Mrs. HUTCHISON, Mr. DORGAN, Mr. KYL, Mr. DURBIN, Mr. THOMPSON, Mr. FEINGOLD, Mr. HAGEL, Mrs. FEINSTEIN, Mr. CHAFEE, Mr. GLENN, Ms. COLLINS, Mr. GRAHAM, Mr. FRIST, Mr. HARKIN, Ms. SNOWE, Mr. ABRAHAM, Mr. INOUYE, Mr. ASHCROFT, Mr. JOHNSON, Mr. BENNETT, Mr. KENNEDY, Mr. BOND, Mr. KERREY, Mr. CRAIG, Mr. KERRY, Mr. DOMENICI, Mr. KOHL, Mr. ENZI, Ms. LANDRIEU, Mr. FAIRCLOTH, Mr. FORD, Mr. GORTON, Mr. LAUTENBERG, Mr. GRAMM, Mr. LEAHY, Mr. GRAMS, Mr. LEVIN, Mr. GRASSLEY, Mr. GREGG, Mr. HOLLINGS, Mr. HUTCHINSON, Ms. MIKULSKI, Mr. INHOFE, Ms. MOSELEY-BRAUN, Mr. KEMPTHORNE, Mr. MOYNIHAN, Mr. LUGAR, Mrs. MURRAY, Mr. MURKOWSKI, Mr. REED, Mr. NICKLES, Mr. REID, Mr. ROBERTS, Mr. ROTH, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. SARBANES, Mr. SESSIONS, Mr. TORRICELLI, Mr. SHELBY, Mr. SMITH of New Hampshire, Mr. WELLSTONE, Mr. SPECTER, Mr. WYDEN, Mr. STEVENS, Mr. THOMAS, and Mr. THURMOND):

S.J. Res. 46. A joint resolution expressing the sense of the Congress on the occasion of the 50th anniversary of the founding of the modern State of Israel and reaffirming the bonds of friendship and cooperation between the United States and Israel; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MACK (for himself and Mr. DASCHLE):

S. Res. 219. A resolution to authorize printing of the minutes of the Senate Republican and Democratic Party Conferences; considered and agreed to.

By Mr. TORRICELLI (for himself and Mr. D'AMATO):

S. Con. Res. 92. A concurrent resolution expressing the sense of Congrss with respect to the collection of demographic, social, and economic data as part of the 2000 decennial census of population; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENNETT:

S. 2000. A bill to ensure that businesses, financial markets, and the Federal Government are taking adequate steps to resolve the year 2000 computer problem; to the Committee on Governmental Affairs.

YEAR 2000 COMPUTER PROBLEM LEGISLATION

Mr. BENNETT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2000

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

SECTION 1. FIDUCIARIES OF EMPLOYEE BENEFIT PLANS MUST CONSIDER YEAR 2000 COMPUTER PROBLEMS IN MAKING INVESTMENT DECISIONS.

(a) IN GENERAL.—Section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) is amended by adding at the end the following new paragraph:

''(3) A fiduciary shall not be treated as meeting the requirements of paragraph (1)(B) unless—

''(A) the fiduciary determines that—

''(i) the issuer of any security in which the fiduciary seeks to invest the assets of the plan has, or is taking, steps to substantially eliminate any year 2000 computer problem faced by the issuer, and

''(ii) such security is traded on a market that is prepared to operate without any interruption due to the year 2000 computer problem, or

''(B) in any case where such assets are invested by an insurance carrier, bank, or similar institution, the fiduciary determines that such institution makes the determinations described in subparagraph (A) with respect to the investment of such assets.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to investments made by a fiduciary, and contracts to invest plan assets entered into with insurance carriers, banks, and similar institutions, on or after the date of the enactment of this Act.

SEC. 2. STEPS TO ENSURE THE FEDERAL GOVERNMENT ADDRESSES YEAR 2000 COMPUTER PROBLEM.

(a) PRESIDENT'S COUNCIL ON YEAR 2000 CONVERSION.—

(1) IN GENERAL.—The President shall establish the President's Council on Year 2000 Conversion (the ''Council'') which shall be chaired, at the President's discretion, by an Assistant to the President.

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Council shall be composed of 1 representative from each of the executive departments and from such other Federal agencies as the Chair shall designate.

(B) VICE CHAIR; OTHER PERSONNEL.—The Chair shall appoint a Vice Chair and shall assign other responsibilities to members of the Council as the Chair determines necessary.

(3) FUNCTIONS.—The Chair shall—

(A) oversee the activities of executive departments and other Federal agencies to assure that their computer systems operate smoothly through the year 2000,

(B) provide policy direction to, and receive reports and data from, executive departments and other Federal agencies, as is necessary to ensure progress and compliance with Federal standards for remediation of the year 2000 computer problem,

(C) allocate resources for correcting critical year 2000 computer problems among executive departments and other Federal agencies in order to meet critical deadlines, and

(D) utilize any existing authorities granted to the executive branch, or recommend to the Congress other appropriate plans, for the retention of critical personnel needed to address the Federal Government's year 2000 computer problem in a timely manner.

(4) COOPERATION.—The head of each executive department and any other Federal agency shall cooperate to the fullest extent with the Council.

(b) REPORT.—The Director of the Office of Management and Budget shall report quarterly to the Congress on the progress made by the Federal Government—

(1) in achieving year 2000 compliance, and

(2) in obtaining and retaining the resources and personnel necessary to achieve an orderly conversion to year 2000 compliance.

By Mr. MURKOWSKI (for himself, Mr. LOTT, and Mr. BAUCUS):

S. 2001. A bill to amend the Indian Health Care Improvement Act to make permanent the demonstration program that allows for direct billing of medicare, medicaid, and other third party payors, and to expand the eligibility under such program to other tribes and tribal organizations; to the Committee on Indian Affairs.

THE ALASKA NATIVE AND AMERICAN INDIAN DIRECT REIMBURSEMENT ACT OF 1998

Mr. MURKOWSKI. Mr. President, today I rise on behalf of myself and Majority Leader LOTT, Senator BAUCUS, and Senator CAMPBELL, to introduce legislation which would permanently authorize and expand the Medicare and Medicaid direct collections demonstration program under section 405 of the Indian Health Care Improvement Act.

This act will end much of the redtape and bureaucracy for IHS facilities involved with Medicare and Medicaid reimbursement, and will mean more Medicaid and Medicare dollars to Native health facilities to use for improving health care.

Our bill will allow Native hospitals to collect Medicare and Medicaid funds directly from the Health Care Financing Administration instead of having to go through the maze of regulations mandated by HIS.

This bill is an expansion of a current demonstration project that includes Bristol Bay Health Corporation of Dillingham, Alaska; the Southeast Alaska Regional Health Corporation of Sitka, Alaska; the Mississippi Choctaw Health Center of Philadelphia, Mississippi; and the Choctaw Tribe of Durant, Oklahoma. All of the participants in the demonstration program—as well as the Department of Health and Human Service and the Indian Health Services—report that the program is a great success. In fact, the program has:

Dramatically increased collections for Medicare and Medicaid services, which in turn has provided badly-needed revenues for Indian and Alaska Native health care; significantly reduced the turn-around time between billing and the receipt of payment for Medicare and Medicaid services; and increased the administrative efficiency of the participating facilities by empowering them to track their own Medicare and Medicaid billings and collections.

