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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. OSE).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
June 18, 2003.

I hereby appoint the Honorable DOUG OSE to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Reverend Timothy Smith, Chaplain, Sun Health Hospice, Sun City, Arizona, offered the following prayer:

Our Loving Father, we pause now before taking up the duties of this day. We pause to turn our thoughts to You. We acknowledge that in our own strength and wisdom, we are not sufficient for the challenges of the hour.

We unite now to bring to You the Members of this House for Your blessing. May each one today feel the strength and power of Your grace. Amid the many voices crying out to be heard and the agonizing problems to be faced, may they listen for Your still, small voice.

Grace each Member with Your spirit, that their hope be renewed and their vision revived. And bless their families and loved ones, each one, guarding and keeping them in the safety of Your hand.

May Your will for this Nation be done through these, Your servants, placed here by the people. We need Your help today, Father, and we do humbly seek it. In Your holy name. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. SNYDER. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER pro tempore. The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SYNDER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8, rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Florida (Mr. LINCOLN DIAZ-BALART) come forward and lead the House in the Pledge of Allegiance.

Mr. LINCOLN DIAZ-BALART of Florida led the Pledge of Allegiance as follows:

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

WELCOMING THE REVEREND TIMOTHY SMITH, CHAPLAIN, SUN HEALTH HOSPICE, SUN CITY, ARIZONA

(Mr. FRANKS of Arizona asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRANKS of Arizona. Mr. Speaker, our Founding Father, John Adams, told us, ''Our Constitution was made for moral and religious people and that it is wholly inadequate to the government of any other.''

Mr. Speaker, we are very privileged today to have among us a man, Reverend Timothy Smith. Reverend Smith reminds all of us of our spiritual heritage in this country, and we are greatly bettered because of his presence with us today.

This gentleman has been offering spiritual counsel and leadership to Arizona residents for more than 30 years; and from children to senior citizens, thousands of Arizonians have benefited tremendously from the selfless ministry of this man.

He has served as chaplain for the Arizona Department of Juvenile Corrections and has pastored congregations in Sun City and Glendale and is currently offering a very touching and much-needed type of compassion on a daily basis as chaplain of Sun Health Hospice in Sun City.

Mr. Speaker, we are indeed blessed to have this man with us because he somehow helps us know in our mortality that there is a high and lofty One that inhabits eternity that watches over all of us, and we are the better for his presence here; and I thank him for his commitment to God, his commitment to his country and his commitment to his fellow man.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain ten 1-minutes on each side.

FREEDOM WILL COME TO CUBA

(Mr. LINCOLN DIAZ-BALART of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, today I bring to

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the floor of the U.S. House of Representatives the case of Cuban political prisoner Jorge Luis Garcia Perez, known as Antunez.

This young man has been in Castro's gulag since 1990, since his high school days, for failing to keep silent. An extraordinary leader of unlimited courage, Jorge Luis Garcia Perez was sentenced to 18 years in prison for so-called ''verbal enemy propaganda.''

Antunez, Mr. Speaker, is the face of the real Cuba.

Those who visit Cuba to have a good time, to take advantage of the regime-encouraged child prostitution, or simply to dine with the tyrant, may avoid seeing Antunez these days. But, sooner or later, Antunez will be free, Cuba will be free, and those who collaborated with his jailers and torturers will have to face him and many others like him.

COVERUP ON IRAQ DAMAGING LEGITIMACY OF GOVERNMENT

(Mr. KUCINICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KUCINICH. Mr. Speaker, protection of the truth and the constitutional role of Congress as a coequal branch should not be a partisan matter. Yet yesterday Republicans on the House Committee on International Relations participated in the cover-up of the Bush administration's false claims which sent America to war against Iraq.

The resolution of inquiry, backed by 40 Members of the House, sought to protect Congress' role in asking the administration where is the proof that Iraq has weapons of mass destruction; where was proof of an imminent threat.

Unfortunately, as panic sets in over the realization that this administration misled the American people in the cause of war, Republicans are refusing to hold public hearings, refusing serious oversight, open oversight. Republicans just will not make Republicans accountable. That is the problem with one-party rule.

Our democracy is in danger if we do not make this administration accountable. They sent this country into war based on lies and in doing so have damaged the legitimacy of their own government. Where are the weapons of mass destruction? Where was the imminent threat? Why did America go to war?

AMERICA, A LIBERATING NATION

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Popular representation, Mr. Speaker, in our constitutional Republic is a wonderful thing. It has led some to say that the preceding speaker in the well would make a good President. It has led others to say that the preceding speaker in the well would make a good President of France.

The fact remains, Mr. Speaker, that the United States of America rose up against a tyrant, not only because of weapons of mass destruction, but because the tyrant himself was a weapon of mass destruction. Take a look at the mass graves, the children buried with their dolls, the millions of people who were sacrificed by the regime of Saddam Hussein. And yet there are those, earnest in their intent, to tell us somehow that this Nation is evil, to go to sloganeering: ''No blood for oil.'' The fact remains, historically it was that tyrant who invaded Kuwait for oil, it was that tyrant who went to war with Iran for oil.

The fact is, the United States of America is a liberating Nation, not a conquering Nation. We stand here unashamedly rejoicing in that fact.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will remind all persons in the gallery that they are here as guests of the House and that any manifestation of approval or disapproval of proceedings or other audible conversation is in violation of the rules of the House.

REPEAL OF DEATH TAX TO LIVING AMERICANS

(Mr. SNYDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SNYDER. Mr. Speaker, today this House will continue its discussion of the repeal of the estate tax, the so-called ''death tax.'' But, in fact, this bill is a continuation of policies that will hurt living Americans.

Let me give one example. From this month's magazine back home, ''Aging Arkansas,'' referring to the last tax cut passed by this House: ''Tax cut bleeds seniors. Yet Republican leaders come forward once again to shrink, wither and dry up government.''

And what is government? It is what this article talks about, programs that older Americans have taken for granted.

Today in Arkansas, a few of the wealthiest Americans will benefit from this repeal of the estate tax, but tens of thousands of other Arkansan seniors will be hurt.

REPEAL OF ESTATE TAX NECESSARY NOW

(Mr. RYUN of Kansas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RYUN of Kansas. Mr. Speaker, my constituent Mary Ann wrote me about the effect of the estate tax on her family's farm. Her mother's family owned that farm for five generations. Mary Ann promised her mother it would stay in the family for generations to come. After her parents passed away, Mary Ann was faced with the high cost of the estate tax on the valuable family land she had inherited. Sadly, the family had to part with the farm in part due to the death tax.

Examples such as this have become far too common in my district and across this great Nation. The estate tax has devastated numerous family farms and businesses. It discourages entrepreneurship, thrift, and diligence.

We should not penalize an individual's efforts to make life better for their children. I am opposed to the government taxing anyone's property simply because the owner has died. The time has come to permanently repeal the estate tax.

I urge my colleagues on both sides of the aisle to join me in ending the death tax once and for all.

TAXPAYER PROTECTION AND IRS ACCOUNTABILITY ACT

(Ms. LORETTA SANCHEZ of California asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I rise today to talk about the Taxpayer Protection and IRS Accountability Act.

I was pleased to see the inclusion of language that abates interest on erroneous tax refunds. This is language nearly identical to my Erroneous Tax Refund Fairness Act.

I had to deal with this very issue a few years ago when I tried to return an erroneous refund. Actually the IRS put into my bank account $66,000 more than I was supposed to get back, so my husband called and said we want to return this $66,000. They would not take it. My CPA called and said we would like to return the $66,000. They would not take it. I called them and said I need to return the $66,000. They would not take it.

Four months later, they finally took it back. Two weeks later they sent us another check for $66,000. A short time after that, after we finally got the $66,000 back to the IRS, I was billed by the IRS for the interest on the money, even though I had not earned any. So I applaud this bill for including this language.

FIGHTING FOR DEMOCRACY IN IRAN

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, in the past week, in scenes reminiscent of Eastern Europe in the last days of the Soviet domination, students in Tehran took to the streets in protest against Iran's brutal, repressive government. They were a vivid reminder that a lot of Iranians want more freedom in how they live their lives.

But it was not just students demonstrating. On Sunday, several hundred intellectuals, including several clerics, issued a statement supporting the right of Iranians to criticize the government. These patriots do not want to be told what to think, what to wear, what to read, what to watch, how to behave; and they are frustrated at the slow pace of change.

The demonstrations are evidence enough that freedom-loving people in Iran are growing in numbers and boldness.

Instead of complaining about what we have not found in the Middle East countries, let us appreciate what we have found, people longing for the same freedoms that we enjoy.

REPEAL THE DEATH TAX

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, I cannot think of a more unfair and immoral tax than the death tax.

□ 1015

It is fundamentally wrong to tax a person their entire life and then, upon death, have the IRS take up to 60 percent of what they have saved. This is a cruel tax that punishes people for working hard and saving enough to pass something on to their children.

This tax has hit the Palmetto State very hard, as in South Carolina, 1,518 death tax returns were filed in 2001. As a former probate attorney, I have seen firsthand where those who inherit family businesses or farms are forced to lay off workers, cut salaries, liquidate assets, or even take out loans to keep the doors open.

Thanks to President Bush's leadership, we have passed legislation that would end the death tax, but only temporarily. I urge my colleagues to support the bill of the gentlewoman from Washington (Ms. DUNN), H.R. 8, the Death Tax Repeal Permanency Act of 2003. We must make this repeal permanent and end this unfair tax.

In conclusion, God bless our troops.

SUPPORT H.R. 660, THE SMALL BUSINESS HEALTH FAIRNESS ACT

(Mr. CANTOR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CANTOR. Mr. Speaker, this week, the House has a chance to help out over 20 million uninsured workers that are employed by small businesses across our Nation. H.R. 660, the Small Business Health Fairness Act, will allow small employers to band together to access more affordable, more efficient health insurance for their companies.

This bill will help small business owners like Kevin Maxwell from my district in Midlothian, Virginia. Earlier this year, Mr. Maxwell wrote to me about the escalating health care costs for his employees. He is a partner in a small petroleum parts sales company, employing about 13 people. Mr. Maxwell told me that the health insurance costs will increase from $1,100 to $1,400 per month, per family. Two or three years of these types of increases will very quickly force Mr. Maxwell to stop offering health care to his employees.

As a small businessman, Kevin pays more because he does not have the insurance purchasing power that large companies have.

According to the National Federation of Independent Businesses, small businesses pay 17 percent more for health benefits than large companies. That price disparity forces small companies to make tough choices about the benefits they offer.

Mr. Speaker, I applaud people like Kevin Maxwell. It has not been easy, but help is on the way.

PRIVATIZING MEDICARE IS A BAD IDEA

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, last night the House began the process of privatizing Medicare. The Committee on Ways and Means put out a bill, and it has a provision in it that says, by the year 2010, we are going to take away the guaranteed benefit that people have under Medicare, and we are going to give them a defined contribution.

Now, that is a voucher under any other name. They call it premium support. They will try and confuse people. It is wrapped inside the drug bill so people will say, well, we want the prescription drug benefit. If you take it the way the Republicans are giving it to you in the House of Representatives, you have to accept that they are privatizing Medicare.

Now, that is a concept that people simply do not understand what that means. Give $5,000 to every one of the 40 million old people in this country and send them out looking for a loving insurance company to take care of them. It is a bad idea. People should wake up and see what is happening in the next week.

This rubber stamp Congress is going to put that bill out of here so that they can go home over the 4th of July and say, we gave you prescription drugs. They are going to give you privatized Medicare with it.

MEDICARE REFORM IMPROVES QUALITY OF LIFE FOR SENIORS

(Ms. HART asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. HART. Mr. Speaker, I rise in support of a Medicare reform that will actually help our seniors.

The Republican House, along with the Senate, have worked on plans that will help provide prescription drug coverage to seniors. I have spent the last year in my district in western Pennsylvania in different forums with groups telling me what they need.

What we know in Pennsylvania is that prescription drug assistance is necessary. We have been giving it to low-income seniors for years. However, middle income seniors, those who one would think are fairly well off, are finding it very difficult to pay for these prescription drugs.

What I learned is those forums is we need to help them. Our plan does this. It makes sure that catastrophic expenses for prescription drugs are going to be covered for these senior citizens.

We also improve Medicare, making sure that it provides proper access to home health care, so that families can stay together in their later years.

Mr. Speaker, our goal is to make sure that the quality of life for our seniors is better, that they can have access to prescription drugs which they can pay for. That is our goal. That is what we are going to give in our plan.

SOME WILL NOT TAKE YES FOR AN ANSWER

(Mr. PENCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, I was amazed to hear the gentleman from Ohio (Mr. KUCINICH) speak in this Chamber just a few short moments ago and use the word ''cover-up'' to describe the action that we took in the House Committee on International Relations yesterday. The truth is that some Democrats just will not take yes for an answer.

The gentleman from Ohio (Mr. KUCINICH) offered a resolution asking for the White House to turn over all information relative to the weapons of mass destruction for inspection by the Congress. The White House, at the urging of the House Select Committee on Intelligence, is doing just that. All documentation on the WMD program of Iraq will be available to every Member of Congress at the House Select Committee on Intelligence.

We rejected the Kucinich resolution because it was mute, as the ranking Democrat member of the Committee on International Relations says.

It is not a cover-up, Mr. Speaker. Some Democrats just will not take yes for an answer.

WEAPONS OF MASS DESTRUCTION

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, lately there has been a stir, a desperate grasp for press attention, to form an inquiry into the Bush administration's knowledge of weapons of mass destruction.

Mr. Speaker, for 7 years following the Gulf War, Saddam claimed that he did not possess weapons of mass destruction, and for all 7 years, he was lying. Iraqis told inspectors they had no mustard agent and then they expressed profound shock when quantities of mustard gas were found. Iraq told inspectors they never had weaponized VX nerve agent and then feigned surprise when inspectors found weaponized VX nerve agent. We learned that Saddam Hussein had constructed elaborate concealment mechanisms. The Iraqi regime spent a decade working to ensure that prohibited weapons production was kept quiet. When the inspectors were kicked out of Iraq in 1998, the regime had failed to account for vast quantities of its weapons of mass destruction stockpiles.

So here is a question for the dissenters: Why would a regime without weapons of mass destruction manufacture the mobile laboratories that our troops and the U.N. inspectors found to make such weapons? And why would the numerous defectors, many with recent, first-hand knowledge of Iraq's WMD programs, have detailed elaborate production and concealment efforts? Were they all lying?

Mr. Speaker, Iraq is the size of California and the dirt is deep. There are many places for these weapons to have been hidden. I urge the press and the American people to be patient and let our troops do their jobs. There are still soldiers at risk fighting off violence. We know that these weapons existed and we know that the Iraqi government has never accounted for their destruction. That is what we do know.

BAKE SALES AND BUDGET CUTS—THE IMPACT OF NO CHILD LEFT BEHIND

(Mr. ETHERIDGE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ETHERIDGE. Mr. Speaker, I rise today to explain the effects on our States of the administration's cut of the No Child Left Behind Act. The $20 billion in education cuts could not come at a worse time as States scramble to close budget gaps and schools struggle to comply with the rigorous new law.

Across America, desperate measures are being taken. In Alabama, schools are being forced to raise class sizes. In Florida, two-thirds of the pre-kindergarten programs are being terminated. In Idaho, parents must raise money for teacher salaries through bake sales and auctions. In Illinois, they have laid off thousands of teachers and staff to increase class sizes and, in some schools, to nearly 40 students. Detroit plans to close 16 schools this month. In South Carolina, 2,000 teachers have been let go, and class sizes are up to 35 students.

This is just a sample of the consequences of the failure of the Federal Government to make good on its promises.

That is why I intend to introduce H.R. 2366, the Fully Fund the No Child Left Behind Act. Before we ask our schools to hold bake sales and our States to live with budget cuts, we should live up to our own budget cuts.

Mr. Speaker, Congress should honor its commitment to our students.

MEDICARE REFORM MEANS MODERNIZING HEALTH CARE FOR OUR SENIORS

(Mr. RYAN of Wisconsin asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RYAN of Wisconsin. Mr. Speaker, last night we marked up the Medicare bill in the Committee on Ways and Means, and we are hoping to pass a comprehensive Medicare bill by the 4th of July recess. Just a few minutes ago, we heard a sample of some of the rhetoric we are going to hear from the other side, the distortion, the demagoguery.

There are three things we are trying to accomplish with Medicare reform which we accomplish in this bill: make Medicare fair for seniors across all of America in all States like my State of Wisconsin; modernize Medicare so that it is once again a comprehensive health care plan with prescription drug coverage; and number 3, and perhaps the most important part, recognize the fact that in 13 years, Medicare is going bankrupt and we need to pass reforms to make Medicare solvent for the baby boom generation.

What we are doing is protecting all of the rights seniors have in Medicare today, but expanding their choices of coverage so they have the same choices, like every Member of Congress has here in their own health plan and every other Federal employee.

We have to modernize Medicare. We have to make it fair for all of our constituents in all of our States, and we have to save this vital program for the baby boom generation, and that is what we are accomplishing.

PROVIDING FOR CONSIDERATION OF H.R. 1528, TAXPAYER PROTECTION AND IRS ACCOUNTABILITY ACT OF 2003

Mr. HASTINGS of Washington. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 282 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 282

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 1528) to amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service. The bill shall be considered as read for amendment. The amendment recommended by the Committee on Ways and Means now printed in the bill, modified by the amendment printed in part A of the report of the Committee on Rules accompanying this resolution, shall be considered as adopted. All points of order against the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; (2) the further amendment printed in part B of the report of the Committee on Rules, if offered by Representative Rangel of New York or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divide and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. OSE). The gentleman from Washington (Mr. HASTINGS) is recognized for 1 hour.

Mr. HASTINGS of Washington. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. HASTINGS of Washington asked and was given permission to revise and extend his remarks.)

Mr. HASTINGS of Washington. Mr. Speaker, House Resolution 282 is a modified, closed rule waiving all points of order against the consideration of H.R. 1528, the Taxpayer Protection and IRS Accountability Act of 2003. The rule provides one hour of debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The rule also provides that the amendment in the nature of a substitute recommended by the Committee on Ways and Means, as modified by the amendment printed in Part A of the Committee on Rules report accompanying this resolution, shall be considered as adopted. The rule waives all points of order against the bill, as amended.

The rule further provides for consideration of the amendment printed in Part B of the report, if offered by the gentleman from New York (Mr. RANGEL) or his designee, which shall be considered as read and shall be separately debatable for one hour, equally divided and controlled by a proponent and an opponent.

Finally, the rule waives all points of order against the amendment printed in Part B of the report and provides one motion to recommit, with or without instructions.

Mr. Speaker, H.R. 1528, as authored by my friend and colleague, the gentleman from Ohio (Mr. PORTMAN), would amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the IRS. The bill would improve the efficiency of tax administration and increase the confidentiality of tax returns and related information.

In addition, H.R. 1528 reforms the penalty and interest provisions of the Internal Revenue Code and provides new safeguards against unfair IRS collection procedures.

Specifically, the bill grants a first-time penalty waiver to individual taxpayers in cases where minor negligence results in a liability that is disproportionate and unreasonable.

□ 1030

The bill allows taxpayers to enter into installment agreements for less than the full amount of their tax liability.

The bill also allows electronic filers until April 30 to file their individual tax returns and allows taxpayers to consult with the Taxpayer Advocate Service on a confidential basis.

Finally, the bill increases the authorization for low income taxpayer clinics from $6 million to $9 million in 2004 and from $12 million for 2005 and $15 million for subsequent years.

The Congressional Budget Office and Joint Committee on Taxation estimate that H.R. 1528 would decrease governmental receipts by $308 million over the 2003–2013 time period, and CBO estimates that the bill would increase direct spending by $171 million over the 2004–2013 time period.

CBO has determined that H.R. 1528 contains no private sector or intergovernmental mandates as defined by the Unfunded Mandate Reform Act and would impose no costs on State, local, or tribal governments.

Mr. Speaker, the gentleman from Ohio (Mr. PORTMAN) and his colleagues on the Committee on Ways and Means are to be commended for their efforts to increase fairness in accountability in our tax collection system. Accordingly, I urge my colleagues to support both this rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Washington for yielding me the customary 30 minutes.

Mr. Speaker, priorities, what are our priorities? H.R. 1528 is a popular, noncontroversial measure that would likely pass under suspension of the rules. So why have we made such a bill more problematic and more difficult to pass? A controversial provision unrelated to restraints on the IRS or protections for American taxpayers was grafted onto this consensus legislation for the second time. If our priority is to enact additional protections for the Federal taxpayer, why was a provision waiving consumer protections for the health insurance tax credit, for workers who have been displaced by trade, implanted into this unrelated bill?

The problem that we now face as we consider H. Res. 282 is that the taxpayer protection bill eliminates the federally mandated requirements of affordability and nondiscrimination for state-based insurance policies for the American workers whose jobs were moved overseas. This controversial and problematic add-on allows the insurers to pick and choose the displaced workers that they wish to cover, insuring the young and healthy and refusing to cover the older workers and those with preexisting conditions. Such a provision would undo the promises Congress last year made to the displaced workers and to their families. Is our priority the health of working families, or is it increasing the bottom line for certain health plans?

Fortunately, the rule does make in order the substitute amendment offered by the gentleman from New York (Mr. RANGEL), my fellow New Yorker, the ranking member of the Committee on Ways and Means, which better reflects what our priorities should be. This amendment removes the waivers that would allow insurance plans to discriminate and includes the child tax credit that seems to have been abandoned in the bureaucratic forest.

The Nation was outraged to learn that in the recent tax-cutting package almost 12 million children were denied the benefit of the increased child tax credit. A way to correct this is simple and straightforward. The other body overwhelmingly by a vote of 94 to 2 passed a clean, simple, bipartisan bill to extend the child tax credit to the 7 million low-income working families. However, our priorities went in the wrong direction.

Instead of quickly passing the other body's bill so the President could sign it and these low-income working families could receive immediate tax credits, which they badly need, the Chamber chose to consider and pass another round of tax cuts totaling $82 billion without any offsets, following on the heels of the $350 billion worth of tax cuts. This indicated that the priority is to use the child tax credit legislation as another opportunity to add more and more tax cuts for those at the highest levels of wealth.

The Rangel substitute includes the language in the clean bill passed by the other body and contains language to extend the child tax credits to the 200,000-or-so families of the military personnel who serve in Iraq, Afghanistan or other combat zones and nonetheless are ineligible under the House-passed tax free-for-all. Let me repeat that, Mr. Speaker: 200,000 families of military personnel who are on active duty were denied the protections or the benefits from this bill.

I urge my colleagues to vote against this rule so that the provisions permitting the discrimination can be excised from an otherwise noncontroversial bill that would undoubtedly pass unanimously. Should H. Res. 282 pass, I strongly urge my colleagues to support the Rangel substitute amendment for these children and families who deserve swift and deliberate action without political add-ons and political chicanery.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I advise my friend from New York that I have no requests for time, and I am prepared to yield back if she is prepared to yield back.

Ms. SLAUGHTER. Mr. Speaker, I have no requests for time, and I yield back my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 8, DEATH TAX REPEAL PERMANENCY ACT OF 2003

Mr. REYNOLDS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 281 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 281

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 8) to make the repeal of the estate tax permanent. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; (2) the amendment printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Pomeroy of North Dakota or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. OSE). The gentleman from New York (Mr. REYNOLDS) is recognized for 1 hour.

Mr. REYNOLDS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman, and my colleague and neighbor, from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purposes of debate only.

(Mr. REYNOLDS asked and was given permission to revise and extend his remarks.)

Mr. REYNOLDS. Mr. Speaker, House Resolution 281 is a modified closed rule providing for the consideration of H.R. 8, the Death Tax Repeal Permanency Act of 2003, legislation to make the repeal of the estate tax permanent. The rule makes in order 1 hour of debate, a minority substitute, and one motion to recommit, with or without instructions.

Mr. Speaker, the issue before us today is certainly not a new one. In the 106th session, Congress voted several times in a bipartisan fashion to eliminate the death tax. In the 107th session, Congress voted on three separate occasions to eliminate the death tax; but with the death tax relief set to expire in 2011, we might give Dr. Kevorkian a new career as a tax and estate planner.

Today, we have the opportunity to bury the death tax once and for all.

By way of history, this tax was initially imposed to prevent the very wealthy from passing on their wealth from one generation to the next. At the time, this well-intentioned tax eased concerns about the growing concentration of money and power among a small number of wealthy families. Later, it was used to fund national emergencies, and it became necessary to maintain these high tax rates in high wartime levels during the 1930s and the 1940s, but they remained relatively unchanged until the Tax Reform Act of 1976.

Ironically, the death tax served little of the purpose for which it was intended. Rather than prevent the concentrated accumulation of vast wealth, the death tax punished savings and thrift and hard work among American families. Small businesses and farmers have been unfairly penalized for their blood, sweat and tears, paying taxes on already-taxed assets.

Instead of investing money on productive measures such as creating new jobs or purchasing new equipment, businesses and farms are forced to divert their earnings to tax accountants and lawyers just to prepare their estates.

The victims of the death tax are typically hardworking Americans of medium-sized estates, farmers and small business owners. Their enterprises create jobs and growth and opportunities for our communities, but every year those families were literally forced to sell the family farm or business just to pay off their death taxes.

Equally disturbing is the fact that the death tax actually raises relatively little revenue for the Federal Government. Some studies have found that it may cost the government and taxpayers more in administrative and compliance fees than it actually raises in revenue.

Of course, farmers and ranchers are not the only ones facing an unfair and unnecessary burden in the death tax. One study conducted by the Public Policy Institute of New York State found that in a 5-year period family-owned and -operated businesses on an average spent $125,000 per company on tax planning alone. These costs are incurred prior to any actual payment of Federal estate taxes. They reported that an estimated 14 jobs per business were lost as a result of Federal estate tax planning. For just the 365 businesses surveyed, the total number of jobs already lost due to the Federal estate tax is 5,100. That was just in upstate New York.

My rural and suburban district in New York is laden with small businesses and farms that are owned by hardworking families who pay their taxes, create jobs, and contribute not only to the quality of life in their community but to the Nation's rich heritage. Is it so much to ask that they be able to pass on their industry and hard work, their small business or their farm to their children? Why should Uncle Sam become the Grim Reaper?

The fact is they paid their taxes in life on every acre sown, on every product sold, and on every dollar earned. They should not be taxed in death, too.

Mr. Speaker, death tax relief was a good idea in the 107th Congress, and it is a good idea now. We should not provide this kind of relief for only a few years. We should provide it permanently. This kind of permanent tax relief for farmers, ranchers, and small business owners that will keep the family business growing and growing is just the kind of relief that is beginning to get this economy moving.

Wall Street has shown modest gains not only since Congress passed its tax cut plan but even since we began working on the tax cut itself. As one media report said, ''Economic advisers credit the tax cuts and positive first quarter earnings for the gains.''

Tax cuts work. They work in helping hardworking families keep more of what they earn. They work in allowing people to have greater control over decisions to save and invest, and they work in creating jobs and creating greater economic opportunity for American families. We are on the right course. Let us keep moving forward.

Mr. Speaker, I urge my colleagues to bury this unfair tax once and for all. Vote ''yes'' on the rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I thank my colleague and neighbor from New York for yielding me the customary 30 minutes.

Mr. Speaker, at the outset let me say that those of us who oppose this bill love the family farms and small businesses no less than anyone else in the Congress. The fact of the matter is that this tax is paid now by such a small percentage of people, less than 2 percent in the United States, that we believe almost every family farm and every small business is covered already by not having to pay estate tax, and indeed, the 2 percent who pay it, including the Warren Buffetts and the Bill Gateses and his father, all claim that this is a very bad direction for us to go in. They do not want to build large kingdoms of their own wealth. They are asking that we keep this because it has always been the American policy for taxation that it is based upon the ability to pay.

We would be wise, I think, to remember our American history. Republican President Teddy Roosevelt, a hero of mine, who led the charge to create an inheritance tax, believed that the wealthy had a special obligation to the government. He said: ''The man of great wealth owes a peculiar obligation to the State because he derives special advantages from the mere existence of government.''

□ 1045

It would also be wise to remember the virtues of responsibility and accountability, especially now that the deficit has gone from the $5.6 trillion surplus to a $400 billion deficit in a little more than 2 years. The underlying legislation before us today would drain $80 billion more a year from the already empty Federal Treasury. In other words, the money would have to be borrowed.

Now, what does this say to the American people when we prioritize the checkbooks of the wealthiest 2 percent of Americans before paying for the health care for our veterans and fully funding education? I know that the President pledged to repeal estate tax during his campaign, and I am sure that he knows some people in the top 2 percent who will benefit from the complete and permanent elimination of the inheritance tax.

In fact, he probably mingled with a few of them just last night during the event that kicked off the largest political fund-raising drive in our history. But I meet those whose Social Security benefits are threatened by the drain on the resources of the government, some of the 9 million unemployed and 12 million children that are still without the help of the child tax credit. Teddy Roosevelt admonished, and this is so important because it is so wise, ''The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.''

I hope that in the short time allocated for discussion of this legislation that we do not frighten the family farmers and small business owners. As I said, all of them, unless they are among the wealthiest 2 percent in the United States, are covered already by not paying this tax. They have worked hard to keep their farms from falling into bankruptcy, and far too many family farms are going under already. They fight hard to keep their small businesses going, and we support them in every way that we can, especially during this continued economic decline. They are not subject to the estate tax as it currently exists. I cannot stress that enough.

Indeed, one of my colleagues on the Committee on Rules last night talked about an event in his home State where the convention hall was full and the President said he wanted to make permanent the repeal of the estate tax

and got a humongous response to that. My colleague on the Committee on Rules said that he was sure that not more than 40 people in that room, if that many, would have benefitted from that repeal.

Special estate tax rules for family farms value their farm land at less than other land, at between 45 percent and 75 percent of its fair market value, and already allows farm couples to exempt up to $2.6 million from taxes. Family businesses pay less than 1 percent of all estate taxes. Family business couples can also exempt up to $2.6 million from taxes. The Pomeroy substitute provides even more protections for them. It excludes from the inheritance tax any estate owned by a couple worth $6 million.

Almost a decade ago, the gentleman from California, the distinguished Chair of the Committee on Rules, said on the floor that ''all,'' and in parentheses the minority members at that time, ''are asking for fair treatment on both sides of the aisle here.'' And I agree with my colleague, I want fairness on both sides of the aisle. I would also like fairness and a little old-fashioned common sense.

Under H. Res. 281, only one amendment has been made in order, a substitute amendment offered by my friend from, the gentleman from North Dakota (Mr. POMEROY). However, instead of choosing his substitute amendment that paid for itself, in other words, took money from probably from the tax cut from the very wealthy and paid for what he is recommending here, where we would have no further drain on the Treasury because it would not have added a single penny to the Federal deficit, but instead of making that amendment in order, the Committee on Rules made a second amendment in order which only partially offsets the cost of the elimination of taxes on estates larger than $3 million.

Even though H.R. 8 falls short, and fails to offset any of the $80 billion annual losses it creates and adds to our increasing deficit, it is very important to note, Mr. Speaker, that one of the differences between H.R. 8 and the Pomeroy substitute amendment is .35 percent. That's all. H.R. 8 would permanently remove the estate tax on any estate, even those as large as $3 billion or $4 billion or $5 billion or larger, and cost the Federal Government more than $800 billion over 10 years. The Pomeroy amendment would exempt every estate in America, except for the wealthiest of the wealthy. Only one-third of 1 percent of estates would be so large that they surpassed the generous exclusion in the Pomeroy substitute.

This bill does a great deal for a very few. It really does, again, add to the deficit. And the most important thing about it are that the people who benefit from it the most are the people who most loudly say not to do this; that we do not need it. We would much prefer a stronger economy in America.

Mr. Speaker, I reserve the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, my friends from the left always bring up class warfare every time we have a tax cut discussion in this body. I just would point to two aspects of my colleague and friend's remarks.

First, Henry Aaron and Alicia Munnell, who are two prominent liberal economists, concluded in their study of the estate tax the following: In short, the estate and gift taxes of the United States have failed to achieve their intended purposes. They raise little revenue, they impose large excess burdens, and they are unfair.

Alan Binder, a former member of the Federal Reserve Board, appointed by former President Bill Clinton, found that only about 2 percent of inequity was attributable to the unequal distribution of inherited wealth.

Joseph Stiglitz, who served as Chairman of President Clinton's Council of Economic Advisers, found that the estate tax may ultimately increase income equality.

Those are the same type of things that Republicans or conservatives or economists who are right of center have said. So there seems to be concurrence on that.

I would also say that it is sometimes difficult being a member of the majority to resolve some of the issues of inside baseball upstairs in the Committee on Rules. Sometimes we are attacked because we have open rules, sometimes we are attacked because we have closed rules, modified rules, or whatever happens. In this instance, we just cannot seem to win.

The unfortunate aspect of this is that we have today for our colleagues to consider, in the rule that we now have before us, a substitute offered by the Democrats. If the gentleman from North Dakota (Mr. POMEROY) does not want this substitute, he should withdraw it. He introduced it, he asked the Committee on Rules to consider it, the Committee on Rules did just that.

We also have a recommit, as we have in each and every single rule that we put out on behalf of consideration of legislation since the majority took its control in 1995.

Mr. MCGOVERN. Mr. Speaker, will the gentleman yield?

Mr. REYNOLDS. I yield to the gentleman from Massachusetts, though it is unfortunate, as a member of the Committee on Rules, the gentleman cannot get time from his side.

Mr. MCGOVERN. Mr. Speaker, I thank the gentleman for yielding. I just want to assure the gentleman that on our side of the aisle, we will not complain if we get open rules, and we certainly would not be complaining as much if the majority allowed the substitute that the gentleman from North Dakota (Mr. POMEROY) wanted to offer, with the offsets, so this Estate Tax Bill would be paid for.

Mr. REYNOLDS. Reclaiming my time, Mr. Speaker, the gentleman from North Dakota (Mr. POMEROY) came before the Committee on Rules and he introduced his legislation. There is no time I am aware of, in talking to the staff, that the gentleman from North Dakota, from the time he brought the legislation for our consideration until today, that he has asked to withdraw the substitute.

So we are moving forward on the Pomeroy substitute. After that is considered, we will move forward with the motion to recommit and then we will, hopefully, go to final passage.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. MCGOVERN).

Mr. MCGOVERN. Mr. Speaker, a few weeks ago, President Bush signed a huge tax cut into law giving billions and billions of dollars in tax cuts to the very, very wealthy. Of course, in the dead of night, the Republicans stripped out the child tax credit to help low- and middle-income American families. But those families do not go to the fund-raisers at the Hilton, so the leadership does not care about them.

The other body acted quickly and responsibly to fix the child tax problem. The leadership of this House, however, dragged their feet and then acted irresponsibly. Finally, last week, after a drumbeat of public pressure, we saw a child tax credit bill, sort of. What we actually saw was a sham, a distraction, a way to kill the issue with one hand while sending out a press release with the other.

Since the House bill is vastly different and vastly more expensive than the Senate bill, the differences have to be worked out in a conference committee. Conferees have been appointed, but has the conference committee met? No.

Now, it is clear that the leadership of the Committee on Ways and Means is not too busy, since they had time to bring up this week's installment of Tax Cut Bonanza, a bill to eliminate the sunset on the estate tax. Mr. Speaker, the current sunset does not even expire until the year 2010, 7 years from now. Now, the Senate-passed child tax credit can help working families today, but, clearly, the Republicans would rather help the very wealthy 7 years early.

This bill would burden our children and our grandchildren with $150 billion in debt over the next 10 years and hundreds of billions of dollars more after that. So why are we considering this bill today? The answer is simple: Last night, at the Washington Hilton, all the fat cats had a fund-raiser for the President's reelection campaign. For $2,000, the people who will benefit from this Estate Tax Bill got a hamburger and a handshake from the Republican Party.

Now, last night in the Committee on Rules, the gentleman from North Dakota (Mr. POMEROY) offered a substitute that would permanently exclude estates worth up to $3 million per

person or $6 million for a married couple, and would exempt 99.65 percent of estates from estate tax liability. He offered a substitute that would have been paid for. But last night, keeping with tradition, the Committee on Rules basically disallowed his right to offer that substitute. And, also keeping with tradition of shutting out the voices of average working families in this House, they did not allow him to offer his substitute that had the offsets.

So I guess the problem with the approach of the gentleman from North Dakota is that the people who were raising all the money last night are worth more than $6 million. They want more. And they are the people that this leadership in the House cares most about. For those people, it is Christmas in June. But the soldier serving our country over in Iraq, who makes $16,000 a year, gets nothing, because he cannot afford to pay $2,000 for a hamburger at the Hilton.

Mr. Speaker, I urge my colleagues to defeat the previous question vote for the responsible Pomeroy substitute.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

As President Reagan would say, Mr. Speaker, there you go again. Class warfare. I do not know about my colleagues, but I go home every weekend, and I see farmers, and I see small businesses that have worked their hearts out. They have worked hard their whole life on their family farm or in their Main Street business. They are not rich, but they have an estate. They want to pass it to whoever they want. In most instances, that is their children. But to pay the estate tax, they have to sell the family farm. And that just is not right, because they paid taxes on every single portion of the products, goods, and services and then they have to do it again at death tax time.

They are not rich, although this would certainly help them, but as I cited in earlier debate, liberal economists and conservative economists all agree the tax does not really do the job. But think about this: The actuaries and life underwriters and everybody else are saying, if you want to die, you want to do it between now and 2010, because God forbid, if it is January 1, 2011. This thing does not work anymore.

It is a reasonable thing to tell America and to show America and perform for America with permanent death tax relief. This tax relief is reasonable. I understand my colleagues on the left do not believe in tax cuts. I accept that. But I also want to remind my colleagues and friends, as the gentleman from Massachusetts (Mr. MCGOVERN) has indicated, in the Committee on Rules every single amendment had a rollcall vote yesterday. They were all heard, they were all debated, and they all had a vote.

We have, in this modified closed rule, included the Pomeroy substitute, and we have included a motion to recommit. We will then have final passage of whatever comes as the result of our colleagues in the conference on the other side.

Mr. Speaker, I reserve the balance of my time.

□ 1100

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, this is not about family farms. In 2001, only 2 percent of the 2.3 million deaths involved any estate or gift tax liability at all. Of those deaths, about one-tenth of 1 percent incurred any liability at all involving family farm assets. How many is that? What does it translate into? Just 46 family farms incurred any estate tax liability at all.

This bill helps 46 family farms, yet will cost $160 billion. So let us not be fooled. This bill is only about protecting those wealthy few, and the cost of this legislation comes directly out of vital services, job training, education, health care for working families. Even in the most robust economy, eliminating the estate tax would be totally irresponsible, a giveaway to the richest Americans; but at a time when we are experiencing $400 billion in record deficits, 9 million Americans are unemployed, eliminating the estate tax is not only irresponsible, it is immoral.

This bill is an insult to the 6.5 million families left out of the child tax legislation, 200,000 military families, less than a week after the majority cynically maneuvered to kill legislation passed overwhelmingly by the ordinary body which would have corrected this injustice; and the House majority brings up yet another bill to cut taxes for only the wealthiest Americans.

And if Members think it is only the Democrats that are saying that the Republicans are cynical in what they did last week, let me quote a senior Senate Republican aide. He said that he expected the tax credits for those working families would die in a dead-locked conference, and he said further that it appeared that was the intention of the House Republicans. And today the Republican whip has said our leadership is committed to the bill we sent to the conference. The majority of our Members are not going to accept anything else. They wanted to destroy the opportunity for working people to be able to get a child tax credit. That is what they did last week.

At a time when there are hard-working, tax-paying minimum-wage-earning families, families of 12 million children, they have not yet received a penny of tax relief. The House's consideration of this bill is irresponsible.

This is a debate about priorities. It is about values. I call on my colleagues to turn aside this misguided, reckless bill. I call on President Bush to use his moral leadership, help deliver the child tax credit to those 6.5 million families, those 12 million children. The President should urge his Republican leadership to pass a responsible child credit bill that reflects the principles of this great Nation. Give those 6.5 million low-income families the tax relief they need. They pay taxes, property taxes, sales taxes, excise taxes, payroll taxes, 8 percent of their income. Give them the tax relief that they need. That is what we should be debating today. Those families have earned it.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, apparently as I cited in my remarks before, some of that has not been heard as we get some of the facts out. The left does not want to cut taxes. I accept that. I understand that. We are going to have a debate; and this House has repeatedly cut taxes, including the estate tax in the 106th Congress, the 107th Congress, and now in the 108th Congress. But Henry Aaron and Alicia Munnell, who are two prominent liberal economists, concluded in their study of the estate tax, the estate and gift taxes in the United States have failed to achieve their intended purposes. They raise little revenue, they impose large excess burdens, and they are unfair.

Alan Binder, a former member of the Federal Reserve Board appointed by President Clinton, found that 2 percent of the equity was attributable to the unequal distribution of inherited wealth.

And Joseph Stiglitz, who served as President Clinton's Council of Economic Advisors, found the estate tax may ultimately increase income inequality. The reason I have cited that a second time in this debate is we can keep coming forward and say how bad it is. The liberal economists, just as we have seen from right-of-center economists, have concurred that this is not a functional tax.

Mr. Speaker, I yield 4 minutes to the gentleman from Georgia (Mr. LINDER), a member of the Committee on Rules.

Mr. LINDER. Mr. Speaker, first of all I would like to say that this is a typical rule on a tax bill, and it gives the minority an opportunity to put all of their eggs in one basket and to vote on a substitute; and that is fair.

