply to a subsequent application, when the wage is for the same occupation, skill level, and area of intended employment. In no case may the wage rate the employer provides the NPC be lower than the highest wage required by any applicable Federal, State, or local law.

(ii) [Reserved]

* * * * *

■ 12. Revise § 656.41 to read as follows:

§ 656.41 Review of prevailing wage determinations.

(a) *Review of NPC PWD.* Any employer desiring review of a PWD made by a CO must make a request for such review within 30 days of the date from when the PWD was issued. The request for review must be sent to the director of the NPC that issued the PWD within 30 days of the date of the PWD; clearly identify the PWD from which review is sought; set forth the particular grounds for the request; and include all the materials pertaining to the PWD submitted to the NPC up to the date of the PWD received from the NPC.

(b) *Processing of request by NPC.* Upon the receipt of a request for review, the NPC will review the employer's request and accompanying documentation, and add any material that may have been omitted by the employer, including any material the NPC sent the employer up to the date of the PWD.

(c) *Review on the record.* The director will review the PWD solely on the basis upon which the PWD was made and, upon the request for review, may either affirm or modify the PWD.

(d) *Request for review by BALCA.* Any employer desiring review of the director's determination must make a request for review by the BALCA within 30 days of the date of the Director's decision.

(1) The request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal arguments and only such evidence that was within the record upon which the director made his/her affirmation of the PWD.

(2) The request for review must be in writing and addressed to the director of the NPC making the determination. Upon receipt of a request for a review, the director will assemble an indexed appeal file in reverse chronological order, with the index on top followed by the most recent document.

(3) The director will send the Appeal File to the Office of Administrative Law Judges, BALCA. The BALCA handles the appeals in accordance with §§ 656.26 and 656.27.

Signed in Washington, DC, this 12th day of December, 2008.

Brent R. Orrell,

Deputy Assistant Secretary, Employment and Training Administration.

Alexander J. Passantino,

Acting Administrator, Wage and Hour Division, Employment Standards Administration.

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