In 1996, when the demonstration program was about to expire, Congress extended it through FY 1998. This extension has allowed the participants to continue their direct billing and collection efforts and has provided Congress with additional time to consider whether to permanently authorize the program.

Because the demonstration program is again set to expire at the end of FY 98, it is time to recognize the benefits of the demonstration program by enacting legislation that would permanently authorize it and expand it to other eligible tribal participants.

I hope that my colleagues will support this important legislation.

By Mr. REID:

S. 2003. A bill to amend title II of the Social Security Act to allow workers who attain age 65 after 1981 and before 1992 to choose either lump sum payments over four years totalling $5,000 or an improved benefit computation formula under a new 10-year rule governing the transition to the changes in benefit computation rules enacted in the Social Security Amendments of 1977, and for other purposes; to the Committee on Finance.

NOTCH FAIRNESS ACT OF 1998

Mr. REID. Mr. President, I rise today to introduce legislation that would correct a problem which plagues a special group of older Americans. I am speaking on behalf of those affected by the Social Security notch.

For my colleagues who may not be aware, the Social Security notch causes 11 million Americans born between the years 1917–1926 to receive less in Social Security benefits than Americans born outside the notch years due to changes made in the 1977 Social Security benefit formula.

I have felt compelled over the years to speak out about this issue and the injustice it imposes on millions of Americans. The notch issue has been debated and debated, studied and studied, yet to date, no solution to it has been found. Because of this, many older Americans born during this period must scrimp to afford the most basic of necessities.

Mr. President, I am the first to acknowledge that with any projected budget surplus we must save Social Security. In many ways, my legislation does just this. It restores confidence to the many notch victims around the country and will show them that we in Congress will accept responsibility for any error that was made. We should not ask them to accept less as a result of our mistake. While we must save Social Security for the future, we have an obligation to those, who through no fault of their own, receive less than those that were fortunate enough to be born just days before or after the notch period.

I believe we owe a debt to notch babies. Like any American family, we must first pay the bills before we invest in the future. With a surplus projected for this fiscal year, we have the resources to make good on our debt to notch babies. We should come forward and honor our commitment.

Mr. President, the ''notch'' situation had its origins in 1972, when Congress decided to create automatic cost-of-living adjustments to help Social Security benefits keep pace with inflation. Previously, each adjustment had to await legislation, causing beneficiaries' monthly payments to lag behind inflation. When Congress took this action, it was acting under the best of intentions.

Unfortunately, this new benefit adjustment method was flawed. To function properly, it required that the economy behave in much the same fashion that it had in the 1950s and 1960s, with annual wage increases outpacing prices, and inflation remaining relatively low. As we all know, that did not happen. The rapid inflation and high unemployment of the 1970s generated increases in benefits. In an effort to end this problem, in 1977 Congress revised the way that benefits were computed. In making its revisions, Congress decided that it was not proper to reduce benefits for persons already receiving them; it did, however, decide that benefits for all future retirees should be reduced. As a result, those born after January 1, 1917 would, by design, receive benefits that were, in many cases, far less. In an attempt to ease the transition to the new, lower benefit levels, Congress designed a special ''transitional computation method'' for use by beneficiaries born between 1917 and 1921.

Mr. President, we have an obligation to convey to our constituents that Social Security is a fair system. In town hall meetings back home in Nevada, I have a hard time trying to tell that to a notch victim. They feel slighted by their government and if I were in their situation I would too. Through no fault of their own, they receive less, sometimes as much as $200 less, than their neighbors.

The legislation I am offering today is my proposal to right the wrong. I propose using any projected budget surplus to pay the lump sum benefit to notch babies. While we have a surplus, let's fix the notch problem once and for all and restore the confidence of the ten million notch babies across this land.

Government has an obligation to be fair. I don't think we have been in the case of notch babies. My support of notch babies is longstanding. I introduced the only notch amendment in April 1991 that ever passed in Congress as part of the fiscal year 1992 Budget Resolution. Unfortunately, it did not become the law of the land as it was dropped in Conference with the House of Representatives. I have cosponsored numerous pieces of legislation over the years to address this issue. With this legislation, my effort continues.

Mr. President, it is unfortunate that these measures have not seen the light of day. Many who have written to me think Congress is waiting for notch babies to die rather than honor this debt. I must tell you it concerns me when our constituents have this perception of their elected representatives. Unfortunately, the truth is that today a number of notch babies will die. We will not have to worry about those notch babies, or honor our debt to them. This is the wrong approach.

Each day a grave injustice is perpetrated when these people pass away. We have to do something to make sure Americans believe that Social Security is a fair system. Passage of my legislation provides us that chance. I invite members to join me in cosponsoring this important legislation.

I acknowledge that the battle for notch reform suffered a major setback when on December 31, 1994, the Commission on the Social Security ''Notch'' issue released its final report. It concluded that the ''benefits paid to those in the 'Notch' years are equitable, and no remedial legislation is in order.'' The National Committee to Preserve Social Security and Medicare strongly disagreed with the Committee's methodology and conclusions. Although they have stopped advocating for this issue due to the political and fiscal climate, their disagreement with the outcome is nonetheless significant.

The Commission's report also stated ''in retrospect'' Congress ''Probably should have'' limited the benefits of those who were grandfathered, but that it is too late now to do so given their advanced age. Since we did not do the right thing then, I propose that we do the right thing now. Let's show we have the courage to correct a mistake when we have made one. The Commission report provided political cover for those who were opposed to notch reform legislation. I have long opposed ''political'' solutions to problems such as this.

My legislation is intended to make good on what this government should have done long ago. I propose that workers who attain the age of 65 after 1981 and before 1992 be allowed to choose either lump sum payment over four years totaling $5,000 or an improved benefit computation formula under a new 10-year rule governing the transition to the changes in benefit computation rules enacted in the Social Security Amendments of 1977.

As of December 1996, there were 11,637,390 recipients born between 1917 and 1926 who were receiving Social Security retirement benefits. By providing each with a $5,000 lump sum payment or an improved benefit computation formula, maximum costs would be $60 billion spread over four years or $15 billion annually.

There are some who would say there are ''bigger fish to fry'' such as Social Security solvency and Medicare's long term solvency. While I am in full agreement that these are very important issues that I intend to work on, we should include in our discussion concerning uses of any budget surplus, to repair the damage that has been done as a result of notch. Living on a fixed income is not easy. Many notch babies have difficulty making ends meet. This one time lump sum payment would provide much needed financial support for some of this nation's most needy citizens.

Mr. President, it is time to return these dollars to the hands of those who earned them. It is time to show our support for notch reform. All of our offices have staff to help us answer the mail. We tell our constituents what bills have been offered and that we will lend our support if their issue comes to a vote.