But let me speak to the underlying issue, the bill. I was with President Bush some months ago at Harrison High School in Cobb County, Georgia. He spoke for about 30 minutes in a gymnasium that was filled to the rafters. And at one brief time he said we must make permanent the repeal of the death tax, and the place exploded in spontaneous applause and cheering. I turned to the person I was sitting next to, and I said there are not 40 people in this auditorium who are going to benefit from that. They are cheering it because they think it is a moral issue. People should be able to pass on what they earn and keep.

Mr. Speaker, why are we so angry at success in this body? What do rich people do with their money? They give it away, and they do not give it away for

tax reasons. Some of the great fortunes that were given away, the Fricks, the Carnegies, the Mellons, were given away before we had a Tax Code. They were given away because they wanted to, and we think they have a right to decide where their money goes. Bill Gates gives it in Africa for health reasons; Ted Turner gave $1 billion to the United Nations. Let them make that choice, rather than take it away from them and make the choice for them.

I have said this before on this floor, and I want to say it again. Some years ago and maybe today, if you want to start a business in some great cities, you are visited by a pretty scruffy guy who says we are going to let you stay in business, but we want 30 percent of your profits. And if you sell the business, we are going to take 20 percent of what you make off it; but even the Mafia does not show up at the widow's doorstep asking for their share of what is left over. Our government does. It is immoral, and it ought to end.

Ms. SLAUGHTER. Mr. Speaker, I yield 1½ minutes to the gentleman from Massachusetts (Mr. MCGOVERN) to ask a question.

Mr. MCGOVERN. Mr. Speaker, I have a question for either of my colleagues on the Committee on Rules. The gentleman's party controls the House and the Senate and the White House. My question is when are we going to have a child tax credit? When are we going to provide relief to that soldier in Iraq who is earning $16,000 a year? We are talking about helping millionaires today, and my question is since the other side of the aisle controls everything, when are they going to bring this child tax credit to the floor?

Mr. REYNOLDS. Mr. Speaker, will the gentleman yield?

Mr. MCGOVERN. I yield to the gentleman from New York.

Mr. REYNOLDS. Mr. Speaker, I certainly hope that the Senate will quickly respond to the legislation we passed last week, in a prompt response to the decision that they wanted to look at the child tax credit.

Mr. MCGOVERN. Mr. Speaker, some of the gentleman's colleagues in the other body have said quite clearly that they are not going to deal with the bill sent over there because it was not paid for. I guess since we have Republicans that control the House and the Senate, I would like to think that they would get along with each other and resolve some of these issues; and the issue of the child tax credit is something that would help low-income and moderate-income families right now. They need help now, and it seems to me while we are talking about this estate tax relief bill today, which takes place 7 years from now, why can we not help the people hurting right now.

Mr. REYNOLDS. If the gentleman would continue to yield, I am a little confused. Last week the gentleman voted against the child tax credit.

Mr. MCGOVERN. Mr. Speaker, reclaiming my time, no, I voted against the child tax credit that was not paid for.

Mr. REYNOLDS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Mr. Speaker, I rise in support of the rule that we are discussing that would allow us to consider legislation to permanently repeal the death tax.

Mr. Speaker, I am one of those that truly believes the death tax is a triple tax. First, Americans pay a tax when they earn this income. Then they buy an asset and spend it, and they pay the tax then. Then when an American dies, they have to pay the tax again.

This tax is a tax that affects all Americans, especially our small business owners. In fact, 70 percent of small businesses never make it past that first generation because of this tax. It is something that prohibits people from being able to pass that business on to the next generation.

In addition, it discourages savings. It discourages investment, and it is costing our economy hundreds of thousands of jobs.

Mr. Speaker, the Americans get it; 89 percent of the people want us to permanently eliminate the death tax. Small business owners get it. Seniors get it. The farmers in my district in Tennessee, they get it. They want us to do away with death taxes. I hope my colleagues on the other side of the aisle will also get it and vote in favor of this rule and in favor of H.R. 8 to rid our country of an unjust tax that penalizes all Americans.

Ms. SLAUGHTER. Mr. Speaker, I yield 5 minutes to the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, I think it is important to note that we are dealing with an issue today that, as has been pointed out, that is really not in the realm of debate or action for the next 7 years when in fact what I think bears importance is to recount what has happened here in the last several weeks about a tax credit for working families, people who pay payroll taxes, sales taxes, property taxes and excise taxes, people who make between $10,500 and $26,625, again working people, who were told that they were part of a tax package, a $350 billion tax package.

Oddly enough, their portion of the $350 billion tax package, $3.5 billion, was stolen out of the bill that the President signed 10 days ago, 2 weeks ago in the dead of night, and the promise that was made to these individuals was just pulled back in order that we meet the demand of those people, 184,000 millionaires in this country, who are going to get $93,000 a year in a tax cut; but we could not scale back 1 percent of that $350 billion to adjust for these working families.

So the Senate in a bipartisan way, the other body in a bipartisan way, because they said that this was just plain wrong, came to the conclusion on a vote of 94 to 2 that we could address this wrongdoing and put $3.5 billion into a bill and address this injustice. And they paid for it.

The President, I might add, or his spokesperson, said we ought to do what the Senate, the other body, did. It came to the House of Representatives where the majority leader of the House said we have more important things to do. What is more important? What is more important to do, give $93,000 in a tax cut to the wealthiest people in this country? Or allow corporations to go overseas and not pay taxes at all? Is that more important than the hard-working American families who pay taxes, 8 percent of their income in taxes, and they should be shortchanged on a $400 tax credit for their children?

There is a basic and fundamental values issue here about who we care about and what we care about in this Nation. We had an opportunity and what the Republican leadership did, the other side of the aisle did last week, was to in fact come forward with an $82 billion package to pay for a $3.5 billion issue, and they did it for one reason; and I will quote the Senate Republican aide again.

□ 1115

A senior Senate Republican aide said he expected the tax credits to die in a deadlocked conference which he said appeared to be the intention of the House Republicans. It was and is the intention of the House Republicans to end this tax credit for these hard-working folks. What people may not know is that everybody else in that tax bill is going to get their tax relief on July 1. Not the families included here. Military families are not going to get it. They are going to have to apply for next year. Two hundred thousand military families fighting a war, fighting a war on our behalf, they are not going to get it. This is an outrage. This should not happen. But over and over and over again, and today what we are talking about is a tax cut, repealing, permanently, the estate tax which I pointed out earlier, 46 families, some of the wealthiest families in the country. And we cannot take care of these families.

I called on the President and the President said he wanted to see this fixed. The President needs to talk to the Republican House leadership, take them in hand and say, let's do what's right. Take the moral leadership, the moral leadership where the President stood up and he fought for the dividend tax cut, again to benefit the wealthiest people in this country. I believe he should take on the moral leadership to fight for these hardworking families.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume. I enjoyed that oratory. I would almost think that she voted for the child tax credit last week, but the sad fact is that she did not because she voted the other way. She voted no. We sent a bill over to the other body. I have listened to the presumptions of the other body, of what will happen over there. I have

talked to a few Senators. They give me the hope that they are so desirous of voting on this that they are looking forward to a conference and they are looking forward to getting it on the floor.

The fact is we are talking about permanent estate tax repeal now. That is what is coming on the floor as we pass this rule, if the body does pass it, and I believe that they will and I believe that we will get bipartisan, Democrat-Republican, support for a permanent estate tax, death tax, however, you want to look at the reality, repeal. As we are listening to the debate shift over to the child tax credit, it is fine to lecture what that is and how it all happened.

The fact is last week I voted for a child tax credit and other tax cuts and sent it to the other body. And the fact is the last two orators on the Democratic side did not vote for it.

So as we move forward today back on the death tax to make a permanent death tax repeal, Members get to vote up or down on the rule and then they get to vote on a substitute and then they get to vote on a recommit and then final passage. I look forward to today, because I believe that we will get bipartisan support to pass the permanent repeal of the death tax.

Ms. DELAURO. Mr. Speaker, will the gentleman yield?

Mr. REYNOLDS. I yield to the gentlewoman from Connecticut.

Ms. DELAURO. Mr. Speaker, I would just say to the gentleman, he says I voted against that bill last week. I will tell him my view and he can dispute this with me. It was a very good feel-good vote on the Republican side of the aisle, and that may be where his vote was because, according to Republican Senate people, Senator GRASSLEY today—I am sorry, a member of the other body—a Senator from the other body said he does not have time for a conference. The majority whip in this body said no time for a conference. The gentleman felt good about voting for that bill because he knew that the Senate was not going to do it and, therefore, they were going to kill the child tax credit. He can say it over and over again. I would not vote for a bill that was instrumental in killing the child tax credit nor was it paid for. The bill that I voted for was being paid for.

Mr. REYNOLDS. I guess she did not have a question.

Mr. Speaker, I reserve the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATHAM). All Members are reminded against making inappropriate references to the Senate.

Ms. SLAUGHTER. Mr. Speaker, I yield 5 minutes to the gentleman from Massachusetts (Mr. MCGOVERN).

Mr. MCGOVERN. Mr. Speaker, I thank the gentlewoman from New York for yielding the time, and I certainly want to associate myself with her remarks and the remarks of the gentlewoman from Connecticut. I think it is important to kind of set the facts straight here because the gentleman from New York, for whom I have a great deal of respect, I think has said some things that I believe are a little bit misleading. One is those of us on our side of the aisle here, we voted for the child tax credit six times. They voted against it six times. We voted for it six times. The difference with what we voted for and what they ended up voting for is we ended up voting for a child tax credit that was fully paid for, with offsets, because we are a little concerned quite frankly with the way Republicans are on this tax cut/spending spree right now because it is adding to our deficit and adding to our debt. This year as a result of their policies, CBO tells us that the deficit this year is $400 billion, the biggest single year deficit ever recorded in our history. That is what we are worried about over here. So we feel very strongly that as we support these tax cut measures to help working families, that they be paid for, that the offsets be specified.

The other body came forward with a bill to help deal with the child tax credit that was going to cost $10 billion, which was fully paid for, with offsets. The majority in the House could not get together with their counterparts in the other body, even though they are of the same party, but the leadership in this House, I think, is so out of touch and so radical when it comes to how they spend the taxpayers' money in this country that they could not even come up with a bill that even approached anything near what the other body did.

But what the House leadership did is they came up with a bill that would cost $82 billion, that was not paid for. In other words, it was all borrowed money, money being borrowed from our children and our grandchildren and our great-grandchildren. They all talk about cutting taxes, but they, in essence, are raising taxes on our kids, something called a debt tax. We are paying an ever increasing amount on the interest on the debt that is being accumulated in this country, in large part because of their fiscally irresponsible policies.

So do not tell us that we voted against a child tax credit. We voted for it six times. We voted for one that would provide immediate relief to these families that we have been talking about for these last several weeks, including our military families, men and women serving in Iraq right now making a base pay of $16,000 a year. They deserve help right now. They work hard, they are defending our country, they deserve this child tax credit. We tried to bring to this floor just like the majority did in the other body brought to the Senate floor a responsible child tax credit bill that was fully paid for. They said no.

We voted for one that was paid for six times and then they came up with a sham, a public relations ploy, knowing that it will get lost in conference committee or that there would never be a conference committee and these low- and medium-income families would get nothing. And here we are today debating an estate tax relief bill that takes effect 7 years from now. We are talking about lifting the sunset 7 years from now. There are more important and pressing problems for a lot of working families, people who will never get to the point where they are going to have to deal with whether or not they are going to pay estate tax or not.

I would just respectfully suggest to the gentleman that his facts are a little bit wrong with regard to what we on this side of the aisle have tried to do and have been championing.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I probably need to put the gentleman from California (Mr. THOMAS) and the gentlewoman from Washington (Ms. DUNN) on notice that when we move into the bill on the underlying legislation, we will be talking more on the child tax credit than the permanent death tax. I am just encouraged to see in the 107th Congress, three votes that occurred on the death tax. I saw from 41 to 58 Democratic votes along with Republicans and it reassures me that we are on the path of a bipartisan tax cut to end the death tax once and for all that is in this country.

We need to see a couple of things. Individuals and families and partnerships or family corporations own 99 percent of all U.S. farms and ranches. Think about that. Individuals, family partnerships or family corporations own 99 percent of all U.S. farms and ranches. I do not want us to ever forget that every acre, every piece of equipment, every business has already been taxed in life, so why should they be taxed in death.

Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma (Mr. SULLIVAN).

Mr. SULLIVAN. Mr. Speaker, today what we are talking about is ending the death tax. I believe it is morally wrong that we tax people on their death. They should not have to visit the IRS and the undertaker on the same day. I know a story of a couple, a man and a woman, who had two children who owned a small business. They passed away, unfortunately, and left that business to their children. Their children thought they would get this business, maybe get a little money. But instead to pay the death tax, they had to actually borrow money to sell that business. The Republican Party does not want to tax dead people. The Democrat Party does. That is the difference here today.

Mr. Speaker, I rise today in support of H.R. 8, the Death Tax Repeal Permanency Act of 2003. This bill permanently repeals the death tax and allows families to pass on businesses and farms to their families without the enormous, intrusive and burdensome

taxes they are often forced to incur. The IRS imposes rates of up to 60 percent of the value of a family business or farm when the owner passes away. To pay the tax man, many families are forced to liquidate assets and sell their businesses and farms though some have been in the family for generations.

The death tax is un-American, Mr. Speaker. Ask any small business owner. They know all too well that 70 percent of family businesses do not survive to the second generation, and 87 percent do not make it to the third. They will tell you that repealing the death tax would create jobs and grow our economy. It is good for small business owners, it is good for our economy and it is good for America.

Join me in voting for H.R. 8, the repeal of this burdensome tax on family-owned farms and businesses. It is morally wrong.

Ms. SLAUGHTER. Mr. Speaker, I yield myself 5 seconds. Saying that it will preserve family farms from taxation does not make it true. They are preserved already from taxation.

Mr. Speaker, I am pleased to yield 1 minute to the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, on the commentary for my not having voted for a child tax credit, let me just say we have voted six times on this issue. Democrats have voted for, Republicans voted against, including a motion to instruct on which Republicans voted for taking the bill that the other body passed and bringing it back here. My interest in this effort is not today, it is not yesterday, it is not in the last week.

On March 12, I introduced the child tax credit in the Committee on the Budget and it was voted there for the first time. All of the members on the Democratic side voted yes. All of the members on the Republican side voted no against the child tax credit. This legislation we deal with today goes into effect in 7 years. We have an opportunity to right a wrong, to right an injustice, to pass a child tax credit, to take the bill, to go to conference and address this issue and allow these hard-working people to get their benefit on July 1 as every other American who is going to get the benefit of this tax credit will. It is wrong to do otherwise.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I welcome so many from the left to join me in cutting taxes. I look forward to that vote when it comes out of conference committee and maybe she can join us with that.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I want to remind my colleague from New York that the gentleman from Texas (Mr. STENHOLM) would really hate to be put in that category of a lefty.

Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. I thank the gentlewoman for yielding me this time.

Mr. Speaker, I am going to urge that my colleagues vote against this rule. On the one hand, they do allow a Democrat substitute that I am pleased to offer, one that would provide very meaningful estate tax relief. In fact, it would completely take care of any estate tax problem of 99.65 percent of the people of this country. It is far more relief than offered under the majority proposal in each of the next 5 years.

So these family farms and these small businesses we are going to be hearing so much about, the alligator tears we are going to be seeing cried on the majority side, we help them and we help them now. On the other hand, the majority approach is very different. Nobody gets nothing until the wealthiest three-tenths of 1 percent get everything that they need. That is why we have the inferior plan on their side compared to the more generous benefit of ours.

There is another very big difference. Theirs would drive the deficit higher to the tune of $160 plus billion dollars over 10 years. Why I want to vote against this rule is that we had a proposal in the amendment that I proposed to the Committee on Rules that would have completely paid for the relief we provide. There would have been zero impact on the deficit. Yet to my surprise, the substitute allowed in order only provides for the tax relief portion and does not provide the means by which we avoid any impact on the deficit whatsoever. We wanted to close the Enron-like tax shelters.

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We also had some customs fees, and yet they have shielded this, stripped it out of the rule; and so what we are allowed on the floor will have a deficit impact. I vote against the rule.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I have got to tell the Members, I have only been here since 1999, but it never ceases to amaze me to see something new. Yesterday my colleague from North Dakota was before the Committee on Rules advocating this substitute that is contained in this rule and another one, and he was granted one that he actually spoke for; and today he wants to bring down the rule.

Mr. POMEROY. Mr. Speaker, will the gentleman yield?

Mr. REYNOLDS. I yield to the gentleman from North Dakota.

Mr. POMEROY. Mr. Speaker, to my friend from New York, we had within the substitute proposed to the Committee on Rules, on which the gentleman served so well, a pay-for so we were not going to impact the deficit. You took out the pay-for provisions of what we submitted to the committee. You make us impact the deficit, although it is only a fraction to which the majority proposal impacts the deficit. We know you do not care about the deficits. In fact, there has been a $9 trillion reversal in the financial fortunes of this country within the last 2 years. We think enough is enough. We do not want to drive the deficit deeper and deeper, and that is why I so wish you would have allowed for the pay-for portion proposed to the Committee on Rules to be considered.

I thank the gentleman for yielding.

Mr. REYNOLDS. Mr. Speaker, did the gentleman come before the Committee on Rules and advocate the substitute which is contained in the rule today? I think he did, did he not? Did he come and advocate two different amendments before the Committee on Rules, this one being made that was made as substitute inside the rule? Did he or did he not come yesterday before the Committee on Rules and submit testimony before us asking for consideration of this substitute?

Mr. POMEROY. I believe the gentleman was out of the room at the time I testified, but I would refer him to the transcript.

Mr. REYNOLDS. I am happy to bring the record down and bring it here.

Mr. POMEROY. Does the gentleman want me to answer his question or does he not?

Mr. REYNOLDS. The gentleman and I both know that he was before the committee and asked for this amendment to be considered by the Committee on Rules and now he wants to bring it down. Is that true or not, sir?

Mr. POMEROY. It is not true.

Mr. REYNOLDS. Is the gentleman saying he was not in the Committee on Rules or that he did not request this substitute in his presentation before the Committee on Rules when he spoke on two specific amendments, this being one?

Mr. POMEROY. Mr. Speaker, is the gentleman going to yield to me to answer his question?

Mr. REYNOLDS. I will yield to the gentleman from South Dakota.

Mr. POMEROY. Then I will proceed to answer. If the gentleman will check the transcript of my remarks before the Committee on Rules, I asked that the proposal I offered be considered that paid for the provision for the very meaningful estate tax relief we extend by closing the Enron-type tax loopholes.

I know you probably do not want that considered on the floor of the House. So what you have made in order does not allow us to incorporate the pay-fors. I think that is unfortunate. My specific request to the chairman of the Committee on Rules was to allow the pay-fors.

Mr. REYNOLDS. Mr. Speaker, I reclaim my time.

Mr. Speaker, I must say that in the Committee on Rules, we try to work with our side of the aisle to advise a Member if they do not want their amendment made in order, they should not offer it in the Committee on Rules. Maybe that does not happen to Members on the other side of the aisle; but on our side, if someone comes up there and asks for consideration of an amendment, they ought to be prepared that it might be granted.

I just want to go back and make sure we do not miss anything on the death tax inhibiting economic growth because I have listened to my colleagues on both sides of the aisle talk about creating jobs. The threat of a resurrected death tax will force American families to make inefficient investment decisions and to waste resources in an effort to comply with the death tax. Studies show that repealing the death tax would create as many as 200,000 extra jobs each year across America. Jobs are lost when businesses are liquidated to pay death taxes and to make decisions not to expand because of anticipated death tax liabilities.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I will be calling for a ''no'' vote on the previous question. And if it is defeated, I will offer an amendment to the rule. The amendment will make in order the portion of the gentleman from North Dakota's (Mr. POMEROY) request that made his amendment budget neutral and was paid for. The amendment was offered, but was rejected on a party-line vote. At least that part was taken out.

The Pomeroy substitute will provide substantial tax relief from estate taxes. In fact, it grants more generous relief to most estates than the Republican bill and grants it immediately. The Pomeroy substitute completely exempts all but the largest estates from taxation and significantly simplifies tax planning for estates of all sizes. It also exempts virtually all family farms and small businesses from estate taxes. Furthermore, the Pomeroy substitute will not add one single penny to the deficit. Unlike the Republican bill, it will be completely paid for.

Republicans in the House have continued for weeks to block any and every bill that provides tax relief to the people who need it most in this Nation. Even on the issue of estate tax, they favor the rich over the middle- and lower-income working Americans. They continue to take care of their wealthy friends again today with yet another deficit-busting bill. Let us take this opportunity to make in order a substitute that will immediately eliminate estate taxes for all estates of less than $6 million. That is 99.65 percent of all estates, 99.65; and it will also do that without costing any additional dollars to the deficit.

Let me make very clear that a ''no'' vote on the previous question will not stop consideration of the Death Tax Repeal Permanency Act of 2003, but a ''no'' vote will allow the House to vote on the Pomeroy substitute which is fully paid for. However, a ''yes'' vote on the previous question will prevent us from voting on a fiscally responsible and revenue-neutral tax bill. I urge a ''no'' vote on the previous question.

Mr. Speaker, I ask unanimous consent that the text of the amendment be printed in the RECORD immediately before the vote on the previous question.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentlewoman from New York?

There was no objection.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I guess I believe, looking up at the press gallery, that there is probably a view that it is a fair rule. It is a modified closed rule that provides a substitute, then a recommit; and then we move on to final passage. So there is not much controversy on the rule. And we are in a situation as we move forward on a debate that I believe once we get through the process, which is the rule vote, we are going to see in final passage, just looking at the 107th Congress, somewhere between 41 Democratic colleagues and 58 Democratic colleagues who voted for death tax in the past Congress that will join us today in a bipartisan message of passing this legislation out of the House and having it go to the other body.

Mr. Speaker, Benjamin Franklin once noted in this world nothing can be said to be certain except death and taxes. But while death may be certain, taxes are immortal. That is because our current tax system plays a cruel joke on farmers and small business owners. Simply put, the death tax stifles growth, discourages savings, stymies job creation, drains resources, and ruins family businesses. It is time we permanently repeal this unfair tax and allow the American Dream to be passed on to our children and future generations.

The material previously referred to by Ms. SLAUGHTER is as follows:

PREVIOUS QUESTION FOR H. RES. 281—RULE ON H.R. 8: THE DEATH TAX REPEAL PERMANENCY ACT OF 2003

Strike all after the resolving clause and insert in lieu thereof the following:

That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 8) to make the repeal of the estate tax permanent. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; (2) the amendment specified in section 2 of this resolution if offered by Representative Pomeroy of North Dakota or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with our without instructions.

SEC. 2. The amendment referred to in the first section of this resolution is as follows:

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 28

OFFERED BY MR. POMEROY

Strike all after the enacting clause and insert the following:

SECTION 1. AMENDMENT OF 1986 CODE.

(a) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(b) TABLE OF CONTENTS.—

Sec. 1. Amendment of 1986 code.

TITLE I—RESTORATION OF ESTATE TAX; REPEAL OF CARRYOVER BASIS

Sec. 101. Restoration of estate tax; repeal of carryover basis.
Sec. 102. Modifications to estate tax.
Sec. 103. Valuation rules for certain transfers of nonbusiness assets; limitation on minority discounts.

TITLE II—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

Sec. 201. Clarification of economic substance doctrine.
Sec. 202. Penalty for failing to disclose reportable transaction.
Sec. 203. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
Sec. 204. Penalty for understatements attributable to transactions lacking economic substance, etc.
Sec. 205. Modifications of substantial understatement penalty for nonreportable transactions.
Sec. 206. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
Sec. 207. Disclosure of reportable transactions.
Sec. 208. Modifications to penalty for failure to register tax shelters.
Sec. 209. Modification of penalty for failure to maintain lists of investors.
Sec. 210. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
Sec. 211. Understatement of taxpayer's liability by income tax return preparer.
Sec. 212. Penalty on failure to report interests in foreign financial accounts.
Sec. 213. Frivolous tax submissions.
Sec. 214. Regulation of individuals practicing before the department of treasury.
Sec. 215. Penalty on promoters of tax shelters.
Sec. 216. Statute of limitations for taxable years for which listed transactions not reported.
Sec. 217. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.

TITLE III—OTHER PROVISIONS

Sec. 301. Limitation on transfer or importation of built-in losses.
Sec. 302. Disallowance of certain partnership loss transfers.
Sec. 303. No reduction of basis under section 734 in stock held by partnership in corporate partner.
Sec. 304. Repeal of special rules for FASITs.
Sec. 305. Expanded disallowance of deduction for interest on convertible debt.
Sec. 306. Expanded authority to disallow tax benefits under section 269.
Sec. 307. Modifications of certain rules relating to controlled foreign corporations.
Sec. 308. Basis for determining loss always reduced by nontaxed portion of dividends.

Sec. 309. Affirmation of consolidated return regulation authority.
Sec. 310. Extension of customs user fees.

TITLE I—RESTORATION OF ESTATE TAX; REPEAL OF CARRYOVER BASIS

SEC. 101. RESTORATION OF ESTATE TAX; REPEAL OF CARRYOVER BASIS.

(a) IN GENERAL.—Subtitles A and E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001, and the amendments made by such subtitles, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subtitles, and amendments, had never been enacted.

(b) SUNSET NOT TO APPLY.—

(1) Subsection (a) of section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking ''this Act'' and all that follows and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.''.

(2) Subsection (b) of such section 901 is amended by striking '', estates, gifts, and transfers''.

(c) CONFORMING AMENDMENTS.—Subsections (d) and (e) of section 511 of the Economic Growth and Tax Relief Reconciliation Act of 2001, and the amendments made by such subsections, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subsections, and amendments, had never been enacted.

SEC. 102. MODIFICATIONS TO ESTATE TAX.

(a) INCREASE IN EXCLUSION EQUIVALENT OF UNIFIED CREDIT TO $3,000,000.—Subsection (c) of section 2010 (relating to applicable credit amount) is amended by striking all that follows ''the applicable exclusion amount'' and inserting ''. For purposes of the preceding sentence, the applicable exclusion amount is $3,000,000.''.

(b) MAXIMUM ESTATE TAX RATE TO REMAIN AT 49 PERCENT; RESTORATION OF PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.—

(1) Paragraph (1) of section 2001(c) is amended by striking the last 2 items in the table and inserting the following new item:

''Over $2,000,000	$780,800, plus 49% of the excess over $2,000,000.''.

(2) Paragraph (2) of section 2001(c) is amended to read as follows:

''(2) PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.—The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds $10,000,000. The amount of the increase under the preceding sentence shall not exceed the sum of the applicable credit amount under section 2010(c) and $199,200.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying, and gifts made, after December 31, 2003.

SEC. 103. VALUATION RULES FOR CERTAIN TRANSFERS OF NONBUSINESS ASSETS; LIMITATION ON MINORITY DISCOUNTS.

(a) IN GENERAL.—Section 2031 (relating to definition of gross estate) is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsections:

''(d) VALUATION RULES FOR CERTAIN TRANSFERS OF NONBUSINESS ASSETS.—For purposes of this chapter and chapter 12—

''(1) IN GENERAL.—In the case of the transfer of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092)—

''(A) the value of any nonbusiness assets held by the entity shall be determined as if the transferor had transferred such assets directly to the transferee (and no valuation discount shall be allowed with respect to such nonbusiness assets), and

''(B) the nonbusiness assets shall not be taken into account in determining the value of the interest in the entity.

''(2) NONBUSINESS ASSETS.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'nonbusiness asset' means any asset which is not used in the active conduct of 1 or more trades or businesses.

''(B) EXCEPTION FOR CERTAIN PASSIVE ASSETS.—Except as provided in subparagraph (C), a passive asset shall not be treated for purposes of subparagraph (A) as used in the active conduct of a trade or business unless—

''(i) the asset is property described in paragraph (1) or (4) of section 1221(a) or is a hedge with respect to such property, or

''(ii) the asset is real property used in the active conduct of 1 or more real property trades or businesses (within the meaning of section 469(c)(7)(C)) in which the transferor materially participates and with respect to which the transferor meets the requirements of section 469(c)(7)(B)(ii).

For purposes of clause (ii), material participation shall be determined under the rules of section 469(h), except that section 469(h)(3) shall be applied without regard to the limitation to farming activity.

''(C) EXCEPTION FOR WORKING CAPITAL.—Any asset (including a passive asset) which is held as a part of the reasonably required working capital needs of a trade or business shall be treated as used in the active conduct of a trade or business.

''(3) PASSIVE ASSET.—For purposes of this subsection, the term 'passive asset' means any—

''(A) cash or cash equivalents,

''(B) except to the extent provided by the Secretary, stock in a corporation or any other equity, profits, or capital interest in any entity,

''(C) evidence of indebtedness, option, forward or futures contract, notional principal contract, or derivative,

''(D) asset described in clause (iii), (iv), or (v) of section 351(e)(1)(B),

''(E) annuity,

''(F) real property used in 1 or more real property trades or businesses (as defined in section 469(c)(7)(C)),

''(G) asset (other than a patent, trademark, or copyright) which produces royalty income,

''(H) commodity,

''(I) collectible (within the meaning of section 401(m)), or

''(J) any other asset specified in regulations prescribed by the Secretary.

''(4) LOOK-THRU RULES.—

''(A) IN GENERAL.—If a nonbusiness asset of an entity consists of a 10-percent interest in any other entity, this subsection shall be applied by disregarding the 10-percent interest and by treating the entity as holding directly its ratable share of the assets of the other entity. This subparagraph shall be applied successively to any 10-percent interest of such other entity in any other entity.

''(B) 10-PERCENT INTEREST.—The term '10-percent interest' means—

''(i) in the case of an interest in a corporation, ownership of at least 10 percent (by vote or value) of the stock in such corporation,

''(ii) in the case of an interest in a partnership, ownership of at least 10 percent of the capital or profits interest in the partnership, and

''(iii) in any other case, ownership of at least 10 percent of the beneficial interests in the entity.

''(5) COORDINATION WITH SUBSECTION (b).—Subsection (b) shall apply after the application of this subsection.

''(e) LIMITATION ON MINORITY DISCOUNTS.—For purposes of this chapter and chapter 12, in the case of the transfer of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092), no discount shall be allowed by reason of the fact that the transferee does not have control of such entity if the transferee and members of the family (as defined in section 2032A(e)(2)) of the transferee have control of such entity.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

TITLE II—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

SEC. 201. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction has economic substance shall be made as provided in this paragraph.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects and, if there are any Federal tax effects, also apart from any foreign, State, or local tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating

the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) SUBSTANTIAL NONTAX PURPOSE.—In applying subclause (II) of paragraph (1)(B)(i), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

''(D) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(E) TREATMENT OF LESSORS.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 13, 2003.

SEC. 202. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

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

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 203. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

''SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for

the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which paragraph (1) applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a continuing financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 204. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(m)(1)) for the transaction giving rise to the claimed tax benefit or the transaction was not respected under section 7701(m)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 13, 2003.

SEC. 205. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 206. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 207. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

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

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''

(3)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

SEC. 208. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

''SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the reportable transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 209. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 210. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 211. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 212. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 213. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 214. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure.''

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''

SEC. 215. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 216. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(e)(1) (relating to substantial omission of items for income taxes) is amended by adding at the end the following new subparagraph:

''(C) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the tax for such taxable year may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the time the return is filed. This subparagraph shall not apply to any taxable year if the time for assessment or beginning the proceeding in court has expired before the time a transaction is treated as a listed transaction under section 6011.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

SEC. 217. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

TITLE III—OTHER PROVISIONS

SEC. 301. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATIONS ON BUILT-IN LOSSES.—

''(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this paragraph if—

''(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

''(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

''(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.''

''(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

''(A) IN GENERAL.—If—

''(i) property is transferred in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

''(ii) the transferee's aggregate adjusted bases of the property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

''(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

''(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.''

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

''(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act.

SEC. 302. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS TRANSFERS.

(a) TREATMENT OF CONTRIBUTED PROPERTY WITH BUILT-IN LOSS.—Paragraph (1) of section 704(c) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following:

''(C) if any property so contributed has a built-in loss—

''(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

''(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value immediately after the contribution.

For purposes of subparagraph (C), the term 'built-in loss' means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value immediately after the contribution.''

(b) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY ON TRANSFER OF PARTNERSHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN LOSS.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 743 (relating to optional adjustment to basis of partnership property) is amended by inserting before the period ''or unless the partnership has a substantial built-in loss immediately after such transfer''.

(2) ADJUSTMENT.—Subsection (b) of section 743 is amended by inserting ''or with respect to which there is a substantial built-in loss immediately after such transfer'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BUILT-IN LOSS.—Section 743 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BUILT-IN LOSS.—

''(1) IN GENERAL.—For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the transferee partner's proportionate share of the adjusted basis of the partnership property exceeds by more than $250,000 the basis of such partner's interest in the partnership.

''(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.''

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 743 is amended to read as follows:

''SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BUILT-IN LOSS.''

(B) The table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking the item relating to section 743 and inserting the following new item:

''Sec. 743. Adjustment to basis of partnership property where section 754 election or substantial built-in loss.''

(c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS REDUCTION.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 734 (relating to optional adjustment to basis of undistributed partnership property) is amended by inserting before the period ''or unless there is a substantial basis reduction''.

(2) ADJUSTMENT.—Subsection (b) of section 734 is amended by inserting ''or unless there is a substantial basis reduction'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BASIS REDUCTION.—Section 734 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BASIS REDUCTION.—

''(1) IN GENERAL.—For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds $250,000.

''(2) REGULATIONS.—

''For regulations to carry out this subsection, see section 743(d)(2).''

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 734 is amended to read as follows:

''SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BASIS REDUCTION.''

(B) The table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking the item relating to section 734 and inserting the following new item:

''Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.''

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to transfers after the date of the enactment of this Act.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall apply to distributions after the date of the enactment of this Act.

SEC. 303. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 304. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,'' and inserting ''or a REMIC to which part IV of subchapter M applies,''.

(3) Paragraph (1) of section 582(c) is amended by striking '', and any regular interest in a FASIT,''.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5) Paragraph (5) of section 860G(a) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(6) Subparagraph (C) of section 1202(e)(4) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(7) Subparagraph (C) of section 7701(a)(19) is amended by adding ''and'' at the end of clause (ix), by striking '', and'' at the end of clause (x) and inserting a period, and by striking clause (xi).

(8) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this

section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act.

(B) TRANSFER OF ADDITIONAL ASSETS NOT PERMITTED.—Except as provided in regulations prescribed by the Secretary of the Treasury or the Secretary's delegate, subparagraph (A) shall cease to apply as of the earliest date after the date of the enactment of this Act that any property is transferred to the FASIT.

SEC. 305. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by striking ''or a related party'' and inserting ''or equity held by the issuer (or any related party) in any other person''.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 163(l) is amended by striking ''or a related party'' in the material preceding subparagraph (A) and inserting ''or any other person''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act.

SEC. 306. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

''(a) IN GENERAL.—If—

''(1)(A) any person acquires stock in a corporation, or

''(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

''(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance,

then the Secretary may disallow such deduction, credit, or other allowance.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 307. MODIFICATIONS OF CERTAIN RULES RELATING TO CONTROLLED FOREIGN CORPORATIONS.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive investment company) is amended by adding at the end the following flush sentence:

''Such term shall not include any period if there is only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i) of subpart F income of such corporation for such period.''

(b) DETERMINATION OF PRO RATA SHARE OF SUBPART F INCOME.—Subsection (a) of section 951 (relating to amounts included in gross income of United States shareholders) is amended by adding at the end the following new paragraph:

''(4) SPECIAL RULES FOR DETERMINING PRO RATA SHARE OF SUBPART F INCOME.—The pro rata share under paragraph (2) shall be determined by disregarding—

''(A) any rights lacking substantial economic effect, and

''(B) stock owned by a shareholder who is a tax-indifferent party (as defined in section 7701(m)(3)) if the amount which would (but for this paragraph) be allocated to such shareholder does not reflect such shareholder's economic share of the earnings and profits of the corporation.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years on controlled foreign corporation beginning after February 13, 2003, and to taxable years of United States shareholder in which or with which such taxable years of controlled foreign corporations end.

SEC. 308. BASIS FOR DETERMINING LOSS ALWAYS REDUCED BY NONTAXED PORTION OF DIVIDENDS.

(a) IN GENERAL.—Section 1059 (relating to corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

''(g) BASIS FOR DETERMINING LOSS ALWAYS REDUCED BY NONTAXED PORTION OF DIVIDENDS.—The basis of stock in a corporation (for purposes of determining loss) shall be reduced by the nontaxed portion of any dividend received with respect to such stock if this section does not otherwise apply to such dividend.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after the date of the enactment of this Act.

SEC. 309. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 310. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking September 30, 2003' and inserting September 30, 2013'.

Amend the title so as to read: ''A bill to amend the Internal Revenue Code of 1986 to restore the estate tax, to limit its applicability to estates of over $3,000,000, to curb abusive tax shelters, and for other purposes.''

Mr. REYNOLDS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clauses 8 and 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution and then on the question of the Speaker's approval of the Journal, if ordered.

The vote was taken by electronic device, and there were—yeas 227, nays 200, not voting 7, as follows:

[Roll No. 284]

YEAS—227

Aderholt	Gibbons	Osborne
Akin	Gilchrest	Ose
Bachus	Gillmor	Otter
Baker	Gingrey	Oxley
Ballenger	Goode	Paul
Barrett (SC)	Goodlatte	Pearce
Bartlett (MD)	Goss	Pence
Barton (TX)	Granger	Peterson (PA)
Bass	Graves	Petri
Beauprez	Green (WI)	Pickering
Bereuter	Greenwood	Pitts
Biggert	Gutknecht	Platts
Bilirakis	Harris	Pombo
Bishop (UT)	Hart	Porter
Blackburn	Hastings (WA)	Portman
Blunt	Hayes	Pryce (OH)
Boehlert	Hayworth	Putnam
Boehner	Hefley	Quinn
Bonilla	Hensarling	Radanovich
Bonner	Herger	Ramstad
Bono	Hobson	Regula
Boozman	Hoekstra	Rehberg
Bradley (NH)	Hostettler	Renzi
Brown (SC)	Houghton	Reynolds
Brown-Waite, Ginny	Hulshof	Rogers (AL)
Burgess	Hunter	Rogers (KY)
Burns	Hyde	Rogers (MI)
Burr	Isakson	Rohrabacher
Burton (IN)	Issa	Ros-Lehtinen
Buyer	Istook	Royce
Calvert	Janklow	Ryan (WI)
Camp	Jenkins	Ryun (KS)
Cannon	Johnson (CT)	Saxton
Cantor	Johnson (IL)	Schrock
Capito	Johnson, Sam	Sensenbrenner
Carter	Jones (NC)	Sessions
Castle	Keller	Shadegg
Chabot	Kelly	Shaw
Chocola	Kennedy (MN)	Shays
Coble	King (IA)	Sherwood
Cole	King (NY)	Shimkus
Collins	Kingston	Shuster
Cox	Kirk	Simmons
Crane	Kline	Simpson
Crenshaw	Knollenberg	Smith (MI)
Cubin	Kolbe	Smith (NJ)
Culberson	LaHood	Smith (TX)
Cunningham	Latham	Souder
Davis, Jo Ann	LaTourette	Stearns
Davis, Tom	Leach	Sullivan
Deal (GA)	Lewis (CA)	Sweeney
DeLay	Lewis (KY)	Tancredo
DeMint	Linder	Tauzin
Diaz-Balart, L.	LoBiondo	Taylor (NC)
Diaz-Balart, M.	Lucas (OK)	Terry
Doolittle	Manzullo	Thomas
Dreier	McCotter	Thornberry
Duncan	McCrery	Tiahrt
Dunn	McHugh	Tiberi
Ehlers	McInnis	Toomey
Emerson	McKeon	Turner (OH)
English	Mica	Upton
Everett	Miller (FL)	Vitter
Feeney	Miller (MI)	Walden (OR)
Ferguson	Miller, Gary	Walsh
Flake	Moran (KS)	Wamp
Fletcher	Murphy	Weldon (FL)
Foley	Musgrave	Weldon (PA)
Forbes	Myrick	Weller
Fossella	Nethercutt	Whitfield
Franks (AZ)	Neugebauer	Wicker
Frelinghuysen	Ney	Wilson (NM)
Gallegly	Northup	Wilson (SC)
Garrett (NJ)	Norwood	Wolf
Gerlach	Nunes	Young (AK)
	Nussle	Young (FL)

NAYS—200

Abercrombie	Baca	Bell
Ackerman	Baird	Berkley
Alexander	Baldwin	Berman
Allen	Ballance	Berry
Andrews	Becerra	Bishop (GA)

Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (OK)
Case
Clay
Clyburn
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Hall
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Wexler
Woolsey
Wu
Wynn

NOT VOTING—7

Brady (TX)
Carson (IN)
Conyers
Gephardt
Lofgren
Smith (WA)
Weiner

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATHAM) (during the vote). Members are reminded there are 2 minutes remaining on this vote.

□ 1201

Messrs. PASCRELL, OBEY, BELL, and Ms. BERKLEY changed their vote from ''yea'' to ''nay.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. SLAUGHTER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 230, noes 199, not voting 5, as follows:

[Roll No. 285]

AYES—230

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—199

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (OK)
Case
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Hall
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Wexler
Woolsey
Wu
Wynn

NOT VOTING—5

Carson (IN)
Gephardt
Lofgren
Smith (WA)
Weiner

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are reminded there are 2 minutes remaining on this vote.