Well, here is our change. I am introducing this legislation because actions speak louder than words. The ''Notch

Fairness Act of 1998'' that I am introducing on behalf of notch victims today, is intended to put my words into action. I ask all my colleagues to join me in support of this important and long overdue legislation.

By Mr. McCONNELL:

S. 2005. A bill to amend the Federal Power Act to ensure that certain Federal power customers are provided protection by the Federal Energy Regulatory Commission, and for other purposes; to the Committee on Energy and Natural Resources.

TVA CUSTOMER PROTECTION ACT OF 1998

Mr. McCONNELL. Mr. President, I have come to the Senate floor today to introduce a bill that is long overdue. Known as the TVA Customer Protection Act, this legislation will implement a number of consumer reforms to make TVA accountable to ratepayers and better prepare TVA to compete in a restructured electricity market.

The bill I am introducing provides Tennessee Valley ratepayers a number of consumer protections against unchecked and unjustified increases in their power rates. This bill will put an end to TVA's ability to compete unfairly with its regional distributors. This bill will prohibit TVA from sticking ratepayers with the bill for TVA's international forays that have no relevance to TVA's responsibility to provide low cost power to the Tennessee Valley. Finally, this bill also codifies an agreement between TVA and several industry associations to limit TVA's authority as a government entity to compete with small businesses in nonelectric services.

Mr. President, TVA is a federal corporation that was first formed in 1933, to tame the Tennessee River, our nation's fifth largest river, and to bring economic development to this once poverty stricken region. Over the years as the Valley has developed, TVA has evolved in their role as a river steward to become the largest power producer in the nation. Today, TVA provides power to all of Tennessee and to parts of six other states covering over 80,000 square miles and serving eight million consumers. The bulk of TVA's power sales are made through municipal and cooperative distributors, which in turn are responsible for delivering that power to every home, office and farm in the Valley. TVA has exclusive power contracts with its distributors and the three member TVA board sets the retail rates offered by distributors. TVA also has the authority to compete directly with distributors to make retail sales to large industrial customers.

Mr. President, over the past 65 years, TVA has accumulated an enormous debt of nearly $28 billion, despite being a monopoly power provider. TVA is also carrying $6.3 billion in deferred assets that will eventually force electricity rates higher in the future. By deferring these charges, TVA's financing costs will continue to mount. I have real concerns about how this debt load will affect rates as well as the overall economic health of the region.

In 1997, GAO found that TVA paid over 35 percent of its power revenue to servicing its debt. In other words, TVA pays an astronomical 35 cents of every $1 earned to interest. Compare that to a public utility which paid a mere 7 percent in finance costs. In a 1994 study, GAO found that 69 percent of TVA's total debt is tied to the nuclear facilities, yet they generated only 14 percent of TVA's total power production in 1994. This study concluded that TVA's financial condition ''threatens its long-term viability and places the federal government at risk.''

Only through years of unaccountability and fiscal irresponsibility could a power company have ever reached this level of debt despite the fact that TVA is a monopoly provider of electricity. Therefore, I have come to the conclusion that TVA needs to be made more accountable for their actions. Not more accountable to Congress or the President, but the people they were charged to serve—the TVA customers.

Mr. President, it is my desire to provide TVA customers with a clear picture of TVA's financial situation including TVA's rates, charges and costs. The Federal Energy Regulatory Commission (FERC) is authorized under the Federal Power Act with regulating electric utilities.

FERC provides regulatory oversight to over 200 utilities for wholesale and transmission power rates to ensure that their electric rates and charges are ''just and reasonable and not unduly discriminatory or preferential.'' At present, TVA is entirely exempt from these necessary regulations allowing it to operate as a self-regulating monopoly, with no such mandate for openness fairness or oversight.

Requiring TVA to comply with FERC regulations will serve two purposes. First, it will allow customers to accurately evaluate TVA's wholesale and transmission pricing and terms to ensure the rates charged are ''just and reasonable'' and to provide customers with a forum for challenging future rate increases just as every other regulated utility does.

Second, this information will provide FERC with a better understanding of the stranded costs TVA has accumulated. Understanding the full scope of these costs will be critical in an open transmission and wholesale market. It will also have a significant impact in determining how competitive TVA will be in the future.

Last year, former FERC Chair Elizabeth Moler testified before the Senate Energy Committee regarding nationwide open access in the transmission and wholesale markets. She stated that, ''like Swiss cheese, nationwide open access has some holes. Federal legislation is necessary to fill in these holes.'' It was her belief that TVA's large transmission system must be included within FERC's open access program.

Recently, I read an article written by Carlos Smith, the General Counsel to TVPPA, an association which represents TVA distributors. Mr. Smith made the case that investor-owned utilities should be regulated, ''because only in this way can the captive ratepayers learn the underlying basis for the retail utility rates and require justification for the charges made for services.''

Mr. President, I wholeheartedly concur with Mr. Smith's conclusion that ratepayers, including the distributors Mr. Smith represents, should know what their rates are based on and have a justification for such rates. Further, ratepayers should be able to challenge, through FERC, any rate increase they find unreasonable.

Mr. President, let me point out one very important provision in this legislation. I have included a provision that makes it explicitly clear that nothing in this bill would change the law applying to TVA distributors. Unlike TVA, distributors are directly accountable to the customers they serve. Cooperatives, for example, are operated by a board elected by the customers to represent their own member interests. I don't believe we need to change this policy, except to make TVA more accountable to the people they serve.

Mr. President, I expect TVA to complain that this legislation somehow treats them unfairly. They will attempt to blame me for unfairly burdening them with new accountability standards and claim that a rate increase will be a direct result.

Mr. President, I don't believe Valley residents will be fooled by TVA's rhetoric when they recall TVA's track record. It's hard to argue that the TVA Board has kept ratepayers' interests foremost in mind as they ran up $28 billion in debt, while serving a captive customer base. It's hard to argue it was in the ratepayers' interest to try to hide million dollar bonuses to a select cadre of high level staff. It is hard to argue that it was in the ratepayers' interest to zero out all federal appropriations, which could add millions to TVA's annual operating costs.

Mr. President, I have carefully compared the rates of regulated utilities in Kentucky against TVA's rates to determine if applying these regulations would drive rates higher. Much to my surprise, I have found that not only are regulated utilities rates very competitive, but lower than rates offered by TVA. This confirms my assumption that the underlying financial health of TVA—and its $28 billion debt—has a far greater impact on its electric rates than any other factor.

Mr. President, since 1988, wholesale power rates of regulated utilities in Kentucky have steadily fallen, while TVA has maintained the same level, until last year when TVA raised rates by 7 percent. It is appearent to me that due to TVA's past financial mismanagement, thousands of Kentucky resident are not able to take advantage

of the declining rates. Mr. President, I ask that this chart be printed in the record at this point.