□ 1208

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the pending business is the question of the Speaker's approval of the Journal of the last day's proceedings.

The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. SLAUGHTER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 365, noes 59,

answered ''present'' 1, not voting 9, as follows:

[Roll No. 286]

AYES—365

Abercrombie	Dingell	Kirk
Ackerman	Dooley (CA)	Kleczka
Akin	Doolittle	Kline
Alexander	Doyle	Knollenberg
Allen	Dreier	Kolbe
Andrews	Duncan	LaHood
Baca	Dunn	Lampson
Bachus	Edwards	Langevin
Baker	Ehlers	Lantos
Ballance	Emanuel	Larson (CT)
Ballenger	Emerson	Latham
Barrett (SC)	Engel	LaTourette
Bartlett (MD)	Eshoo	Leach
Barton (TX)	Etheridge	Lee
Bass	Everett	Levin
Beauprez	Farr	Lewis (CA)
Becerra	Fattah	Lewis (GA)
Bell	Feeney	Lewis (KY)
Bereuter	Ferguson	Linder
Berkley	Flake	Lipinski
Berman	Fletcher	Lowey
Biggert	Foley	Lucas (KY)
Bilirakis	Forbes	Lucas (OK)
Bishop (GA)	Frank (MA)	Lynch
Bishop (NY)	Franks (AZ)	Majette
Bishop (UT)	Frelinghuysen	Maloney
Blackburn	Frost	Manzullo
Blumenauer	Gallegly	Markey
Blunt	Garrett (NJ)	Marshall
Boehlert	Gerlach	Matsui
Boehner	Gibbons	McCarthy (MO)
Bonilla	Gilchrest	McCarthy (NY)
Bonner	Gingrey	McCollum
Bono	Gonzalez	McCotter
Boozman	Goode	McCrery
Boswell	Goodlatte	McHugh
Boucher	Gordon	McInnis
Boyd	Goss	McIntyre
Bradley (NH)	Granger	McKeon
Brady (TX)	Graves	Meehan
Brown (SC)	Green (TX)	Meek (FL)
Brown, Corrine	Green (WI)	Meeks (NY)
Brown-Waite, Ginny	Greenwood	Menendez
	Grijalva	Mica
Burgess	Hall	Michaud
Burns	Harman	Millender-McDonald
Burr	Harris	
Burton (IN)	Hart	Miller (FL)
Buyer	Hastings (WA)	Miller (MI)
Calvert	Hayes	Miller (NC)
Camp	Hayworth	Miller, Gary
Cannon	Hensarling	Mollohan
Cantor	Herger	Moran (KS)
Capito	Hill	Moran (VA)
Capps	Hinojosa	Murphy
Cardin	Hobson	Murtha
Cardoza	Hoeffel	Musgrave
Carson (OK)	Hoekstra	Myrick
Carter	Holden	Nadler
Case	Honda	Napolitano
Castle	Hooley (OR)	Neal (MA)
Chabot	Hostettler	Nethercutt
Chocola	Houghton	Neugebauer
Clyburn	Hoyer	Ney
Coble	Hunter	Northup
Cole	Hyde	Norwood
Collins	Inslee	Nunes
Cooper	Isakson	Nussle
Cox	Israel	Obey
Cramer	Issa	Ortiz
Crenshaw	Istook	Osborne
Crowley	Jackson (IL)	Ose
Cubin	Jackson-Lee (TX)	Otter
Culberson		Owens
Cummings	Janklow	Oxley
Cunningham	Jenkins	Pallone
Davis (AL)	John	Pascrell
Davis (CA)	Johnson (CT)	Pastor
Davis (FL)	Johnson (IL)	Paul
Davis (IL)	Johnson, E. B.	Payne
Davis (TN)	Johnson, Sam	Pearce
Davis, Jo Ann	Jones (NC)	Pelosi
Davis, Tom	Jones (OH)	Pence
Deal (GA)	Kanjorski	Petri
DeGette	Kaptur	Pickering
Delahunt	Keller	Pitts
DeLauro	Kelly	Platts
DeLay	Kildee	Pombo
DeMint	Kilpatrick	Pomeroy
Deutsch	Kind	Porter
Diaz-Balart, L.	King (IA)	Portman
Diaz-Balart, M.	King (NY)	Price (NC)
Dicks	Kingston	Pryce (OH)
Putnam	Saxton	Terry
Quinn	Schiff	Thomas
Radanovich	Schrock	Thornberry
Rahall	Scott (GA)	Tiahrt
Rangel	Scott (VA)	Tiberi
Regula	Sensenbrenner	Tierney
Rehberg	Serrano	Toomey
Renzi	Sessions	Turner (OH)
Reyes	Shaw	Turner (TX)
Reynolds	Shays	Upton
Rodriguez	Sherman	Van Hollen
Rogers (AL)	Sherwood	Velazquez
Rogers (KY)	Shimkus	Vitter
Rogers (MI)	Shuster	Walden (OR)
Rohrabacher	Simmons	Walsh
Ros-Lehtinen	Simpson	Wamp
Ross	Skelton	Watson
Rothman	Smith (MI)	Watt
Roybal-Allard	Smith (NJ)	Waxman
Royce	Smith (TX)	Weldon (FL)
Ruppersberger	Snyder	Weldon (PA)
Rush	Solis	Wexler
Ryan (OH)	Souder	Whitfield
Ryan (WI)	Spratt	Wilson (NM)
Ryun (KS)	Stearns	Wilson (SC)
Sanchez, Linda T.	Sullivan	Wolf
	Tanner	Woolsey
Sanchez, Loretta	Tauzin	Wynn
Sanders	Taylor (MS)	Young (AK)
Sandlin	Taylor (NC)	Young (FL)

NOES—59

Aderholt	Hastings (FL)	Sabo
Baird	Hefley	Schakowsky
Baldwin	Holt	Shadegg
Berry	Hulshof	Slaughter
Brady (PA)	Jefferson	Stark
Brown (OH)	Kennedy (MN)	Stenholm
Capuano	Kennedy (RI)	Strickland
Clay	Kucinich	Sweeney
Conyers	Larsen (WA)	Tauscher
Costello	LoBiondo	Thompson (CA)
Crane	Matheson	Thompson (MS)
DeFazio	McDermott	Towns
English	McGovern	Udall (CO)
Evans	McNulty	Udall (NM)
Filner	Miller, George	Visclosky
Ford	Moore	Waters
Fossella	Oberstar	Weller
Gillmor	Olver	Wicker
Gutierrez	Peterson (MN)	Wu
Gutknecht	Ramstad	

ANSWERED ''PRESENT''—1

Tancredo

NOT VOTING—9

Carson (IN)	Hinchey	Smith (WA)
Doggett	Lofgren	Stupak
Gephardt	Peterson (PA)	Weiner

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are reminded there are 2 minutes remaining on this vote.

□ 1215

So the Journal was approved.

The result of the vote was announced as above recorded.

□ 1215

DEATH TAX REPEAL PERMANENCY ACT OF 2003

Ms. DUNN. Mr. Speaker, pursuant to House Resolution 281, I call up the bill (H.R. 8) to make the repeal of the estate tax permanent, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Pursuant to House Resolution 281, the bill is considered read for amendment.

The text of H.R. 8 is as follows:

H.R. 8

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 ''Death Tax Repeal Permanency Act of 2003''.

SEC. 2. ESTATE TAX REPEAL MADE PERMANENT.

Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to title V of such Act.

The SPEAKER pro tempore. After 1 hour of debate on the bill, it shall be in order to consider the amendment printed in House Report 108–157, if offered by the gentleman from North Dakota (Mr. POMEROY) or his designee, which shall be considered read and shall be debatable for 1 hour, equally divided and controlled by a proponent and an opponent.

The gentlewoman from Washington (Ms. DUNN) and the gentleman from California (Mr. STARK) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentlewoman from Washington (Ms. DUNN).

Ms. DUNN. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of H.R. 8, the Death Tax Repeal Permanency Act of 2003.

The bill before us has been cosponsored by over 200 Members of the House from both sides of the aisle. This approach is simple. It makes elimination of the death tax permanent. Although the bill is only one short sentence, it will have a powerful impact on the millions of people we represent.

Two years ago, Congress voted to phase out and repeal the death tax. Due to the Byrd rule, however, the tax will come back in full force January 1, 2011, imposing a maximum tax of 55 percent on estates. In the last Congress, a majority of the House voted on three occasions to remove this sunset in the law and make repeal permanent. We are here today to complete this unfinished business.

I have no doubt we will hear a great deal of rhetoric from those who want to keep the death tax alive. Repeal only helps the wealthy, they will say. It will reduce charitable giving; it will increase the deficit; it will jeopardize Social Security. Time and again these arguments have been raised. The simple truth is none of them holds water.

Does repeal of the death tax help only the wealthy? The Joint Economic Committee in 1998 underscored how repeal of the death tax will help minority-owned businesses. Both the National Black Chamber of Commerce and the United States Hispanic Chamber of Commerce support repeal of the death tax.

Robert Johnson, the founder of Black Entertainment Television, said in 2001 that ''elimination of the estate tax will help close the wealth gap in this Nation between African American families and white families.''

Supporters of the estate tax say that it does not really affect rural communities or farmers. Mr. Speaker, I represent rural communities and timber landowners. Earlier this year experts at the United States Forest Service published findings on just how devastating the tax affected rural communities.

Over a 10-year period, 36 percent of forest estates owed the Federal estate tax. In 40 percent of the cases where a Federal estate tax was due, timber or land had to bo sold to pay part or all of that tax. The amount of forest land harvested to pay the Federal estate tax was approximately 2.6 million acres every year. Forest land sold was nearly 1.3 million acres per year; and roughly 29 percent of the land sold was developed, or it was turned into subdivisions or converted to other uses.

Supporters of the tax say just lift the exemption amount, but that does not solve the problem. As inflation erodes the value of the exemption level, it will just mean more acres will be sold or harvested or developed. This is not the answer.

They say repeal of the estate tax will reduce charitable giving. In ''The CPA Journal'' of August 2001, Arthur Schmidt said, ''Philanthropy will likely increase as a result of the repeal of the estate tax, both at death because of the greater net resources available, or during the lifetime of the taxpayer as a result of the remaining tax efficiency of the charitable income tax deduction. In either case, the net present value of philanthropy will likely increase.''

Does the estate tax really promote charitable giving? IRS statistics show that in four out of five cases of taxable estates no bequest is made. No bequest is made in four out of five cases.

Would estate tax repeal jeopardize Social Security benefits? Federal receipts as a result of the death tax represent less than 1.5 of all total revenues. None of that money goes to Social Security for the trust funds, and eliminating the tax will in no way affect Social Security benefits, not one bit.

The death tax does not prevent accumulation of wealth. It does not promote charitable giving. It does not lead to increased economic growth. It is not a tax on sin. It is a tax on virtuous activities like savings and investment, activities we should be encouraging.

It increases the cost of capital for small businesses. It affects rural communities. It imposes financial burdens on minority businessmen and -women. In sum, the case for the death tax has been made, and it has been over and over again in this House thoroughly rejected.

Woodrow Wilson signed the death tax into law in 1916, and the time has come to get rid of it for once and for all. I urge my colleagues to join me in supporting H.R. 8 and opposing the substitute amendment and providing small businessmen and -women, family farmers and minorities with the capital they will need to expand, to create jobs and grow the economy.

Mr. Speaker, I reserve the balance of my time.

Mr. STARK. Mr. Speaker, I yield myself 6 minutes.

I rise today to oppose this repeal of the estate tax. In the very same week that the Republicans are willing, as they did last night, to shortchange seniors on a Medicare prescription drug benefit, they are willing to go out and spend $60 billion a year on a tax cut for the richest 1 percent. Kind of a new form of shock and awe, along with the same kind of truth that they use in weapons of mass destruction.

This bill before us cost $163 billion. It occurs only in the last 3 years of the 10-year budget window, and it is on top of the $1.3 trillion tax cuts signed into law in 2001 and the recent $350 billion, or trillion bucks when we strip away all the accounting gimmicks.

The gentlewoman from Washington misspoke. Only 642 or 1.4 percent of taxable estates had farm assets making up half or more of the gross estate in the last reported statistics; 776 or 1.6 percent of taxable estates had business or partnership assets comprising half or more of their gross estate. One percent of small businesses and farms, one percent, of those estates would have been forced to liquidate any assets at all to pay the current level of estate tax.

So here they are responding, as the Republicans will, to the Mars family who spent $1 million lobbying already to get this through and the Connell Company and the Koch Industries, Incorporated, Hallmark Cards. So they have got a few very, very rich people who would like to get away without paying their fair share of what it keeps to make America great.

I suspect that what is really troubling the Republicans is they are worried about the efficacy and ability of their children to succeed. That is understandable. If one is raised and coddled by rich parents and never have to work, they probably need some protection. Most of the money that they are sucking out of our Federal revenues is money that we are taking out of programs like Head Start, Leave No Child Behind, Medicare, health insurance for children, things that will make healthy and strong families.

Warren Buffett who earned some money on his own, something that my Republicans do not seem to understand, most of the people opposing this bill worked at the public trough all their lives, never had a job in free enterprise or else they inherited their money. So if they listen to somebody like Warren Buffett who said we come closer to a true meritocracy than anywhere else around the world, we have mobility so people with talents can be put to the best use. Without the estate tax, we in effect will have an aristocracy of wealth which means we pass down the ability to command the resources of the Nation based on heredity rather than merit. I suppose that is something the Republicans need to keep themselves in office.

He likened the tax repeal to choosing the 2020 Olympic team by picking the eldest son of gold medal winners in the 2000 Olympics. We would regard that as absolute folly in athletic competition. Yet my colleagues on the other side of the aisle, having been seduced by, I guess, they had 1,200 folks last night raise 3 or $4 million for the President, but they are worried about every one of them, but not about the 40 million seniors who they denied decent Medicare prescription drug benefits last night because they felt they did not have the money.

The reason they do not have the money is they are giving it away to less than 10,000 people a year. So as they help 10,000 people, who I might add, make that the kids who are going to inherit this, that is, 40,000 a year, so they are going to give away $60 billion to 40,000 rich kids every year, and they are going to deny 40 million senior citizens the health care they deserve in their old age; and some of my colleagues may snicker about that, but those are mostly you do not have anything left to leave and so I say that it is the same old same old: Republicans pandering to the rich to entrench themselves here and people whose children cannot make it on their own trying to figure out how to support them in an era where they should be learning to make it on their own if they had the right kind of education, which again the Republicans are denying us.

So it is very clear, it is the same old message over and over. Billions of dollars to a few very rich people, turn your back on those who need the help they should be getting from society.

Mr. Speaker, I reserve the balance of my time.

Ms. DUNN. Mr. Speaker, I yield myself such time as I may consume.

I want to remind the gentleman from California, whose State is in very financial straits, that in the year 2002 his State and estates in that State sent to the Federal Government $4,201,408. Actually that is $4,201,408,000 to the Federal Government, which I am sure his State could have made use of.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. SAM JOHNSON), a great member of the Committee on Ways and Means and very much in touch with his constituents on repealing the death tax.

(Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend his remarks.)

□ 1230

Mr. SAM JOHNSON of Texas. Mr. Speaker, I thank the gentlewoman from Washington (Ms. DUNN) for yielding me this time.

I think sometimes the Members on the other side forget that this is a Nation built on free enterprise. Free enterprise means you start with nothing and you make something out of it. And guess what? It's great that you can turn it over to your kids when you die.

A great bill this is for America. I strongly support the bill to permanently repeal the death tax. Members of this House have overwhelmingly voted to repeal these destructive taxes that can wipe out a lifetime of work. For many businesses, small businesses

especially, death taxes loom over their very future existence. These taxes have driven far too many business decisions for far too long. Whether it is purchasing extra life insurance that benefits only the tax man or structuring the form of a company ownership so that a small business is not wiped out on the death of a key employee, the death tax has been in the driver's seat of too many small business decisions.

Two years ago, we voted to repeal this tax and let the small business owners get on with making their businesses successful instead of planning for their own demise. But like the arcade game ''Whack a Mole,'' this tax keeps popping up and rearing its ugly head. Many of our Democrat colleagues are arguing for something less than full repeal of the death tax. Class warfare does not work on this issue.

Americans strive to be successful and then share the fruits of their labor with their children. Americans support full repeal of the death tax. They do not want a toll booth on the road to after life. Mr. Speaker, just as you cannot be a little bit dead, this tax cannot be a little bit repealed. Imposing taxes on the value of a lifetime of work is just wrong and we must end this tax permanently.

Mr. STARK. Mr. Speaker, I am happy to yield 4 minutes to the gentleman from Michigan (Mr. LEVIN), a senior member of the Committee on Ways and Means, who, with his brother, understands that hard work and education can lead to a successful career without inheriting a lot of money.

(Mr. LEVIN asked and was given permission to revise and extend his remarks.)

Mr. LEVIN. Well, so let us look at the facts, Mr. Speaker. The latest year for which we have exact data shows this: Of all of the taxable estates, only 1 percent would be considered family farms, not the millions that the gentlewoman from Washington (Ms. DUNN) mentioned, but hundreds. That amounts to about 400 people in the entire United States.

As to family-owned businesses in that year for which we have exact data, of the 2.3 million deaths, only 776 decedents had taxable estates. So when you add up the small businesses and family farms, 1.6 of all the estates paid the estate tax.

So what is going on here? We are talking about, at the most, thousands. A few thousand. The Pomeroy substitute would increase the exclusion and, as a result, 99.65 percent of all estates would not be subject to an estate tax. So that means two-fifths of 1 percent would be subject to the estate tax.

So why, in view of that, take away $162 billion the last 3 years of this 10-year cycle and $800 billion out of Federal revenues the next 10 years? Eight hundred billion dollars. Well, the main reason is cited today in an article by David Broder based on an article, an op-ed, a week before by Grover Norquist, where he said the Republicans can't do this all at once. They are now doing it step by step. This is David Broder's analysis, and it is so correct: ''The consequence of this is a massive rollback in Federal revenue,'' ''and what he (Grover Norquist) regards as a desirable shrinkage of Federal services and benefits. In short, the goal is a system of government wiped clean, on both the revenue and spending side, of almost a century's accumulation of social programs designed to provide a safety net beneath the private economy.''

That is what is at stake here. There is class warfare against everybody except, in this case, one-quarter of 1 percent of the population. And when you take into account all the other tax cuts, it is a class warfare against all but the very, very wealthy.

Last night we tried to add to the Medicare benefit $400 billion to $500 billion and the Republicans said no. They traded $400 billion to $500 billion in Medicare benefits that we wanted to add that would make it real for the seniors of this country, for a tax cut for a few hundred, maybe a few thousand people. Not millions. Not hundreds of thousands. Not even tens of thousands. But a few hundred, or several hundreds of people. That is the Republican value system. That is their option.

So I wish they would not bring up this smoke screen of family farms and small businesses. What they are trying to do is to end this effort to provide a safety net and a step up, a hand up. Not a hand out, but a hand up the ladder for people in the middle-income and low-income groups of America.

That is where my Republican colleagues stand. Let us today show where we stand and vote for the Pomeroy amendment and against this unfortunate and not at all defensible repeal.

Ms. DUNN. Mr. Speaker, I yield myself such time as I may consume.

I think the gentleman has created not just a near miss, but a big, big miss when we speaks about family farms. Families own 99 percent of the Nation's farms and ranches, and they are capital intensive businesses. Their assets are not liquid, and so for that reason they are very much at risk at having to pay very large estate taxes. Nearly 20 percent of farmers have paid Federal estate taxes in the previous 5 years. Seventy-seven percent of farmers report that they spent money each year on estate planning.

Not only are we hitting the family farms and the people who are employed by them, but we are also wasting dollars that go into this economy not for the purpose of stimulating this economy, but to pay for life insurance policies, estate planning, and everything else that is there when there is unpredictability and they need to provide for the future of their business and the business that employs so many people throughout the United States.

Mr. Speaker, I yield 3 minutes to the gentleman from Arizona (Mr. HAYWORTH), a very strong member of the Committee on Ways and Means who has been close to his folks at home on this issue and who has done a great job for us on codifying the issue in the State of Arizona.

Mr. HAYWORTH. Mr. Speaker, I thank my colleague from Washington State for yielding me this time and for the recognition.

It is interesting to hear the rhetoric so far and the lectures that come from the left and the far left on this matter. They seek to find logic in their illogic. On one hand they tell us that this only affects a very few people. Glaringly omitted from their diatribe against accomplishment is the fact that those very few people, when we take this tax in totality and look at it, account for a little more than 1 percent of total revenues to the Federal Government in any given year.

So understand that the impact here would not tear asunder the safety net as merchants of fear would have us believe. Quite the contrary. Indeed, rather than resorting to the politics of fear, why not embrace the initiatives of opportunity. Stop and think about the small businesses across America that are family owned, the people they employ. Indeed, we know in rural communities that rural areas are affected disproportionately by this.

And though my friend talks about a small percentage of family farms, I think it is safe to say that those family farms impact other businesses, such as farm machinery businesses in their town, grocery stores in their town, and other opportunities for economic advancement. There is a multiplier effect.

Indeed, as we take a look at this, the real life experiences of two Arizonans come to mind: One, a lady living down in Tucson who stopped me and said, you know, my dad had a job, and it was not that of a high-falutin tycoon. He was a milkman in Southern California. After his days in World War II he came home. She said her mom passed away, and her dad made some wise investments. He was thrifty. Then her dad found out he had a terminal illness. He had not spent years in estate planning. He was just the kind of guy for whom thrift and initiative was a byword, and his estate had accumulated to over $6 million. And now, as he had passed away from this terminal illness, this lady and her siblings were confronted with giving over half of her father's estate to the government.

Or take the example of the 1994 Democratic nominee for Governor in the State of Arizona, Eddie Basha, a proponent of eliminating the death tax. Why? Because he is in the grocery business. The grocery business is capital intensive. He wants to pass the business on to his children. Small wonder that my friend Eddie has left the Democratic party and now is a registered Independent.

But, friends, whether you are a Republican, Democrat, Independent, Libertarian, or Vegetarian, you understand this: There should be no taxation without respiration. The fact is, those who work hard and save and pass their businesses down, whether in the minority community, the Hispanic community, the African American community, those respective of Chambers of Commerce embrace this idea. Because by getting the wealth down intergenerationally, we can, in fact, encourage jobs and investments. Vote ''yes'' on this measure. Put the death tax to death.

Mr. STARK. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Washington (Mr. MCDERMOTT).

Mr. MCDERMOTT. Mr. Speaker, I guess we are all in touch with our constituents. Mine was quoted today. Bill Gates, Sr. lives in my district, and he said the principal issue is the growing budget deficit. You cannot run a $400 billion deficit year after year and go around repealing taxes at the same time.

Now, I learned in Sunday school, and it may surprise some of you, but I went to Sunday school, and I learned that you cannot take anything with you when you die. But it is not fair to heap $800 billion of additional debt on your kids as you go out of sight.

This argument we are having here today is an old one in this society. We made the decision between John Adams and Thomas Jefferson that we were not going to have primogeniture in this country; that you could not pass everything on to your eldest son and that was it. We said everybody ought to start with an even shot, men and women. We have come a long way using that. But now we are saying that somebody who inherited from his father or his mother, millions and millions and millions of dollars, should get it just because he was born lucky.

Now, I have read the Bible and I have looked around and I do not find that anywhere, that if you are born lucky, as they say, some guys were born on third base and they think they hit a triple, but this is not something where you have a God-given right to that. You have a God-given right in this country to have an equal shot.

As for the farmers, I listened to my colleague from Washington go on and on and on about the farmers. I have a letter here from the National Farmers Union dated 16 June. ''I write on behalf of 300,000 farmers with the National Farmers Union. There is no evidence that the estate tax has forced the liquidation of any farms, and existing estate tax provisions already exempt 98 percent of all farms and ranches.'' By increasing the level of the estate tax, as we will get an opportunity with the Pomeroy substitute, to $4 million per individual, 99.5 percent of America's agricultural producers would be exempt from any State liability.

Now, if the farmers are who we are arguing about here, 300,000 of them just spoke, and they say this is baloney. In fact, the letter goes on to say that, ''we need that money for crop supports and conservation and all the other things that government provides.'' So they understand that having a government that can provide services is important.

□ 1245

Mr. Speaker, if we give away all of the money, we are going to come back here next year and say we cannot do conservation, we cannot do crop subsidies, we cannot do anything because we do not have the money. These farmers are not stupid. They understand. I think we ought to vote for the Pomeroy amendment.

Ms. DUNN. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. MANZULLO), the chairman of the Committee on Small Business.

Mr. MANZULLO. Mr. Speaker, the death tax falls most heavily on small businesses because they are asset rich but cash poor. This bill allows small businesses to be passed from one generation to the next without having to sell assets to pay the punitive tax. This bill is not about Bill Gates. It is not about Warren Buffett. If they have problems with repealing the death tax, let them write a check to the government.

This bill is about the Beuth family of Winnebago, Illinois, and the Hall family of Ogle County, Illinois, who live in my congressional district. Richard and Judy Beuth of Seward almost lost the family farm several years ago when Richard's father died and the IRS hit them with a $185,000 death tax bill. Factual, not philosophical, factual. Not Warren Buffett, not Bill Gates, but Richard and Judy Beuth of Seward, Illinois. Gary Hall and his four sisters of Lindenwood had to sell equipment, had to sell part of their land, and take out huge loans to pay a $2.7 million death tax bill they received shortly after their father died in 1996. Real live people, real live farmers, my constituents, forced to go out of business because of the capital-intensive farming operations that they have to make their living.

This tax is immoral. It has devastated too many family farms and mom and pop businesses. These families worked hard all their lives to put food on the dinner tables, and this is about giving that family farm, that family business on to succeeding generations. Of all of the small businesses in this country, fewer than 30 percent are passed on to succeeding generations and fewer than 13 percent make it to the third generation. I urge that this bill to repeal the death tax be made permanent.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would inquire of the gentleman from Illinois (Mr. MANZULLO) if he would be willing to engage with me for a moment. The two constituents mentioned, would they not have been covered under the Pomeroy amendment?

Mr. MANZULLO. Mr. Speaker, will the gentleman yield?

Mr. STARK. I yield to the gentleman from Illinois.

Mr. MANZULLO. No, because the estates would have been more than that.

Mr. STARK. The estate on which they paid $185,000 in tax, how much was the farm worth?

Mr. MANZULLO. It was probably worth more than the $3 million.

Mr. STARK. Reclaiming my time, so it would be covered by the Pomeroy amendment. I just suggest that many of these horror stories of people who are quite fortunate would be covered under the Pomeroy amendment.

Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. KLECZKA).

(Mr. KLECZKA asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. KLECZKA. Mr. Speaker, the previous gentleman who spoke indicated that the estate tax is immoral. Do Members know what is more immoral? Giving this tax relief to the wealthiest individuals in this country and passing it on through national debt to our children and our grandchildren.

The action we take today, which will cost over $800 billion in the next 10 years after fully effective, will be put on the national debt of the country to be paid back by our kids and grandkids. Boy, are we generous. Mr. Speaker, the only good thing about today's bill to repeal the estate tax for the billionaires of this country is that it is dead in the Senate, so all of the talk and debate today and the vote we will have later is for naught because the Senate is going to kill it. That is the good news. But let us see what we have done in this House and Congress over the last couple of years.

Last week we provided a tax cut of some $82 billion. The country is broke. We have a $400 billion deficit this year. The kids are going to pay that because that is part of the debt now. A month before that we passed another tax bill. This one totaled $350 billion, of which the wealthiest Americans would get about $92,000. The average taxpayer in my district would get about $400. We had no money for that one either. The real problem with that bill is once we total it up, that costs $1 trillion but that is a secret, so do not say anything. Quiet.

Now 2001 we passed another tax bill. How much did that one cost? That one cost $1.3 trillion. Again, the surplus is gone. The country is broke. We have a deficit. What the heck are we doing around here? When is this idiocy going to stop?

Today the estate tax has an exemption of $2 million. It covers everyone in my district. Well, we are going to have an option later today which would raise that to $7 million and that would take care of 99 percent of all small businesses and farmers in this country. But that is not good enough. That is

not good enough for the Republicans because that is not who they are trying to help. The people they are trying to help are the Hallmark Card people and the Mars candy bar people, who over the last couple of years have spent millions of dollars hiring lobbyists in D.C. and giving campaign contributions, and today they want their due.

Mr. Speaker, I include for the RECORD a Washington Post article of this morning by Jonathan Weisman entitled, ''Estate Tax Compromise Sought.'' What we are doing today is sheer nonsense.

Let me say to my Republican colleagues, we have already voted on this proposition three times; and under the campaign finance law if we vote for an item three times and it does not pass, you are still entitled to the campaign contribution, okay. So Members are still going to get the money from Hallmark and the campaign contributions from the Mars candy bar people; but for God's sake, save the taxpayers of this country.

[From the Washington Post, June 18, 2003]

ESTATE TAX COMPROMISE SOUGHT

HOUSE SET TO PASS REPEAL, BUT SUPPORTERS KNOW SENATE VOTES AREN'T THERE

(By Jonathan Weisman)

When a coalition of wealthy families, small-business groups and farm interests won temporary repeal of the estate tax two years ago, they immediately resumed their campaign for permanent repeal. Now, even as the House is expected to vote today for just that, some in the alliance have second thoughts.

It's not that they have backed off their vehement opposition to the tax on large inheritances. Rather, as the Federal budget deficit grows and their patriarchs and matriarchs age, they are losing faith that permanent repeal will ever happen and are considering compromises that were unthinkable two years ago.

The House is expected to vote today to permanently repeal the estate tax after 2010, when it is set to expire after being in effect for only one year. But no one expects the Senate to pass the bill, leading some proponents to believe that the vote and the distant temporary repeal date are more political gamesmanship than a serious legislative attack on the tax.

So some of the affluent families who have bankrolled the repeal movement are exploring estate tax changes short of repeal that could be implemented sooner.

''There is some real concern that 2010 is not soon enough,'' said a lobbyist working on the issue, referring to the deficit and the uncomfortable fact that some affluent benefactors may not live until 2010. Grover Connell of privately held Connell Co., for example, is 85. The matriarchs and patriarch of the Hallmark greeting-card fortune are in their seventies.

For more than a decade, the coalition has rejected overtures for compromise and declared it will accept nothing short of ''death tax'' repeal.

The simplicity of their demand, the strength of the small-business coalition and the money of the families financing the effort combined to turn an obscure tax affecting very few Americans into a powerful rallying point, especially for Republicans.

The movement culminated in 2001 with the 10-year, $1.35 trillion tax cut, which repeals the estate tax in 2010. But the tax is to return in 2011 when the entire tax cut expires.

For the past two years, the repeal coalition has tried, and failed, to gather the 60 Senate votes needed to make the repeal permanent. One lobbyist working on the estate tax said the appeal of the issue may have ''plateaued.''

And just as the surging Federal budget deficit is beginning to shake up the Bush administration's plans for more tax cuts, it is starting to change the politics of estate tax repeal. Repeal supporters worry that the growing deficit will make it more difficult to eliminate the tax, particularly by 2010, when the vanguard of the baby boom will retire.

The Treasury Department said repeal of the estate tax in 2011 through 2013 would cost the government $115 billion in revenue. In 2014 through 2023, repeal would cost about $820 billion, according to the Center on Budget and Policy Priorities.

''The principal issue is the growing federal budget deficit,'' said William Gates Sr., father of the Microsoft Corp. founder, who opposes repeal of the estate tax. ''You can't run a $400 billion deficit year after year and go around repealing taxes at the same time.''

Even if Bush is reelected in 2004, a new president, who could be far less friendly to repeal, will be elected in 2008. And the broad appeal of the anti-estate-tax movement that caught fire in the 1990s may be dissipating simply because people are not feeling so rich anymore, one lobbyist said.

Even at the height of the stock market boom, the estate tax affected very few families because estates worth up to a certain amount are exempt. That amount is currently $1 million for a single person or as much as $2 million for a couple. In 2000, the most recent year for which statistics are available, more than 2.4 million adults died in the United States, but only about 52,000 left taxable estates.

The strength of the repeal movement always came from people's fear that their estates would be hit with a huge tax bill. If that fear dissipates in a sluggish economy, so will the movement, lobbyists said.

''I think some of [coalition members] are coming around to 'Let's get a common-sense solution that can work now instead of just talking about this for eons,'" said Sen. Blanche Lincoln (D-Ark.), a past repeal supporter who is floating a less expensive alternative.

With all those factors in mind, some of the biggest names in the estate tax coalition are looking to compromise. The candy-making Mars family of McLean gave more than $1 million to lobbying powerhouse Patton Boggs LLP last year, in part to explore ''estate and gift tax reform,'' according to lobbying disclosure forms.

Koch Industries Inc., a family-run energy, ranching and finance conglomerate, paid Hogan & Hartson LLP $40,000 last year, while spending $500.000 on in-house lobbying on the estate tax. The Connell Co. hired Washington Council Ernst & Young for $120,000 to lobby for ''estate and income tax relief,'' while Hallmark Cards Inc. spent $60,000 to hire Capitol Tax Partners LLP.

Stephen Moore, a conservative tax-cutting activist with the Club for Growth, and Mark A. Bloomfield, president of the business-backed American Council for Capital Formation, proposed taxing estates at the current capital gains rate of 15 percent. Taxable estates are subject to a 49 percent tax.

''There are Republicans who want this debate to last forever, keep the [campaign] money flowing in, keep the Democrats off guard,'' Moore said. ''Mark Bloomfield and I have been on crusade to get this done, to break the logjam.''

If that proposal cannot be passed, another lobbyist suggested taxing inheritances at income tax rates, which are at most 35 percent. A stream of lobbyists has passed through Lincoln's office to discuss her proposal to immediately repeal the estate tax for family-owned businesses and farms.

The public faces of the repeal movement remain resolute. ''We are 100 percent united behind permanent repeal in 2010,'' said Patricia Soldano, a Southern California financial planner who, in 1992, helped launch the repeal movement with funding from the Mars family and the Gallo wine heirs, among others.

Dena Battle, the National Federation of Independent Business's lobbyist on the issue, conceded that the budget deficit ''certainly changes the dynamics of the debate.''

''But,'' she said, ''you're talking about something that takes place 10 years from now. There's no way we can know what the economy is going to look like then. That's not an excuse to vote against this.''

There is little doubt that the House will vote today to repeal the tax, but lobbyists said they will look closely at the tally. If past repeal supporters—especially Democrats—vote against it this time, the fledgling movement toward compromise will pick up steam quickly, a lobbyist for one of the rich families predicted.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. ADERHOLT). The Chair must remind Members to avoid improper references to the Senate. Remarks in debate may not characterize, nor urge, nor predict actions of the Senate.

Ms. DUNN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just remind the gentleman from Wisconsin that we did vote three times on this legislation last year in different forms; and, in fact, the legislation passed each of the times by a bipartisan majority. It also passed in the other body by a bipartisan majority. But, unfortunately, because of their strange rule system, it required a 60-vote margin to pass in that body.

Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. PUTNAM), a very prominent member of our sophomore class.

Mr. PUTNAM. Mr. Speaker, I thank the gentlewoman for her leadership on this issue.

I am from a farm family in a rapidly growing part of the State of Florida. I have seen what the death tax does to destroy families and destroy pieces of property that have been in the same family's hands for generations, that have cared for that land and have been steward of that land, and the environmental benefits that come from that. When the death of the grandfather or the great grandfather or the father comes along, it is busted up into half-acre ranchettes, and the environmental and agricultural benefits are lost. The food security issues are lost forever. We cannot unpave a parking lot, we cannot bring those families back together again, you cannot put agriculture back into practice. It is lost forever because of a quirk in our tax law which is purely redistribution of wealth.

Now the Johnny-come-lately deficit hawks on the other side would have us believe that we cannot afford to do this

in this particular economic environment. But they did not believe we should do it when we were projecting trillion-dollar surpluses either. The bottom line is that they do not support the repeal of this immoral tax. They continue to support the redistribution of wealth, the penalty on ambition, the penalty on thrift, the penalty on holding those family operations together again. Despite their best planning efforts, 70 percent of small and family-owned businesses do not survive the second generation and 87 percent do not survive the third.

Mr. Speaker, 90 percent of those failed owners say the death tax was a contributing factor to the loss of that business. It is time for the death tax to die. It is an immoral tax. It sends the wrong philosophical message to the next generation of Americans who are looking for incentives to work hard and create wealth and jobs and build businesses and farms. I urge support of H.R. 8.

Mr. STARK. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. BECERRA).

Mr. BECERRA. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, anecdotes are indispensable when the facts speak to the contrary, and perhaps we have to remind Members what the facts are once again. These are not our figures, these are not made-up figures, these are figures provided by the Federal Government, the Bush administration.

In 1999, roughly 2.3 million Americans died. Of those 2.3 million Americans who died, less than 1.3 percent, some 33,000 Americans, paid estate taxes. That is the 1.3 wealthiest Americans in our country who paid estate taxes. So 98.7 percent of the rest of Americans who passed away in 1999 paid zero estate taxes. So when we talk about repealing the estate tax, eliminating the estate tax, we are giving a tax break not for Americans but the 1.3 percent richest Americans in this country.

It is easy with anecdotes to hide behind family farms and family businesses which constitute less than 1 percent of the estates that are paying estate taxes. And it is real easy to hide behind the fact that in legislation like this we are back-loading the costs. We are phasing in the repeal so slowly, so gradually that when we start to add up the real cost of the repeal of the estate tax to the wealthiest 1.3 percent of Americans, when we fully phase it in when it is gone completely, it totals about $80 billion a year starting in 2014 when this takes full effect. $80 billion a year in revenues will be lost to the Federal Treasury, more than $800 billion over the decade from 2014 to 2023.

Now, perhaps it would not be so bad to give the wealthiest 1 percent of Americans a tax cut that 99 percent of Americans would not get at a cost of $800 billion over the next 10 years from 2014 to 2023 if not for the fact that today every Member knows that we have a budget deficit for the year of over $400 billion, the largest deficit this country has ever faced in any year; and we are told that it is probably going to rise to half a trillion dollars, $500 billion next year. And that is after 2 years ago when the President took office and he said we are going to have for the next 10 years surpluses totaling over $5.6 trillion.

□ 1300

We have seen a reversal from surpluses of $5.6 trillion to now projections of a $3.6 trillion debt over the next 10 years. How can we talk about giving $800 billion to the 1.3 percent wealthiest Americans? We spend more in tax cuts than we spend in all our educational programs that the Federal Government spends on all our schools combined.

Let us defeat this. Vote for the Pomeroy substitute.

Ms. DUNN. Mr. Speaker, I yield myself such time as I may consume.

I want to remind the gentleman from California that his State, in the year 2002, sent $4,201,408,000 to the Federal Government. And you can about double that for the cost of complying with the death tax. That is what comes out of the economy. And so his figure of $80 billion, just take that and double it and that is what has been taken out of the economy.

Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. OSBORNE), a wonderful contributing sophomore Member.

Mr. OSBORNE. Mr. Speaker, I rise in support of H.R. 2143. Mr. Speaker, I do come from a rural area. We have 52,000 farmers and ranchers in Nebraska. I heard some figures that were unbelievable to me, that maybe only 400 farmers in this country would benefit from the repeal of the death tax. I would say out of 52,000 farmers in Nebraska, that we would look at probably somewhere between 15 and 20,000 that would benefit tremendously and will probably not be able to pass their farm on without some repeal of the death tax.

Let me give Members an example. A small ranch in Nebraska is 12,000 acres. That will support about 300 cows and that will support one family. That probably started out at $25 an acre, it is now worth $300 an acre, so it was maybe worth $100,000 when the farmer started out roughly 30 years ago. So it has increased in value. If they have two children and the last surviving parent dies in 2010, that ranch, which is worth $5 million today, would go on to those two children and they would pay no tax. But in 2011, their tax bill would be $2 million. They cannot pay that tax. They have to sell the ranch. That is an actual example of an average to small-sized ranch in Nebraska.

The Coble family in Mullen, Nebraska, had that happen to them. And who bought the ranch? Ted Turner bought the ranch. Ted Turner owns several hundred thousand acres in Nebraska today, most of which has been bought because people could not afford to keep the ranch because of the inheritance tax. And so that drives hundreds if not thousands of young people off the land. They cannot afford to ranch or farm. Of course, the same thing is true with small businesses. The only way to preserve family ownership is through insurance. And so maybe only 1 percent of inheritance taxes is the issue, but lots of people have to pay insurance in order to hang on.

I urge the support of this bill.

Mr. STARK. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Speaker, we ought to tell to all of America as well as those people assembled in this room, what are we going to benefit from this legislation? They have attempted, the other side, from the very beginning of this debate, to say that they are for something and we are against. The Democratic amendment this afternoon covers most of the people, 99.3 percent of everybody on both amendments. You are talking about the exclusiveness of that very, very small percentage of people.

Who are those people? Those are the people that are multimillionaires. Those are people who do not need us. The gentlewoman from Washington has suggested that this is what this State could send back, this is what that State could send back. Does she know they would put a $100 billion hole in the Federal budget? What are they going to cut? Where is that money going to come from? It is wonderful to say we are going to send all of these inheritance taxes back to the people. How are they going to fill that hole? They must tell the American people where they are going to come up with that money so that they can get this money back in their pockets.

Ms. DUNN. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. COX), the chairman of the Policy Committee, a cosponsor of this bill, and a longtime supporter and leader on this bill.

Mr. COX. I thank the gentlewoman for yielding me this time.

Mr. Speaker, I will just make a few observations about the death tax. First, notwithstanding much of what is in the air here, it does not raise any material amount of money for the Federal Government. Nominally, about 1 percent. But, in fact, when we take into account the 65 cents on the dollar in compliance costs and the nearly $10 billion a year that is sucked out of the economy paid to lawyers and accountants and life insurance experts for compliance, it is a wash. Some estimates say it actually costs more than it raises. Second, it is not an income tax. You do not have to have any income to pay it, even though it is part of the Income Tax Code, 88 pages of it. Instead, it is a property tax and is meant to be confiscatory. These are confiscatory rates, well over half, and the purpose is

to break up large concentrations of wealth. But the tax does not do that, either. In fact, it concentrates wealth because family farms, ranches and small businesses that are liquidated to pay the tax man are absorbed by larger conglomerates. We have seen farmland turned into condos all over America for this reason. The rich do not pay it. They hire expensive lawyers and accountants to design trusts and foundations to avoid the tax so that only small business, family farms and people without cash who have to liquidate assets to pay the tax man pay it.

Lastly, if you work in a small business, this is all about you, because the biggest burden of this tax is borne by those who are laid off. The tax rate on you, the guy who sweeps up the floor after your small business contracts when the founder dies, is 100 percent. When you lose your job, that is the toughest tax that you can pay. That is why making this death tax repeal permanent is so important for everyone in this country.

It is time for the death tax to die, and today we are going to drive a stake through its heart.

Mr. STARK. Mr. Speaker, I am delighted to yield 1 minute to the gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Speaker, I want to begin by commending my colleague from California. I think he raised a number of good points, which is why I strongly have supported reform of the estate tax. We need to do it to support small farms and small business. The question is, how do we go about it? My belief is that the majority party proposal here will benefit the extremely wealthy but will not necessarily help the small businesses and farmers who would benefit more, quite frankly, from the Pomeroy substitute. We need to remember, and it is caveat emptor here, that the Republican bill does not allow for a step-up in basis and there will be many people who think this is a great thing when it passes today, but who will suffer.

Secondly, the gentlewoman from Washington has repeatedly reminded us how much money has left various States. I would remind her with great courtesy that $500 million a year leaves her own State because Washington State, like six others, is not allowed to deduct the sales tax. She has focused on a tax reform that will benefit 2 percent of the population or less, neglecting a reform that will benefit 47 percent of the population. $500 million leaves Washington State every single year. We should reform that first and establish justice through that mechanism.

Ms. DUNN. Mr. Speaker, I yield myself such time as I may consume.

I remind the gentlewoman from Washington State that his State in the year 2001 sent back $578 million to Washington, D.C., with about an equal amount for compliance with that law. Also as a representative of a forested district, 36 percent of forest estates owe the Federal estate tax, 29 percent of the land was sold or developed or converted to subdivisions, and 1.3 million acres per year of forestland in this Nation were sold. The amount harvested to pay the estate tax was about 2.6 million acres every single year. I respect his point of view on this particular bill, but I think that there are many people who will be affected if he does not vote for this bill.

Mr. BAIRD. Mr. Speaker, will the gentlewoman yield?

Ms. DUNN. I yield to the gentleman from Washington.

Mr. BAIRD. Mr. Speaker, the gentlewoman raises a perfectly legitimate point about the family foresters. The bulk of the family foresters in my district would be perfectly well covered under the $6 million exemption. I have met with them. I meet with their association. They would be covered under the Pomeroy exemption. What they would not be covered under is any relief from sales tax which is unjust. And the gentlewoman ought to join me in that effort and fix that.

Ms. DUNN. As the gentleman knows, retaking my time, I have already cosponsored that measure and supported it in the committee. We have worked very hard on that and will continue to do so. It affects a number of States. It is important to get rid of it.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida (Ms. HARRIS), a very active member of the freshman class.

Ms. HARRIS. Mr. Speaker, I rise in support of H.R. 8, which will finally free America's hardworking farmers, small business owners and their families from the specter of the death tax. Benjamin Franklin said, ''In this world nothing is certain but death and taxes.'' This observation notwithstanding, I doubt that even the imaginative Mr. Franklin foresaw the taxation of death itself.

Americans are taxed when they earn money. They are taxed once again when they spend what is left. And at last, not even the cold head of death can stay the grasping hands of the tax collector. By pursuing taxpayers beyond the grave, government visits devastating consequences upon their grieving relatives, forcing some to sell the family business or the family farm just to pay the taxes. The National Federation of Independent Businesses has estimated that the death tax will compel one-third of small business owners today to sell some or all of their business. Moreover, according to the Family Business Estate Tax Coalition, simply planning for the death tax costs small businesses an average of $125,000 over 5 years. Worse yet, mainstream economists of all political stripes have concluded that the death tax stifles the creation of jobs and opportunity.

Economist Allen Sinai, a consultant for presidential administrations of both parties, has concluded that the permanent repeal of the death tax could create 160,000 new jobs and an increase in GDP of over $10 billion.

Mr. Speaker, the opponents of H.R. 8 cannot provide any economic justification for the continued existence of this useless relic. It may even cost more in compliance and to collect this onerous tax than it generates in revenue while it punishes thrift, deters investment and diverts capital to unproductive activities such as tax avoidance.

Mr. STARK. Mr. Speaker, I am delighted to yield 3 minutes to the gentleman from Maryland (Mr. HOYER), the distinguished minority whip.

Mr. HOYER. Beware, working men and women of America. The Republicans from Washington are in town and they are here to help you. Beware.

Mr. Speaker, our Republican friends may think they are burying the estate tax today but they actually are burying our children under a mountain of debt. They see a problem. We Democrats see a problem. We solve a problem without burying our children under a mountain of debt. The GOP bill would create a fiscal Frankenstein that would haunt this Nation for decades to come. The Joint Committee on Taxation estimates this bill will cost $162 billion. The young people of America are going to pick up that bill. The Center for Budget and Policy Priorities projects that its costs will explode to more than $800 billion in the decade after that. So if you are about 15, watch out.

Our Nation will run a record budget deficit of more than $400 billion this year. At the same time the Republican majority has acceded to the largest increase in the debt limit in American history, $950 billion-plus in 1 year, which was what the deficit was in its entirety in 1980.

So what does the GOP propose today? Legislation that would drive us even deeper into debt. For whom? For three-tenths of 1 percent of the decedents in America. 99.7 percent of the decedents in America who owe estate tax would be exempted under our option without blowing a hole in the deficit. The fact is repealing the estate tax would only benefit the wealthiest three-tenths of 1 percent of the estates in America. Think of that. For three-tenths we are going to blow a continuing hole in the deficit.

Let us remember, it was Republican President Theodore Roosevelt who called for an inheritance tax in 1906 saying, and I want to quote this Republican President.

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''There is every reason why . . . the national government should impose a graduated inheritance tax.'' Teddy Roosevelt himself, a man of great means, explained: ''The prime object should be to put a constantly increasing burden on the inheritance of those swollen fortunes which it is certainly of no benefit to this country to perpetuate.'' Warren Buffett, one of the wealthiest people in the world, agrees

totally with that. The bill has nothing to do with tax fairness or stimulating the economy. It has everything to do with paying homage to the GOP's reckless tax cut theology and misplaced priorities.

Today, the GOP genuflects at the tax cut alter, but the rest of us ought to be the ones saying a prayer. I urge my colleagues to vote for the Democratic alternative. We talk about personal responsibility. Be personally responsible today.

Ms. DUNN. Mr. Speaker, I yield 1½ minutes to the gentleman from New York (Mr. HOUGHTON), a great member of our committee.

Mr. HOUGHTON. Mr. Speaker, in reply to my friend on the Democratic side, I am a Republican and I am aware and I am old, but I do not quite remember Teddy Roosevelt.

What I would like to do is just to talk a little bit about this whole issue of eliminating the death tax. I do not know where this is going. I do not know whether it has got momentum, but I assume it has.

It sounds appealing. One pays taxes all their life and then why when one should be honored in more does the IRS is swoop in and take another bite of out of their estate? But if we look at the great estate taxes from a different angle, I have a sense of what this country is all about, that democracies are not where one gets a free ride and stand on another's shoulders forever.

I have two specific worries. One, the corrosive effect this tax would have an a subsequent generation who no longer has to work or earn. That has all been taken care of, and I have seen this effect on other countries where there is an establishment of a landed gentry, a privileged entitled class, and that is not good, and that is not what has made the United States what it is today.

The second issue I have is the first question one asks in planning an estate is what flexibility do I have? What should I protect so the bulk of what I have earned will not be siphoned off by the Government? It is at this great point that the great philanthropic gifts are considered. So, believe me, absent a death tax, the question would not even be raised. So I can see nothing bad from this bill. The assets we have, the ability we have, the motivation to give less, anyway, I do not think it is a great bill, and I hope people vote against it.

Assets we have—the ability, the motivation, to give to those less fortunate than we. This is not a good bill. It should be defeated.

Increase the exclusion dramatically. Protect the family farm or business. But do not wipe out and make permanent the repeal of the estate taxes.

Mr. STARK. Mr. Speaker, I reserve the balance of my time until just before the gentlewoman closes.

Ms. DUNN. Mr. Speaker, I yield 1½ minutes to the gentleman from Texas (Mr. HENSARLING), freshman member of our class who has been one of the most active on the repeal of the death taxes.

Mr. HENSARLING. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I believe, as do most Americans, that it is simply unconscionable that anybody would have to visit the undertaker and the IRS agent on the same day. It is unconscionable; it ought to be illegal.

The death tax is nothing more than a tax on the American dream. Americans work hard all their lives to build farms and small businesses in hopes that maybe one day they can pass them along to their families, but after payroll taxes and income taxes and sales taxes and property taxes, all of which the left is so fond, many family businesses do not make it, and those that do, the Government can step in and take over half of what someone worked their entire life to build.

A while back I heard from a rancher in my district who spent 30 years building a cattle ranch, almost lost it once or twice to drought. His hope was to leave that ranch to his family. It was his greatest dream, but with sadness in his voice, he told me when the Government takes their share, there is just not enough to go around.

People on the other side of the aisle want to talk about fairness. Where is the fairness in taking this ranch away? Where is the fairness in taxing Americans twice on the same income? Where is the fairness in having Uncle Sam have an inheritance of 55 percent of a family farm, business, or nest egg?

Mr. Speaker, it is time to reject the politics of class warfare and envy and support the permanent repeal of the death tax. And by ending the death tax, we can help resurrect the American dream.

Mr. STARK. Mr. Speaker, I yield myself the balance of my time.

There are two issues with this bill. One is fairness. And the other is lost opportunity. Let me give the Members a hypothetical. Let us take a young man, young woman, who started out after school and never worked anyplace but for the Government, and suddenly early in their youth in their career as a Government worker, they are going to inherit $40 million. They never had a job outside of public service in their lives. And they might pay $20 million in tax, be left with $20 million, to which they contributed nothing but it is nice to get.

The question of fairness is why should my children, who went to school and worked hard to become lawyers and teachers and contribute to society, why should they have to pay the $20 million for this kid who is going to inherit the $40 million? That is not fair. They are not asking for a handout. They are probably grumping at their father for fighting against this bill, but they are content. They have got a leg up. They got to go to school, and now they are making their own way. And if, when I pass away, they have to pay some tax, they are going to be proud to do it, and they are proud of me for suggesting that they pay their fair share instead of asking me to give them a free ride. That is the fairness issue.

The lost opportunity is this: For those of us who are wealthy enough to pay the tax, my good friend from New York I think senses this. This bill is going to cost 60 billion bucks a year. We just got a release from the Institute of Medicine that shows that with the 41 million uninsured in this country, for about $69 billion a year we could provide them with health services. Do my colleagues know what? That would save us another $130 billion a year that we are paying in lost costs by having them go to hospitals without insurance. What is more important? To give a few thousand rich kids an exemption from paying their fair share and denying 40 million people health care in this country? That is the issue. Yes, it is divisive. Yes, we are talking about separating the rich and the poor. But I think those of us who are fortunate enough to be successful in this country ought to give something back and ought to help those who are less fortunate, and I just think it is crummy, it is anti-Christian, it is cheap, it is obscene to sit and say we have got ours, we are going to give tax breaks to our wealthiest contributors and to hell with the people who do not have health insurance. That is what the Republicans are saying with this bill, and I urge them late in life to come to do what is fair, to help 40 million Americans get health insurance rather than 4,000 get a tax break that will do none of us any good.

Mr. Speaker, I yield back the balance of my time.

Ms. DUNN. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. FOLEY), who has been with us from the beginning, who is a strong advocate and a member of the Committee on Ways and Means.

Mr. FOLEY. Mr. Speaker, let me commend the gentlewoman from Washington (Ms. DUNN) for her excellent work on this important bill.

It is a little disingenuous to use the deficit as a reason not to pass this bill. When we inherited this Congress in 1994, they had racked up $5.7 trillion worth of debt. So let us not start blaming the national debt on this bill or the Republicans. Now they are holding up the Gates family as a paragon of virtue on this issue; yet 2 years ago the Clinton Administration was pursuing the same Gates family for monopolistic practices. Now they use Warren Buffett. Now Warren Buffett, of all people, has billions of dollars. He can step up to the voluntary tax payment window if he so chooses.

The people we are talking about today have paid excise taxes, property taxes, capital gains taxes, income taxes. It is being described here as they are getting an unfair or free ride. These are the hard-working Americans. We learned in our youth to strive to struggle and make something of our life and maybe we could pass on those virtues and values to the next generation.

The rich know how to shelter their income. They are very good at creating trust and remainderman trust. In fact, one of the premier families in America, the Kennedy family, has 40 or 60 or 80 trusts that were established to pass the money into different hands to avoid, I am sure, the estate tax liability. These are families that have properly prepared, but it has been expensive. It has been time consuming, and it is complicated.

We can have a debate and pick sides. The Democrats are obviously offering a $7 million package in a minute; so I do not know the difference between a $7 million estate or a $10 million estate, but somehow they reconciled that $7 million may not be rich. They keep claiming today in this debate they are for the little guy. If they are little and have worked hard and have earned some money, there is a penalty box for them under their plan. They take away what they have earned. They give it and redistribute it to someone else.

This is about fairness. This is about family farms. This is about a lot of people. But to sit here and speculate somehow we are going to implode or explode the deficit is simply wrong.

Mr. FARR. Mr. Speaker, I have long been a strong advocate that tax policy ought to be consistent with good land use policy. Inheritance tax is neither. California has seen the break-up of agricultural real estate holdings, and the dissolution of small businesses to pay inheritance taxes. Although repeal of the tax at this time is not good fiscal policy, we have no choice with this up or down vote but to support good land policy. Agricultural land should not be subdivided merely for tax purposes.

It has been argued that the repeal of the estate tax will only benefit a few Americans. This is certainly not the case for Californians. The estate tax affects the lives of many of my constituents, whether they are families trying to hold onto their farms, small businesses working to keep their doors open, or children protecting the legacy of their parents.

Having said this, I regret that the repeal of the estate tax comes at a time when the Republican-led Congress is driving this country further and further into debt. Republicans in Washington have turned a $5.6 trillion surplus, left by the Clinton administration, into a $3.6 trillion deficit, a total loss of $9 trillion for Americans and their families.

I also regret that the Republican-dominated House does not allow Democrats to offer sensible, bi-partisan alternatives. I, like other Democratic Californians, support an alternative where family farms and businesses would be subject to capital gains tax if they decided to sell their farm or business. I am confident that we could have agreed on a sensible compromise, such as this one, if the Republican leadership had allowed members a full and open debate.

In the final analysis, however, repealing the estate tax will help family farms stay in the family. It will help California maintain a policy of sensible growth and curb the sprawl that comes with subdivision of property. It will help small businesses stay afloat and survive the passing of generations. Nevertheless, we should all keep in mind that if we are concerned for future generations, we should be very wary about increasing the public debt. We need to act in a fiscally responsible way if we want to leave a prosperous future for our children.

Mr. WELDON of Florida. Mr. Speaker, I rise in strong support of H.R. 8, the Death Tax Repeal Permanency Act of 2003. I am a proud cosponsor of this bill. I am pleased that the House approved my bill last year to accomplish this very same goal. Unfortunately, we were unable to garner the votes in the Senate to enact this into law.

The Death Tax Needs to Die. Along with the marriage penalty, the death tax is perhaps the most disgraceful tax levied by the Federal Government and it should be repealed. The death tax is double taxation. Small business owners and family farmers pay taxes throughout their lifetime, then at the time of death they are assessed another tax on the value of the property on which they have already paid taxes.

Critics claim that we can't afford to eliminate the death tax. They are wrong. We can't afford not to permanently repeal the death tax. Family businesses spend nearly $14.2 billion a year on estate planning and insurance costs largely to avoid the death tax. Studies indicate the cost of compliance with the death tax equals the amount of death taxes received. Thus, the ''real'' cost of the death tax to business is double the tax burden.

During the debate last year on my bill to permanently repeal the death tax, I asked a constituent of mine. Danny Sexton of Kissimmee, FL and owner of Kissimmee Florist, to come to Washington and share his ''death tax'' experience.

Mr. Sexton, who comes from a family of florists, inherited his uncle's flower shop and was faced with paying almost $160,000 in estate taxes. This forced him to have to liquidate all of the assets, lay off staff, but salaries, and take out a loan just to pay the death tax. He also had to establish a line of credit just to keep the operation running.

Danny Sexton is the face of the death tax. The death tax isn't a tax for the rich, it is a tax that hurts family owned businesses—family owned businesses that are the back-bone of this great Nation. The folks that worked in Danny's florist were not rich, but they lost their jobs because of the death tax.

According to the National Federation of Independent Business more than 70 percent of family businesses do not survive the second generation and 87 percent of family businesses do not make it to the third generation. Sixty percent of small business owners report that they would create new jobs over the coming year if death taxes were eliminated.

For the sake of future generations, Congress must take responsibility, do the right thing, and permanently repeal the estate tax. I urge my colleagues to vote for H.R. 8, the Death Tax Repeal Permanency Act of 2003.

Mr. UDALL of Colorado. Mr. Speaker, I support reform of the estate tax—that is why I voted for the substitute. But I do not support repeal of the estate tax—and so I cannot vote for this bill as it stands. For me, this is not a partisan issue. Instead, it is an issue of reasonableness, fairness, and fiscal responsibility.

In 2001, I did not vote for the bill that included changes in the estate tax. However, there were parts of that bill that I think should be made permanent, including the elimination of the ''marriage penalty'' and the provisions related to the adoption credit and the exclusion from tax of restitution to Holocaust survivors. And, as I said, I support reform of the estate tax. I definitely think we should act to make it easier for people to pass their estates—including lands and businesses—on to future generations. This is important for the whole country, of course, but it is particularly important for Coloradans who want to help keep ranch lands in open, undeveloped condition by reducing the pressure to sell them to pay estate taxes.

Since I have been in Congress, I have been working toward that goal. I am convinced that it is something that can be achieved—but it should be done in a reasonable, fiscally responsible way in a way that deserves broad bipartisan support. That means it should be done in a better way than by enacting this bill, and the substitute would have done that. That alternative would have provided real, effective relief without the excesses of the Republican bill. It would have raised the estate tax's special exclusion to $3 million for each and every person's estate—meaning to $6 million for a couple—and would have done so immediately. So, under that alternative, a married couple—including but not limited to the owners of a ranch or small business—with an estate worth up to $6 million could pass it on intact with no estate tax whatsoever. And since, under the alternative that permanent change would take effect on January 1st of next year—not in 2011, like the bill before us—it clearly would be much more helpful to everyone who might be affected by the estate tax. At the same time, the alternative was much more fiscally responsible. It would not run the same risks of weakening our ability to do what is needed to maintain and strengthen Social Security and Medicare, provide a prescription drug benefit for seniors, invest in our schools and communities, and pay down the public debt.

The 2001 tax cut bill included complete repeal of the estate tax for only one year, 2010, but contained language that sunsets all of the tax cuts, including changes in the estate tax after 2001. This bill would exempt repeal of the estate tax from the general sunset provisions. Between now and 2013 it would reduce the Federal revenue available to meet necessary expenses by $162 billion. I think this is simply irresponsible as we face the decade between 2013 and 2022—the time when the baby boomers will be retiring.

Also, we all know, the budget outlook has changed dramatically since 2001. Trillions of dollars of budget surpluses that were projected have disappeared—because of the combination of the recession, the costs of fighting terrorism and paying for homeland defense, and the enactment of tax legislation. And now the proposal is to make the budgetary outlook even more difficult, making it that much harder to meet our national commitments—all in order to provide a tax break for less than 0.4 percent of all estates. I do not think this is responsible, and I cannot support it.

And, as if that were not bad enough, this bill does nothing to correct one of the worst aspects of the estate-tax provisions in the 2001 bill—the hidden tax increase on estates whose value has increased by more than $1.3 million, beginning in 2010, due to the capital gains tax. Currently, once an asset, such as a farm or business, has gone through an estate, whether any estate tax is paid or not, the

value to the heirs is ''stepped up'' for future capital gains tax calculations. However, last year's bill—now enacted into law—provides for replacing this with a ''carryover basis'' system in which the original value is the basis when heirs dispose of inherited assets. That means they will have to comply with new record-keeping requirements, and most small business will end up paying more in taxes. That cries out for reform, but this bill does not provide it.

Mr. Speaker, I am very disappointed with the evident determination of the Republican leadership to insist on bringing this bill forward. Just as they have done in the past, they have rejected any attempt to shape a bill that could be supported by all Members. Since I was first elected, I have sought to work with our colleagues on both sides of the aisle on this issue to achieve realistic and responsible reform of the estate tax. But this bill does not meet that test, and I cannot support it.

Mr. LANGEVIN. Mr. Speaker, I rise in support of the Pomeroy substitute to H.R. 8, the Estate Tax Repeal Permanency Act, and in opposition to the underlying bill. As the son of a small business owner, I know firsthand the tax burden placed on entrepreneurs and working families, and I support efforts to responsibly protect small business owners.

The Pomeroy substitute provides needed relief by eliminating estate taxes for assets totaling $3 million per individual or $6 million per married couple. Increasing the exemption to this level means that 99.65 percent of all estates will not pay a single penny of the estate tax beginning in 2004. The substitute provides relief sooner than the Republican bill, which does not take full effect until 2011 and has an exemption of only $1.5 million for 2004. Small businesses and farm owners should not be penalized for their success, nor should they need to worry about their ability to pass the family business on to future generations, and the substitute addresses these concerns.

H.R. 8 goes far beyond providing fair tax relief to small businesses and family farms that are in greatest need of assistance. Besides benefiting just a few thousand American families per year, H.R. 8 would also have a devastating impact on charities, foundations, universities and other philanthropic organizations because the estate tax provides a powerful tax incentive to donate money to these groups. The Department of Treasury estimates a decrease of up to 12 percent per year in charitable giving, or more than $1 billion annually, should full repeal occur.

The Republicans' call for repealing the estate tax comes at a time when our Government is already in fiscal crisis. The 2001 estate tax provision will reduce revenues by more than $192 billion over ten years, and over the second decade, the costs will be a whopping $820 billion. With a $400 billion deficit for fiscal year 2003, now is not the time to add $1 trillion in debt to the tab that future generations must pay. These added costs also come as Congress prepares to pass a prescription drug program and baby boomers near retirement. We must work to meet our obligation to our Nation's seniors rather than cutting taxes for the wealthiest families in America.

Based on Internal Revenue Service data for 2002, out of approximately 10,000 deaths in my home State, only 426 Rhode Island decedents filed estate tax returns. This number would be much lower with the $3 million exemption under the Pomeroy substitute. Under our Democratic alternative, those eligible middle-income families, small business owners and family farmers truly in need would receive estate tax relief.

I urge my colleagues to join me in supporting permanent reform of the estate tax, but not irresponsibly repealing it. Our small business owners are in need of relief, and we must provide it without leaving future generations to pay the bill.

Mr. BEREUTER. Mr. Speaker, as stated on the record many times, this Member continues his strong opposition to the permanent, total elimination of the estate tax on the super-rich. The reasons for this Member's opposition to this perfectly terrible idea have been publicly explained on numerous occasions, including past statements in the CONGRESSIONAL RECORD.

It must also be noted, however, that this Member is strongly in favor of substantially raising the estate tax exemption level and reducing the rate of taxation on all levels of taxable estates, and that today he has re-introduced legislation to this effect. This same bill, H.R. 42 was introduced in the previous 107th Congress by this Member—the only change in the bill introduced today is that the highest individual income tax is now 35 percent.

This Member believes that the only way to ensure that his Nebraska and all American small business, farm and ranch families and individuals benefit from estate tax reform is to dramatically and immediately increase the Federal inheritance tax exemption level, such as provided in this Member's newly re-introduced measure.

This Member's bill would provide immediate, essential Federal estate tax relief by immediately increasing the Federal estate tax exclusion to $10 million effective upon enactment. With some estate planning, a married couple could double the value of this exclusion to $20 million. As a comparison, for tax year 2002, the estate tax exclusion was only $675,000. In addition, this Member's re-introduced bill would adjust this $10 million exclusion for inflation thereafter. The legislation also would decrease the highest Federal estate tax rate from 55 percent to the ''highest individual income tax rate'' that corresponds to that specific tax year—the highest individual income tax rate will be going down to 35 percent in stages.

Finally, this Member's re-introduced bill would continue to apply the stepped-up capital gains basis to the estate, which is provided in current law. In fact, this Member has said on many occasions that he would be willing to raise the estate tax exclusion level to $15 million.

Since this Member believes that his bill or similar legislation is the only responsible way to provide true estate tax reduction for our Nation's small business, farm and ranch families, this Member must use this opportunity to reiterate the following reasons for his opposition to the total elimination of the Federal estate tax.

First, to totally eliminate the estate tax on billionaires and mega-millionaires would be very much contrary to the national interest. It is not in America's interest that absolutely huge estates should be passed from generations to generations—getting ever larger. The establishment of a permanent privileged class, re-enforced every generation, is too much like the situation in many European countries from which immigrants fled from hopelessness from the total domination of a small feudal class.

Second, the elimination of the estate tax also would have a very negative impact upon the continuance of very large charitable contributions for colleges and universities and other worthy institutions in our country.

Finally, and fortunately, this Member believes that actually the Federal estate tax will never be eliminated in the year 2010. Reason will ultimately prevail and this effort to totally eliminate the estate tax on the super-rich will be seen as the very counterproductive step that it would be.

At this point, this Member notes that under the previously enacted estate tax legislation (e.g., the Economic Growth and Tax Relief Reconciliation Act), beginning in 2011, the ''stepped-up basis'' is eliminated, with two exceptions, such that the value of inherited assets would be ''carried-over'' from the deceased. Therefore, as noted previously by this Member, the Economic Growth and Tax Relief Reconciliation Act could result in unfortunate tax consequences for some heirs as the heirs would have to pay capital gains taxes on any increase in the value of the property from the time the asset was acquired by the deceased until it was sold by the heirs—resulting in a higher capital gain and larger tax liability for the heirs than under the current ''stepped-up'' basis law.

In closing, Mr. Speaker, while this Member is strongly supportive of legislation to substantially raise the estate tax exemption level and to reduce the rate of taxation on all levels of taxable estates, and as such today re-introduced his legislation to this effect, this Member cannot in good conscience support the permanent total elimination of the inheritance tax on the super-rich.

Mr. KNOLLENBERG. Mr. Speaker, today we have a key vote in front of this House on one of the most unfair and unjustifiable taxes in our Nation today.

Today we can permanently repeal the estate tax otherwise known as the death tax, to save millions of hard-working Americans from the ordeal of losing a family business at the same time as a family member. Unfortunately this is a prospect that is all too real for many small businesses.

Americans for Tax Reform says that 70 percent of small businesses do not survive the second generation as a result of the death tax. With our current economic uncertainty, we need to make it easier for our small businesses to survive, not harder. We can take a big step toward that end here today by passing a permanent repeal of the death tax.

I urge the House to vote this most unfair and unreasonable of taxes out of existence permanently.

Ms. MAJETTE. Mr. Speaker, as I have said many times in the past: I support tax relief, and I support repeal of the estate and gift tax. But, I also support tax relief that is fair and responsible. House Resolution 8, the Estate Tax Repeal Permanency Act is neither at this time.

That's why I today I voted for the Pomeroy substitute, which would exclude estates worth $3 million—$6 million per couple—from the estate tax beginning in 2004. This provides relief sooner than under current law, and sooner than under H.R. 8. The Pomeroy substitute would repeal permanently the estate tax for 99.65 percent of all taxable estates.

The Democratic alternative is effective and would provide immediate relief. Small and family businesses, which are the backbone of our economy, would be protected.

Most important, it is the fiscally responsible thing to do.

This vote comes against the backdrop of huge surpluses that have turned into record-breaking deficits. This year alone, our Nation will incur a record budget deficit of more than $400 billion. This Congress, the House has already passed over $425 billion in tax cuts, including the Republican tax cuts, the increased child tax credit action of last week, and the cuts provided for in the Energy bill from earlier in the spring.

It has been estimated that the Republican estate tax repeal bill would cost $162 billion through 2013, and the Center for Budget and Policy Priorities projects that its costs would explode to more than $800 billion in the decade after that. Add this bill to the $425 billion in tax cuts already passed and it will take the total to at least $1.387 trillion of revenues lost over the next 20 years. That's $1.387 trillion in debt reduction that could have been achieved.

The revenue decrease from the estate tax repeal would come just when baby-boomers are beginning to retire and will bring increased demands on Social Security and Medicare programs, not to mention the cost of the war in Iraq and our continued involvement overseas.

I am in favor of reducing the tax burden in ways that will stimulate the economy and put money into the hands of those who need it most, but not at the expense of the long term health of this Nation, and not in a way that will burden our children and grandchildren for the rest of their lives.

Our economy is still sputtering. We cannot continue to cut revenues when it does nothing to stimulate the economy. We are already making severe cuts in much needed services, and not expanding programs that are proven investments in our future and our children's future.

As an example of the flawed priorities of this Congress, this week in committee the Republicans voted not to spend $12 billion to fully fund Head Start, yet a few short weeks ago they voted to give relief to people who do not need it in the form of huge tax cuts. Adding to our national deficit again today will continue to make it more difficult for the Federal Government to address other pressing social needs, including education, health care, and home land security.

Long-term success in this country depends on high-quality education, stable and high-paying jobs and access to quality health care, and we must invest in these things to secure our children's future.

What we need today is a renewed commitment to fiscal responsibility. What we need today is a new direction and an emphasis on the future, not on the past.

I support repealing the estate tax, and have voted to do so today in a responsible manner, by supporting the Pomeroy substitute.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in opposition to H.R. 8, the ''Death Tax Repeal Permanency Act of 2003,'' and in support of the substitute amendment proposed by my colleague from North Dakota, the Honorable Mr. POMEROY.

I support granting relief to the many Americans in our farming community and small business community through the repeal of the death tax. Presently, only 2 percent of the estates of persons who die each year are taxed, and this number will fall in coming years as the exemption level for the estate tax rises. Of the estates that are subject to the estate tax, very few include family-owned businesses or farms. For example, in 1998, family-owned businesses or farms comprised the majority of the taxable estates in just 1,418 of the approximately 2.3 million people who died that year—or 6 out of every 10,000 people who died. Taken together, all farms and family businesses account for less than 3 percent of the assets in taxable estates valued at less than $5 million.

Family farms and businesses are already recipients of special treatment under existing law. For instances, estates that contain family farms and businesses may use special valuation significantly reduce or eliminate estate tax liability. In addition, when the enterprise accounts for at least one-third of an estate, tax payment can be deferred for up to 14 years. Furthermore, relief for family farms and businesses can be provided without repealing the estate tax.

If, hypothetically, the estate tax were extended at its 2009 level with a $3.5 million exemption and an upper echelon of 45 percent only 10,000 estates nationwide would be subject to taxation in the year 2010. That amounts to less than one half of one percent of the projected 2.6 million deaths for that year. For every 1,000 deaths, 995 people would be completely exempt from estate taxes. The remaining five individuals would pay significantly less in tax because of higher exemption and lower rate.

The United States Treasury Department analyzed the estate tax and found that raising the estate tax exemption level for family-owned farms and businesses to $4 million for individuals and $8 million for married couples, as proposed in 2000, would have exempted practically all of the family-owned farms and reduced the already small number of family businesses subject to the tax by nearly three-quarters.

The estate tax is also beneficial for charitable giving efforts. The very existence of the estate tax creates a powerful incentive for charitable giving. A recent study found that if the estate tax were eliminated charitable giving would have been reduced by approximately $10 billion in 2001. This amount is equal to the total grants currently made by the largest 100 foundations in the United States.

The estate tax increases the amount of charitable contributions among the largest estates by making these contributions tax deductible and thus act to reduce estate taxes. In 2001, for example, the latest year for which these IRS data are available, estates contributed $16.2 billion to charities. Taxable estates of more than $20 million gave $6.8 billion of this total, averaging $23 million in donations per estate.

Giving the trying economic times America is facing, this Chamber cannot afford to pass another financially imprudent bill. Beneficial programs like Head Start are being altered and Leave No Child Behind is being restricted. Medicare is under attack. The war in Iraq cost Americans billions of dollars, and the deficit is ballooning out of control. The repeal of the estate tax is a step in the wrong direction.

Mr. Speaker, the death tax should be repealed. I support the Pomeroy substitute that features offsets that close the corporate tax loophole to pay for the estate tax repeal proposal.

The SPEAKER pro tempore (Mr. PUTNAM). All time for debate on the bill has expired.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. POMEROY

Mr. POMEROY. Mr. Speaker, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. POMEROY:

Strike all after the enacting clause and insert the following:

SECTION 1. RESTORATION OF ESTATE TAX; REPEAL OF CARRYOVER BASIS.

(a) IN GENERAL.—Subtitles A and E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001, and the amendments made by such subtitles, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subtitles, and amendments, had never been enacted.

(b) SUNSET NOT TO APPLY.—

(1) Subsection (a) of section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking ''this Act'' and all that follows and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.''.

(2) Subsection (b) of such section 901 is amended by striking '', estates, gifts, and transfers''.

(c) CONFORMING AMENDMENTS.—Subsections (d) and (e) of section 511 of the Economic Growth and Tax Relief Reconciliation Act of 2001, and the amendments made by such subsections, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subsections, and amendments, had never been enacted.

SEC. 2. MODIFICATIONS TO ESTATE TAX.

(a) INCREASE IN EXCLUSION EQUIVALENT OF UNIFIED CREDIT TO $3,000,000.—Subsection (c) of section 2010 of the Internal Revenue Code of 1986 (relating to applicable credit amount) is amended by striking all that follows ''the applicable exclusion amount'' and inserting ''. For purposes of the preceding sentence, the applicable exclusion amount is $3,000,000.''.

(b) MAXIMUM ESTATE TAX RATE TO REMAIN AT 49 PERCENT; RESTORATION OF PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.—

(1) Paragraph (1) of section 2001(c) of such Code is amended by striking the last 2 items in the table and inserting the following new item:

''Over $2,000,000	$780,800, plus 49% of the excess over $2,000,000.''.

(2) Paragraph (2) of section 2001(c) of such Code is amended to read as follows:

''(2) PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.—The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds $10,000,000. The amount of the increase under the preceding sentence shall not exceed the sum of the applicable credit amount under section 2010(c) and $199,200.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying, and gifts made, after December 31, 2003.

SEC. 3. VALUATION RULES FOR CERTAIN TRANSFERS OF NONBUSINESS ASSETS; LIMITATION ON MINORITY DISCOUNTS.

(a) IN GENERAL.—Section 2031 of the Internal Revenue Code of 1986 (relating to definition of gross estate) is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsections:

''(d) VALUATION RULES FOR CERTAIN TRANSFERS OF NONBUSINESS ASSETS.—For purposes of this chapter and chapter 12—

''(1) IN GENERAL.—In the case of the transfer of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092)—

''(A) the value of any nonbusiness assets held by the entity shall be determined as if the transferor had transferred such assets directly to the transferee (and no valuation discount shall be allowed with respect to such nonbusiness assets), and

''(B) the nonbusiness assets shall not be taken into account in determining the value of the interest in the entity.

''(2) NONBUSINESS ASSETS.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'nonbusiness asset' means any asset which is not used in the active conduct of 1 or more trades or businesses.

''(B) EXCEPTION FOR CERTAIN PASSIVE ASSETS.—Except as provided in subparagraph (C), a passive asset shall not be treated for purposes of subparagraph (A) as used in the active conduct of a trade or business unless—

''(i) the asset is property described in paragraph (1) or (4) of section 1221(a) or is a hedge with respect to such property, or

''(ii) the asset is real property used in the active conduct of 1 or more real property trades or businesses (within the meaning of section 469(c)(7)(C)) in which the transferor materially participates and with respect to which the transferor meets the requirements of section 469(c)(7)(B)(ii).

For purposes of clause (ii), material participation shall be determined under the rules of section 469(h), except that section 469(h)(3) shall be applied without regard to the limitation to farming activity.

''(C) EXCEPTION FOR WORKING CAPITAL.—Any asset (including a passive asset) which is held as a part of the reasonably required working capital needs of a trade or business shall be treated as used in the active conduct of a trade or business.

''(3) PASSIVE ASSET.—For purposes of this subsection, the term 'passive asset' means any—

''(A) cash or cash equivalents,

''(B) except to the extent provided by the Secretary, stock in a corporation or any other equity, profits, or capital interest in any entity,

''(C) evidence of indebtedness, option, forward or futures contract, notional principal contract, or derivative,

''(D) asset described in clause (iii), (iv), or (v) of section 351(e)(1)(B),

''(E) annuity,

''(F) real property used in 1 or more real property trades or businesses (as defined in section 469(c)(7)(C)),

''(G) asset (other than a patent, trademark, or copyright) which produces royalty income,

''(H) commodity,

''(I) collectible (within the meaning of section 401(m)), or

''(J) any other asset specified in regulations prescribed by the Secretary.

''(4) LOOK-THRU RULES.—

''(A) IN GENERAL.—If a nonbusiness asset of an entity consists of a 10-percent interest in any other entity, this subsection shall be applied by disregarding the 10-percent interest and by treating the entity as holding directly its ratable share of the assets of the other entity. This subparagraph shall be applied successively to any 10-percent interest of such other entity in any other entity.

''(B) 10-PERCENT INTEREST.—The term '10-percent interest' means—

''(i) in the case of an interest in a corporation, ownership of at least 10 percent (by vote or value) of the stock in such corporation,

''(ii) in the case of an interest in a partnership, ownership of at least 10 percent of the capital or profits interest in the partnership, and

''(iii) in any other case, ownership of at least 10 percent of the beneficial interests in the entity.

''(5) COORDINATION WITH SUBSECTION (b).—Subsection (b) shall apply after the application of this subsection.

''(e) LIMITATION ON MINORITY DISCOUNTS.—For purposes of this chapter and chapter 12, in the case of the transfer of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092), no discount shall be allowed by reason of the fact that the transferee does not have control of such entity if the transferee and members of the family (as defined in section 2032A(e)(2)) of the transferee have control of such entity.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

Amend the title so as to read: ''A bill to amend the Internal Revenue Code of 1986 to restore the estate tax, to limit its applicability to estates of over $3,000,000, and for other purposes.''

The SPEAKER pro tempore. Pursuant to House Resolution 281, the gentleman from North Dakota (Mr. POMEROY) and the gentlewoman from Washington (Ms. DUNN) each will control 30 minutes.

The Chair recognizes the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as we begin consideration of the substitute, I would like us to focus on something pretty central to the fundamentals of legislating. We ought to do as a Congress that which we can do. The substitute I bring forward will take effect during the tenure of this Congress. It is effective January 1, 2004. The majority proposal before us does nothing during the sitting of this Congress, nothing during the sitting of the next Congress, the Congress after that, the Congress after that, the Congress after that, or the Congress after that. Nothing until January 1, 2011.

We have heard so much from the other side. We have heard so much about how they care about all the problems, how mean of us to oppose their addressing the problems. And yet now when it comes to the substitute, this is where the rubber meets the road because we want to do something now and something meaningful and they do nothing. Nothing about their bill.

□ 1330

Not one whit of their bill applies during the sitting of this Congress or until the year 2011.

Again, I referenced earlier the heartwrenching examples we have heard from the majority about family farmers. Let us talk for a minute about family farmers. I know something about family farmers. In representing the State of North Dakota, I probably represent more production acreage than any other Members of this House. The family farmers who have estate tax problems, and I am happy to tell my colleagues most of them do not, but of those that do, let us get after it. Let us get them relief and get them relief now.

The substitute I have advanced would give family farm couples $6 million in exclusion from estate tax. Any farmer in operation up to $6 million, no estate taxes. One hundred percent repeal, effective January 1. That is very meaningful relief and it is going to go right to the heart of the farm families that they are talking about.

Now, what do they offer by way of an alternative, this Congress, for dealing with these farm families? Absolutely nothing. In 2004, under their proposal, family farm estates over $3 million will be subject to estate tax; over $3 million. Family farm estates per couple in our situation: $6 million. We provide double the relief immediately. And so really, what they are offering these people is a total sham, because under their proposal, nobody gets anything until the very wealthiest, a tiny number of estates in this country, are taken care of.