Mr. President, in addition to applying FERC regulation to TVA I have included a number of other important customer reforms. As I mentioned earlier, this bill prohibits TVA from continuing to subsidize their foreign endeavors at ratepayers expense. Quarter million dollar conferences in China and other points on the globe are not consistent with either TVA's deficit reduction goals or its mission to be a low cost power provider to the valley.

Another provision that I have included is a measure proposed by the TVA distributors. Section Five in the bill protects distributors from unfair competition by ending TVA's ability to directly serve large industrial customers. In the past, TVA has been able to directly serve some of the valley's largest industrial customers. Through this loophole, TVA is able to use it considerable market power to unfairly compete with distributors. This provision also facilitates the transition from TVA to FERC regulation. To protect the sanctity of the existing contracts, FERC is directed to accept the terms and conditions of those contracts without initial review.

Section Seven of this bill will increase TVA's level of accountability by applying all federal antitrust laws and penalties. I have included this provision in response to heavy-handed tactics used by TVA to punish the City of Bristol, Virginia for signing a contract with another energy provider. Last year, Bristol Virginia Utilities Board signed an agreement with Cinergy Corporation to provide its wholesale power, which yielded a savings of $70 million for Bristol after fulfilling the terms of the contract with TVA. What Bristol didn't expect was the backlash from TVA and effort to punish Bristol for leaving the TVA family.

In testimony before the Senate Energy Committee, the Chairman of the Bristol Utility Board, David Fletcher, outlined the anti-competitive practices employed by TVA to undermine Bristol's new contract. TVA applied scare tactics by predicting unreliable electricity services as a discouragement to leaving. TVA also sought to recover tens of millions invested by TVA to provide power to Bristol, despite the fact that Bristol had fulfilled the terms of their contract. Finally, TVA attempted to steal Bristol's industrial customers by offering direct-serve power contracts at 2 percent below any rate offered by Bristol. I find these predatory practices to be entirely unacceptable, especially for an entity of the federal government. It is my belief that since TVA's activities were performed in a commercial endeavor, they should be held to the same standards as any other corporation under the antitrust laws.

Recently, I was informed that TVA willing to subject themselves to the federal antitrust laws, so long as they weren't subject to any penalties.

Mr. President, I have some advice for TVA. If you can't pay the fine, don't do the crime.

My bill's final provision regards TVA's ability to branch out into other businesses beyond power generation and transmission. TVA's has attempted to diversify into equipment leasing as well as engineering and other contracting services in direct competition with other valley businesses.

Mr. President, I hope these reforms will offer TVA customers—both distributors and individuals alike—the means to make TVA more accountable. I am very concerned, however, that these reforms may be too late to avert a gradual increase in power rates within the TVA region. Last year, for the first time in 10 years, TVA raised rates on households and business by over 7 percent in order to prepare for a more open electricity market. This can be contrasted with a 15 percent decline in rates over the past ten years in Kentucky—outside the TVA fence.

I remain hopeful that with these reforms, TVA's Board will be more accountable to ratepayers and will help ensure that the economic potential of the Tennessee Valley, which was mortgaged by years of fiscal unaccountability, will not be diminished.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 2005

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 ''TVA Customer Protection Act of 1998''.

SEC. 2. INCLUSION IN DEFINITION OF PUBLIC UTILITY.

(a) IN GENERAL.—Section 201(e) of the Federal Power Act (16 U.S.C. 824(e)) is amended by inserting before the period at the end the following: '', and includes the Tennessee Valley Authority''.

(b) CONFORMING AMENDMENT.—Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is amended by striking ''foregoing, or any corporation'' and inserting ''foregoing (other than the Tennessee Valley Authority) or any corporation''.

SEC. 3. DISPOSITION OF PROPERTY.

Section 203 of the Federal Power Act (16 U.S.C. 824b) is amended by adding at the end the following:

''(c) TVA EXCEPTION.—This section does not apply to a disposition of the whole or any part of the facilities of the Tennessee Valley Authority if—

''(1) the Tennessee Valley Authority discloses to the Commission (on a form, and to the extent, that the Commission shall prescribe by regulation) the sale, lease, or other disposition of any part of its facilities that—

''(A) is subject to the jurisdiction of the Commission under this Part; and

''(B) has a value of more than $50,000; and

''(2) all proceeds of the sale, lease, or other disposition under paragraph (1) are applied by the Tennessee Valley Authority to the reduction of debt of the Tennessee Valley Authority.''.

SEC. 4. FOREIGN OPERATIONS; PROTECTIONS.

Section 208 of the Federal Power Act (16 U.S.C. 824g) is amended by adding at the end the following:

''(c) TENNESSEE VALLEY AUTHORITY.—

''(1) LIMIT ON CHARGES.—

''(A) NO AUTHORIZATION OR PERMIT.—The Commission shall issue no order under this Act that has the effect of authorizing or permitting the Tennessee Valley Authority to make, demand, or receive any rate or charge, or impose any rule or regulation pertaining to a rate or charge, that includes any costs incurred by or for the Tennessee Valley Authority in the conduct of any activities or operations outside the United States.

''(B) UNLAWFUL RATE.—

''(i) IN GENERAL.—Any rate, charge, rule, or regulation described in subparagraph (A) shall be deemed for the purposes of this Act to be unjust, unreasonable, and unlawful.

''(ii) NO LIMITATION ON AUTHORITY.—Clause (i) does not limit the authority of the Commission under any other provision of law to regulate and establish just and reasonable rates and charges for the Tennessee Valley Authority.

''(2) ANNUAL REPORT.—The Tennessee Valley Authority shall annually—

''(A) prepare and file with the Commission, in a form that the Commission shall prescribe by regulation, a report setting forth in detail any activities or operations engaged in outside the United States by or on behalf of the Tennessee Valley Authority; and

''(B) certify to the Commission that the Tennessee Valley Authority has neither recovered nor sought to recover the costs of activities or operations engaged in outside the United States by or on behalf of the Tennessee Valley Authority in any rate, charge, rule, or regulation on file with the Commission.''.

SEC. 5. TVA POWER SALES.

(a) IN GENERAL.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SEC. 215. TVA POWER SALES.

''(a) IN GENERAL.—The Tennessee Valley Authority shall not sell electric power to a retail customer that will consume the power within the area that, on the date of enactment of this section, is assigned by law as the distributor service area, unless—

''(1) the customer (or predecessor in interest to the customer) was purchasing electric power directly from the Tennessee Valley Authority as a retail customer on that date;

''(2) the distributor is purchasing firm power from the Tennessee Valley Authority in an amount that is equal to not more than 50 percent of the total retail sales of the distributor; or

''(3) the distributor agrees that the Tennessee Valley Authority may sell power to the customer.

''(b) RETAIL SALES.—Notwithstanding any other provision of law, the rates, terms, and conditions of retail sales of electric power by the Tennessee Valley Authority that are not prohibited by this section shall be subject to regulation under State law applicable to public utilities in the manner and to the extent that a State commission or other regulatory authority determines appropriate.''.