Mr. Speaker, where I come from, a bird in the hand is worth two in the bush, and that is especially true when we consider prospects that this year 2011 will actually offer the kind of relief that they proclaim so loudly. Five Congresses from now are going to be looking at a very different budget situation, because the cost of their proposal absolutely explodes in the very decade baby boomers retire.

Consider the chart here. Mr. Speaker, $162 billion of revenue loss in the first 10 years. It ramps up slowly, and then really clobbers you: A $500 million loss in '04; a $31 billion loss in the year 2011; $57 billion loss in 2012; $63 billion loss in 2013. You catch my drift. This thing explodes in its consequence in the budget. Mr. Speaker, $840 billion worth of revenue loss in the next decade, just as baby boomers retire and want their Medicare and want their Social Security.

Now, what do my colleagues think is likely? We are going to say, no, baby boomers, we have this estate tax we repealed some time ago, and we are going to stick with it. I do not think so. I think the prospects are overwhelming that this distant repeal will never arrive.

Finally, I think that it just makes it very, very clear what this is all about. To look at the relief we offer in each of the next 5 years being vastly superior to theirs, because they do not want, in any way, to lose some of the momentum behind total repeal. So they will leave family farmers in the lurch through the year 2011; they will leave the small businesses they talk about in

the lurch in the year 2011. Again, look at this: estates $6 million and under; no tax under our proposal in 2004; $3 million and under taxed under their proposal. In 2005, the same situation. Again, we are superior in 2006, 2007 and 2008.

Now, if this Congress has before it the opportunity to give over each of the next 5 years meaningful relief to people that need it, why in the world do we not do it? That is exactly what this substitute is all about.

There is one final feature that I would discuss briefly; it is a feature that I was surprised to hear my friend, the gentlewoman from Washington, tout before the Committee on Rules yesterday, and that is, this notion of who is going to have capital gains tax on inherited property? Because under our proposal, when you inherit the property, the only capital gains tax on the appreciated value of that property you are going to have is between the time you inherited it and the time you sell it. Under their proposal, you are going to face capital gains taxes from the time it was purchased originally, whoever purchased it that ultimately bequeathed it to you in the inheritance.

And so in the family farm context, you have an awful lot of farmland coming into families in the 1930s, in the 1940s at just nominal value, which now has significant value. And when the heir goes to sell it, you are going to have capital gains on all capital appreciation over $1.3 million. We are going to have an awful lot of the family farmers that they are touting so much on this debate that right now do not have estate tax problems, and surely would not have estate tax problems under our bill, that are going to find themselves with walloping capital gains taxes, because they take this stepped up in basis and throw it out for carry-over so that they can help the wealthiest tiny few in this country.

Mr. Speaker, we have a proposal in my substitute to take care of 99.65 percent of the estates in this country. My gosh, that is pretty darn close to perfect, 99.7. But they do not want that relief to move forward, because it is the three-tenths of 1 percent of their wealthiest benefactors that they are most worried about. Well, I say let us deal with this straight up, take what we can get now, provide meaningful relief effective in 2004, pass the Pomeroy substitute, and get this on the road toward exactly what we need: estate tax relief now for America's families.

Mr. Speaker, I ask unanimous consent to have my friend and colleague, the gentleman from Maryland (Mr. CARDIN), assist in the management of the time.

The SPEAKER pro tempore (Mr. PUTNAM). Is there objection to the request of the gentleman from North Dakota?

There was no objection.

Ms. DUNN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am strongly opposed to this amendment, and I want my colleagues to look at it very closely and be very clear about what this amendment would do. It establishes a permanent death tax. It is a huge tax increase on small business and family farms.

This amendment would increase taxes on farmers, on timber growers, on small businessmen and small business women, and it would not only take money from their pockets and send it to Washington, D.C.; it would practically force them to take more money from their pockets to pay lawyers, insurance salesmen, and estate planners. And why? So they will not have to send their money to Washington, D.C. to comply with this permanent death tax.

There are people who think this is a good thing. I do not understand it; I do not question their intent, I simply acknowledge that that is the case.

We have already debated the issue surrounding the death tax, but let us look closely at the impact of this amendment, because I think it puts on display the philosophy of those who want to keep the death tax.

Under current law, the tax rate for estates is due to fall in 2004, in 2005, 2006, and 2007. For 2 years, the rate would remain at 45 percent and then be totally repealed in 2010. This amendment eviscerates that tax relief.

Some estates may benefit under this amendment. If you are unlucky enough that your business is not doing well and you fall below the $3 million threshold that is in this amendment, you benefit. But what this amendment tells you is this: do not be successful. Do not save your money. Do not invest your money. Do not grow your business.

Instead, it encourages you to spend it now, sit back, consume that estate, because the government is going to take half of that estate anyway, and everybody knows how wisely the government spends our money. Because the more successful you are and the harder and the more you work, the more expensive it will be for you to hand that business on to your children.

Does the amendment promote charitable giving? No, it does not. Does it redistribute the money it raises to those who are less wealthy? No, it does not. Does it equalize income among different layers of society? No, it does not do that. Does it help pay Social Security benefits? No.

Opponents of death tax repeal make all of those charges, but when they bring forth their own proposal, we can see it for what it really is: a tax increase, pure and simple. A way to put money in the pockets of the Federal Government. And because the exemption level is not indexed, there will be free money to the Treasury. Inflation grows, but the exemption stays just the same. As the economy improves, as businesses grow, as people invest and work hard, they will be penalized, because someone in Washington, D.C. said you can only be so successful, an arbitrary limit, and then you pay.

That is what this amendment is about and that is why it ought to be voted down.

Mr. Speaker, we hear time and again the arguments of those who want to keep the death tax. We hear about equality, about Social Security, about charitable giving, about enormous concentrations of wealth. But when it comes right down to it, it is about money.

Mr. Speaker, this approach is the wrong approach. This policy has outlived its day. This philosophy is not what made our Nation great, and I urge a ''no'' vote on this substitute.

Mr. Speaker, I reserve the balance of my time.

Mr. CARDIN. Mr. Speaker, it is my pleasure to yield 2 minutes to the distinguished democratic whip, the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Speaker, I say to my friend from Washington State, what we hear over here is enmity, enmity towards the common wheel. I do not mean towards government, I mean towards us coming together as a people to invest in America, to invest in our children, to leave no child behind, to make sure our environment is clean, to make sure that we have the resources to invest in national defense.

Now, those of you who go to work every day and work for a living and get a salary check and have deductions from that salary check, to help your government have a national defense, have the programs for education and health care and NIH research to make our society better, hear me now. Those of you who work every day, let me tell you what the objective of this provision is.

First, we are going to exempt three-tenths of a percent; not exempt 99.7 which the Pomeroy bill does, and it speaks to those small farmers and those small business people who have grown America, who we want to exempt. We are for that. But what it does not do is add gargantuan amounts to the debt and then, let me tell my colleagues what this does. I have $100 million that I inherited from my dad, hooray for me. I will never, ever pay taxes again under the Republican program.

Never, unless it happens to be a sales tax or an excise tax. I will not pay income tax, because this is inherited dollars, and I will have it invested in corporate or savings accounts, and the Republicans want to exempt both dividends from taxation and interest on savings from taxation. So I will never pay taxes again. And, by the way, they also want to exempt capital gains.

Now, if you get most of your income from capital gains, or you get most of your income from dividends, or you get most of your income from interest, you may be for this. But if, however, you are like the overwhelming majority of Americans who get up every day, play

by the rules, work hard, and get a salary check, this undermines you, your children, and your families.

Vote for the Pomeroy substitute.

Ms. DUNN. Mr. Speaker, I yield 3½ minutes to the gentleman from Missouri (Mr. HULSHOF), a very valuable member of the Committee on Ways and Means, a gentleman who knows what he is talking about because he has been through it personally.

Mr. HULSHOF. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I have been listening to the discussion and the debate and the rhetoric, and I have been a bit disappointed by some of the arguments that have been made; not surprised by the arguments, but nonetheless disappointed. There have been some of my colleagues on the other side who have talked about hypotheticals. Let me allow my colleagues a little glimpse into a very personal story.

On November 22 of last year, my father collapsed and died at our family's home in Southeast Missouri. He was 68. On his first trip to Washington, D.C., he sat right up there in the gallery to watch his son take the first oath of office. He died without an estate plan. In fact, I wish my colleagues could have met my dad, because if they had shaken his hand, they would have immediately noticed the callouses from 4 decades of working our family's farm down in the district of the gentlewoman from Missouri (Mrs. EMERSON).

One of the necessities, of course, of having that painful experience is that my mom and I, as the surviving members of the family, had to conduct an inventory. And I do not mind telling my colleagues, a 493-acre farm, a number of irrigation systems, farm equipment, grain trucks, the modest home where I grew up, modest savings and, thankfully, because of Congress's actions a number of years ago, my mom was not required to pay the tax. Yet, she has vowed to put together an estate plan in order to pass on the legacy that my father built.

□ 1345

So she has been forced to spend thousands of dollars to accountants, to lawyers to create these legal contortions that are required by the very existence of the estate tax. Can anybody give me a compelling reason why she should have to spend her limited resources in order to preserve my father's legacy? Can anyone?

As long as the estate tax laws remain on the books, surviving family members across this country will have to shell out hard-earned dollars to ensure that the long reach of the death tax does not force them to sell off assets in the family business.

The gentleman from North Dakota is my friend. I applaud his intent. One of the charts that he mentioned, at the bottom, it says only 400 farms would actually be subject to the estate tax. I think that is what it says on the bottom of it, and I will let my colleagues look at the exhibit; and yet what the chart does not say is that every farm or every family business has to file an estate tax form and a return, perhaps a simple exercise, but in every instance where a family business has been accumulating assets, a return has to be filed, which means again hours of meetings with accountants and lawyers and, again, a cost of compliance.

So it is not just the number of estates that would be subject to the tax. It is this huge cost that as long as the estate tax, the inheritance tax remains on the laws of our books there will be this cost of compliance to all family businesses across the country.

Simply, the death of a family member should never be a taxable event.

Mr. CARDIN. Mr. Speaker, I yield myself such time as I may consume.

Let me say to my friend we all, of course, offer our deepest condolences as we did to his family. I am afraid, though, that the bill without the Pomeroy substitute is going to offer no help whatsoever for a decade to people who may find themselves in this same position.

One of the principal advantages of the substitute is that not only does it provide immediate help starting in 2004, exempting those estates $3 million, $6 million on a couple, and by the way, those gross estates would not have to file forms. They do not even have to file an information form if their gross value is below $3 million. So I think we would provide immediate help to a significant number, to the overwhelming majority of people who would find themselves in the same position that my colleague's family found itself in.

But there is a second reason that I think family farms, which go through a similar situation, would benefit much more from the substitute than the underlying bill, and this is predictability. I dare say that if the bill that the Republicans are bringing forward were to pass, very few individuals who had estates of 3, 4, 5, 6, $7 million would change their estate plan based upon the predictability of Congress to keep this policy in effect for the next decade, so that the relief would eventually come.

Predictability is very important in estate planning. The Pomeroy substitute gives us that predictability, a policy that will stand, a policy that exempts 99.6 percent of the estates in our country today. Those individuals would be able to make estate changes in order to deal with the new realities of a law that makes sense.

There is a third reason in addition to the fact that we provide immediate relief and it is predictable. The third reason we have heard over and over again, and it is an important reason, and this is affordability, what we can afford as a Nation.

Next week we are going to be debating whether we can afford a prescription drug plan for our seniors. We make choices. We set priorities by what we think is important. The Joint Economic Committee on Taxation, not this Member but our objective professionals, tell us that this bill will lose, when fully implemented in the next decade, $850 billion. Our prescription drug plan that will be on the floor next week is $400 billion. Those of us who say can we not find a little bit more money for the millions of seniors who do not have health insurance, can we not throw a few more dollars in that program, we are told we do not have the money.

Yet we have the money for relief that affects only a few thousand estates in this country, and that is all it is. It is not the wholesale farm. It is the farms of a very few. In fact, they are wealthy farms that are going to be affected, estates of a very few, very wealthy people in this Nation that are impacted by maintaining an estate tax for the very, very wealthy individuals. And as my friend, the gentleman from Maryland (Mr. HOYER), pointed out, the reason why the underlying bill will never become law and if it becomes law it will never be sustained is that Americans would not tolerate multibillionaires passing their estates tax free and their income not being taxed. It will not be sustained.

Vote for the underlying substitute. It will affect policy today. It will take care of the problems we have heard before.

Mr. Speaker, I reserve the balance of my time.

Ms. DUNN. Mr. Speaker, I yield 12 minutes to the gentleman from Georgia (Mr. BURNS) for the purposes of control, a gentleman who has been very involved in the development of our legislation and very much a supporter of it as he has come to Congress as a freshman Member. He will present differing points of views from people who come from all over the country who are members of the freshman class.

The SPEAKER pro tempore (Mr. PUTNAM). Is there objection to the request of the gentlewoman from Washington?

There was no objection.

Mr. BURNS. Mr. Speaker, I yield myself such time as I may consume.

I thank the gentlewoman from Washington for yielding me the time; and Mr. Speaker, I rise today in support of H.R. 8, as introduced by the gentlewoman from Washington (Ms. DUNN) and in opposition to the Pomeroy substitute amendment.

In 2001, Congress repealed the death tax temporarily. It is scheduled to resurface and haunt farmers and small business owners again in 2011. My constituents in the 12th district of Georgia are not rich; but they own farms, they own small businesses, where family ownership still means a great deal.

H.R. 8 helps to ensure their survival. The underlying bill that I am proud to cosponsor is good for small businesses. It is good for family ownership. It is good for family farms.

The amendment crafted by the opponents of H.R. 8 would gut the bill and would reinstitute the double taxation of a person's earnings over a lifetime. This is a veiled attempt to increase the taxation burden on our small businesses and family farms. Do not be deceived.

The death tax stifles economic growth. It is counterproductive to the American Dream, and it is an unfair and immoral tax on our small and minority business owners.

The substitute amendment reinstates the death tax and ensures its hindrance on the family businesses and the farmers. We must vote ''no'' on the substitute.

H.R. 8 does just the opposite. It kills the death tax permanently. I encourage my colleagues to vote against the substitute amendment and to vote for the underlying bill that ensures the viability of our small businesses and our family farms.

Mr. Speaker, I reserve the balance of my time.

Mr. CARDIN. Mr. Speaker, it is now my pleasure to yield 2 minutes to the gentleman from Illinois (Mr. EMANUEL).

(Mr. EMANUEL asked and was given permission to revise and extend his remarks.)

Mr. EMANUEL. Mr. Speaker, I thank the gentleman for yielding me the time.

I was moved by my colleague's story who remembers his father here when he got sworn in. Just 5 months ago, my father sat up there and watched me get sworn in, and he came to this country in 1959. So whatever happens in his life and my life, I will always have that time that he was able to see, having coming to this country, his son get sworn in.

Now that I am a father of three children, I am reminded of what Mark Twain once said: ''At 12 I concluded my father was a fool. By 16 I was shocked what he could learn in only 4 years.'' I say that because I am going to provide for my children the same values that my father taught me and my mother. They are going to get love, education and a good kick out the front door so they can earn their way around this world the way I have.

The truth is, what we should be doing instead of helping wealthy people protect their wealth, we should help people build wealth. I had an amendment that is not allowed today on the floor that would support the Pomeroy substitute and give us estate tax relief where it should be provided for our farm and small business owners, but also provide a deduction for college tuition education for all families who are trying to send their children to college: $4,000 they are allowed to deduct for college education; families, up to $100,000. That deduction ends in 2005.

College costs have gone up by 20, 30 percent over the last couple of years. It is continuing to go up. Yet in 2005 that deduction for a middle-class family to send their kids to college is eliminated. It ends. That is about creating wealth. That is about our common shared values. So we can have an estate tax and help create wealth by making sure everybody gets access to that ticket to the middle-class dream, a college education.

That deduction is eliminated in 2005. I offered an amendment to extend it to 2013 so we can have estate tax reform and college education. What we should do is be in the position of not having an either/or policy, a tax reform on the estate tax and provide middle-class families the opportunity to give their children a college education, not go broke doing it, and make sure that the American Dream stays alive for generations to come.

Mr. BURNS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank the gentleman from Georgia (Mr. BURNS) for yielding me the time.

Mr. Speaker, as I listen to this debate, of course I stand here fully in favor of H.R. 8 and against the Pomeroy amendment because it is really not about who has received and who has not this double taxation, this so-called death tax.

The other side says that there is a $3 million exemption under the Pomeroy substitute, that 99.6 percent of estates would be exempted from the death tax. I personally do not need that $3 million exemption or even the $600,000 exemption. I would probably be fine with a $300,000 exemption; but the point is, it is a double taxation and it is wrong. It is wrong to tax anybody twice on the same income.

These people, no matter what their net worth, they have paid taxes. They have paid at the highest marginal tax rate; and it is totally wrong, as the gentleman from Missouri (Mr. HULSHOF) said, to have to worry about paying taxes after death.

Mr. CARDIN. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, in the Oregon legislature some years ago, I actually led, as Chair of a tax committee, a reform of the estate tax. I thought I understood some of the principles; but after listening to the rhetoric regarding this issue, looking at the facts since I have been a Member of Congress, I thought maybe I would go back and check to see if there was something I was missing.

I invited a number of tax professionals in my community, CPAs, tax attorneys, financial planners, to come down and talk to me about how the effect of this proposal actually works. It was fascinating, giving these people a grant of immunity, and I urge any of my colleagues to do the same with tax professionals in their community.

They said, number one, under existing law anybody who could not shield at least $5 million of an estate was really guilty of malpractice.

Number two, they said it was not the estate tax that broke up small business. It was idiot sons, and they said in their experience when they watch great inherited wealth after three generations, it looks like it becomes a genetic defect. It was fascinating what they told me, people who in the main were Republicans who work in this every day.

They pointed out that huge wealth, which would be tax free under the Republican proposal today, huge wealth often was not even taxed once. One does not become a billionaire based on their W–2s.

□ 1400

It is capital appreciation. And the clever approach of eliminating the inheritance tax, eliminating dividends from taxation means that you will be able to manipulate it, while people with great means will not be paying any tax at all if they do not want to.

If my colleagues truly wanted to help protect the family farm and small business, they would join together with the vast bipartisan consensus in this Chamber to index the inheritance tax to be able to deal with the Pomeroy amendment, which actually would help the mother of the gentleman from Missouri (Mr. HULSHOF), not the proposal that he is going to vote for.

Mr. Speaker, I strongly urge that we approve the Pomeroy amendment.

Mr. BURNS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Florida (Mr. FEENEY).

Mr. FEENEY. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time.

I am not surprised that some tax planners oppose this act, because what this does is to simplify the Tax Code. What the substitute amendment does is to make a 40,000-plus page Tax Code longer and more complicated. It is understandable that a few tax planners do not like this.

But there is something inherently unfair about taxing people when they die. My motto is: No taxation without respiration. When a person quits breathing, we ought to leave them alone. And the notion we are going to make a complicated Tax Code even more complicated with this ceiling under the Pomeroy amendment, this creates a ceiling on growth and prosperity and success. This is a ceiling on the future.

The bottom line is that we have more people in America engaged in the preparation and collection of taxes than we do in the growing of food and agriculture. That is wrong. We need actually to have fewer tax planners and estate planners. We need to let family farmers, we need to let small businesses, automobile dealers and other businesses in our communities plan for their future without the need of expensive lawyers and tax planners.

Again, my colleagues, let us abolish the death tax. No taxation without respiration.

Mr. CARDIN. Mr. Speaker, could I inquire as to the amount of time that remains on both sides?

The SPEAKER pro tempore (Mr. PUTNAM). The gentleman from Maryland (Mr. CARDIN) has 13 minutes remaining, the gentlewoman from Washington (Ms. DUNN) has 11 minutes remaining, and the gentleman from Georgia (Mr. BURNS) has 8½ minutes remaining.

Mr. CARDIN. Mr. Speaker, I ask unanimous consent that the rightful sponsor of the substitute, the gentleman from North Dakota (Mr. POMEROY), be allowed to control the remaining time on this side.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. BURNS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Texas (Mr. CARTER).

Mr. CARTER. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time.

Mr. Speaker, I stand in support of H.R. 8 and totally opposed to the substitute. It is time we kill the death tax once and for all and forever. This is critical. Across the street from my church is a 400-acre farm. The second generation of farmers are farming that farm. But because of the growth in our county, the value of that farm, which these people intend to farm, is now over $2.50 a square foot because of development growth. Those people will be killed by this tax. We have got to eliminate it so that those people, their children, can continue to farm.

I ran into a good friend of mine in New Mexico. After years in college, I just assumed he would be continuing to ranch in Clayton, New Mexico. But, no, he is not in the ranching business. Why? Because the inheritance tax wiped out a ranch that they fought for and died for in Northern New Mexico. And now he is not there anymore. We have to protect those people and kill this tax.

Mr. POMEROY. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. LEVIN).

(Mr. LEVIN asked and was given permission to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, the Pomeroy amendment would exclude 99.65 percent of all estates from estate tax. So what is going on here? Why would the Republicans want to abolish the estate tax on this two-fifths of 1 percent? And, by the way, almost none of the 99.65 have to file a return. I think the answer is pretty clear: It is not only that my Republican colleagues are trying to protect the very, very, very wealthiest. That they are doing. And maybe that is their instinct. But what is really happening is my colleagues are taking $50 billion a year out of the Treasury of the United States. That is the difference between the Pomeroy bill and the total repeal.

That $50 billion a year would make up about one-third of the shortfall of Social Security. It would also provide other programs, like education, that are not only a safety net but are a rung up the ladder for middle- and lower-income families, and, yes, a lot of higher-income families. So that is what the Republicans are trying to do. They say it is only 1 percent of the totals revenues of this country. But they chipping away, chip by chip, block by block at the revenue in-flow into the Treasury of the U.S. and starving the programs that are needed for the vast majority.

What the Republicans are doing is to help a teeny tiny minority, a small number, hundreds, only hundreds of farmers and small business. The rest do not pay any estate tax. What the Republicans are trying to do is to help that small, small minority, and they are hurting 99 percent of the American people.

Vote for Pomeroy and vote against the basic bill.

Mr. BURNS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Minnesota (Mr. KLINE).

Mr. KLINE. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise today in strong support of H.R. 8, a measure that frees men and women from being penalized for their hard work and their success. The Death Repeal Permanency Act of 2003 would eliminate the death tax, eliminate it, and that is the key, once and for all.

Mr. Speaker, Congress has already voted to get rid of the tax. We should never ever let it come back. The estate tax discourages the very values we prize most highly in our Nation. It is a tax on hard work and savings, on sacrifice, and on success.

In Minnesota, the family farm is an important part of our commerce, an important part of our industry. It is part of the fabric of Minnesota. The family farm epitomizes the values that we hold most dear. We should never ever let this tax creep back in and put those farms in jeopardy.

We cannot allow this unjust penalty to harm any of our family farmers, whether they are a small farm, like my wife's family farm, or a big farm. The estate tax is immoral. The death of an individual's father, mother, father-in-law or mother-in-law should not be a taxable event. Not now, not ever.

Let us support H.R. 8 and not the Pomeroy substitute.

Mr. POMEROY. Mr. Speaker, I yield 1 minute to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, I thank the gentleman for yielding me this time.

Let us be clear what this is about. This is not about saving the family farm. This is not about protecting small business. This is about over a 10-year period giving $160 billion in tax relief to the richest 2 percent of the population. Ninety-eight percent of the people get nothing.

What these folks are trying to do by running up huge deficits and a huge national debt is to end up cutting back disastrously on Medicare, Medicaid, education, and veterans' protection. No money to ease the waiting lines at VA hospitals all over America, but $180 billion for the richest 2 percent of the population.

This is an insult to the middle class and to the working families of this country. It should be defeated.

Mr. BURNS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Indiana (Mr. CHOCOLA).

Mr. CHOCOLA. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in support of H.R. 8 and opposed to the amendment.

The bottom line, although we hear a lot of discussion, the bottom line is anybody who spends their whole life building a business or growing a farm should never have to sell that business or that farm to pay death taxes. The American dream is based on the principles of hard work and the celebration of self-reliance and individual responsibility.

People can reap the rewards of their own success, and they should be encouraged to share that success with others. The death tax and this amendment violates every single one of those principles of the American Dream. Mr. Speaker, it is not only the heirs that are punished by this unfair tax, it is the employees of those companies and those farms, and it is the customers, and it is most of all the communities that those farms and those businesses operate in.

Mr. Speaker, it is past time for Congress to repeal the death tax permanently, and I encourage all of my colleagues to support H.R. 8 and vote against this amendment.

Mr. BURNS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Pennsylvania (Mr. GERLACH).

Mr. GERLACH. Mr. Speaker, I thank the gentleman for yielding me this time. I appreciate the opportunity to speak on this matter. I rise today to oppose the substitute amendment and to support the underlying bill. The initial repeal of the death tax was designed to benefit an important sector in our economy: Family-owned and small businesses.

Many of these businesses hold nonliquid assets and, thus, upon the passing of an elder, many families finds they must liquidate a portion or all of their family business in order to pay the obligations imposed upon them by the estate tax. Often these businesses are generations old, and when they liquidate not only does the family suffer but the economy and the community suffers as well.

Small businesses are among the strongest participants in our economy, yet their continued viability is the most vulnerable to unfair and excessive taxes, such as the death tax, which may tax up to 55 percent of a business' full value. Permanently repealing the death tax will not only provide much-needed tax relief to personal estates passed to individuals, but will also insulate this business sector so vital to our fledgling economic recovery.

Additionally, if we do not address this issue by a permanent repeal of the estate tax, it will automatically be reinstated in 2011. Individuals and small businesses would again face the looming specter of the return of the death tax. I urge opposition to the substitute amendment and for support of the underlying bill.

Mr. BURNS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Texas (Mr. BURGESS).

(Mr. BURGESS asked and was given permission to revise and extend his remarks.)

Mr. BURGESS. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise today in strong support of H.R. 8, against the substitute amendment, and in favor of the repeal of the death tax.

Hardworking men and women toil every day to provide for their families and make their children's lives better. That is the American dream. Today that dream is being threatened by the death tax. Upon death, heirs are often forced to sell the family farm or small business to pay the Federal estate tax because a large share of their wealth is held in assets such as lands, buildings, plant and equipment. That is not right, that is not fair, and that is not the American way.

It is not fair because that property has already been taxed once, and in some cases twice. Two weeks ago, we passed the President's economic stimulus plan, which puts tax dollars back in the hands of people who make our economy go. We cannot continue to punish those who work hard, take risks, and are successful. We need their success. We need their success for the economy to recover. We need their success to create jobs.

The next step towards getting our economy moving is to repeal the unfair and unjust death tax. It is for that reason I am a strong supporter of permanently abolishing the death tax.

Mr. BURNS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Alabama (Mr. BONNER).

(Mr. BONNER asked and was given permission to revise and extend his remarks.)

Mr. BONNER. Mr. Speaker, I rise in strong support of H.R. 8 and in opposition to this substitute. I firmly believe that this is every bit as important a piece of legislation as the President's tax cut was just a few weeks ago, and I am very proud to be a cosponsor.

The death tax is fundamentally un-American. We should all aspire to be successful. And if we are fortunate enough to accumulate a little wealth, we should be able to leave that to our children, to our grandchildren, to our universities, our churches, our synagogues, or whomever we choose, not whom the government chooses. This unfair and punitive tax is killing America's small businessmen and women and our family farmers.

Congress understood this in 2001 and acted to gradually repeal the estate tax. But the repeal will sunset in 2010. It simply makes no sense whatsoever to expect taxpayers to time their deaths so as to qualify for more favorable tax treatment. The House recognized this problem, and we have twice voted to make this repeal permanent.

My district in Alabama is largely rural, with small landowners. Estate planning is extremely difficult and expensive. This is just wrong to make these people not only be doubly taxed but triple taxed. I again urge my colleagues to oppose the substitute and support the underlying bill.

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Mr. POMEROY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I find it curious that the preceding speakers each making their eloquent speeches on behalf of their family farm constituents, their small business constituents, will oppose the amendment that I have offered that will bring them meaningful relief right now, January 1, 2004.

Mr. Speaker, let me just go through the comparison. If a couple's estate is worth $6 million or less on January 1, 2004, no estate tax under our proposal. Under their proposal, these farms and small businesses with valuations in excess of over $3 million, they are going to have tax under their proposal in 2004, 2005, 2006, 2007, and 2008. There is more relief under our proposal than their proposal.

If they want to protect these estates, they should pass the substitute today; and next year if they want to go ahead and try to pass the repeal, they can go ahead and try. There is no harm in that, take what you can get now and come back and take some more later. That is how we function in this Congress a lot. But they have done something quite different. They say nobody gets any relief until 2011 because at that time the wealthiest three-tenths of 1 percent get to participate fully in the relief as well.

If that is what this is about, let us talk about the three-tenths of 1 percent. But do not put this on family farms or small businesses; or as an earlier speaker said, this estate tax repeal is really about the guy pushing the broom. I do not know too many guys pushing brooms that have estate tax problems. It goes to show really the overblown rhetoric on the other side of the aisle unmatched by any reasonable effort to help now address the estate tax problems they speak so compellingly about.

Mr. Speaker, I yield 3 minutes to the gentleman from Seattle, Washington (Mr. MCDERMOTT).

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. MCDERMOTT. Mr. Speaker, I think the gentleman from North Dakota, who comes from a big farming district, has a great amendment here.

Mr. Speaker, I will include for the RECORD a letter from the National Farmers Union dated June 16, 2003. The letter says there is no evidence that the estate tax has forced the liquidation of any farms, and existing estate tax provisions already exempt 98 percent of all farmers and ranchers. This is a letter on behalf of 300,000 farmers and ranchers. By increasing the level of estate exemption to $4 million per individual, which is what the Pomeroy amendment does, 99.5 percent of American agricultural producers would be exempted from any estate tax liability. It goes on to say the 20-year Federal cost of Federal estate tax repeal is estimated to be nearly $1 trillion. For farmers and ranchers, such a loss in Federal revenues will reduce our ability to fund a wide range of commodity, conservation, rural development, research and trade programs important to family farms.

Why are we doing this? Well, we are in the rubber-stamp Congress. We have an amendment out here that makes sense, but the Republicans will not consider it because ''I approve of everything George Bush does,'' and they are out here to rubber stamp another amendment.

In spite of the fact that last night we created a bill in the Committee on Ways and Means to deal with pharmaceutical benefits, we said to people, we are going to cover you from zero up to $2,000 and then there is going to be this big gap up to $4,900 people do not get a thing. They have to keep paying their premium, but they are not going to get anything out of it. From $2,000 to $4,900 in your bill is not a tax benefit that covers the pharmaceutical needs of people.

Now we could fix that simply with the money we have here today that we are passing out the back door, not to farmers; this is not a farmer issue. This is a bunch of very, very rich people hiding behind farmers. They are sort of sneaking behind the combine waiting until this bill gets through, and then they are going to stand up and take all their money. This is not for farmers. The farmers say that.

So who is it for? It is the President of the United States who had a fund-raiser last night, and he said give me $2,000 a plate, sit down; and I am going to rubber-stamp another bill.

Mr. Speaker, we have rubber-stamped one bill after another. A Member on the other side of the aisle said this is equally important with the other tax bill we did. Hey, there is $900 billion still laying in the Committee on Ways and Means. It is going to be brought out here, and we will rubber-stamp it. How big is the debt? Nobody cares. Our kids can pay for that, except for the kids of rich people; they do not pay taxes.

NATIONAL FARMERS UNION,
June 16, 2003.

House of Representatives,
Washington, DC.

DEAR MEMBER OF CONGRESS: I write on behalf of the 300,000 farmer and rancher members of the National Farmers Union to urge you to vote against H.R. 8, legislation that

would repeal the federal estate tax when it comes to the floor of the U.S. House of Representatives.

Repeal proponents have characterized this issue as critical to the future sustainability of America's family farms and ranches because it is a primary cause of farm liquidations. This argument is without merit. There is no evidence that the estate tax has forced the liquidation of any farms, and existing estate tax provisions already exempt 98 percent of all farms and ranches. By increasing the level of the estate tax exemption to $4 million per individual, 99.5 percent of America's agricultural producers would be exempt from any estate tax liability.

We believe estate tax laws should be reformed, not repealed. An immediate increase in the level of the exemption utilized to calculate estate tax liability, and simplification of the rules and procedures governing the filing and payment of estate taxes, represents a more rational and beneficial approach for farmers, ranchers and small business owners than full repeal.

The tax reform approach will minimize the loss of revenue for both the federal and state governments that will result from full repeal at a time when budget deficits and declining public revenues are severely stressing our capacity to maintain and expand priority programs important to the American people. The twenty-year federal cost of full estate tax repeal is estimated to be nearly $1 trillion. For farmers and ranchers, such a loss in federal revenues will reduce our ability to fund a wide range of commodity, conservation, rural development, research and trade programs important to the farm economy. These programs are much more critical to retaining a family farm oriented production agriculture system than the limited savings resulting from estate tax repeal that will only accrue to the nation's wealthiest individuals.

Estate tax reform will provide much needed certainty to those engaged in planning for the future while ensuring that individuals are not subjecting their heirs to a capital gains tax liability resulting from the potential loss of the stepped-up basis provisions contained in current law. If this occurs, the result will amount to a substantial tax increase for those of more modest means and smaller accumulations of wealth.

We look forward to working with you to develop and adopt an estate tax reform proposal that is both fair and fiscally responsible. Thank you for your consideration of these issues and for your vote against repeal of the federal estate tax.

Sincerely,

DAVID J. FREDERICKSON,
President.

Mr. BURNS. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. MURPHY).

Mr. MURPHY. Mr. Speaker, I would like to add one other thing to this discussion, that is, many a small business owner has a lot of money tied up in assets, but very little in cash by comparisons. They will spend perhaps hundreds of thousands a year paying for insurance, lawyers' fees and accountants to make sure that upon their death, the insurance picks up the tab.

This money that they spend each year could be spent on employees' wages and benefits and expanding their businesses. Some of the smaller farmers do not have the money to pay for this. I just want to make sure that we keep that in perspective, that there is a lot of money that is spent every year by small businesses that otherwise could be going to help employees. Insurance is what pays it anyway, and that is not the way we should be thinking about it. They should be thinking about ways to keep the money in their business now and after their death so they can continue to have people employed.

Mr. BURNS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to summarize what we have heard from the new Members of Congress. The death tax as we know it is wrong. It is immoral. It is something that we must repeal permanently. My colleagues on the other side of the aisle would like to suggest that the substitute is the better approach, but it establishes a permanent death tax. The farmers and ranchers and the small business people of America are opposed to any death tax. I would remind Members that the American Farm Bureau is supportive of the repeal of the death tax permanently, as are numerous other organizations that recognize how onerous this burden is to America.

I would like to add my support to the underlying bill, H.R. 8. Let us kill the death tax today. Let us make it permanent. Let us ensure the future of our children and grandchildren.

Mr. Speaker, I ask unanimous consent to yield the balance of my time to the gentlewoman from Washington (Ms. DUNN) and that she may control that time.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Georgia?

There was no objection.

Ms. DUNN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to make a couple of points in response to things I heard during the debate, and I appreciate the participation of the freshmen Members of Congress. Their viewpoint is very energetic and fresh. It is very valuable to hear what they have to say.

There has been mention in the past of the National Farmers Union, and I want to assure people listening to this debate that the American Farm Bureau, which has 5 million members, supports permanent repeal of the death tax, as do the Agricultural Retailers Association, the Alabama Farmers Federation, the American Society of Farm Managers, the Rural Appraisers, the American Soybean Association, the American Nursery and Landscape Association, the Farm Credit Bureau. I could go on and on. There is a list of 25 organizations here that support the permanent repeal of the death tax.

Why is that? The reason is they want predictability. One of the previous speakers talked about unpredictability because the act will not go into effect until 2010, 7 years from now. These farmers support permanent repeal because they do not want to have to bet on the fact that their farm will be within $3 million, which is the limit in the Pomeroy amendment. We hear talk about $6 million, and that is for two members of a family. They do not want to put those dollars into providing for estate planning and purchasing life insurance policies so liquidity will be there when the time comes that they are taken from this vale of tears and their children have to pay for the inheritance of their estate. They want to use those dollars and put that capital into their businesses and farms and into their equipment and land and into the employment of many, many people who will lose their jobs once farms close down.

Mr. Speaker, we have another speaker who would like to speak about the death tax. He is a long-time Member and very active in this debate through the years.

Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Speaker, I am pleased to cosponsor H.R. 8, and I commend the gentlewoman from Washington (Ms. DUNN) for the diligent work that she has performed regarding this issue.

I was proud to support the Economic Growth and Tax Relief Reconciliation Act of 2001, which included a permanent repeal of the death tax. Unfortunately, due to arcane rules of the other body, this much-needed relief for working Americans is scheduled to sunset at the conclusion of 2010. Since then my colleagues, many of my colleagues, and I have voted twice to make this repeal permanent. I am hopeful that this Congress, both the House and the other body, will finally agree to permanently repeal the death tax and send it to the President for his signature.

Unless we pass H.R. 8, it is my belief that some of my constituents in the Sixth Congressional District of North Carolina will once again be subject to the death tax in 2011. Further, the sunsetting of this tax makes it difficult for business owners to make strategic planning and investment decisions which could have a major impact on the future of their business and loved ones.

Finally, I do not believe we should punish American families who have worked diligently to provide for themselves and their families and want to pass along the fruits of this success to their children and grandchildren. The death tax is a threat to the American Dream as we know it. It is my belief that this tax is the most onerous in the code. Conceptually and in practice, it reduces personal incentive to remain industrious, a disincentive to save, to invest.

Eliminating the death tax, coupled with the recent Jobs and Growth Relief and Reconciliation Act, will greatly assist in restoring consumer confidence, spurring capital investment, and creating new jobs which are critical components of economic viability and growth, particularly in the small business community. I urge passage of H.R. 8.

Mr. POMEROY. Mr. Speaker, I yield myself such time as I may consume.

I want to speak for a moment on the question of where rural America is on my amendment. I believe if we ask the farmers of this country today, and I represent a whole lot of farmers in North Dakota, if they would take a proposition where they get $6 million per farm couple estate tax relief, no estate tax if their farm is $6 million or under, or no relief at all until 2011 under the majority proposal, leaving them with exposure over $3 million under their proposal as opposed to $6 million with our proposal, I would be interested in a show of hands on that one.

I have a strong feeling that most would support relief now. In addition to that, we are not used to the notion of capital gains on inherited estates, but I heard the gentlewoman from Washington (Ms. DUNN) talk about the new capital gains feature that is part of their proposal and that it is going to be a good thing because it means you are going to have to keep farming or running that small business because if you sell it, you are going to have capital gains exposure. I do not think that it is a good thing that we suddenly impose capital gains exposure on inherited assets. That is why the stepped-up basis feature of our bill is so important.

□ 1430

Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from California (Ms. PELOSI), our leader. I am so proud of her and so proud she joins the debate on my amendment.

Ms. PELOSI. Mr. Speaker, I thank the distinguished gentleman for yielding me this time and I thank him for his very great leadership in shaping and bringing this alternative to the floor. It simply makes sense. It recognizes that family farmers, small businesses, hardworking Americans would like some relief from estate taxes so they can pass on the fruit of their labor to the next generation. What his substitute will do will cover 99.6 percent of all estates in America. It is reasonable. He would like to have paid for it, but we were told that it was against the rules of the House to pay for it by closing corporate tax shelters. It is against the rules of the House to eliminate corporate tax shelters. But his proposal as he presented it was fiscally sound and paid for, reasonable, and covered the estates of 99.6 percent of America's estates. I thank and congratulation the gentleman from North Dakota for his leadership.

Mr. Speaker, every one of us in this body, and we know this and are reminded of it on a daily basis, takes an oath to protect and defend the Constitution of the United States every time we are sworn in to a new term. In the Preamble to the Constitution, it says our first responsibilities are to provide for the common defense, to promote the general welfare and to provide the blessings of liberty for ourselves and our posterity. Let us look at that in light of what is happening on the floor today. The Republicans are bringing a continuation of their reckless tax-cutting binge that they are on to undermine the fiscal soundness of our country. They do it on a weekly basis, without any sense of what it does to plunge our children into indebtedness rather than investing in our future, and here they are again today.

Provide for the common defense. Those men and women in uniform who provide for the common defense deserve for us to make a future worthy of their potential sacrifice. That future must be one that is better for everyone in America. Those who have provided for our common defense, some of whom of an earlier generation, have been called the greatest generation. Yet a tax cut of this nature that is on the floor today will benefit fewer than 10,000 estates in our country and for that cost we could give 100 percent of Americans a prescription drug benefit. Those members of the greatest generation would benefit from that. Instead, we have again another piece to the reckless binge that the Republicans are on. Pretty soon the country will tilt from the imbalance of all of this recklessness.

And provide the blessings of liberty for our and our posterity. Every child in America is an heir to that legacy, is part of that posterity. Instead of investing in their future, and in fact, what we could have done earlier this week and we could do any minute here, to give them an expansion of a tax credit, instead we are plunging them into debt again rather than investing in their future. We have to see this goodie that is on the floor today, not only for itself, but what it is part of and how dangerous that is to our posterity and to our children's future, if that is the way you want to describe that.

The Republicans' intentions are clear. They want to unravel the social compact that we have with the American people. The role of government, to educate the public, to invest in our infrastructure, to protect the American people, to reward our senior citizens who have built our country. Instead, and they speak of it with great arrogance now, they are proud of the shrinking of government that they have that is part of their design, and critical to it is to reduce the tax base; to reduce the tax base. Some of these people that have talked about previous tax cuts will be paying, those who have unearned income, whose income is dividend income, will not pay any taxes on the dividend and now they will not pay any taxes on the estate. I am talking about all of those people above a $6 million for a couple, $3 million for an individual estate.