(b) TRANSITION.—

(1) FILING REQUIREMENT.—Not later than 180 days after the date of enactment of this Act, the Tennessee Valley Authority shall file all rates and charges for the transmission or sale of electric energy and the classifications, practices, and regulations affecting those rates and charges, together with all contracts that in any manner affect or relate to contracts that are required to be filed under Part II of the Federal Power Act

(16 U.S.C. 824 et seq.), as amended by subsection (a), and that are in effect as of the date of enactment of this Act.

(2) NO INITIAL REVIEW.—A filing under this section that is timely made under subsection (a) shall be accepted for filing without initial review by the Federal Energy Regulatory Commission.

SEC. 6. FILING AND FULL DISCLOSURE OF TVA DOCUMENTS.

Part III of the Federal Power Act (16 U.S.C. 825 et seq.) is amended—

(1) by redesignating sections 319 through 321 as sections 320 through 322, respectively; and

(2) by inserting after section 318 the following:

"SEC. 319. FILING AND FULL DISCLOSURE OF TVA DOCUMENTS.

''(a) IN GENERAL.—The Tennessee Valley Authority shall file and disclose the same documents and other information that other public utilities are required to file under this Act, as the Commission shall require by regulation.

''(b) REGULATION.—

''(1) TIMING.—The regulation under subsection (a) shall be promulgated not later than 1 year after the date of enactment of this section.

''(2) CONSIDERATIONS.—In promulgating the regulation under subsection (a), the Commission shall take into consideration the practices of the Commission with respect to public utilities other than the Tennessee Valley Authority.''.

SEC. 7. APPLICABILITY OF THE ANTITRUST LAWS.

The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended by inserting after section 16 the following:

"SEC. 17. APPLICABILITY OF THE ANTITRUST LAWS.

''(a) DEFINITION OF ANTITRUST LAWS.—In this section, the term 'antitrust laws' means—

''(1) an antitrust law (within the meaning of section (1) of the Clayton Act (15 U.S.C. 12));

''(2) the Act of June 19, 1936 (commonly known as the 'Robinson Patman Act') (49 Stat. 1526, chapter 323; 15 U.S.C. 13 et seq.); and

''(3) section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the extent that the section relates to unfair methods of competition.

''(b) APPLICABILITY.—Nothing in this Act modifies, impairs, or supersedes the antitrust laws.

''(c) ANTITRUST LAWS.—

''(1) TVA DEEMED A PERSON.—The Tennessee Valley Authority shall be deemed to be a person, and not government, for purposes of the antitrust laws.

''(2) APPLICABILITY.—Notwithstanding any other provision of law, the antitrust laws (including the availability of any remedy for a violation of an antitrust law) shall apply to the Tennessee Valley Authority notwithstanding any determination that the Tennessee Valley Authority is a corporate agency or instrumentality of the United States or is otherwise engaged in governmental functions.''.

SEC. 8. SAVINGS PROVISION.

(a) DEFINITION OF TVA DISTRIBUTOR.—In this section, the term ''TVA distributor'' means a cooperative organization or publicly owned electric power system that, on January 2, 1998, purchased electric power at wholesale from the Tennessee Valley Authority under an all-requirements power contract.

(b) EFFECT OF ACT.—Nothing in this Act or any amendment made by this Act—

(1) subjects any TVA distributor to regulation by the Federal Energy Regulatory Commission; or

(2) abrogates or affects any law in effect on the date of enactment of this Act that applies to a TVA distributor.

SEC. 9. PROVISION OF CONSTRUCTION EQUIPMENT, CONTRACTING, AND ENGINEERING SERVICES.

Section 4 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831c) is amended by adding at the end the following:

''(m) PROVISION OF CONSTRUCTION EQUIPMENT, CONTRACTING, AND ENGINEERING SERVICES.—

''(1) IN GENERAL.—Notwithstanding any other provision of this Act, except as provided in this subsection, the Corporation shall not have power to—

''(A) rent or sell construction equipment;

''(B) provide a construction equipment maintenance or repair service;

''(C) perform contract construction work; or

''(D) provide a construction engineering service;

to any private or public entity.

''(2) ELECTRICAL CONTRACTORS.—The Corporation may provide equipment or a service described in subparagraph (1) to a private contractor that is engaged in electrical utility work on an electrical utility project of the Corporation.

''(3) CUSTOMERS, DISTRIBUTORS, AND GOVERNMENTAL ENTITIES.—The Corporation may provide equipment or a service described in subparagraph (1) to—

''(A) a power customer served directly by the Corporation;

''(B) a distributor of Corporation power; or

''(C) a Federal, State, or local government entity;

that is engaged in work specifically related to an electrical utility project of the Corporation.

''(4) USED CONSTRUCTION EQUIPMENT.—

''(A) DEFINITION OF USED CONSTRUCTION EQUIPMENT.—In this paragraph, the term 'used construction equipment' means construction equipment that has been in service for more than 2,500 hours.

''(B) IN GENERAL.—The Corporation may dispose of used construction equipment by means of a public auction conducted by a private entity that is independent of the Corporation.

''(C) DEBT REDUCTION.—The Corporation shall apply all proceeds of a disposition of used construction equipment under subparagraph (B) to the reduction of debt of the Corporation.''.

By Mr. GRAMS (for himself, Mr. COVERDELL, Mr. FRIST, Mr. MCCAIN, Mr. HUTCHINSON, Mr. SMITH of Oregon, Mr. GRAHAM, and Mr. D'AMATO):

S. 2004. A bill to amend the Internal Revenue Code of 1986 to authorize the Secretary of the Treasury to abate the accrual of interest on income tax underpayments by taxpayers located in Presidentially declared disaster areas if the Secretary extends the time for filing returns and payment of tax for such taxpayers; to the Committee on Finance.

THE DISASTER VICTIM TAX EXTENSION ACT

Mr. GRAMS. Mr. President, I rise today to introduce legislation that would permanently exempt the interest payments owed by disaster victims to the Internal Revenue Service.

Each year, our country is hit by a variety of natural disasters such as hurricanes, tornadoes, earthquakes, floods, and ice storms, all causing extreme hardship for hundreds of thousands of Americans.

This year, 15 States have already been hit by deadly disasters.

Starting on March 7, severe storms and flooding struck the State of Alabama, damaging nearly 1,200 homes, and the city of Elba in Coffee County was evacuated as a result of a levee failure. Three deaths were attributed to the floods and one person was reported missing.

On February 9, 27 California counties were wracked by severe storms.

During the period of January 28 through February 6, a series of severe winter storms hit communities in Sussex County of Delaware.

Also in February, three southern Florida counties were victimized by tornadoes and other violent weather.

In February, six counties in Georgia were struck by tornadoes. On March 20, amid flood recovery efforts, tornadoes and windstorms tore through northeast Georgia, adding to the overall devastation. Tornadoes again touched down in west Georgia, metro Atlanta, and southeast Georgia on April 9.

In February, Atlantic and Cape May counties in southern New Jersey were hit by the coastal storm that lashed the area.