One of the values that the American people hold dear is the value of fairness. We are a country of fairness. How could it be fair to say we are going to give the wealthiest 10,000 families in America a bonanza instead of giving every senior citizen in America a prescription drug benefit? How could it be a sense of fairness to say to the children of the wealthiest families in America, we're concerned about your posterity, you are heirs and heiresses, but ignore the fact that every child in America, as I said before, is an heir and heiress to the great legacy that is our great country, a country of opportunity, opportunity that will be diminished by these tax cuts, opportunity that is diminished by the cutting back and investments in our children's health and their education and the economic security of their families by creating jobs instead of indebting us into the future with an impact of the deficits on long-term interest rates to be a drag on investment in our economy to create jobs.

We have to look at all of this as one. In the same week, within a matter of days that we have deprived the children of minimum-wage earners of the expansion of the tax credit, which they could have in a matter of weeks if the Republicans in the House would act responsibly, in the same week that we, over and over, again honor our men and women in uniform, which they deserve, we bring dishonor to them by saying their children, 250,000 of them, are not worthy of the expansion of the tax credit. At the same time, as we do all of this, we are not building a future worthy of the sacrifice of our men and women in uniform. We are not honoring our oath of office to provide the blessings of liberty for ourselves and our posterity, our children, to promote the general welfare. Where is that in the vision of this bill except that it is another part of the reckless binge that the Republicans are on, a fiscal unsoundness that has been a failure for the first 2½ years, losing 3.1 million jobs, and now they want to heap more on to it.

That is why I am so pleased that the gentleman from North Dakota took the lead on this. His standing on issues relating to America's family farmers is impeccable. He has been their champion in issues relating to economic security, education, rural education, rural health, rural housing, rural transportation in every possible way. He brings great credibility to this debate for his concern for the people that he represents with such dignity. And he gives this body an opportunity to immediately give tax relief to estates of $3 million for an individual or $6 million for a couple instead of squandering our children's future for the top 10,000 or fewer estates in our country at the expense of so much else.

The trade-offs are appalling. We have a responsibility in this body. We are elected for a reason. We are not here just to give tax cuts that do not create jobs, that do not grow the economy and are not fair and plunge us into debt. I urge my colleagues to honor your

oaths of office. I urge you to do the responsible thing. I urge you to vote ''yes'' on the Pomeroy substitute.

Ms. DUNN. Mr. Speaker, I yield 30 seconds to the gentleman from Michigan (Mr. SMITH).

(Mr. SMITH of Michigan asked and was given permission to revise and extend his remarks.)

Mr. SMITH of Michigan. Mr. Speaker, let me just say that as a farmer, the value of farmland has increased dramatically. That means an average 500-acre farm in many of the Midwest areas is now worth more than the $3 million allowed in this substitute. That means that a farm family has to sell off part of the farm to pay off the death tax debt to the Federal Government. $3 million is too low and means losing the farm for many farmers.

Ms. DUNN. Mr. Speaker, I yield myself such time as I may consume.

I think Members have a good idea of what we are going through here today. We have been through this issue before. Each time I am very happy to say that the House of Representatives has stood up to get rid of the death tax repeal permanently. Three times in the last Congress the House voted to repeal the death tax. We are here today only for one reason and that is that the rules of the other body have stymied this tax relief for small business people and for family farms.

Some of my colleagues would say we should throw in the towel. They say the Senate will never pass this legislation, so why not compromise? Why even take up the permanent repeal piece of legislation? That is the statement made by the Pomeroy substitute. We faced similar arguments not very long ago when we considered an economic growth package, but the House did not throw in the towel and the legislation that is now law reflects to a very deep degree the policy decisions that were written right here on the floor of this House of Representatives. Thanks to the tenacity and the leadership of the chairman of the Committee on Ways and Means, the will of the House prevailed. Frankly, I am very optimistic that we will ultimately prevail on permanently repealing the death tax.

I hope Members will not be swayed by the rhetoric and the hyperbole on the other side because we have heard lots of it today. On this issue, the opposition rhetoric and reality have very little in common. Why should Members vote against this amendment? Let me tell you why. Number one, it will be a retreat from the tax relief this body voted 2 years ago. In fact, it would reinstate a permanent death tax. Number two, we need to permanently repeal the death tax so that small businesses and family farmers can plan their future and invest in their businesses. We do not need to make them spend the fruits of their labor on estate lawyers and accountants and insurance policies. Number three, this is a direct vote against the President's proposal to repeal this tax permanently and that is based on 80 percent of the American people who think that the death tax is an unfair tax.

We need to inject greater fairness into the Tax Code. Do not be swayed by the arguments of those who say this is about a tax break for the wealthy. This is a relief from a burden that takes money from middle-income people who run their small businesses and their family farms. The wealthy people can afford to hire lawyers and accountants to avoid the burden of the estate tax. This is not about charitable giving and it is not about the wealthy. It is about people who are trying to raise money for the Federal Treasury and using an abhorrently unfair, misguided tax to do that. When people argue in favor of keeping the death tax, I am reminded of a story about Samuel Johnson, the English literary critic. An acquaintance of Johnson's had been unhappily married for a long time, and when the man's wife died he almost immediately remarried. Dr. Johnson said, ''That's an example of the triumph of hope over experience.'' That is what this is about, Mr. Speaker. It is about people who are wedded to misguided hope over experience.

Mr. Speaker, I think we have had enough experience with the death tax, nearly 90 years worth since 1916, and that is why we should reject this amendment. I urge my colleagues to vote ''no.''

Mr. Speaker, I reserve the balance of my time.

Mr. POMEROY. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from North Dakota is recognized for 2½ minutes.

Mr. POMEROY. Mr. Speaker, I am very pleased that our leader was able to participate in the debate, and am pleased to have the participation of the Speaker of the House in closing for the majority, because I think the issue is of that importance.

The esteemed Speaker of the House, a gentleman I admire greatly, representing the State of Illinois, I reckon is going to tell us something about how we have to do this for family farmers and the small businesses of this country. I think that it is time that family farmers and small businesses have estate tax relief and that is why I have put forward this amendment which brings them estate tax relief effective January 1 of 2004. Again, let us put the rhetoric aside and just look at the facts.

□ 1445

In 2004, these families that they have been talking about, 3 million and over, estate tax liability attaches. A couple, in our side, 6 million liability of taxes. Meaningful relief now, 2004, 2005, 2006, 2007, 2008. We provide meaningful relief in each of those years beyond what the majority proposes.

I also expect that the Speaker of the House is going to talk a little bit about how we need to do this to get the economy moving again. Let us consider that one because something that takes effect in 2004 is much more related to getting the economy moving again than something that has no effect whatsoever until the year 2011. Consider this date, 2011, which, again, is the first time the majority proposal has any effect. That is five Congresses from now and into the third Presidential term from now. There is nothing we can do to bind action at that time, nothing in the world. We might kid ourselves about it, but what this Congress can do is attend to that in the here and now. That is why I believe it is time we move estate tax relief forward, do it in a meaningful way, do it in a way to provide couples 6 million and under complete freedom from ever having to worry about estate tax again, and if we attach at that number, we will address completely the estate tax concerns of 99.65 percent of the people in this country.

I do not know the definition of universal, but that is getting mighty darn close; and it beats by a mile, in my opinion, leaving people with the estate tax exposure they have until the year 2011.

Here is the danger that we will never get to 2011. This is the cost of the proposal the first 10 years; this is the cost in the next 10 years. I believe there is significant risk 2011 will never be allowed to occur under the majority bill. Let us get relief now. Please vote for my amendment.

Ms. DUNN. Mr. Speaker, I yield the remainder of my time to the gentleman from Illinois (Mr. HASTERT), the Speaker of the House.

Mr. HASTERT. Mr. Speaker, I thank the gentlewoman from the State of Washington for yielding me this time. I thank her for her leadership on this issue.

We have been talking about this for a long, long time. I am somewhat amused in hearing some of the rhetoric here on the floor this afternoon. I hear words like ''reckless'' and ''abominable'' and big words; but when we talk about this, I do not hear the word ''fairness'' very often. We got into a long discussion about other tax bills. And child tax credits, that we should vote for them. We did vote for them. Not only did we extend them just a little bit just like our other friends on the other side of the aisle wanted to extend them, to the year 2005, but we extended them clear out to the year 2010. On top of that we said that those folks who may be a fireman or may be a teacher and earn over $110,000 a year maybe ought to get some of this tax break as well, and we have added that on. So that issue is off the table. That is not an argument that we talk about this afternoon.

And when we talk about other tax bills out there, our veterans and other issues, we had that in that bill as well, so veterans can get a tax break and families that lose their loved ones can

get a tax break. But we have passed it. Let us just get it done.

What we are talking about here is fairness to families. We have talked over and over again about small businesses, the family farm, the orchard, the little ranch, some folks who have pulled together all their resources for a little business, a small manufacturing, might have been a real estate firm. But I grew up in one of those small businesses. My family owned a retail store. We were a farm service business; and in the 1950's the stockyards moved away from Chicago, and we lost that business. The feeders moved away. But families learn how to start over again. So we went from the feed business to the food business, started a restaurant business. But I will tell the Members all my life and my family's in those businesses, we did not take vacations. The kids stayed and worked in that business. We did not know what a paycheck was until we were 18 or 19 years old. We were paid $5 at a time, put a little gas in the car, go buy lunch, and that was how we got paid.

Families sacrifice to make small businesses work. Families sacrifice to make small farms better. They pay taxes all the time. People say this is a big tax break for people who made these businesses, but they paid the income taxes. They pay them every year. They pay real estate taxes. They pay sales taxes. They have been taxed to death; but yet they have made that sacrifice to make that business work, and now we are simply saying that as the years of those people who found those businesses are ending, they ought to have the comfort and relief to pass that business on to the next generation, to their children and to their grandchildren. And this is not just for rich people. This is for everybody who shares in the American Dream.

The largest beginning group of people who start small businesses in my district are Hispanics. They are minorities. Do the Members not think they ought to have the same break for themselves and their children if they want to pass it on to the next generation? Sure, they should. So why are we denying it?

We need to pass this piece of legislation so that we can keep this American heritage of families working, of families creating wealth, of families owning businesses because when they sell their business, who buys it? Some foreign company maybe, maybe a Fortune 500. That family loses that grasp in being able to carry that business forward.

This is a plain and simple bill. We have had it on the floor under the leadership of the gentlewoman from Washington three times before. It is time that we pass it. It is time that we make it law. It is time that the other body understands what we are trying to do and to come along and make it law with us. The American people deserve this legislation. Let us move forward and pass it today.

Mr. NEAL of Massachusetts. Mr. Speaker, I rise in opposition to yet another budget-busting bill. The Republican estate tax repeal that we are considering today will cost $1 trillion over the next two decades, and will kick into high gear just at the time the baby boomers retire.

The Democratic substitute, however, provides immediate and greater estate tax relief to more families this decade than the Republican bill. And, the Democratic substitute would have no effect on the Federal budget, had the Republican leadership not refused the revenue offsets in the substitute.

Our Republican colleagues say this substitute doesn't do enough, but the substitute would provide that 99.65 percent of decedents would not have to pay estate taxes. Who is in this less-than-one-percent group that the Republican majority is so intent on protecting?

Well, the Washington Post today reports about some of these wealthy patrons in the shadows: ''So some of the affluent families who have bankrolled the repeal movement,'' including the heirs of the Hallmark greeting card company and the candy-making Mars family, ''are exploring estate tax changes short of repeal that could be implemented sooner.'' In fact, the Post reports, the heirs of Hallmark spent $60,000 while the Mars' heirs spent $1 million on professional Washington lobbyists to push their views on estate tax relief. That may be money well spent, considering the reckless drive to repeal in the face of exploding deficits.

But, as one of the lobbyists in Washington argues to the Post, don't let exploding deficits dissuade you. It is not certain to happen, she argues, so feel free voting for $1 trillion in estate tax relief to that half-of-one-percent group. While the heirs are ready to cut a deal, the lobbyists hold strong.

Mr. Speaker, I urge my colleagues to vote down this irresponsible Republican bill.

Mr. KIND. Mr. Speaker, I rise today in strong support for making estate tax relief permanent so that family-owned farms and businesses can be passed down from generation to generation. The estate tax should be updated and modernized to reflect both the economic growth so many Americans have experienced in recent years, and the hard work of millions of entrepreneurs and those just trying to make a living. These businesses should not be punished for being successful or for simply having their owners pass away.

The United States is the land of opportunity, encouraging free enterprise and rewarding entrepreneurs. The estate tax should be modified to protect family-owned small businesses and family farms from the threat of having to be sold just to pay the tax.

But, Mr. Speaker, H.R. 8 would fully repeal the estate tax for all Americans at a time when the administration is running record deficits that threaten the futures of our children's children. As we all know, the estate tax applies to fewer than 2 percent of all estates, about 50,000 a year. This bill would initially cost the Nation's treasury $161 billion over 11 years, and $840 billion over the following 10 years.

Mr. Speaker, the majority's policies have turned a projected $5.3 trillion surplus into an estimated $3 trillion deficit over 10 years. This year alone, our budget deficit will reach a record $400 billion and will likely exceed $500 billion next year. However, even with these record deficits, we are debating yet another tax cut on top of the fiscally irresponsible $350 billion tax cut package this House recently passed.

With the majority's policies leading our Nation toward a fiscal train wreck, we should not be talking about totally repealing the death tax and instead talk about doing something about the debt tax, which falls upon all Americans. The growing amount of taxes needed to pay interest on the national debt will double under the Republican budget, costing the average family of four $8,453 in 2013. That is $8,000 a year that the average family will have to pay in taxes that will not go to provide better schools, national defense, or other government services. With the staggering budget shortfalls facing our country, Mr. Speaker, complete repeal of the estate tax is simply not an option I can support.

Therefore, I am supporting the substitute being offered by my good friend Mr. POMEROY. His legislation will immediately help the small businesses and family farms by increasing the estate tax exemption to $3 million for individuals and $6 million for couples. This meaningful, commensense bill will exempt 99.65 percent of all estates from the estate tax.

Mr. Speaker, it is our responsibility to avoid towering deficits and reduce the debt future generations will inherit. We must give them the capability and flexibility to meet whatever problems or needs they face. I cannot, in good faith, support legislation that will put our country further into deficit spending with a tax cut that will hurt future generations for the unforeseeable future.

The SPEAKER pro tempore (Mr. SIMPSON). All time for debate on the amendment in the nature of a substitute has expired.

Pursuant to House Resolution 281, the previous question is ordered on the bill and on the amendment in the nature of a substitute offered by the gentleman from North Dakota (Mr. POMEROY).

The question is on the amendment in the nature of a substitute offered by the gentleman from North Dakota (Mr. POMEROY).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. POMEROY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 188, nays 239, not voting 8, as follows:

[Roll No. 287]

YEAS—188

Ackerman	Brady (PA)	Davis (FL)
Alexander	Brown (OH)	Davis (IL)
Allen	Brown, Corrine	Davis (TN)
Baca	Capps	DeFazio
Baird	Capuano	DeGette
Baldwin	Cardin	Delahunt
Ballance	Case	DeLauro
Berkley	Castle	Deutsch
Berman	Clay	Dicks
Berry	Clyburn	Dingell
Bishop (GA)	Cooper	Doyle
Bishop (NY)	Costello	Edwards
Blumenauer	Crowley	Emanuel
Boswell	Cummings	Engel
Boucher	Davis (AL)	Eshoo
Boyd	Davis (CA)	Etheridge

Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—239

Abercrombie
Aderholt
Akin
Andrews
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carson (OK)
Carter
Chabot
Chocola
Coble
Cole
Collins
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doggett
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Rangel
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—8

Carson (IN)
Conyers
Gephardt
Hulshof
Lofgren
Nadler
Smith (WA)
Taylor (MS)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are reminded there are 2 minutes remaining on this vote.

□ 1514

Messrs. TERRY, RANGEL, and HALL changed their vote from ''yea'' to ''nay.''

Mr. HILL, Mr. STARK, Mrs. CAPPS and Ms. SOLIS changed their vote from ''nay'' to ''yea.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. HULSHOF. Mr. Speaker, on rollcall No. 287 I was inadvertently detained. Had I been present, I would have voted ''nay.''

The SPEAKER pro tempore (Mr. LATOURETTE). The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. DUNN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 15-minute vote.

The vote was taken by electronic device, and there were—ayes 264, noes 163, not voting 8, as follows:

[Roll No. 288]

AYES—264

Abercrombie
Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bell
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carson (OK)
Carter
Castle
Chabot
Chocola
Clay
Coble
Cole
Collins
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Farr
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hinojosa
Hobson
Hoekstra
Hooley (OR)
Hostettler
Hulshof
Hunter
Hyde
Isakson
Israel
Issa
Istook
Janklow
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Lampson
Larsen (WA)
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCarthy (NY)
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Rahall
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tanner
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NOES—163

Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bereuter
Berman
Bishop (NY)
Blumenauer
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Case
Clyburn
Cooper
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Emanuel
Engel

Eshoo	Lewis (GA)	Rodriguez
Etheridge	Lipinski	Rothman
Evans	Lowey	Roybal-Allard
Fattah	Lynch	Rush
Filner	Majette	Sabo
Frank (MA)	Maloney	Sanchez, Linda T.
Frost	Markey	Sanchez, Loretta
Gonzalez	Marshall	Sanders
Green (TX)	Matsui	Schakowsky
Grijalva	McCarthy (MO)	Schiff
Gutierrez	McCollum	Scott (VA)
Harman	McDermott	Serrano
Hastings (FL)	McGovern	Sherman
Hill	McNulty	Slaughter
Hinchey	Meehan	Snyder
Hoeffel	Meek (FL)	Solis
Holden	Meeks (NY)	Spratt
Holt	Menendez	Stark
Honda	Michaud	Stenholm
Houghton	Millender-McDonald	Strickland
Hoyer	Miller (NC)	Stupak
Inslee	Miller, George	Tauscher
Jackson (IL)	Mollohan	Taylor (MS)
Jackson-Lee (TX)	Moore	Thompson (MS)
Jefferson	Moran (VA)	Tierney
Johnson (CT)	Murtha	Towns
Johnson, E. B.	Napolitano	Turner (TX)
Jones (OH)	Neal (MA)	Udall (CO)
Kanjorski	Oberstar	Udall (NM)
Kaptur	Obey	Van Hollen
Kennedy (RI)	Olver	Velazquez
Kildee	Ortiz	Visclosky
Kilpatrick	Owens	Waters
Kind	Pallone	Watson
Kleczka	Pascrell	Watt
Kucinich	Pastor	Waxman
Langevin	Payne	Weiner
Lantos	Pelosi	Wexler
Larson (CT)	Pomeroy	Woolsey
Leach	Price (NC)	Wu
Lee	Rangel	
Levin	Reyes	

NOT VOTING—8

Carson (IN)	Lofgren	Smith (WA)
Conyers	Nadler	Tiberi
Gephardt	Radanovich	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE) (during the vote). Members are advised 2 minutes are remaining in this vote.

□ 1531

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. TIBERI. Mr. Speaker, on rollcall 288, The Death Tax Repeal Permanency Act, I was detained in the U.S. Capitol and unable to cast my vote. Had I been able, I would have voted ''aye'' on H.R. 8, The Death Tax Repeal Permanency Act.

Mr. RADANOVICH. Mr. Speaker, I missed the vote on passage of H.R. 8, but would like to state that I would have voted ''aye'' on final passage.

MAKING IN ORDER DURING CONSIDERATION OF H.R. 1528, TAXPAYER PROTECTION AND IRS ACCOUNTABILITY ACT OF 2003, POSTPONEMENT OF FURTHER CONSIDERATION UNTIL A TIME DESIGNATED BY THE SPEAKER

Mr. BLUNT. Mr. Speaker, I ask unanimous consent that during consideration of H.R. 1528 pursuant to House Resolution 282, notwithstanding the ordering of the previous question, it may be in order at any time for the Chair to postpone further consideration of the bill until a later time to be designated by the Speaker.

The SPEAKER pro tempore (Mr. LATOURETTE). Is there objection to the request of the gentleman from Missouri?

There was no objection.

EXPLANATION OF PURPOSE OF POSTPONEMENT OF FURTHER CONSIDERATION OF H.R. 1528, TAXPAYER PROTECTION AND IRS ACCOUNTABILITY ACT OF 2003

(Mr. BLUNT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BLUNT. Mr. Speaker, the purpose of this request to postpone votes or further consideration of the bill until a later time to be designated by the Speaker is just simply to allow the Members, and families that are in town and intend to go with them, to go to the picnic at the White House this evening. By moving these votes until tomorrow, we allow that to happen, and I hope that allows the family members who are here and intending to go to this event with Members to have as much of the evening as they anticipated having.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 660, SMALL BUSINESS HEALTH FAIRNESS ACT OF 2003

Mr. LINCOLN DIAZ-BALART of Florida, from the Committee on Rules, submitted a privileged report (Rept. No. 108–160) on the resolution (H. Res. 283) providing for consideration of the bill (H.R. 660) to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees, which was referred to the House Calendar and ordered to be printed.

TAXPAYER PROTECTION AND IRS ACCOUNTABILITY ACT OF 2003

Mr. MCCRERY. Mr. Speaker, pursuant to House Resolution 282, I call up the bill (H.R. 1528) to amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 282, the bill is considered read for amendment.

The text of H.R. 1528 is as follows:

H.R. 1528

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Taxpayer Protection and IRS Accountability Act of 2003''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; etc.

TITLE I—PENALTY AND INTEREST REFORMS

Sec. 101. Failure to pay estimated tax penalty converted to interest charge on accumulated unpaid balance.
Sec. 102. Exclusion from gross income for interest on overpayments of income tax by individuals.
Sec. 103. Abatement of interest.
Sec. 104. Deposits made to suspend running of interest on potential underpayments.
Sec. 105. Expansion of interest netting for individuals.
Sec. 106. Waiver of certain penalties for first-time unintentional minor errors.
Sec. 107. Frivolous tax submissions.
Sec. 108. Clarification of application of Federal tax deposit penalty.

TITLE II—FAIRNESS OF COLLECTION PROCEDURES

Sec. 201. Partial payment of tax liability in installment agreements.
Sec. 202. Extension of time for return of property.
Sec. 203. Individuals held harmless on wrongful levy, etc., on individual retirement plan.
Sec. 204. Seven-day threshold on tolling of statute of limitations during tax review.
Sec. 205. Study of liens and levies.

TITLE III—TAX ADMINISTRATION REFORMS

Sec. 301. Revisions relating to termination of employment of Internal Revenue Service employees for misconduct.
Sec. 302. Confirmation of authority of tax court to apply doctrine of equitable recoupment.
Sec. 303. Jurisdiction of tax court over collection due process cases.
Sec. 304. Office of Chief Counsel review of offers in compromise.
Sec. 305. 15-day delay in due date for electronically filed individual income tax returns.
Sec. 306. Access of National Taxpayer Advocate to independent legal counsel.
Sec. 307. Payment of motor fuel excise tax refunds by direct deposit.
Sec. 308. Family business tax simplification.
Sec. 309. Health insurance costs of eligible individuals.
Sec. 310. Suspension of tax-exempt status of terrorist organizations.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

Sec. 401. Collection activities with respect to joint return disclosable to either spouse based on oral request.
Sec. 402. Taxpayer representatives not subject to examination on sole basis of representation of taxpayers.
Sec. 403. Disclosure in judicial or administrative tax proceedings of return and return information of persons who are not party to such proceedings.
Sec. 404. Prohibition of disclosure of taxpayer identification information with respect to disclosure of accepted offers-in-compromise.

Sec. 405. Compliance by contractors with confidentiality safeguards.
Sec. 406. Higher standards for requests for and consents to disclosure.
Sec. 407. Notice to taxpayer concerning administrative determination of browsing; annual report.
Sec. 408. Expanded disclosure in emergency circumstances.
Sec. 409. Disclosure of taxpayer identity for tax refund purposes.
Sec. 410. Disclosure to State officials of proposed actions related to section 501(c)(3) organizations.
Sec. 411. Confidentiality of taxpayer communications with the Office of the Taxpayer Advocate.

TITLE V—MISCELLANEOUS

Sec. 501. Clarification of definition of church tax inquiry.
Sec. 502. Expansion of declaratory judgment remedy to tax-exempt organizations.
Sec. 503. Employee misconduct report to include summary of complaints by category.
Sec. 504. Annual report on awards of costs and certain fees in administrative and court proceedings.
Sec. 505. Annual report on abatement of penalties.
Sec. 506. Better means of communicating with taxpayers.
Sec. 507. Explanation of statute of limitations and consequences of failure to file.
Sec. 508. Amendment to treasury auction reforms.
Sec. 509. Enrolled agents.
Sec. 510. Financial management service fees.
Sec. 511. Extension of Internal Revenue Service user fees.

TITLE VI—LOW-INCOME TAXPAYER CLINICS

Sec. 601. Low-income taxpayer clinics.

TITLE VII—FEDERAL-STATE UNEMPLOYMENT ASSISTANCE AGREEMENTS.

Sec. 701. Applicability of certain Federal-State agreements relating to unemployment assistance.

TITLE I—PENALTY AND INTEREST REFORMS

SEC. 101. FAILURE TO PAY ESTIMATED TAX PENALTY CONVERTED TO INTEREST CHARGE ON ACCUMULATED UNPAID BALANCE.

(a) PENALTY MOVED TO INTEREST CHAPTER OF CODE.—The Internal Revenue Code of 1986 is amended by redesignating section 6654 as section 6641 and by moving section 6641 (as so redesignated) from part I of subchapter A of chapter 68 to the end of subchapter E of chapter 67 (as added by subsection (e)(1) of this section).

(b) PENALTY CONVERTED TO INTEREST CHARGE.—The heading and subsections (a) and (b) of section 6641 (as so redesignated) are amended to read as follows:

"SEC. 6641. INTEREST ON FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

''(a) IN GENERAL.—Interest shall be paid on any underpayment of estimated tax by an individual for a taxable year for each day of such underpayment. The amount of such interest for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

''(b) AMOUNT OF UNDERPAYMENT; INTEREST RATE.—For purposes of subsection (a)—

''(1) AMOUNT.—The amount of the underpayment on any day shall be the excess of—

''(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

''(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

''(2) DETERMINATION OF INTEREST RATE.—

''(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

''(B) INSTALLMENT UNDERPAYMENT PERIOD.—For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

''(C) DAILY RATE.—The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

''(3) TERMINATION OF ESTIMATED TAX INTEREST.—No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.''.

(c) INCREASE IN SAFE HARBOR WHERE TAX IS SMALL.—

(1) IN GENERAL.—Clause (i) of section 6641(d)(1)(B) (as so redesignated) is amended to read as follows:

''(i) the lesser of—

''(I) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

''(II) the tax shown on the return for the taxable year (or, if no return is filed, the tax for such year) reduced (but not below zero) by $1,600, or''.

(2) CONFORMING AMENDMENT.—Subsection (e) of section 6641 (as so redesignated) is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(d) CONFORMING AMENDMENTS.—

(1) Paragraphs (1) and (2) of subsection (e) (as redesignated by subsection (c)(2)) and subsection (h) of section 6641 (as so designated) are each amended by striking ''addition to tax'' each place it occurs and inserting ''interest''.

(2) Section 167(g)(5)(D) is amended by striking ''6654'' and inserting ''6641''.

(3) Section 460(b)(1) is amended by striking ''6654'' and inserting ''6641''.

(4) Section 3510(b) is amended—

(A) by striking ''section 6654'' in paragraph (1) and inserting ''section 6641'';

(B) by amending paragraph (2)(B) to read as follows:

''(B) no interest would be required to be paid (but for this section) under 6641 for such taxable year by reason of the $1,600 amount specified in section 6641(d)(1)(B)(i)(II).'';

(C) by striking ''section 6654(d)(2)'' in paragraph (3) and inserting ''section 6641(d)(2)''; and

(D) by striking paragraph (4).

(5) Section 6201(b)(1) is amended by striking ''6654'' and inserting ''6641''.

(6) Section 6601(h) is amended by striking ''6654'' and inserting ''6641''.

(7) Section 6621(b)(2)(B) is amended by striking ''addition to tax under section 6654'' and inserting ''interest required to be paid under section 6641''.

(8) Section 6622(b) is amended—

(A) by striking ''PENALTY FOR'' in the heading; and

(B) by striking ''addition to tax under section 6654 or 6655'' and inserting ''interest required to be paid under section 6641 or addition to tax under section 6655''.

(9) Section 6658(a) is amended—

(A) by striking ''6654, or 6655'' and inserting ''or 6655, and no interest shall be required to be paid under section 6641,''; and

(B) by inserting ''or paying interest'' after ''the tax'' in paragraph (2)(B)(ii).

(10) Section 6665(b) is amended—

(A) in the matter preceding paragraph (1) by striking '', 6654,''; and

(B) in paragraph (2) by striking ''6654 or''.

(11) Section 7203 is amended by striking ''section 6654 or 6655'' and inserting ''section 6655 or interest required to be paid under section 6641''.

(e) CLERICAL AMENDMENTS.—

(1) Chapter 67 is amended by inserting after subchapter D the following:

"Subchapter E—Interest on Failure by Individual to Pay Estimated Income Tax

''Sec. 6641. Interest on failure by individual to pay estimated income tax.''.

(2) The table of subchapters for chapter 67 is amended by adding at the end the following new items:

''Subchapter D. Notice requirements.

''Subchapter E. Interest on failure by individual to pay estimated income tax.''.

(3) The table of sections for part I of subchapter A of chapter 68 is amended by striking the item relating to section 6654.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to installment payments for taxable years beginning after December 31, 2003.

SEC. 102. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting after section 139 the following new section:

"SEC. 139A. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

''(a) IN GENERAL.—In the case of an individual, gross income shall not include interest paid under section 6611 on any overpayment of tax imposed by this subtitle.

''(b) EXCEPTION.—Subsection (a) shall not apply in the case of a failure to claim items resulting in the overpayment on the original return if the Secretary determines that the principal purpose of such failure is to take advantage of subsection (a).

''(c) SPECIAL RULE FOR DETERMINING MODIFIED ADJUSTED GROSS INCOME.—For purposes of this title, interest not included in gross income under subsection (a) shall not be treated as interest which is exempt from tax for purposes of sections 32(i)(2)(B) and 6012(d) or any computation in which interest exempt from tax under this title is added to adjusted gross income.''.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139 the following new item:

''Sec. 139A. Exclusion from gross income for interest on overpayments of income tax by individuals.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest received in calendar years beginning after the date of the enactment of this Act.

SEC. 103. ABATEMENT OF INTEREST.

(a) ABATEMENT OF INTEREST WITH RESPECT TO ERRONEOUS REFUND CHECK WITHOUT REGARD TO SIZE OF REFUND.—Paragraph (2) of section 6404(e) is amended by striking ''unless—'' and all that follows and inserting ''unless the taxpayer (or a related party) has in any way caused such erroneous refund.''.

(b) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS.—Subsection (f) of section 6404 is amended—

(1) in the subsection heading, by striking ''PENALTY OR ADDITION'' and inserting ''INTEREST, PENALTY, OR ADDITION''; and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking ''penalty or addition'' and inserting ''interest, penalty, or addition''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 104. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84 0958.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84 0958, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 105. EXPANSION OF INTEREST NETTING FOR INDIVIDUALS.

(a) IN GENERAL.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: ''Solely for purposes of the preceding sentence, section 6611(e) shall not apply in the case of an individual.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accrued after December 31, 2003.

SEC. 106. WAIVER OF CERTAIN PENALTIES FOR FIRST-TIME UNINTENTIONAL MINOR ERRORS.

(a) IN GENERAL.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

''(i) TREATMENT OF FIRST-TIME UNINTENTIONAL MINOR ERRORS.—

''(1) IN GENERAL.—In the case of a return of tax imposed by subtitle A filed by an individual, the Secretary may waive an addition to tax under subsection (a) if—

''(A) the individual has a history of compliance with the requirements of this title,

''(B) it is shown that the failure is due to an unintentional minor error,

''(C) the penalty would be grossly disproportionate to the action or expense that would have been needed to avoid the error, and imposing the penalty would be against equity and good conscience,

''(D) waiving the penalty would promote compliance with the requirements of this title and effective tax administration, and

''(E) the taxpayer took all reasonable steps to remedy the error promptly after discovering it.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply if—

''(A) the Secretary has waived any addition to tax under this subsection with respect to any prior failure by such individual,

''(B) the failure is a mathematical or clerical error (as defined in section 6213(g)(2)), or

''(C) the failure is the lack of a required signature.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2004.

SEC. 107. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission is based on a position which the Secretary has identified as frivolous under subsection (c).

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 7811 (relating to taxpayer assistance orders),

''(II) section 6159 (relating to agreements for payment of tax liability in installments), or

''(III) section 7122 (relating to compromises).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 108. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the percentage specified in subsection (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

TITLE II—FAIRNESS OF COLLECTION PROCEDURES

SEC. 201. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 202. EXTENSION OF TIME FOR RETURN OF PROPERTY.

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY SUBJECT TO LEVY.—Subsection (b) of section 6343 (relating to return of property) is amended by striking ''9 months'' and inserting ''2 years''.

(b) PERIOD OF LIMITATION ON SUITS.—Subsection (c) of section 6532 (relating to suits by persons other than taxpayers) is amended—

(1) in paragraph (1) by striking ''9 months'' and inserting ''2 years'', and

(2) in paragraph (2) by striking ''9-month'' and inserting ''2-year''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) levies made after the date of the enactment of this Act, and

(2) levies made on or before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 203. INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC., ON INDIVIDUAL RETIREMENT PLAN.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

''(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC., ON INDIVIDUAL RETIREMENT PLAN.—

''(1) IN GENERAL.—If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies, an amount equal to the sum of—

''(A) the amount of money returned by the Secretary on account of such levy, and

''(B) interest paid under subsection (c) on such amount of money,

may be deposited into an individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted.

''(2) TREATMENT AS ROLLOVER.—The distribution on account of the levy and any deposit under paragraph (1) with respect to such distribution shall be treated for purposes of this title as if such distribution and deposit were part of a rollover described in section 408(d)(3)(A)(i); except that—

''(A) interest paid under subsection (c) shall be treated as part of such distribution and as not includible in gross income,

''(B) the 60-day requirement in such section shall be treated as met if the deposit is made not later than the 60th day after the day on which the individual receives an amount under paragraph (1) from the Secretary, and

''(C) such deposit shall not be taken into account under section 408(d)(3)(B).

''(3) REFUND, ETC., OF INCOME TAX ON LEVY.—If any amount is includible in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

''(4) INTEREST.—Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid under subsections (b), (c), and (d)(2)(A) of section 6343 of the Internal Revenue Code of 1986 after December 31, 2003.

SEC. 204. SEVEN-DAY THRESHOLD ON TOLLING OF STATUTE OF LIMITATIONS DURING TAX REVIEW.

(a) IN GENERAL.—Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after ''application,'' the following: ''but only if the date of such decision is at least 7 days after the date of the taxpayer's application''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 205. STUDY OF LIENS AND LEVIES.

The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the practices of the Internal Revenue Service concerning liens and levies. The study shall examine—

(1) the declining use of liens and levies by the Internal Revenue Service, and

(2) the practicality of recording liens and levying against property in cases in which the cost of such actions exceeds the amount to be realized from such property.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III—TAX ADMINISTRATION REFORMS

SEC. 301. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF INTERNAL REVENUE SERVICE EMPLOYEES FOR MISCONDUCT.

(a) IN GENERAL.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by inserting after section 7804 the following new section:

''SEC. 7804A. DISCIPLINARY ACTIONS FOR MISCONDUCT.

''(a) DISCIPLINARY ACTIONS.—

''(1) IN GENERAL.—Subject to subsection (c), the Commissioner shall take an action in accordance with the guidelines established under paragraph (2) against any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties or where a nexus to the employee's position exists.

''(2) GUIDELINES.—The Commissioner shall issue guidelines for determining the appropriate level of discipline, up to and including termination of employment, for committing any act or omission described under subsection (b).

''(b) ACTS OR OMISSIONS.—The acts or omissions described under this subsection are—

''(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

''(2) willfully providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

''(3) with respect to a taxpayer or taxpayer representative, the willful violation of—

''(A) any right under the Constitution of the United States;

''(B) any civil right established under—

''(i) title VI or VII of the Civil Rights Act of 1964;

''(ii) title IX of the Education Amendments of 1972;

''(iii) the Age Discrimination in Employment Act of 1967;

''(iv) the Age Discrimination Act of 1975;

''(v) section 501 or 504 of the Rehabilitation Act of 1973; or

''(vi) title I of the Americans with Disabilities Act of 1990; or

''(C) the Internal Revenue Service policy on unauthorized inspection of returns or return information;

''(4) willfully falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

''(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final adverse judgment by a court in a civil case, with respect to the assault or battery;

''(6) willful violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer or taxpayer representative;

''(7) willful misuse of the provisions of section 6103 for the purpose of concealing information from a congressional inquiry;

''(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect;

''(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect; and

''(10) threatening to audit a taxpayer, or to take other action under this title, for the purpose of extracting personal gain or benefit.

''(c) DETERMINATIONS OF COMMISSIONER.—

''(1) IN GENERAL.—The Commissioner may take a personnel action other than a disciplinary action provided for in the guidelines under subsection (a)(2) for an act or omission described under subsection (b).

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in his sole discretion, may establish a procedure to determine if an individual

should be referred to the Commissioner for a determination by the Commissioner under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination of the Commissioner under this subsection may not be reviewed in any administrative or judicial proceeding. A finding that an act or omission described under subsection (b) occurred may be reviewed.

''(d) DEFINITION.—For the purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity regarding Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.

''(e) ANNUAL REPORT.—The Commissioner shall submit to Congress annually a report on disciplinary actions under this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 80 is amended by inserting after the item relating to section 7804 the following new item:

''Sec. 7804A. Disciplinary actions for misconduct.''.

(c) REPEAL OF SUPERSEDED SECTION.—Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105 09206; 112 Stat. 720) is repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 302. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Subsection (b) of section 6214 (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any action or proceeding in the Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 303. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Section 6330(d)(1) (relating to judicial review of determination) is amended to read as follows:

''(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to judicial appeals filed after the date of the enactment of this Act.

SEC. 304. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking ''Whenever a compromise'' and all that follows through ''his delegate'' and inserting ''If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion''.

(b) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 305. 15-DAY DELAY IN DUE DATE FOR ELECTRONICALLY FILED INDIVIDUAL INCOME TAX RETURNS.

(a) IN GENERAL.—Section 6072 (relating to time for filing income tax returns) is amended by adding at the end the following new subsection:

''(f) ELECTRONICALLY FILED RETURNS OF INDIVIDUALS.—

''(1) IN GENERAL.—Returns of an individual under section 6012 or 6013 (other than an individual to whom subsection (c) applies) which are filed electronically—

''(A) in the case of returns filed on the basis of a calendar year, shall be filed on or before the 30th day of April following the close of the calendar year, and

''(B) in the case of returns filed on the basis of a fiscal year, shall be filed on or before the last day of the 4th month following the close of the fiscal year.

''(2) ELECTRONIC FILING.—Paragraph (1) shall not apply to any return unless—

''(A) such return is accepted by the Secretary, and

''(B) the balance due (if any) shown on such return is paid electronically in a manner prescribed by the Secretary.

''(3) SPECIAL RULES.—

''(A) ESTIMATED TAX.—If—

''(i) paragraph (1) applies to an individual for any taxable year, and

''(ii) there is an overpayment of tax shown on the return for such year which the individual allows against the individual's obligation under section 6641,

then, with respect to the amount so allowed, any reference in section 6641 to the April 15 following such taxable year shall be treated as a reference to April 30.

''(B) REFERENCES TO DUE DATE.—Paragraph (1) shall apply solely for purposes of determining the due date for the individual's obligation to file and pay tax and, except as otherwise provided by the Secretary, shall be treated as an extension of the due date for any other purpose under this title.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed with respect to taxable years beginning after December 31, 2002.

SEC. 306. ACCESS OF NATIONAL TAXPAYER ADVOCATE TO INDEPENDENT LEGAL COUNSEL.

Clause (i) of section 7803(c)(2)(D) (relating to personnel actions) is amended by striking ''and'' at the end of subclause (I), by striking the period at the end of subclause (II) and inserting '', and'', and by adding at the end the following new subclause:

''(III) appoint a counsel in the Office of the Taxpayer Advocate to report solely to the National Taxpayer Advocate.''.

SEC. 307. PAYMENT OF MOTOR FUEL EXCISE TAX REFUNDS BY DIRECT DEPOSIT.

(a) IN GENERAL.—Subchapter II of chapter 33 of title 31, United States Code, is amended by adding at the end the following new section:

''1A3337. Payment of motor fuel excise tax refunds by direct deposit

''The Secretary of the Treasury shall make payments under sections 6420, 6421, and 6427 of the Internal Revenue Code of 1986 by electronic funds transfer (as defined in section 3332(j)(1)) if the person who is entitled to the payment—

''(1) elects to receive the payment by electronic funds transfer; and

''(2) satisfies the requirements of section 3332(g) with respect to such payment at such time and in such manner as the Secretary may require.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 33 of title 31, United States Code, is amended by adding at the end the following new item:

''3337. Payment of motor fuel excise tax refunds by direct deposit.''.