On April 16, six Tennessee counties were ravaged by deadly tornadoes and other violent weather.

And, Mr. President, on March 29, seven counties in my own State of Minnesota were hit by the deadly tornadoes, damaging thousands of homes and businesses along a 62-mile path carved through the communities of St. Peter, Comfrey, and Le Center. The storms claimed two lives.

The estimated total dollar value of insured losses caused by the south-central Minnesota tornadoes has reached $175 million, exceeding insured losses incurred in my state during the floods of one year ago.

The list goes on and on. But my point is: deadly natural disasters occur every year. Lives are lost, homes are demolished, property is destroyed, businesses are ruined, and crops are wiped out. The survivors of these disasters need our help to get their feet back on the ground.

Federal disaster assistance has been effective. In fact, almost all of the major disaster sites have been subsequently designated as Presidentially declared disaster areas and are eligible to receive federal disaster assistance.

However, there is one hurdle Congress still must remove. Residents in Presidentially declared disaster areas can often get an extension to file their income tax returns.

However, interest owed cannot be exempted by the IRS. That requires Congressional action.

In other words, we give them time, an extension to file their taxes, but at the same time we are saying, because you cannot because of circumstances beyond your control file, we are going to charge you interest on it. That is adding insult to injury.

So many States, like Minnesota, immediately have granted exemptions for interest payments on State taxes when disaster areas are declared.

Although Congress has granted such Federal waivers in the past, they must be done legislatively each time a disaster occurs, and appropriate vehicles are not always available. This creates one more uncertainty for victims of disaster.

The legislation I am here to introduce today along with Senators COVERDELL, FRIST, MCCAIN, HUTCHINSON, and SMITH of Oregon, the bill called the Disaster Victim Tax Extension Act, would once and for all remove this barrier and it would give residents of Presidentially declared disaster areas an interest payment exemption on any Federal taxes owed.

By the way, Mr. President, our legislation would be effective retroactively to tax year 1997.

Mr. President, this may seem like a small matter, but for disaster survivors, every dollar counts. I urge my colleagues to support this legislation.

By Mr. ABRAHAM (by request):

S. 2006. A bill to amend the Act establishing the Keweenaw National Historical Park, and for other purposes; to the Committee on Energy and Natural Resources.

KEWEENAW NATIONAL HISTORICAL PARK

Mr. ABRAHAM. Mr. President, on behalf of the administration, I rise today to introduce legislation to amend the Act establishing the Keweenaw National Historical Park, and for other purposes. I ask unanimous consent that the administration's letter of transmittal, the bill, and a section-by-section analysis of the legislation be printed in the RECORD for the information of my colleagues.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2006

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

That section 9(c) of the Act to establish the Keweenaw National Historical Park (Public Law 102–543, approved October 27, 1992), is amended as follows:

(1) In paragraph (A), by striking ''from nominees'' and inserting ''after consideration of nominees''.

(2) In paragraph (B), by striking ''from nominees'' and inserting ''after consideration of nominees''.

(3) In paragraph (C), by striking ''from nominees'' and inserting ''after consideration of nominees''.

(4) In paragraph (D), by striking ''from nominees'' and inserting ''after consideration of nominees''.

SECTION-BY-SECTION ANALYSIS—KEWEENAW NATIONAL HISTORICAL PARK AMENDMENTS

This bill would amend the enabling legislation for the Keweenaw National Historical Park in Michigan to correct the language of the membership section for the Keweenaw National Historical Park Advisory Commission. The new language will alleviate constitutional concerns about the appointment process for the commission.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, February 23, 1998.

Hon. ALBERT GORE, JR.,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is a draft bill, ''To amend the Act establishing the Keweenaw National Historical Park, and for other purposes.''

We recommend the bill be introduced, referred to the appropriate committee for consideration, and enacted.

This bill will facilitate the appointment of the Keweenaw National Historical Park Advisory Commission for this Michigan park. The existing statute raises constitutional concerns by directing the Secretary of the Interior to appoint to the Commission persons nominated by state and local officials. The Department of Justice has opined that this procedure does not satisfy the requirements imposed by the Appointments Clause (U.S. Const. Art. II, Sec. 2, cl. 2) for appointments of federal officers. Accordingly, former President Bush signed the existing law on the express understanding that the commission would serve only in an advisory capacity and would not exercise executive authority. The proposed amendments will eliminate the need for this limiting construction of the commission's duties.

The Office of Management and Budget has advised that there is no objection to the enactment of the enclosed draft legislation from the standpoint of the Administration's program.

Sincerely,

DONALD BARRY,
Acting Assistant Secretary for Fish and Wildlife and Parks.

Enclosures.

By Mr. COCHRAN (for himself and Mr. HOLLINGS):

S. 2007. A bill to amend the false claims provisions of chapter 37 of title 31, United States Code; to the Committee on the Judiciary.

THE HEALTH CARE CLAIMS GUIDANCE ACT

Mr. COCHRAN. Mr. President, today I am introducing the Health Care Claims Guidance Act. I am pleased to have the distinguished Senator from South Carolina (Mr. HOLLINGS), join with me as an original co-sponsor of the bill. This measure addresses a very serious concern: the government's misuse of the False Claims Act and the need to distinguish Medicare fraud from unavoidable billing errors.

Health care fraud has no place in health care practice. Health care fraud costs taxpayers many millions of dollars that should be spent on patient care. In addition, government agencies must be able to use all of the tools at their disposal to prosecute aggressively those who willfully engage in fraudulent practices.

It is equally important, however, that government resources be used to go after genuine wrongdoers, rather than health care providers who may have overbilled the government for Medicare services through innocent clerical errors or interpretive mistakes.

Recently, the Department of Justice has embarked on a program to utilize the False Claims Act to prosecute provider billing errors. Until 1994, government agencies, hospitals, and physicians acted together, cooperating in most instances, to make sure all parties were treated fairly in Medicare billing disputes. Sometimes providers were underpaid, sometimes they were overpaid. Either way, they and the government would review and settle claims at the end of each quarter or each year. But, the government has abandoned this practice with doctors and hospitals and has begun a campaign to coerce and extract money improperly from the providers.

In the State of Mississippi, and across the Nation, health car providers have received ''demand'' letters from U.S. Attorneys' offices, many not even from their own State, asserting that the doctors and hospitals may be guilty of fraudulent billing. These letters threaten the imposition of treble damages plus fines of $5,000 to $10,000 per claim unless a quick settlement is reached, often within fourteen days of the letter. In some cases, the demand letters have been sent based on alleged overbilling of minuscule amounts.

Providers should certainly do all they can to minimize errors, and when discrepancies are discovered, the correct amounts should be paid to the Government with interest.

But, with the filing of large numbers of claims each year, and the volume of Government rules, regulations, and directives—some of which are conflicting—that providers must follow, it is impossible to be error-free. Hospitals and health systems submit nearly 200,000 Medicare claims a day. To ensure the accuracy of those claims, they must comply with the 1,800 pages of law, 1,300 pages of regulations interpreting the law and thousands of additional pages of instructions. In addition, they are required to work with 41 intermediaries—mostly insurance companies—that have their own procedures that hospitals must follow as part of the billing process. The same level of law, procedures, and instructions also apply to physicians.

The current practice of the Department of Justice, using the False Claims Act, assumes that hospitals, health systems, and doctors are guilty of intentionally filing erroneous claims when errors are made. This, in my view, is simply not right.

The Health Care Claims Guidance Act we are introducing would amend the False Claims Act to distinguish between fraud and mere mistakes. It would apply only to claims under federally funded health care programs, and would have no effect on other False Claims Act prosecutions.

The legislation does not change the criminal portions of the False Claims Act. Neither does it change the *qui tam*, or ''whistle blower'' provisions of the law. And it in no way would impede the Department of Justice or any other Government agency from zeroing in on true fraud and prosecuting those who commit fraud. No other Federal laws would be affected, including changes made by Congress in 1996 in the Health

Insurance Portability and Accountability Act. The changes would apply only to health care claims for Federally funded programs such as Medicare and CHAMPUS. This legislation would not prevent the Government from receiving any money that is rightfully due. In all cases, overpayments would be reimbursed with interest.

What this legislation does is to distinguish Medicare billing fraud from honest billing mistakes. The bill does these four things:

It imposes a ''de minimis'' standard. Under the standard, as defined by the American Institute of Certified Public Accountants, Medicare overpayments to providers of less than a specified percentage would result in penalties of no more than the amount of the claim plus interest.

It establishes a ''safe harbor'' for health care providers that submit a claim based on advice given by fiscal intermediaries and carriers. Such hospitals would be subject to fines limited to actual damages and interest, not treble damages plus $5,000 to $10,000 per claim.

It raises the burden of proof required under the act from a ''preponderance of the evidence'' standard to a ''clear and convincing evidence'' standard.

And lastly, it establishes a ''safe harbor'' for health care providers that have adopted effective, good-faith compliance plans in which they are, if found to be in violation of the False Claims Act, subject only to actual damages plus interest, rather than treble damages plus $5,000 to $10,000 per claim.

Mr. President, although Congress 2 years ago gave Federal agencies additional tools to go after health care fraud—such as expanded authority under the Health Insurance Portability and Accountability Act—the Department of Justice has nonetheless decided that the use of the False Claims Act guarantees ''easy money.''

The Health Care Claims Guidance Act stops this abuse of the law and provides a clear and simple way of distinguishing between those claims that are fraudulent and those claims that result from human error. I urge Senators to support this bill.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 2007

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 ''Health Care Claims Guidance Act''.

SEC. 2. RULES FOR ACTIONS UNDER FALSE CLAIMS PROVISIONS BASED ON CLAIMS SUBMITTED UNDER CERTAIN HEALTH CARE PROGRAMS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following:

''§ 3734. Rules for certain actions based on health care claims

''(a) IN GENERAL.—In the case of any action that is brought under this subchapter based on a claim submitted with respect to a federally funded health care program, the preceding provisions of this subchapter shall apply only to the extent that such provisions are consistent with the provisions of this section.

''(b) ACTIONS IF AMOUNT OF DAMAGES ARE MATERIAL AMOUNT.—Notwithstanding the preceding sections of this subchapter, no action may be brought under this subchapter based on a claim that is submitted under a federally funded health care program unless the amount of damages alleged to have been sustained by the United States Government with respect to such claim is a material amount.

''(c) ACTIONS FOR CLAIMS SUBMITTED IN RELIANCE ON OFFICIAL GUIDANCE.—Notwithstanding the preceding sections of this subchapter, no action may be brought under this subchapter based on a claim submitted—

''(1) in reliance on (and correctly using) erroneous information supplied by a Federal agency (or an agent thereof) about matters of fact at issue; or

''(2) in reliance on (and correctly applying) written statements of Federal policy which affects such claim provided by a Federal agency (or an agent thereof).

''(d) ACTION FOR CLAIMS SUBMITTED BY PERSONS IN SUBSTANTIAL COMPLIANCE WITH MODEL COMPLIANCE PLAN.—Notwithstanding the preceding sections of this subchapter, no action may be brought under this subchapter based on a claim submitted by a person that is in substantial compliance with a model compliance plan issued by the Secretary of Health and Human Services (in consultation with the Secretary of Defense).

''(e) STANDARD OF PROOF.—In any action brought under this subchapter with respect to a claim submitted to a federally funded health care program, section 3731(c) shall be applied by substituting 'clear and convincing evidence' for 'a preponderance of the evidence'.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Government of the United States to recoup or otherwise recover damages with respect to a claim submitted to a federally funded health care program under provisions of law other than this subchapter.

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

''(1) the term 'claim' means a claim (as defined in section 3729(c)) made with respect to a federally funded health care program;

''(2) the term 'damages' means the amount of any overpayment made by the United States Government with respect to a claim;

''(3) the term 'federally funded health care program' means a program that provides health benefits, whether directly, through the purchase of insurance, or otherwise, that is established under—

''(A) title XVIII, XIX, or XXI of the Social Security Act, or

''(B) title 10, United States Code;

''(4) the amount of damages alleged to have been sustained by the United States Government with respect to a claim submitted by (or on behalf of) a person shall be treated as a 'material amount' only if such amount exceeds a proportion (specified in regulations promulgated by the Secretary of Health and Human Services in consultation with the Secretary of Defense) of the total of the amounts for which claims were submitted by (or on behalf of) such person—

''(A) to the same federally funded health care program, and

''(B) for the same calendar year,

as the claim upon which an action under this subchapter is based;

''(5) the regulations specifying the proportion referred to in paragraph (4) shall be based on the definition of the term 'material' used by the American Institute of Certified Public Accountants as of the date of the enactment of this section; and

''(6) in determining whether an amount of damages is a 'material amount' under paragraph (4), with respect to a person—

''(A) the amount of damages for more than 1 claim may be aggregated only if the acts or omissions resulting in such damages were part of a pattern of related acts or omissions by such person, and

''(B) if damages for more than 1 claim are aggregated in accordance with subparagraph (A), the proportion referred to in such paragraph shall be determined by comparing the amount of such aggregate damages to the total of the amounts for which claims were submitted by (or on behalf of) such person to the same federally funded health care program for each of the calendar years for which any claim upon which such aggregate damages were based was submitted.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3733 the following:

''3734. Rules for certain actions based on health care claims.''.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions brought under subchapter III of chapter 37 of title 31, United States Code, with respect to claims submitted before, on, and after the date of the enactment of this Act.

Mr. HOLLINGS. Mr. President, I am delighted to join my colleague Senator COCHRAN in introducing legislation that helps define the rules of the game for health care providers and allows investigators to focus on ferreting out and prosecuting real fraud in Federal health programs.