SEC. 308. FAMILY BUSINESS TAX SIMPLIFICATION.

(a) IN GENERAL.—Section 761 (defining terms for purposes of partnerships) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) QUALIFIED JOINT VENTURE.—

''(1) IN GENERAL.—In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

''(A) such joint venture shall not be treated as a partnership,

''(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

''(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

''(2) QUALIFIED JOINT VENTURE.—For purposes of paragraph (1), the term 'qualified joint venture' means any joint venture involving the conduct of a trade or business if—

''(A) the only members of such joint venture are a husband and wife,

''(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

''(C) both spouses elect the application of this subsection.''.

(b) NET EARNINGS FROM SELF-EMPLOYMENT.—

(1) Subsection (a) of section 1402 (defining net earnings from self-employment) is amended by striking ''and'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ''; and'', and by inserting after paragraph (15) the following new paragraph:

''(16) notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) in determining net earnings from self-employment of such spouse.''.

(2) Subsection (a) of section 211 of the Social Security Act (defining net earnings from self-employment) is amended by striking ''and'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ''; and'', and by inserting after paragraph (15) the following new paragraph:

''(16) Notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) of the Internal Revenue Code of 1986 in determining net earnings from self-employment of such spouse.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 309. HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

(a) CONSUMER OPTIONS.—Paragraph (2) of section 35(e) is amended by inserting at the end the following new subparagraph:

''(C) WAIVER BY ELIGIBLE INDIVIDUALS.—With respect to any month which ends before January 1, 2006, this paragraph shall not apply with respect to any eligible individual and such individual's qualifying family members if such eligible individual elects to waive the application of this paragraph with respect to such month.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to months beginning after the date of the enactment of this Act.

SEC. 310. SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.—

''(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

''(2) TERRORIST ORGANIZATIONS.—An organization is described in this paragraph if such organization is designated or otherwise individually identified—

''(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

''(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

''(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

''(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

''(ii) such Executive order refers to this subsection.

''(3) PERIOD OF SUSPENSION.—With respect to any organization described in paragraph (2), the period of suspension—

''(A) begins on the later of—

''(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

''(ii) the date of the enactment of this subsection, and

''(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

''(4) DENIAL OF DEDUCTION.—No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

''(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

''(6) ERRONEOUS DESIGNATION.—

''(A) IN GENERAL.—If—

''(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

''(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

''(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

''(B) WAIVER OF LIMITATIONS.—If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

''(7) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to designations made before, on, or after the date of the enactment of this Act.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

SEC. 401. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) IN GENERAL.—Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking ''in writing'' the first place it appears.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 402. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL.—Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended—

(1) by striking ''Returns'' and inserting the following:

''(A) IN GENERAL.—Returns'', and

(2) by adding at the end the following new subparagraph:

''(B) TAXPAYER REPRESENTATIVES.—Notwithstanding subparagraph (A), the return of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return of such representative on a basis other than by reason of such relationship.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date which is 180 days after the date of the enactment of this Act.

SEC. 403. DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS WHO ARE NOT PARTY TO SUCH PROCEEDINGS.

(a) IN GENERAL.—Paragraph (4) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new subparagraph:

''(B) DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS NOT PARTY TO SUCH PROCEEDINGS.—

''(i) NOTICE.—Return or return information of any person who is not a party to a judicial or administrative proceeding described in this paragraph shall not be disclosed under clause (ii) or (iii) of subparagraph (A) until after the Secretary makes a reasonable effort to give notice to such person and an opportunity for such person to request the deletion of matter from such return or return information, including any of the items referred to in paragraphs (1) through (7) of section 6110(c). Such notice shall include a statement of the issue or issues the resolution of which is the reason such return or return information is sought. In the case of S corporations, partnerships, estates, and trusts, such notice shall be made at the entity level.

''(ii) DISCLOSURE LIMITED TO PERTINENT PORTION.—The only portion of a return or return information described in clause (i) which may be disclosed under subparagraph (A) is that portion of such return or return information that directly relates to the resolution of an issue in such proceeding.

''(iii) EXCEPTIONS.—Clause (i) shall not apply—

''(I) to any civil action under section 7407, 7408, or 7409,

''(II) to any ex parte proceeding for obtaining a search warrant, order for entry on premises or safe deposit boxes, or similar ex parte proceeding,

''(III) to disclosure of third party return information by indictment or criminal information, or

''(IV) if the Attorney General or the Attorney General's delegate determines that the application of such clause would seriously impair a criminal tax investigation or proceeding.''.

(b) CONFORMING AMENDMENTS.—Paragraph (4) of section 6103(h) is amended by—

(1) by striking ''PROCEEDINGS.—A return'' and inserting ''PROCEEDINGS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a return'';

(2) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively; and

(3) in the matter following clause (iv) (as so redesignated), by striking ''subparagraph (A), (B), or (C)'' and inserting ''clause (i), (ii), or (iii)'' and by moving such matter 2 ems to the right.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

SEC. 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFICATION INFORMATION WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

(a) GENERAL.—Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting ''(other than the taxpayer's address and TIN)'' after ''Return information''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

SEC. 405. COMPLIANCE BY CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Section 6103(p) (relating to State law requirements) is amended by adding at the end the following new paragraph:

''(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary—

''(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

''(B) agrees to conduct an annual, on-site review (mid-point review in the case of contracts of less than 1 year in duration) of each such contractor or other agent to determine compliance with such requirements,

''(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

''(D) certifies to the Secretary for the most recent annual period that each such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract of the contractor or other agent with the agency, and the duration of such contract.''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 6103(p)(8) is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to disclosures made after December 31, 2003.

(2) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to calendar year 2004.

SEC. 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

(a) IN GENERAL.—Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended by adding at the end the following new paragraphs:

''(2) REQUIREMENTS FOR VALID REQUESTS AND CONSENTS.—A request for or consent to disclosure under paragraph (1) shall only be valid for purposes of this section, sections 7213, 7213A, and 7431 if—

''(A) at the time of execution, such request or consent designates a recipient of such disclosure and is dated, and

''(B) at the time such request or consent is submitted to the Secretary, the submitter of such request or consent certifies, under penalty of perjury, that such request or consent complied with subparagraph (A).

''(3) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—Any person shall, as a condition for receiving return or return information under paragraph (1)—

''(A) ensure that such return and return information is kept confidential,

''(B) use such return and return information only for the purpose for which it was requested, and

''(C) not disclose such return and return information except to accomplish the purpose for which it was requested, unless a separate consent from the taxpayer is obtained.

''(4) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for requests and consents which shall—

''(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

''(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

''(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.''.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall—

(1) evaluate (on the basis of random sampling) whether—

(A) the amendment made by subsection (a) is achieving the purposes of this section;

(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how; and

(C) the sanctions for violations of such requirements are adequate; and

(2) include such recommendations that the Treasury Inspector General for Tax Administration considers necessary or appropriate to better achieve the purposes of this section.

(c) CONFORMING AMENDMENTS.—

(1) Section 6103(c) is amended by striking ''TAXPAYER.—The Secretary'' and inserting ''TAXPAYER.—

''(1) IN GENERAL.—The Secretary''.

(2) Section 7213(a)(1) is amended by striking ''section 6103(n)'' and inserting ''subsections (c) and (n) of section 6103''.

(3) Section 7213A(a)(1)(B) is amended by striking ''subsection (l)(18) or (n) of section 6103'' and inserting ''subsection (c), (l)(18), or (n) of section 6103''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests and consents made after 3 months after the date of the enactment of this Act.

SEC. 407. NOTICE TO TAXPAYER CONCERNING ADMINISTRATIVE DETERMINATION OF BROWSING; ANNUAL REPORT.

(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: ''The Secretary shall also notify such taxpayer if the Treasury Inspector General for Tax Administration substantiates that such taxpayer's return or return information was inspected or disclosed in violation of any of the provisions specified in paragraph (1), (2), or (3).''.

(b) REPORTS.—Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by section 405, is further amended by adding at the end the following new paragraph:

''(10) REPORT ON UNAUTHORIZED DISCLOSURE AND INSPECTION.—As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the unauthorized disclosure and inspection of returns and return information, including the number, status, and results of—

''(A) administrative investigations,

''(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

''(C) criminal prosecutions.''.

(c) EFFECTIVE DATE.—

(1) NOTICE.—The amendment made by subsection (a) shall apply to determinations made after the date of the enactment of this Act.

(2) REPORTS.—The amendment made by subsection (b) shall apply to calendar years ending after the date of the enactment of this Act.

SEC. 408. EXPANDED DISCLOSURE IN EMERGENCY CIRCUMSTANCES.

(a) IN GENERAL.—Section 6103(i)(3)(B) (relating to danger of death or physical injury) is amended by striking ''or State'' and inserting '', State, or local''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 409. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

(a) IN GENERAL.—Paragraph (1) of section 6103(m) (relating to disclosure of taxpayer identity information) is amended by striking ''and other media'' and by inserting '', other media, and through any other means of mass communication,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 410. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO SECTION 501(c)(3) ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

''(2) DISCLOSURE OF PROPOSED ACTIONS.—

''(A) SPECIFIC NOTIFICATIONS.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

''(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

''(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

''(iii) the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as organizations described in section 501(c)(3).

''(B) ADDITIONAL DISCLOSURES.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

''(C) PROCEDURES FOR DISCLOSURE.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

''(i) upon written request by an appropriate State officer, and

''(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

''(D) DISCLOSURES OTHER THAN BY REQUEST.—The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of State or Federal issues relating to the tax-exempt status of such organization.

''(3) USE IN ADMINISTRATIVE AND JUDICIAL CIVIL PROCEEDINGS.—Returns and return information disclosed pursuant to this subsection may be disclosed in administrative and judicial civil proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

''(4) NO DISCLOSURE IF IMPAIRMENT.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (3), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) RETURN AND RETURN INFORMATION.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

''(B) APPROPRIATE STATE OFFICER.—The term 'appropriate State officer' means—

''(i) the State attorney general, or

''(ii) any other State official charged with overseeing organizations of the type described in section 501(c)(3).''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6103(p)(3) is amended by inserting ''and section 6104(c)'' after ''section'' in the first sentence.

(2) Paragraph (4) of section 6103(p) is amended—

(A) in the matter preceding subparagraph (A), by inserting '', or any appropriate State officer (as defined in section 6104(c)),'' before ''or any other person'',

(B) in subparagraph (F)(i), by inserting ''or any appropriate State officer (as defined in section 6104(c)),'' before ''or any other person'', and

(C) in the matter following subparagraph (F), by inserting '', an appropriate State officer (as defined in section 6104(c)),'' after ''including an agency'' each place it appears.

(3) Paragraph (2) of section 7213(a) is amended by inserting ''or under section 6104(c)'' after ''6103''.

(4) Paragraph (2) of section 7213A(a) is amended by inserting ''or 6104(c)'' after ''6103''.

(5) Paragraph (2) of section 7431(a) is amended by inserting ''(including any disclosure in violation of section 6104(c))'' after ''6103''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

SEC. 411. CONFIDENTIALITY OF TAXPAYER COMMUNICATIONS WITH THE OFFICE OF THE TAXPAYER ADVOCATE.

(a) IN GENERAL.—Subsection (c) of section 7803 is amended by adding at the end the following new paragraph:

''(5) CONFIDENTIALITY OF TAXPAYER INFORMATION.—

''(A) IN GENERAL.—To the extent authorized by the National Taxpayer Advocate or pursuant to guidance issued under subparagraph (B), any officer or employee of the Office of the Taxpayer Advocate may withhold from the Internal Revenue Service and the Department of Justice any information provided by, or regarding contact with, any taxpayer.

''(B) ISSUANCE OF GUIDANCE.—In consultation with the Chief Counsel for the Internal Revenue Service and subject to the approval of the Commissioner of Internal Revenue, the National Taxpayer Advocate may issue guidance regarding the circumstances (including with respect to litigation) under which, and the persons to whom, employees of the Office of the Taxpayer Advocate shall not disclose information obtained from a taxpayer. To the extent to which any provision of the Internal Revenue Manual would require greater disclosure by employees of the Office of the Taxpayer Advocate than the disclosure required under such guidance, such provision shall not apply.

''(C) EMPLOYEE PROTECTION.—Section 7214(a)(8) shall not apply to any failure to report knowledge or information if—

''(i) such failure to report is authorized under subparagraph (A), and

''(ii) such knowledge or information is not of fraud committed by a person against the United States under any revenue law.''.

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 7803(c)(4) is amended by inserting ''and'' at the end of clause (ii), by striking ''; and'' at the end of clause (iii) and inserting a period, and by striking clause (iv).

TITLE V—MISCELLANEOUS

SEC. 501. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking ''or'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', or'', and by inserting after paragraph (5) the following:

''(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.''.

SEC. 502. EXPANSION OF DECLARATORY JUDGMENT REMEDY TO TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended—

(1) in subparagraph (B) by inserting after ''509(a))'' the following: ''or as a private operating foundation (as defined in section 4942(j)(3))''; and

(2) by amending subparagraph (C) to read as follows:

''(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in subsection (c) (other than paragraph (3)) or (d) of section 501 which is exempt from tax under section 501(a), or''.

(b) COURT JURISDICTION.—Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking ''United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia'' and inserting the following: ''United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after the date of the enactment of this Act.

SEC. 503. EMPLOYEE MISCONDUCT REPORT TO INCLUDE SUMMARY OF COMPLAINTS BY CATEGORY.

(a) IN GENERAL.—Clause (ii) of section 7803(d)(2)(A) is amended by inserting before the semicolon at the end the following: '', including a summary (by category) of the 10 most common complaints made and the number of such common complaints''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to reporting periods ending after the date of the enactment of this Act.

SEC. 504. ANNUAL REPORT ON AWARDS OF COSTS AND CERTAIN FEES IN ADMINISTRATIVE AND COURT PROCEEDINGS.

Not later than 3 months after the close of each Federal fiscal year after fiscal year 2003, the Treasury Inspector General for Tax Administration shall submit a report to Congress which specifies for such year—

(1) the number of payments made by the United States pursuant to section 7430 of the Internal Revenue Code of 1986 (relating to awarding of costs and certain fees);

(2) the amount of each such payment;

(3) an analysis of any administrative issue giving rise to such payments; and

(4) changes (if any) which will be implemented as a result of such analysis and other changes (if any) recommended by the Treasury Inspector General for Tax Administration as a result of such analysis.

SEC. 505. ANNUAL REPORT ON ABATEMENT OF PENALTIES.

Not later than 6 months after the close of each Federal fiscal year after fiscal year 2003, the Treasury Inspector General for Tax Administration shall submit a report to Congress on abatements of penalties under the Internal Revenue Code of 1986 during such year, including information on the reasons and criteria for such abatements.

SEC. 506. BETTER MEANS OF COMMUNICATING WITH TAXPAYERS.

Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to Congress evaluating whether technological advances, such as e-mail and facsimile transmission, permit the use of alternative means for the Internal Revenue Service to communicate with taxpayers.

SEC. 507. EXPLANATION OF STATUTE OF LIMITATIONS AND CONSEQUENCES OF FAILURE TO FILE.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and any instructions booklet accompanying a general income tax return form for taxable years beginning after 2002 (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto), to provide for an explanation of—

(1) the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds; and

(2) the consequences under such section 6511 of the failure to file a return of tax.

SEC. 508. AMENDMENT TO TREASURY AUCTION REFORMS.

(a) IN GENERAL.—Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendments of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon ''(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to meetings held after the date of the enactment of this Act.

SEC. 509. ENROLLED AGENTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7528. ENROLLED AGENTS.

''(a) IN GENERAL.—The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

''(b) USE OF CREDENTIALS.—Any enrolled agents properly licensed to practice as required under rules promulgated under section (a) herein shall be allowed to use the credentials or designation as 'enrolled agent', 'EA', or 'E.A.'.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7528. Enrolled agents.''.

(c) PRIOR REGULATIONS.—Nothing in the amendments made by this section shall be construed to have any effect on part 10 of

title 31, Code of Federal Regulations, or any other Federal rule or regulation issued before the date of the enactment of this Act.

SEC. 510. FINANCIAL MANAGEMENT SERVICE FEES.

Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received by the Financial Management Service as fees under that subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of title 31, United States Code, and shall be collected and accounted for in accordance with the provisions of that section. The amount credited against the taxpayer's liability on account of the continuous levy shall be the amount levied, without reduction for the amount paid to the Financial Management Service as a fee.

SEC. 511. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions), as amended by section 509, is further amended by adding at the end the following new section:

"SEC. 7529. INTERNAL REVENUE SERVICE USER FEES.

''(a) GENERAL RULE.—The Secretary shall establish a program requiring the payment of user fees for—

''(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

''(2) other similar requests.

''(b) PROGRAM CRITERIA.—

''(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

''(A) shall vary according to categories (or subcategories) established by the Secretary,

''(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

''(C) shall be payable in advance.

''(2) EXEMPTIONS, ETC.—

''(A) IN GENERAL.—The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

''(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS.—The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

''(i) made after the later of—

''(I) the fifth plan year the pension benefit plan is in existence, or

''(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

''(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

''(C) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (B)—

''(i) PENSION BENEFIT PLAN.—The term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

''(ii) ELIGIBLE EMPLOYER.—The term 'eligible employer' means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

''(iii) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

''(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

''Category	Average Fee
Employee plan ruling and opinion ..	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination.	$275
Chief counsel ruling	$200.

''(c) TERMINATION.—No fee shall be imposed under this section with respect to requests made after September 30, 2013.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7529. Internal Revenue Service user fees.''.

(2) Section 10511 of the Revenue Act of 1987 is repealed.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS.—Notwithstanding any other provision of law, any fees collected pursuant to section 7527 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

TITLE VI—LOW-INCOME TAXPAYER CLINICS

SEC. 601. LOW-INCOME TAXPAYER CLINICS.

(a) LIMITATION ON AMOUNT OF GRANTS.—Paragraph (1) of section 7526(c) (relating to special rules and limitations) is amended by striking ''$6,000,000 per year'' and inserting ''$9,000,000 for 2004, $12,000,000 for 2005, and $15,000,000 for each year thereafter''.

(b) PROMOTION OF CLINICS.—Section 7526(c) is amended by adding at the end the following new paragraph:

''(6) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.''.

(c) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—Section 7526(c), as amended by subsection (b), is further amended by adding at the end the following new paragraph:

''(7) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—No grant made under this section may be used for the general overhead expenses of any institution sponsoring a qualified low-income taxpayer clinic.''.

(d) ELIGIBLE CLINICS.—

(1) IN GENERAL.—Paragraph (2) of section 7526(b) is amended to read as follows:

''(2) ELIGIBLE CLINIC.—The term 'eligible clinic' means—

''(A) any clinical program at an accredited law, business, or accounting school in which students represent low-income taxpayers in controversies arising under this title; and

''(B) any organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.''.

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 7526(b)(1) is amended by striking ''means a clinic'' and inserting ''means an eligible clinic''.

TITLE VII—FEDERAL-STATE UNEMPLOYMENT ASSISTANCE AGREEMENTS

SEC. 701. APPLICABILITY OF CERTAIN FEDERAL-STATE AGREEMENTS RELATING TO UNEMPLOYMENT ASSISTANCE.

Effective as of May 25, 2003, section 208 of Public Law 107 09147 is amended—

(1) in subsection (a)(2), by inserting ''on or'' after ''ending''; and

(2) in subsection (b), by striking ''May 31'' each place it appears and inserting ''June 1''.

The SPEAKER pro tempore. Pursuant to House Resolution 282, the amendment in the nature of a substitute printed in the bill, modified by the amendment printed in part A of House Report 108–158, is adopted.

The text of H.R. 1528, as amended, as modified, is as follows:

H.R. 1528

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Taxpayer Protection and IRS Accountability Act of 2003''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; etc.

TITLE I—PENALTY AND INTEREST REFORMS

Sec. 101. Failure to pay estimated tax penalty converted to interest charge on accumulated unpaid balance.
Sec. 102. Exclusion from gross income for interest on overpayments of income tax by individuals.
Sec. 103. Abatement of interest.
Sec. 104. Deposits made to suspend running of interest on potential underpayments.
Sec. 105. Expansion of interest netting for individuals.
Sec. 106. Waiver of certain penalties for first-time unintentional minor errors.
Sec. 107. Frivolous tax submissions.
Sec. 108. Clarification of application of Federal tax deposit penalty.

TITLE II—FAIRNESS OF COLLECTION PROCEDURES

Sec. 201. Partial payment of tax liability in installment agreements.
Sec. 202. Extension of time for return of property.
Sec. 203. Individuals held harmless on wrongful levy, etc., on individual retirement plan.
Sec. 204. Seven-day threshold on tolling of statute of limitations during tax review.
Sec. 205. Study of liens and levies.

TITLE III—TAX ADMINISTRATION REFORMS

Sec. 301. Revisions relating to termination of employment of Internal Revenue Service employees for misconduct.
Sec. 302. Confirmation of authority of tax court to apply doctrine of equitable recoupment.

Sec. 303. Jurisdiction of tax court over collection due process cases.
Sec. 304. Office of Chief Counsel review of offers in compromise.
Sec. 305. 15-day delay in due date for electronically filed individual income tax returns.
Sec. 306. Access of National Taxpayer Advocate to independent legal counsel.
Sec. 307. Payment of motor fuel excise tax refunds by direct deposit.
Sec. 308. Family business tax simplification.
Sec. 309. Health insurance costs of eligible individuals.
Sec. 310. Suspension of tax-exempt status of terrorist organizations.
Sec. 311. Extension of joint review of strategic plans and budget for the Interal Revenue Service.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

Sec. 401. Collection activities with respect to joint return disclosable to either spouse based on oral request.
Sec. 402. Taxpayer representatives not subject to examination on sole basis of representation of taxpayers.
Sec. 403. Disclosure in judicial or administrative tax proceedings of return and return information of persons who are not party to such proceedings.
Sec. 404. Prohibition of disclosure of taxpayer identification information with respect to disclosure of accepted offers-in-compromise.
Sec. 405. Compliance by contractors with confidentiality safeguards.
Sec. 406. Higher standards for requests for and consents to disclosure.
Sec. 407. Notice to taxpayer concerning administrative determination of browsing; annual report.
Sec. 408. Expanded disclosure in emergency circumstances.
Sec. 409. Disclosure of taxpayer identity for tax refund purposes.
Sec. 410. Disclosure to State officials of proposed actions related to section 501(c)(3) organizations.
Sec. 411. Confidentiality of taxpayer communications with the Office of the Taxpayer Advocate.

TITLE V—MISCELLANEOUS

Sec. 501. Clarification of definition of church tax inquiry.
Sec. 502. Expansion of declaratory judgment remedy to tax-exempt organizations.
Sec. 503. Employee misconduct report to include summary of complaints by category.
Sec. 504. Annual report on awards of costs and certain fees in administrative and court proceedings.
Sec. 505. Annual report on abatement of penalties.
Sec. 506. Better means of communicating with taxpayers.
Sec. 507. Explanation of statute of limitations and consequences of failure to file.
Sec. 508. Amendment to treasury auction reforms.
Sec. 509. Enrolled agents.
Sec. 510. Financial management service fees.
Sec. 511. Extension of Internal Revenue Service user fees.

TITLE VI—LOW-INCOME TAXPAYER CLINICS

Sec. 601. Low-income taxpayer clinics.

TITLE VII—FEDERAL-STATE UNEMPLOYMENT ASSISTANCE AGREEMENTS.

Sec. 701. Applicability of certain Federal-State agreements relating to unemployment assistance.

TITLE I—PENALTY AND INTEREST REFORMS

SEC. 101. FAILURE TO PAY ESTIMATED TAX PENALTY CONVERTED TO INTEREST CHARGE ON ACCUMULATED UNPAID BALANCE.

(a) PENALTY MOVED TO INTEREST CHAPTER OF CODE.—The Internal Revenue Code of 1986 is amended by redesignating section 6654 as section 6641 and by moving section 6641 (as so redesignated) from part I of subchapter A of chapter 68 to the end of subchapter E of chapter 67 (as added by subsection (e)(1) of this section).

(b) PENALTY CONVERTED TO INTEREST CHARGE.—The heading and subsections (a) and (b) of section 6641 (as so redesignated) are amended to read as follows:

"SEC. 6641. INTEREST ON FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

"(a) IN GENERAL.—Interest shall be paid on any underpayment of estimated tax by an individual for a taxable year for each day of such underpayment. The amount of such interest for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT; INTEREST RATE.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment on any day shall be the excess of—

"(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

"(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

"(2) DETERMINATION OF INTEREST RATE.—

"(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

"(B) INSTALLMENT UNDERPAYMENT PERIOD.—For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

"(C) DAILY RATE.—The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

"(3) TERMINATION OF ESTIMATED TAX INTEREST.—No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.".

(c) INCREASE IN SAFE HARBOR WHERE TAX IS SMALL.—

(1) IN GENERAL.—Clause (i) of section 6641(d)(1)(B) (as so redesignated) is amended to read as follows:

"(i) the lesser of—

"(I) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

"(II) the tax shown on the return for the taxable year (or, if no return is filed, the tax for such year) reduced (but not below zero) by $1,600, or".

(2) CONFORMING AMENDMENT.—Subsection (e) of section 6641 (as so redesignated) is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(d) CONFORMING AMENDMENTS.—

(1) Paragraphs (1) and (2) of subsection (e) (as redesignated by subsection (c)(2)) and subsection (h) of section 6641 (as so designated) are each amended by striking "addition to tax" each place it occurs and inserting "interest".

(2) Section 167(g)(5)(D) is amended by striking "6654" and inserting "6641".

(3) Section 460(b)(1) is amended by striking "6654" and inserting "6641".

(4) Section 3510(b) is amended—

(A) by striking "section 6654" in paragraph (1) and inserting "section 6641";

(B) by amending paragraph (2)(B) to read as follows:

"(B) no interest would be required to be paid (but for this section) under 6641 for such taxable year by reason of the $1,600 amount specified in section 6641(d)(1)(B)(i)(II).";

(C) by striking "section 6654(d)(2)" in paragraph (3) and inserting "section 6641(d)(2)"; and

(D) by striking paragraph (4).

(5) Section 6201(b)(1) is amended by striking "6654" and inserting "6641".

(6) Section 6601(h) is amended by striking "6654" and inserting "6641".

(7) Section 6621(b)(2)(B) is amended by striking "addition to tax under section 6654" and inserting "interest required to be paid under section 6641".

(8) Section 6622(b) is amended—

(A) by striking "PENALTY FOR" in the heading; and

(B) by striking "addition to tax under section 6654 or 6655" and inserting "interest required to be paid under section 6641 or addition to tax under section 6655".

(9) Section 6658(a) is amended—

(A) by striking "6654, or 6655" and inserting "or 6655, and no interest shall be required to be paid under section 6641,"; and

(B) by inserting "or paying interest" after "the tax" in paragraph (2)(B)(ii).

(10) Section 6665(b) is amended—

(A) in the matter preceding paragraph (1) by striking ", 6654,"; and

(B) in paragraph (2) by striking "6654 or".

(11) Section 7203 is amended by striking "section 6654 or 6655" and inserting "section 6655 or interest required to be paid under section 6641".

(e) CLERICAL AMENDMENTS.—

(1) Chapter 67 is amended by inserting after subchapter D the following:

"Subchapter E—Interest on Failure by Individual to Pay Estimated Income Tax

"Sec. 6641. Interest on failure by individual to pay estimated income tax.".

(2) The table of subchapters for chapter 67 is amended by adding at the end the following new items:

"Subchapter D. Notice requirements.

"Subchapter E. Interest on failure by individual to pay estimated income tax.".

(3) The table of sections for part I of subchapter A of chapter 68 is amended by striking the item relating to section 6654.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to installment payments for taxable years beginning after December 31, 2003.

SEC. 102. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting after section 139 the following new section:

"SEC. 139A. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

"(a) IN GENERAL.—In the case of an individual, gross income shall not include interest paid under section 6611 on any overpayment of tax imposed by this subtitle.

"(b) EXCEPTION.—Subsection (a) shall not apply in the case of a failure to claim items resulting in the overpayment on the original return if the Secretary determines that the principal purpose of such failure is to take advantage of subsection (a).

"(c) SPECIAL RULE FOR DETERMINING MODIFIED ADJUSTED GROSS INCOME.—For purposes of this title, interest not included in gross income

under subsection (a) shall not be treated as interest which is exempt from tax for purposes of sections 32(i)(2)(B) and 6012(d) or any computation in which interest exempt from tax under this title is added to adjusted gross income.''.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139 the following new item:

''Sec. 139A. Exclusion from gross income for interest on overpayments of income tax by individuals.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest received in calendar years beginning after the date of the enactment of this Act.

SEC. 103. ABATEMENT OF INTEREST.

(a) ABATEMENT OF INTEREST WITH RESPECT TO ERRONEOUS REFUND CHECK WITHOUT REGARD TO SIZE OF REFUND.—Paragraph (2) of section 6404(e) is amended by striking ''unless—'' and all that follows and inserting ''unless the taxpayer (or a related party) has in any way caused such erroneous refund.''.

(b) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS.—Subsection (f) of section 6404 is amended—

(1) in the subsection heading, by striking ''PENALTY OR ADDITION'' and inserting ''INTEREST, PENALTY, OR ADDITION''; and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking ''penalty or addition'' and inserting ''interest, penalty, or addition''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 104. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 105. EXPANSION OF INTEREST NETTING FOR INDIVIDUALS.

(a) IN GENERAL.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: ''Solely for purposes of the preceding sentence, section 6611(e) shall not apply in the case of an individual.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accrued after December 31, 2003.

SEC. 106. WAIVER OF CERTAIN PENALTIES FOR FIRST-TIME UNINTENTIONAL MINOR ERRORS.

(a) IN GENERAL.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

''(i) TREATMENT OF FIRST-TIME UNINTENTIONAL MINOR ERRORS.—

''(1) IN GENERAL.—In the case of a return of tax imposed by subtitle A filed by an individual, the Secretary may waive an addition to tax under subsection (a) if—

''(A) the individual has a history of compliance with the requirements of this title,

''(B) it is shown that the failure is due to an unintentional minor error,

''(C) the penalty would be grossly disproportionate to the action or expense that would have been needed to avoid the error, and imposing the penalty would be against equity and good conscience,

''(D) waiving the penalty would promote compliance with the requirements of this title and effective tax administration, and

''(E) the taxpayer took all reasonable steps to remedy the error promptly after discovering it.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply if—

''(A) the Secretary has waived any addition to tax under this subsection with respect to any prior failure by such individual,

''(B) the failure is a mathematical or clerical error (as defined in section 6213(g)(2)), or

''(C) the failure is the lack of a required signature.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2004.

SEC. 107. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission is based on a position which the Secretary has identified as frivolous under subsection (c).

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 7811 (relating to taxpayer assistance orders),

''(II) section 6159 (relating to agreements for payment of tax liability in installments), or

''(III) section 7122 (relating to compromises).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section

shall be in addition to any other penalty provided by law.''.

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 108. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the percentage specified in subsection (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

TITLE II—FAIRNESS OF COLLECTION PROCEDURES

SEC. 201. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 202. EXTENSION OF TIME FOR RETURN OF PROPERTY.

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY SUBJECT TO LEVY.—Subsection (b) of section 6343 (relating to return of property) is amended by striking ''9 months'' and inserting ''2 years''.

(b) PERIOD OF LIMITATION ON SUITS.—Subsection (c) of section 6532 (relating to suits by persons other than taxpayers) is amended—

(1) in paragraph (1) by striking ''9 months'' and inserting ''2 years'', and

(2) in paragraph (2) by striking ''9-month'' and inserting ''2-year''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) levies made after the date of the enactment of this Act, and

(2) levies made on or before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 203. INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC., ON INDIVIDUAL RETIREMENT PLAN.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

''(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

''(1) IN GENERAL.—If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies, an amount equal to the sum of—

''(A) the amount of money returned by the Secretary on account of such levy, and

''(B) interest paid under subsection (c) on such amount of money,

may be deposited into an individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted.

''(2) TREATMENT AS ROLLOVER.—The distribution on account of the levy and any deposit under paragraph (1) with respect to such distribution shall be treated for purposes of this title as if such distribution and deposit were part of a rollover described in section 408(d)(3)(A)(i); except that—

''(A) interest paid under subsection (c) shall be treated as part of such distribution and as not includible in gross income,

''(B) the 60-day requirement in such section shall be treated as met if the deposit is made not later than the 60th day after the day on which the individual receives an amount under paragraph (1) from the Secretary, and

''(C) such deposit shall not be taken into account under section 408(d)(3)(B).

''(3) REFUND, ETC., OF INCOME TAX ON LEVY.—If any amount is includible in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

''(4) INTEREST.—Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid under subsections (b), (c), and (d)(2)(A) of section 6343 of the Internal Revenue Code of 1986 after December 31, 2003.

SEC. 204. SEVEN-DAY THRESHOLD ON TOLLING OF STATUTE OF LIMITATIONS DURING TAX REVIEW.

(a) IN GENERAL.—Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after ''application,'' the following: ''but only if the date of such decision is at least 7 days after the date of the taxpayer's application,''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 205. STUDY OF LIENS AND LEVIES.

The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the practices of the Internal Revenue Service concerning liens and levies. The study shall examine—

(1) the declining use of liens and levies by the Internal Revenue Service, and

(2) the practicality of recording liens and levying against property in cases in which the cost of such actions exceeds the amount to be realized from such property.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III—TAX ADMINISTRATION REFORMS

SEC. 301. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF INTERNAL REVENUE SERVICE EMPLOYEES FOR MISCONDUCT.

(a) IN GENERAL.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by inserting after section 7804 the following new section:

''SEC. 7804A. DISCIPLINARY ACTIONS FOR MISCONDUCT.

''(a) DISCIPLINARY ACTIONS.—

''(1) IN GENERAL.—Subject to subsection (c), the Commissioner shall take an action in accordance with the guidelines established under paragraph (2) against any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties or where a nexus to the employee's position exists.

''(2) GUIDELINES.—The Commissioner shall issue guidelines for determining the appropriate level of discipline, up to and including termination of employment, for committing any act or omission described under subsection (b).

''(b) ACTS OR OMISSIONS.—The acts or omissions described under this subsection are—

''(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

''(2) willfully providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

''(3) with respect to a taxpayer or taxpayer representative, the willful violation of—

''(A) any right under the Constitution of the United States;

''(B) any civil right established under—

''(i) title VI or VII of the Civil Rights Act of 1964;

''(ii) title IX of the Education Amendments of 1972;

''(iii) the Age Discrimination in Employment Act of 1967;

''(iv) the Age Discrimination Act of 1975;

''(v) section 501 or 504 of the Rehabilitation Act of 1973; or

''(vi) title I of the Americans with Disabilities Act of 1990; or

''(C) the Internal Revenue Service policy on unauthorized inspection of returns or return information;

''(4) willfully falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

''(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final adverse judgment by a court in a civil case, with respect to the assault or battery;

''(6) willful violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer or taxpayer representative;

''(7) willful misuse of the provisions of section 6103 for the purpose of concealing information from a congressional inquiry;

''(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect;

''(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect; and

''(10) threatening to audit a taxpayer, or to take other action under this title, for the purpose of extracting personal gain or benefit.

''(c) DETERMINATIONS OF COMMISSIONER.—

''(1) IN GENERAL.—The Commissioner may take a personnel action other than a disciplinary action provided for in the guidelines under subsection (a)(2) for an act or omission described under subsection (b).

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in his sole discretion, may establish a procedure to

determine if an individual should be referred to the Commissioner for a determination by the Commissioner under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination of the Commissioner under this subsection may not be reviewed in any administrative or judicial proceeding. A finding that an act or omission described under subsection (b)(3)(B), references to a program or activity regarding Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.

''(e) ANNUAL REPORT.—The Commissioner shall submit to Congress annually a report on disciplinary actions under this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 80 is amended by inserting after the item relating to section 7804 the following new item:

''Sec. 7804A. Disciplinary actions for misconduct.''.

(c) REPEAL OF SUPERSEDED SECTION.—Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206; 112 Stat. 720) is repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 302. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Subsection (b) of section 6214 (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any action or proceeding in the Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 303. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Section 6330(d)(1) (relating to judicial review of determination) is amended to read as follows:

''(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to judicial appeals filed after the date of the enactment of this Act.

SEC. 304. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking ''Whenever a compromise'' and all that follows through ''his delegate'' and inserting ''If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion''.

(b) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 305. 15-DAY DELAY IN DUE DATE FOR ELECTRONICALLY FILED INDIVIDUAL INCOME TAX RETURNS.

(a) IN GENERAL.—Section 6072 (relating to time for filing income tax returns) is amended by adding at the end the following new subsection:

''(f) ELECTRONICALLY FILED RETURNS OF INDIVIDUALS.—

''(1) IN GENERAL.—Returns of an individual under section 6012 or 6013 (other than an individual to whom subsection (c) applies) which are filed electronically—

''(A) in the case of returns filed on the basis of a calendar year, shall be filed on or before the 30th day of April following the close of the calendar year, and

''(B) in the case of returns filed on the basis of a fiscal year, shall be filed on or before the last day of the 4th month following the close of the fiscal year.

''(2) ELECTRONIC FILING.—Paragraph (1) shall not apply to any return unless—

''(A) such return is accepted by the Secretary, and

''(B) the balance due (if any) shown on such return is paid electronically in a manner prescribed by the Secretary.

''(3) SPECIAL RULES.—

''(A) ESTIMATED TAX.—If—

''(i) paragraph (1) applies to an individual for any taxable year, and

''(ii) there is an overpayment of tax shown on the return for such year which the individual allows against the individual's obligation under section 6641,

then, with respect to the amount so allowed, any reference in section 6641 to the April 15 following such taxable year shall be treated as a reference to April 30.

''(B) REFERENCES TO DUE DATE.—Paragraph (1) shall apply solely for purposes of determining the due date for the individual's obligation to file and pay tax and, except as otherwise provided by the Secretary, shall be treated as an extension of the due date for any other purpose under this title.

''(4) TERMINATION.—This subsection shall not apply to any return filed with respect to a taxable year which begins after December 31, 2005.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed with respect to taxable years beginning after December 31, 2002.

SEC. 306. ACCESS OF NATIONAL TAXPAYER ADVOCATE TO INDEPENDENT LEGAL COUNSEL.

Clause (i) of section 7803(c)(2)(D) (relating to personnel actions) is amended by striking ''and'' at the end of subclause (I), by striking the period at the end of subclause (II) and inserting '', and'', and by adding at the end the following new subclause:

''(III) appoint a counsel in the Office of the Taxpayer Advocate to report solely to the National Taxpayer Advocate.''.

SEC. 307. PAYMENT OF MOTOR FUEL EXCISE TAX REFUNDS BY DIRECT DEPOSIT.

(a) IN GENERAL.—Subchapter II of chapter 33 of title 31, United States Code, is amended by adding at the end the following new section:

''§ 3337. Payment of motor fuel excise tax refunds by direct deposit

''The Secretary of the Treasury shall make payments under sections 6420, 6421, and 6427 of the Internal Revenue Code of 1986 by electronic funds transfer (as defined in section 3332(j)(1)) if the person who is entitled to the payment—

''(1) elects to receive the payment by electronic funds transfer; and

''(2) satisfies the requirements of section 3332(g) with respect to such payment at such time and in such manner as the Secretary may require.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 33 of title 31, United States Code, is amended by adding at the end the following new item:

''3337. Payment of motor fuel excise tax refunds by direct deposit.''.

SEC. 308. FAMILY BUSINESS TAX SIMPLIFICATION.

(a) IN GENERAL.—Section 761 (defining terms for purposes of partnerships) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) QUALIFIED JOINT VENTURE.—

''(1) IN GENERAL.—In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

''(A) such joint venture shall not be treated as a partnership,

''(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

''(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

''(2) QUALIFIED JOINT VENTURE.—For purposes of paragraph (1), the term 'qualified joint venture' means any joint venture involving the conduct of a trade or business if—

''(A) the only members of such joint venture are a husband and wife,

''(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

''(C) both spouses elect the application of this subsection.''.

(b) NET EARNINGS FROM SELF-EMPLOYMENT.—

(1) Subsection (a) of section 1402 (defining net earnings from self-employment) is amended by striking ''and'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ''; and'', and by inserting after paragraph (15) the following new paragraph:

''(16) notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) in determining net earnings from self-employment of such spouse.''.

(2) Subsection (a) of section 211 of the Social Security Act (defining net earnings from self-employment) is amended by striking ''and'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ''; and'', and by inserting after paragraph (15) the following new paragraph:

''(16) Notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) of the Internal Revenue Code of 1986 in determining net earnings from self-employment of such spouse.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 309. HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

(a) CONSUMER OPTIONS.—

(1) IN GENERAL.—Paragraph (2) of section 35(e) is amended by adding at the end the following new subparagraphs:

''(C) WAIVER BY ELIGIBLE INDIVIDUALS.—With respect to any month, clauses (i) and (ii) of subparagraph (A) shall not apply with respect to any eligible individual and such individual's qualifying family members if such individual—

''(i) does not reside in a State which the Secretary has identified by regulation, guidance, or otherwise as a State in which any coverage which—

''(I) is described in any of subparagraphs (C) through (H) of paragraph (1), and

''(II) meets the requirements of subparagraphs (A) and (B) of this paragraph,

is available to eligible individuals (and their qualifying family members) residing in the State, and

''(ii) elects to waive the application of clauses (i) and (ii) of subparagraph (A) of this paragraph.