The Health Care Claims Guidance Act of 1998 that we introduce today is made necessary by conflicting, extremely complex regulations covering Medicare, Medicaid, CHAMPS and other Federally funded programs. Ironically, most of these exist as a result of Congressional efforts to reduce fraud and abuse—to establish a system for billing and claims processing that assures these programs are paying reasonable costs for medically necessary services actually provided to eligible individuals. Not achieving our goal of ending fraud, we just stack on more rules that require honest providers to take more and more time from patient care to do paperwork while the crooks ignore us or accept as a challenge getting around the rules. There is no end in sight. This is a classic example of the road to hell being paved with good intentions. We have created a nightmare, and we have a responsibility to begin straightening out some of the confusion so honest health care providers can take care of patients and we can concentrate on prosecuting those who willfully violate the law.

It is absolutely imperative that we accept nothing less than zero tolerance for real fraud and that the Government use all the tools at its disposal to prosecute willful violations of the law. It is equally imperative that we play fair with our partners who provide the health care we pay for with Federal

funds. When a participating hospital receives directions from its fiscal intermediary, the hospital should know it can follow those directions without fear of being accused of fraud. Using the False Claims Act, the Justice Department is notifying hospitals that they are under investigation for alleged billing fraud, offering minimal time to respond or face prosecution. Hospitals are capitulating to these demands even when they know no fraud has been committed simply because they cannot afford to pay the accountants and lawyers to take on the Department of Justice. Others believe diverting these funds from patient care would be an irresponsible waste of tax dollars and not in the best interests of Medicare beneficiaries. I certainly agree.

Respected physicians in my State, some personal friends of forty years, have received letters recently from the ''Medicare Fraud Unit'' demanding that they pay up immediately or face prosecution. They are confused and annoyed about the complexity of Medicare rules and coding, but they are outraged that they are being accused of fraud with no basis whatsoever. I submit, Mr. President, that they deserve to be enraged. And it doesn't get any better once they enter negotiations and are virtually unable to practice medicine because of the auditors consume most of the work day and office space. Then they wait for months to see if the ax will fall.

The Health Care Claims Guidance Act of 1998 would take a small but important step in the right direction. It would amend the False Claims Act to create special rules for claims in all Federally funded health care programs. No criminal provisions are amended. The bill's provisions apply only to health care claims limited to civil actions.

First, no action can be brought if the provider has relied on and correctly applied information supplied by a Federal agency or an agent thereof. Second, no action may be brought unless the amount of damages is material. Third, it establishes a safe harbor for hospitals with an effective compliance plan under the General Hospital Compliance Guidelines. And, fourth, it raises the burden of proof from a ''preponderance of the evidence'' to a ''clear and convincing evidence'' standard.

Mr. President, let me make it clear once again, this bill in no way limits the authority of the Government to recoup or otherwise recover damages with respect to claims under any other provisions of law and does not apply to criminal provisions. It allows us to begin restoring the partnership between the Federal Government and those who provide health care under Federal programs and encourages the Government to use its resources to prosecute those who violate that partnership. I urge my colleagues to assist us in its early passage.

By Mr. COVERDELL (for himself, Mr. ASHCROFT, Mr. SHELBY, Mr. FRIST, Mr. HAGEL, Mr. INHOFE, and Mr. MCCAIN):

S. 2008. A bill to amend the Internal Revenue Code of 1986 to prohibit the use of random audits, and for other purposes; to the Committee on Finance.

THE INTERNAL REVENUE SERVICE RANDOM AUDIT PROHIBITION ACT

Mr. COVERDELL. Mr. President, I rise today to introduce the Internal Revenue Service Random Audit Prohibition Act. I wanted to take this opportunity to alert my colleagues of the Senate that the IRS has identified a new enemy: innocent taxpayers.

Over the past several years, all of us have seen news accounts of regular, average citizens who have become the targets of grueling IRS audits. These individuals were neither wealthy nor powerful; in fact, they were most often ordinary, law-abiding taxpayers who earned a modest wage, ran a small business, or operated a family farm. Some struggled just to make ends meet, and many were understandably confused about what they had committed to justify the scrutiny of the IRS.

The truth is they committed no wrong. They were simply unfortunate victims of an IRS practice called ''random audits,'' where the IRS simply picks people out of a hat in the hope it can uncover some wrongdoing.

A recent report produced by the General Accounting Office (GAO) at my request confirms that the IRS has been targeting thousands of poor taxpayers and small businesses for random audits. In fact, almost 95 percent of all random audits of individual taxpayers performed between 1994 and 1996 were conducted on taxpayers who earned less than $25,000 each year.

Last Fall, hearings held by the Senate Finance Committee brought the IRS's abuse of taxpayers to the attention of the entire Nation. One witness, Jennifer Long, who is a current field agent with the IRS, remarked, ''As of late, we seem to be auditing only the poor people. The current IRS Management does not believe anyone in this country can possibly live on less than $20,000 per year, insisting anyone below that level must be cheating by understating their true income.'' The IRS' belief that low-income families are more likely to cheat than others services as a disturbing sign of how far it has strayed from the principles of American justice.

The GAO report also indicates that the IRS has been specifically targeting my home state of Georgia for random audits. Nearly twice as many random audits took place in Georgia between 1994 and 1996 than in all the New England states combined and Georgians are three-times more likely to be randomly audited than their California counterparts. Furthermore, the GAO warns that we can expect that number of rise dramatically in Georgia over the next several years because the IRS believes small businesses in Georgia are more likely than other so-called ''subpopulations'' to engage in tax fraud. I do not understand why the IRS believes that Georgia small business are more likely to cheat than their counterparts elsewhere in the Nation. I still have not received an adequate reply from the IRS regarding any of these developments.

Most of us understand the need to ensure tax code compliance through reasonable mechanisms. Where there is some indication that wrongdoing has occurred, an audit may be appropriate. But Americans will not accept the IRS's assertion that enforcement requires them to go after innocent, low-income taxpayers by using random audits that make no distinction between the guilty and the innocent. Honest citizens deserve better.

The legislation I introduce today, along with a number of my colleagues, would remove random audits as a tool available to the IRS in its examination process. Victims of random audits would be entitled to damages of $5,000 after filing civil action, and the cost of litigation would also be recoverable. In addition, my proposal would require the IRS to identify the basis for audit in any notice to the affected taxpayer of such an examination. Finally, the effective date for these changes are set to the date of introduction. This puts the IRS on notice that Congress is deadly serious about the need to end random audits.

I hope my colleagues will support my effort to stop the IRS from targeting innocent taxpayers. With passage of the IRS Random Audit Prohibition Act, honest, hardworking taxpayers can be assured they will be protected from unwarranted audits. They deserve no less.

ADDITIONAL COSPONSORS

S. 89

At the request of Ms. SNOWE, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 89, a bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services.

S. 659

At the request of Mr. GLENN, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 659, a bill to amend the Great Lakes Fish and Wildlife Restoration Act of 1990 to provide for implementation of recommendations of the United States Fish and Wildlife Service contained in the Great Lakes Fishery Restoration Study Report.

S. 852

At the request of Mr. LOTT, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.