''(D) ELECTION.—Any election made under subparagraph (C)(ii) shall be effective for the month for which such election is made and for all subsequent months.

''(E) TERMINATION.—Subparagraphs (C) and (D) shall not apply to any month beginning after December 31, 2004.''.

(2) NO IMPACT ON STATE CONSUMER PROTECTIONS.—Nothing in the amendment made by paragraph (1) supercedes or otherwise affects the application of State law relating to consumer insurance protections (including State law implementing the requirements of part B of title XXVII of the Public Health Service Act).

(b) STATE-BASED CONTINUATION COVERAGE NOT SUBJECT TO REQUIREMENTS.—Subparagraphs (A) and (B)(i) of section 35(e)(2) are each amended by striking ''subparagraphs (B) through (H)'' and inserting ''subparagraphs (C) through (H)''.

(c) EFFECTIVE DATE.—

(1) CONSUMER OPTIONS.—The amendment made by subsection (a) shall apply to months beginning after the date of the enactment of this Act.

(2) STATE-BASED CONTINUATION COVERAGE.—The amendments made by subsection (b) shall take effect as if included in section 201(a) of the Trade Act of 2002.

SEC. 310. SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.—

''(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

''(2) TERRORIST ORGANIZATIONS.—An organization is described in this paragraph if such organization is designated or otherwise individually identified—

''(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

''(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

''(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

''(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

''(ii) such Executive order refers to this subsection.

''(3) PERIOD OF SUSPENSION.—With respect to any organization described in paragraph (2), the period of suspension—

''(A) begins on the later of—

''(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

''(ii) the date of the enactment of this subsection, and

''(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

''(4) DENIAL OF DEDUCTION.—No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

''(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

''(6) ERRONEOUS DESIGNATION.—

''(A) IN GENERAL.—If—

''(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

''(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

''(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

''(B) WAIVER OF LIMITATIONS.—If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

''(7) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to designations made before, on, or after the date of the enactment of this Act.

SEC. 311. EXTENSION OF JOINT REVIEW OF STRATEGIC PLANS AND BUDGET FOR THE INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Paragraph (2) of section 8021(f) (relating to joint reviews) is amended by striking ''2004'' and inserting ''2009''.

(b) REPORT.—Subparagraph (C) of section 8022(3) (regarding reports) is amended—

(1) by striking ''2004'' and inserting ''2009'', and

(2) by striking ''with respect to—'' and all that follows and inserting ''with respect to the matters addressed in the joint review referred to in section 8021(f)(2).''.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

SEC. 401. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) IN GENERAL.—Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking ''in writing'' the first place it appears.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 402. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL.—Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended—

(1) by striking ''Returns'' and inserting the following:

''(A) IN GENERAL.—Returns'', and

(2) by adding at the end the following new subparagraph:

''(B) TAXPAYER REPRESENTATIVES.—Notwithstanding subparagraph (A), the return of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return of such representative on a basis other than by reason of such relationship.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date which is 180 days after the date of the enactment of this Act.

SEC. 403. DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS WHO ARE NOT PARTY TO SUCH PROCEEDINGS.

(a) IN GENERAL.—Paragraph (4) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new subparagraph:

''(B) DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS NOT PARTY TO SUCH PROCEEDINGS.—

''(i) NOTICE.—Return or return information of any person who is not a party to a judicial or administrative proceeding described in this paragraph shall not be disclosed under clause (ii) or (iii) of subparagraph (A) until after the Secretary makes a reasonable effort to give notice to such person and an opportunity for such person to request the deletion of matter from such return or return information, including any of the items referred to in paragraphs (1) through (7) of section 6110(c). Such notice shall include a statement of the issue or issues the resolution of which is the reason such return or return information is sought. In the case of S corporations, partnerships, estates, and trusts, such notice shall be made at the entity level.

''(ii) DISCLOSURE LIMITED TO PERTINENT PORTION.—The only portion of a return or return information described in clause (i) which may be disclosed under subparagraph (A) is that portion of such return or return information that directly relates to the resolution of an issue in such proceeding.

''(iii) EXCEPTIONS.—Clause (i) shall not apply—

''(I) to any civil action under section 7407, 7408, or 7409,

''(II) to any ex parte proceeding for obtaining a search warrant, order for entry on premises or safe deposit boxes, or similar ex parte proceeding,

''(III) to disclosure of third party return information by indictment or criminal information, or

''(IV) if the Attorney General or the Attorney General's delegate determines that the application of such clause would seriously impair a criminal tax investigation or proceeding.''.

(b) CONFORMING AMENDMENTS.—Paragraph (4) of section 6103(h) is amended by—

(1) by striking ''PROCEEDINGS.—A return'' and inserting ''PROCEEDINGS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a return'';

(2) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively, and by moving such clauses 2 ems to the right; and

(3) in the matter following clause (iv) (as so redesignated), by striking ''subparagraph (A), (B), or (C)'' and inserting ''clause (i), (ii), or (iii)'' and by moving such matter 2 ems to the right.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

SEC. 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFICATION INFORMATION WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

(a) GENERAL.—Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting ''(other than the taxpayer's address and TIN)'' after ''Return information''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

SEC. 405. COMPLIANCE BY CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Section 6103(p) (relating to State law requirements) is amended by adding at the end the following new paragraph:

''(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary—

''(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

''(B) agrees to conduct an annual, on-site review (mid-point review in the case of contracts of less than 1 year in duration) of each such contractor or other agent to determine compliance with such requirements,

''(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

''(D) certifies to the Secretary for the most recent annual period that each such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract of the contractor or other agent with the agency, and the duration of such contract.''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 6103(p)(8) is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to disclosures made after December 31, 2003.

(2) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to calendar year 2004.

SEC. 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

(a) IN GENERAL.—Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended by adding at the end the following new paragraphs:

''(2) REQUIREMENTS FOR VALID REQUESTS AND CONSENTS.—A request for or consent to disclosure under paragraph (1) shall only be valid for purposes of this section, sections 7213, 7213A, and 7431 if—

''(A) at the time of execution, such request or consent designates a recipient of such disclosure and is dated, and

''(B) at the time such request or consent is submitted to the Secretary, the submitter of such request or consent certifies, under penalty of perjury, that such request or consent complied with subparagraph (A).

''(3) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—Any person shall, as a condition for receiving return or return information under paragraph (1)—

''(A) ensure that such return and return information is kept confidential,

''(B) use such return and return information only for the purpose for which it was requested, and

''(C) not disclose such return and return information except to accomplish the purpose for which it was requested, unless a separate consent from the taxpayer is obtained.

''(4) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for requests and consents which shall—

''(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

''(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

''(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.''.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall—

(1) evaluate (on the basis of random sampling) whether—

(A) the amendment made by subsection (a) is achieving the purposes of this section;

(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how; and

(C) the sanctions for violations of such requirements are adequate; and

(2) include such recommendations that the Treasury Inspector General for Tax Administration considers necessary or appropriate to better achieve the purposes of this section.

(c) CONFORMING AMENDMENTS.—

(1) Section 6103(c) is amended by striking ''TAXPAYER.—The Secretary'' and inserting ''TAXPAYER.—

''(1) IN GENERAL.—The Secretary''.

(2) Section 7213(a)(1) is amended by striking ''section 6103(n)'' and inserting ''subsections (c) and (n) of section 6103''.

(3) Section 7213A(a)(1)(B) is amended by striking ''subsection (l)(18) or (n) of section 6103'' and inserting ''subsection (c), (l)(18), or (n) of section 6103''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests and consents made after 3 months after the date of the enactment of this Act.

SEC. 407. NOTICE TO TAXPAYER CONCERNING ADMINISTRATIVE DETERMINATION OF BROWSING; ANNUAL REPORT.

(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: ''The Secretary shall also notify such taxpayer if the Treasury Inspector General for Tax Administration substantiates that such taxpayer's return or return information was inspected or disclosed in violation of any of the provisions specified in paragraph (1), (2), or (3).''.

(b) REPORTS.—Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by section 405, is further amended by adding at the end the following new paragraph:

''(10) REPORT ON UNAUTHORIZED DISCLOSURE AND INSPECTION.—As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the unauthorized disclosure and inspection of returns and return information, including the number, status, and results of—

''(A) administrative investigations,

''(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

''(C) criminal prosecutions.''.

(c) EFFECTIVE DATE.—

(1) NOTICE.—The amendment made by subsection (a) shall apply to determinations made after the date of the enactment of this Act.

(2) REPORTS.—The amendment made by subsection (b) shall apply to calendar years ending after the date of the enactment of this Act.

SEC. 408. EXPANDED DISCLOSURE IN EMERGENCY CIRCUMSTANCES.

(a) IN GENERAL.—Section 6103(i)(3)(B) (relating to danger of death or physical injury) is amended by striking ''or State'' and inserting '', State, or local''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 409. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

(a) IN GENERAL.—Paragraph (1) of section 6103(m) (relating to disclosure of taxpayer identity information) is amended by striking ''and other media'' and by inserting '', other media, and through any other means of mass communication,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 410. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO SECTION 501(c)(3) ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

''(2) DISCLOSURE OF PROPOSED ACTIONS.—

''(A) SPECIFIC NOTIFICATIONS.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

''(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

''(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

''(iii) the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as organizations described in section 501(c)(3).

''(B) ADDITIONAL DISCLOSURES.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

''(C) PROCEDURES FOR DISCLOSURE.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

''(i) upon written request by an appropriate State officer, and

''(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

''(D) DISCLOSURES OTHER THAN BY REQUEST.—The Secretary may make available for inspection or disclose returns and return information

of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of State or Federal issues relating to the tax-exempt status of such organization.

''(3) USE IN ADMINISTRATIVE AND JUDICIAL CIVIL PROCEEDINGS.—Returns and return information disclosed pursuant to this subsection may be disclosed in administrative and judicial civil proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

''(4) NO DISCLOSURE IF IMPAIRMENT.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (3), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) RETURN AND RETURN INFORMATION.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

''(B) APPROPRIATE STATE OFFICER.—The term 'appropriate State officer' means—

''(i) the State attorney general, or

''(ii) any other State official charged with overseeing organizations of the type described in section 501(c)(3).''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6103(p)(3) is amended by inserting ''and section 6104(c)'' after ''section'' in the first sentence.

(2) Paragraph (4) of section 6103(p) is amended—

(A) in the matter preceding subparagraph (A), by inserting '', or any appropriate State officer (as defined in section 6104(c)),'' before ''or any other person'',

(B) in subparagraph (F)(i), by inserting ''or any appropriate State officer (as defined in section 6104(c)),'' before ''or any other person'', and

(C) in the matter following subparagraph (F), by inserting '', an appropriate State officer (as defined in section 6104(c)),'' after ''including an agency'' each place it appears.

(3) Paragraph (2) of section 7213(a) is amended by striking ''6103.'' and inserting ''6103 or under section 6104(c).''.

(4) Paragraph (2) of section 7213A(a) is amended by inserting ''or 6104(c)'' after ''6103''.

(5) Paragraph (2) of section 7431(a) is amended by inserting ''(including any disclosure in violation of section 6104(c))'' after ''6103''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

SEC. 411. CONFIDENTIALITY OF TAXPAYER COMMUNICATIONS WITH THE OFFICE OF THE TAXPAYER ADVOCATE.

(a) IN GENERAL.—Subsection (c) of section 7803 is amended by adding at the end the following new paragraph:

''(5) CONFIDENTIALITY OF TAXPAYER INFORMATION.—

''(A) IN GENERAL.—To the extent authorized by the National Taxpayer Advocate or pursuant to guidance issued under subparagraph (B), any officer or employee of the Office of the Taxpayer Advocate may withhold from the Internal Revenue Service and the Department of Justice any information provided by, or regarding contact with, any taxpayer.

''(B) ISSUANCE OF GUIDANCE.—In consultation with the Chief Counsel for the Internal Revenue Service and subject to the approval of the Commissioner of Internal Revenue, the National Taxpayer Advocate may issue guidance regarding the circumstances (including with respect to litigation) under which, and the persons to whom, employees of the Office of the Taxpayer Advocate shall not disclose information obtained from a taxpayer. To the extent to which any provision of the Internal Revenue Manual would require greater disclosure by employees of the Office of the Taxpayer Advocate than the disclosure required under such guidance, such provision shall not apply.

''(C) EMPLOYEE PROTECTION.—Section 7214(a)(8) shall not apply to any failure to report knowledge or information if—

''(i) such failure to report is authorized under subparagraph (A), and

''(ii) such knowledge or information is not of fraud committed by a person against the United States under any revenue law.''.

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 7803(c)(4) is amended by inserting ''and'' at the end of clause (ii), by striking ''; and'' at the end of clause (iii) and inserting a period, and by striking clause (iv).

TITLE V—MISCELLANEOUS

SEC. 501. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking ''or'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', or'', and by inserting after paragraph (5) the following:

''(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.''.

SEC. 502. EXPANSION OF DECLARATORY JUDGMENT REMEDY TO TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended—

(1) in subparagraph (B) by inserting after ''509(a))'' the following: ''or as a private operating foundation (as defined in section 4942(j)(3))''; and

(2) by amending subparagraph (C) to read as follows:

''(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in subsection (c) (other than paragraph (3)) or (d) of section 501 which is exempt from tax under section 501(a), or''.

(b) COURT JURISDICTION.—Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking ''United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia'' and inserting the following: ''United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after the date of the enactment of this Act.

SEC. 503. EMPLOYEE MISCONDUCT REPORT TO INCLUDE SUMMARY OF COMPLAINTS BY CATEGORY.

(a) IN GENERAL.—Clause (ii) of section 7803(d)(2)(A) is amended by inserting before the semicolon at the end the following: '', including a summary (by category) of the 10 most common complaints made and the number of such common complaints''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to reporting periods ending after the date of the enactment of this Act.

SEC. 504. ANNUAL REPORT ON AWARDS OF COSTS AND CERTAIN FEES IN ADMINISTRATIVE AND COURT PROCEEDINGS.

Not later than 3 months after the close of each Federal fiscal year after fiscal year 2003, the Treasury Inspector General for Tax Administration shall submit a report to Congress which specifies for such year—

(1) the number of payments made by the United States pursuant to section 7430 of the Internal Revenue Code of 1986 (relating to awarding of costs and certain fees);

(2) the amount of each such payment;

(3) an analysis of any administrative issue giving rise to such payments; and

(4) changes (if any) which will be implemented as a result of such analysis and other changes (if any) recommended by the Treasury Inspector General for Tax Administration as a result of such analysis.

SEC. 505. ANNUAL REPORT ON ABATEMENT OF PENALTIES.

Not later than 6 months after the close of each Federal fiscal year after fiscal year 2003, the Treasury Inspector General for Tax Administration shall submit a report to Congress on abatements of penalties under the Internal Revenue Code of 1986 during such year, including information on the reasons and criteria for such abatements.

SEC. 506. BETTER MEANS OF COMMUNICATING WITH TAXPAYERS.

Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to Congress evaluating whether technological advances, such as e-mail and facsimile transmission, permit the use of alternative means for the Internal Revenue Service to communicate with taxpayers.

SEC. 507. EXPLANATION OF STATUTE OF LIMITATIONS AND CONSEQUENCES OF FAILURE TO FILE.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and any instructions booklet accompanying a general income tax return form for taxable years beginning after 2002 (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto), to provide for an explanation of—

(1) the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds; and

(2) the consequences under such section 6511 of the failure to file a return of tax.

SEC. 508. AMENDMENT TO TREASURY AUCTION REFORMS.

(a) IN GENERAL.—Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendments of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon ''(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to meetings held after the date of the enactment of this Act.

SEC. 509. ENROLLED AGENTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7528. ENROLLED AGENTS.

''(a) IN GENERAL.—The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

''(b) USE OF CREDENTIALS.—Any enrolled agents properly licensed to practice as required under rules promulgated under section (a) herein shall be allowed to use the credentials or designation as 'enrolled agent', 'EA', or 'E.A.'.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7528. Enrolled agents.''.

(c) PRIOR REGULATIONS.—Nothing in the amendments made by this section shall be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other Federal rule or regulation issued before the date of the enactment of this Act.

SEC. 510. FINANCIAL MANAGEMENT SERVICE FEES.

Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received by the Financial Management Service as fees under that subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of title 31, United States Code, and shall be collected and accounted for in accordance with the provisions of that section. The amount credited against the taxpayer's liability on account of the continuous levy shall be the amount levied, without reduction for the amount paid to the Financial Management Service as a fee.

SEC. 511. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions), as amended by section 509, is further amended by adding at the end the following new section:

"SEC. 7529. INTERNAL REVENUE SERVICE USER FEES.

''(a) GENERAL RULE.—The Secretary shall establish a program requiring the payment of user fees for—

''(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

''(2) other similar requests.

''(b) PROGRAM CRITERIA.—

''(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

''(A) shall vary according to categories (or subcategories) established by the Secretary,

''(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

''(C) shall be payable in advance.

''(2) EXEMPTIONS, ETC.—

''(A) IN GENERAL.—The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

''(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS.—The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

''(i) made after the later of—

''(I) the fifth plan year the pension benefit plan is in existence, or

''(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

''(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

''(C) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (B)—

''(i) PENSION BENEFIT PLAN.—The term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

''(ii) ELIGIBLE EMPLOYER.—The term 'eligible employer' means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

''(iii) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

''(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

"Category	*Average Fee*
Employee plan ruling and opinion	*$250*
Exempt organization ruling	*$350*
Employee plan determination	*$300*
Exempt organization determination	*$275*
Chief counsel ruling	*$200.*

''(c) TERMINATION.—No fee shall be imposed under this section with respect to requests made after September 30, 2013.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7529. Internal Revenue Service user fees.''.

(2) Section 10511 of the Revenue Act of 1987 is repealed.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS.—Notwithstanding any other provision of law, any fees collected pursuant to section 7527 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

TITLE VI—LOW-INCOME TAXPAYER CLINICS

SEC. 601. LOW-INCOME TAXPAYER CLINICS.

(a) LIMITATION ON AMOUNT OF GRANTS.—Paragraph (1) of section 7526(c) (relating to special rules and limitations) is amended by striking ''$6,000,000 per year'' and inserting ''$9,000,000 for 2004, $12,000,000 for 2005, and $15,000,000 for each year thereafter''.

(b) PROMOTION OF CLINICS.—Section 7526(c) is amended by adding at the end the following new paragraph:

''(6) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.''.

(c) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—Section 7526(c), as amended by subsection (b), is further amended by adding at the end the following new paragraph:

''(7) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—No grant made under this section may be used for the general overhead expenses of any institution sponsoring a qualified low-income taxpayer clinic.''.

(d) ELIGIBLE CLINICS.—

(1) IN GENERAL.—Paragraph (2) of section 7526(b) is amended to read as follows:

''(2) ELIGIBLE CLINIC.—The term 'eligible clinic' means—

''(A) any clinical program at an accredited law, business, or accounting school in which students represent low-income taxpayers in controversies arising under this title; and

''(B) any organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.''.

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 7526(b)(1) is amended by striking ''means a clinic'' and inserting ''means an eligible clinic''.

TITLE VII—FEDERAL-STATE UNEMPLOYMENT ASSISTANCE AGREEMENTS

SEC. 701. APPLICABILITY OF CERTAIN FEDERAL-STATE AGREEMENTS RELATING TO UNEMPLOYMENT ASSISTANCE.

Effective as of May 25, 2003, section 208 of Public Law 107–147 is amended—

(1) in subsection (a)(2), by inserting ''on or'' after ''ending''; and

(2) in subsection (b), by striking ''May 31'' each place it appears and inserting ''June 1''.

The SPEAKER pro tempore. After 1 hour of debate on the bill, it shall be in order to consider the further amendment printed in part B of the report, if offered by the gentleman from New York (Mr. RANGEL) or his designee, which shall be considered read, and shall be debatable for 1 hour, equally divided and controlled by the proponent and an opponent.

The gentleman from Louisiana (Mr. MCCRERY) and the gentleman from North Dakota (Mr. POMEROY) each will control 30 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. MCCRERY).

Mr. MCCRERY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the Taxpayer Protection and IRS Accountability Act. The title of this bill is a good summary for the fundamental principles contained in it. We are increasing protections for taxpayers from unfair actions by the IRS while at the same time we are making reforms in the IRS that will make the administration of our tax laws more accountable.

Let me mention just a few of the ways we increase protections for taxpayers. The bill increases the confidentiality of taxpayer communications when they seek the assistance of the Taxpayer Advocate. The bill restricts the IRS from auditing the tax returns of taxpayer representatives simply based on their having prepared the returns of other taxpayers.

And let me mention some of the ways we improve tax administration of the IRS.

The bill allows the IRS to enter into installment agreements; to let a taxpayer pay an unpaid amount over 2 or 3 years without imposing the requirement that they pay the full amount. The IRS already has the authority to settle tax debts for less than the full amount. But when it comes to installment payments, the law requires the agreement to cover 100 percent of the debt. So in some cases, instead of the taxpayer paying $9,000 of a $10,000 debt, let us say, giving the IRS $500 every month, the IRS gets nothing.

The bill improves the so-called ten deadly sins actions for which IRS employees can be fired, by removing some of the employee versus employee cases that have bogged down the system, but adding another standard, that of unauthorized browsing of taxpayer records to the list of offenses.

Let me conclude by stressing that the health care tax credit provisions in this bill are sound, prudent and necessary. They do not overturn or weaken the State plans already in effect in

eight States, nor do they have any impact on State consumer protections. The waiver only applies to the preexisting condition and guarantee issues. And the waiver will only be in place until the end of 2004.

We want workers who have suffered a loss of their job and their health insurance to be able to receive the tax credit for health insurance. If we pass this bill, an estimated 12,000 workers will be able to obtain health insurance. Those workers, without this bill, would not be able to get health insurance.

I support the bill, and I urge the House to support this bill.

Mr. Speaker, I would like to say that the gentleman from Maryland (Mr. CARDIN) has been instrumental in putting together the provisions of this bill, along with my colleague on the Committee on Ways and Means, the gentleman from Ohio (Mr. PORTMAN). So I want to thank both of those gentlemen for the good work they have done on this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. POMEROY. Mr. Speaker, I yield such to time as he may consume to the gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. Mr. Speaker, let me thank the gentleman for yielding me this time, and I want to acknowledge the work that both the gentleman from New York (Mr. HOUGHTON) and the gentleman from North Dakota (Mr. POMEROY) have done to develop a process in which we could look at the Taxpayer Bill of Rights with our staffs in order to make reasonable changes to protect taxpayers and their relationship with the Internal Revenue Service.

The gentleman from Ohio (Mr. PORTMAN) has been one of the leaders in the Congress of the United States on this issue, and I have worked with him on some of these matters, but the gentleman from North Dakota and the gentleman from New York, in their subcommittee of oversight, have really taken on, I think, the right process to review each of these provisions and to bring forward a group of noncontroversial changes in the Taxpayer Bill of Rights that are important to protect our constituents in their dealing with the Internal Revenue Service.

So, Mr. Speaker, I start by saying there is a lot of good provisions. Most of the provisions in the underlying bill are important provisions that we need to act on and that have gone through the vetting process, which I think is appropriate for these types of changes. My concern is the amendment that was added that was not part of the Taxpayer Bill of Rights. I think we will have a chance later in this debate to correct that through an amendment or substitute that will be offered by the gentleman from New York (Mr. RANGEL) that will incorporate all the good provisions of the underlying bill, but eliminate the provision that affects TAA.

Let me talk for moment, if I might, about that one provision that I hope we will find a way to get out of the underlying legislation so that we can move forward with the Taxpayer Bill of Rights. That provision is a very controversial provision and a provision that I think does irreparable harm to a large number of our constituents who currently or may be without health insurance.

We provided in the trade adjustment assistance provision where we could deal with workers who have lost their health benefits and their jobs as a result of foreign trade. That could be a clear example of what has happened to the steel industry in my community, where so many Bethlehem Steel workers lost their health benefits as a result of the financial woes caused by illegally dumped steel here in the United States.

My concern with the TAA amendment that has been incorporated in the Taxpayer Bill of Rights is that it removes an important protection for these workers or retirees in getting health insurance that will cover them. In my own State of Maryland, we have taken advantage of the TAA law and the use of the Federal credit by establishing a State pool for these workers and retirees so they can get health benefits. By removing the protection that is in the law, we will be encouraging States to take away protections on preexisting conditions in underwriting.

Mr. Speaker, I think it should be the policy of this body to cover all these workers and retirees. We should not be distinguishing between those who, in their most desperate need, have preexisting conditions. The bill is working as passed by the Congress. It is working in Maryland, it is working around the Nation. There is no need now to remove the protections that were included in the TAA legislation.

So, Mr. Speaker, I will be urging my colleagues to support the substitute that will preserve the important provisions on the Taxpayer Bill of Rights but will remove this poison pill that could hurt many workers and retirees in communities' around the Nation.

Mr. MCCRERY. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. HOUGHTON), the chairman of the Subcommittee on Oversight of the Committee on Ways and Means.

Mr. HOUGHTON. Mr. Speaker, I thank the gentleman for yielding me this time, and I thank also the gentleman from North Dakota.

The theme of this bill, and I, of course, support it, is to improve the IRS. Before I give a few quick examples, I do want to say that I have stood up here at least three times, and my script is getting musty because I have used the same words year after year. I hope that somehow we are going to be able to pass this legislation this year.

But, basically, some of the examples are this. We allow the IRS to waive unfair penalties for honest taxpayers who make mistakes. We allow that. For example, a taxpayer who mails his return on April 15 with a check for $5,000, with a balance due, and he mistakenly puts the wrong stamp on it, he is in trouble. And the IRS cannot waive any penalties to people who make an honest mistake. I know of this personally because of a friend in my area who did this; owed lots and lots of money. There was no maneuverability on it.

Another example is when the IRS erroneously assesses or levies a taxpayer's assets. There is a limited time during which the service can provide relief to the taxpayer. And this is, of course, especially unfair if the IRS ends up levying the taxpayer's retirement account.

So let us say the IRS, just to take this a little more, misapplies a tax payment and consequently levies on a taxpayer's IRA account taking away $25,000. The IRS then later realizes its mistake, but it is unable to restore the IRA balance. That is problem we have here. Very, very inflexible rules. So the result under current laws does not make any sense at all.

Now, this bill requires the IRS to extend the time limit for taxpayers to contest levies and requires the IRS to provide relief to taxpayers whose retirement accounts are affected.

Lastly, and the gentleman from Louisiana, my good friend, also referred to the ten deadly sins that try to strike a balance between making sure that IRS employees are not engaging in improper behavior on the one hand and not placing a straitjacket on IRS employees and the commission on the other hand. These changes are strongly supported by former Commissioner Rossotti, who did an extraordinary job in reorganizing and putting more life into the IRS, and have the support of the National Treasury Employees Union.

So I guess the only thing I can say to sum up, Mr. Speaker, is that this a good bill. I am honored to be able to join these gentlemen in urging my colleagues to support this legislation.

□ 1545

Mr. POMEROY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would say in response to the gentleman from New York, what a privilege I feel it is to serve as a ranking member on the subcommittee chaired by the gentleman from New York (Mr. HOUGHTON). He is an example of the leading effort in the Congress to forge bipartisan consensus and address in commonsense ways problems affecting the American people. That is precisely what the bill before us did, the bill that the gentleman from New York (Mr. HOUGHTON) and I agreed to cosponsor until the week before it was to come to the Committee on Ways and Means, at which time we learned of an extraordinarily offensive provision added into the bill. This provision significantly changes and undermines essential consumer protections that exist for displaced workers as a result of trade agreements that are looking for health insurance.

Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. MCDERMOTT) to elaborate on this feature of the bill and other points relative to the issue before us.

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, the underlying bill here today is not in dispute. We had the same bill last year, and they could not get it through because they used it like they are using it this year. They used it sort of like a bun for a hotdog. Everybody wanted the bun, but they keeping sticking a poison pill into the hot dog. They did it last year with section 527, long forgotten. This year with great fanfare they passed the fast track bill. A lot of Members on this side of the aisle voted for the fast track bill. They said if we put in some protections for the workers, and Members said, oh, yes, that is right, we should give protections for the workers so that if because of trade they lose their job and they lose their health care benefits, we should provide some health care benefits for them.

The bill was barely dry from the President signing it, and they started trying to take that out. The workers have got to think there is nobody in this place who is honest with them. The first time it happened, the gentleman on the other side went to the Committee on Armed Services and stuck it into one of their bills; and he got caught, and it got dropped out in the conference committee. So it has been brought back and put in here.

Members know this bill will pass. The taxpayers deserve some relief and protection. So a bill like that is going to pass 435–0, so Members can stick in just about anything and figure it will slide by and nobody will notice it. What they have done to these workers, and I have 11,000 in my State, and there are a few thousand in every State, they are going to go out thinking I have a 65 percent tax credit on my health care benefits and all I have to do is find a place to do this.

Our State does not have a program yet, but they are working on it in the State legislature because they never put in the bill that the States have to establish programs. What is underlying here is a basic philosophic disagreement. The gentleman from Louisiana (Mr. MCCRERY) and I have been around on this a lot of times. It is the question of do people have an individual responsibility to take care of themselves, or should we take care of them collectively by developing a State program in this particular instance.

Many States have put together plans, in spite of the fact that Congress gave them no direction. We put it in the bill, and it silently went out into the ether. Some States woke up and found it. New York and New Jersey and a few other States were paying attention, but about 30 States have not found it yet. They have not put together a program, or their legislatures are not capable. I do not know why they have not done it. But here we come with an amendment which says you States which have not done it, you cannot have the consumer protections. If your State legislature says all individual programs have to have a guaranteed issue and they have to have no preexisting condition exclusions, then you can buy a policy.

Mr. Speaker, a guy is 55 years old, he gets laid off in this trade adjustment and, he has got a little problem with his heart or kidneys or lungs. Now he has a preexisting condition, and he has a voucher in his hand and he goes to the insurance company, and they take his history. Oh, you have a kidney problem. Sorry, you have a preexisting condition. We cannot. Now many States have passed a law and said you cannot deny him. At that point he is out of luck. He has this promise of health care, and he cannot get at it.

Somehow the Republicans think that we ought to take away those protections from workers. Now wait until they try to put a trade bill through here again and tell people that we are going to protect the workers. This is where we find out what they really mean about protecting the workers. They better know they are going to have to go out in the individual market and get their health care. If it is too expensive, tough. The other side says we gave them a 65 percent tax credit. But of course in order to get it, you have to be able to pay for the insurance. No provision is made for that.

Mr. Speaker, this is a sham that was put in that fast track bill, and they have been trying to get rid of it ever since because they do not want the principle to be established that States can put together a program to take care of individuals in a group and buy group insurance. That is what is at issue here. This is not fair, and it is wrong and Members ought to vote the bill down.

Mr. MCCRERY. Mr. Speaker, I reserve the balance of my time.

Mr. POMEROY. Mr. Speaker, I yield 3 minutes to the gentleman from Maine (Mr. MICHAUD).

Mr. MICHAUD. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise today in opposition to the TAA health care tax credit rollback provision included in the Taxpayer Protection and IRS Accountability Act. Make no mistake, I support taxpayer protection and IRS accountability. But something is wrong, rotten in Congress today. Why would the House leadership try to slip in such a harmful provision in a noncontroversial bill?

It is clearly a sneaky attempt to destroy workers' protections and help leverage big insurance companies' profits. There is no doubt this unpopular provision would never survive unless it was tucked into a popular bill such as this. This measure would strip away the protections for dislocated workers and allow insurers to cherry pick healthy workers and exclude those who are older or in poor health, those who need the coverage the most.

Many dislocated workers in Maine are currently enrolled in this program. Our State has been among the first approved program in the Nation. These hard-working men and women have lost their jobs; they deserve some type of health care protection. I would ask the gentleman from New York (Mr. HOUGHTON) to reconsider this provision. There are some areas in the State of Maine where unemployment is over 32 percent. There are other areas abutting that high-labor market area with double digit employment numbers because we are getting killed by imports because of our trade agreements. Granted, this is a 65 percent tax credit. However, when you are on unemployment, you have mortgage payments to make, automobile payments and health care payments. To come up with the employees' share, it is difficult. I hope Members oppose this bill until the TAA health care tax credit rollback provision is excluded.

Mr. POMEROY. Mr. Speaker, I yield myself such time as I may consume.

(Mr. POMEROY asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. POMEROY. Mr. Speaker, I appreciate the gentleman's outstanding work on behalf of the displaced workers in the State of Maine and throughout the country.

Let me try to put in perspective what this is all about. Let me note back in my days as the State insurance commissioner of North Dakota, I spent a lot of time working on issues, fundamental consumer protections for people buying health insurance. We believe it is critical when we have workers displaced because of trade agreements, they ought to have some assistance with the expenses they incur while looking for other careers and other ways to earn their livelihood.

As a result, we got trade adjustment assistance in that last bill, and it provided for very meaningful assistance, support in purchasing the premium as well as very strong consumer protections in the purchase of that coverage. These protections include guaranteed issues; if you are sick or have some medical condition, it does not matter. You have the right to get that coverage, no preexisting condition exclusion. What that means is, say you want to get coverage but I have some disability maybe that occurred at work. They cannot exclude all medical conditions arising from that disability; they have to cover that, too. And then premiums have to be equitable with other premiums; benefits have to be comparable with other benefits.

What the majority bill would do is allow a period where some of the most important consumer protections do not have to be offered, those providing for guaranteed issue, absolute right to get the coverage, those protecting against

having something excluded; those are also eliminated in this provision.

We have been upset by this provision; and when I say ''we,'' I speak about a swath in the caucus that voted for the fast track trade authority and did so in part because of the protections of trade adjustment assistance.

Mr. Speaker, I include for the RECORD a Dear Colleague written by the gentlewoman from California (Mrs. TAUSCHER) and signed by 15 Democrats who voted for the trade bill, all referencing the fact that this trade adjustment protection for displaced workers was an important part of them coming to agree that we ought to pass this trade bill.

PRO-TRADE HOUSE DEMOCRATS FIGHT TO KEEP WORKER ASSISTANCE IN TRADE BILL

Today, 15 House Democrats who voted for the Trade Promotion Authority bill last year sent a strong letter to Ways and Means Chairman Bill Thomas expressing their concern about his efforts to rewrite guarantees for healthcare benefits for displaced workers that were agreed to as part of the comprehensive trade bill passed last year.

The effort to keep Trade Adjustment Assistance as part of future trade agreements is being led by Reps. Ellen Tauscher (D-Calif.), Adam Smith (D-Wash.) and Cal Dooley (D-Calif.).

JUNE 11, 2003.

Hon. WILLIAM M. THOMAS,
Chairman, Committee on Ways and Means.

DEAR CHAIRMAN THOMAS: As pro-trade Democrats who supported passage of Trade Promotional Authority and the Trade Act of 2002, we write to voice our concerns with your efforts to rewrite the Trade Adjustment Assistance provision of this new law.

Inclusion of a strong and robust TAA provision was paramount to our support of TPA and the Trade Act of 2002. The commitments made during last year's debate are important to us and those we represent.

Specifically, we are very concerned that your efforts to rewrite the healthcare provisions in TAA by adding language to a non-trade related bill (Section 309; HR 1528, the Taxpayer Protection and IRS Responsibility Act) vitiates your commitments made during debate on TPA. More importantly, this undermines Congress' commitment of providing healthcare tax credits to displaced workers, regardless of their age or health status.

Under the guise of ''consumer choice,'' your provision would eliminate key consumer protections designed to give states the flexibility to develop pools and negotiate with private insurance companies while still meeting the law's consumer protection requirements. States are in the process of developing these plans and have not indicated to Congress problems with meeting the TAA requirements. And since Congress has yet to consider a single FTA since its passage, it seems counterproductive to change TAA at this time.

The rules of TPA define Congress' role and responsibilities during negotiations on individual bilateral trade agreements. As proponents of trade, we take our oversight roles seriously. We are equally serious in our commitment to the TAA provisions of the law we worked hard to pass that provide a safety net to those Americans displaced by new trade agreements.

We are hopeful you will reconsider rewriting the healthcare provisions of TAA and remove this provision from HR 1528. We are concerned that altering such a provision in unrelated legislation may undermine the bipartisan consensus necessary for the passage of future FTAs.

Sincerely,

Ellen O. Tauscher, Adam Smith, Cal Dooley, Susan Davis, Jim Davis, William Jefferson, Rick Larsen, Dennis Moore, Bob Etheridge, Harold Ford, Jr., Jane Harman, Norman Dicks, Ken Lucus, Jim Matheson, Jim Moran.

Mr. POMEROY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman from North Dakota (Mr. POMEROY) for his excellent work on this question and for bringing us together around this particular legislation which deals with fixing technical problems dealing with taxpayers' needs that all of us can join in. I thank the gentleman from Ohio (Mr. PORTMAN) and the chairman of the subcommittee on this particular legislation, and I would like to say, if I could, that this is a bill that I would run to the floor to support.

And the reason is because when I first came to Congress, the issue of advocacy for taxpayers was an enormous issue. In fact, we had a very serious problem in Houston, Texas, of insensitivity to taxpayers who were trying to do the right thing. So the very fact that this legislation, H.R. 1528, has 50 bipartisan and relatively noncontroversial taxpayer-rights provisions is one that I would want to support. In fact, title I of the proposed act increases the threshold in which a taxpayer would not incur penalties for underpayment. Because, in fact, my colleagues, those taxpayers are trying to pay their taxes. This is a good provision. This says if you underpay, it gives you a break to try to get in there and fix the problem.

I would like to be supportive of those kinds of very effective tax provisions. There is something else in here that I very much appreciate. The bill eliminates the $50,000 threshold for adjustment of interest on erroneous refunds.

□ 1600

Some of us know of situations where those who tried to pay their taxes got an erroneous refund, and I believe the gentlewoman from California (Ms. LORETTA SANCHEZ) had an issue on this and worked very hard on this issue. We now protect those innocent individuals who get a refund through no fault of their own and they get penalized.

But lo and behold, I have voted for several bills dealing with enhancing trade, the African Growth and Opportunity Act, the Caribbean Basin Initiative, here we come with what we call a trade adjustment assistance health credit, and we do not know where this came from to my colleagues on the other side of the aisle, why they would put a poison pill that clearly takes away the protection. The elimination of the TAA health care program that would be imminent upon the enactment of this bill as drafted will negate consumer protections for eligible laid-off workers and certain pensioners who seek health care coverage. States that have not made health care coverage available to laid-off workers and pensioners by August 2003 would be able to ignore the TAA consumer protections, which ensure that all applicants could get coverage.

Mr. Speaker, let me just say this. We have got a crisis in our States. We have got people being laid off, we have got 177,000 children being taken off of the CHIPs program in the State of Texas. We have got the child tax credit languishing in this body. Someone says that we cannot move that forward. People are hurting. How can we put this bill forward that has all these good provisions, clearing up the taxpayer rights, if you will, providing further help in advocating for taxpayer rights? Remember when I said taxpayer rights, that means we are helping those who pay taxes as well as those who helped build this country, and here we are penalizing them for those who may be laid off through no fault of their own.

I would ask that we correct that poison pill, take it out, and let us support a bipartisan H.R. 1528. Mr. Speaker, I oppose the bill as it presently stands.

Mr. Speaker, I rise in opposition to H.R. 1528, the House Resolution amending the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service (IRS). The bill's proposed changes purport to give taxpayers many improved rights and options in a bipartisan fashion. However, in operation, the bill will change the previously enacted ''Trade Adjustment Assistance (TAA) health care credit'' law much to the surprise of my fellow colleagues who understood it to be safely in place. I rather support the Substitute Amendment offered by Mr. RANGEL that will allow us to revamp our effort to include the relevant provisions of the Senate-passed child tax credit expansion bill.

The Resolution offers fifty bipartisan and relatively non-controversial taxpayer rights provisions that deal with rules on interest payments, penalties, installment payments, levies, first-time errors, offers in compromise, and other areas that welcome reform. Title I of the proposed Act, among other things, increases the threshold in which a taxpayer would not incur penalties for underpayment, that is, create a ''safe harbor'' for taxpayers. It also expands the period in which underpayment interest is applied to cover the entire underpayment period. Interest paid on overpayments of income tax would be excluded from gross income in this program. Furthermore, the bill eliminates the $50,000 threshold for abatement of interest on erroneous refunds. Title II appears to offer taxpayers latitude by allowing the Commissioner of the IRS to enter into installment agreements with taxpayers who cannot remit payment on their obligations when due. The proposed extension from nine months to two years of the time for repayment of erroneous tax payments also appears very beneficial to taxpayers. Moreover, Title III amends the Code to give the Commissioner's rulings more finality, expands the legal purview of the Tax Court, consolidates the decision as to the proper forum for collection due process hearings, which would appear to

make the hearing process more efficient. This Title also proposes to extend the filing deadline for electronic taxpayers, protect the Office of the National Taxpayer Advocate; facilitate the payment process for motor fuel excise tax refunds; improve the tax status of husband and wife joint ventures filing joint returns; and penalizes designated terrorist organizations, among other things. Titles IV, V, VI, and VII deal with Confidentiality and Disclosure, Miscellaneous provisions, Low-Income Taxpayer Clinics, and Federal-State Unemployment Assistance Agreements.

While the above proposed provisions promise, at the surface, to help all taxpayers in a forthright fashion, it contains a very troubling ''poison pill'' provision that would eliminate workers' ability to obtain health coverage under the current Trade Adjustment Assistance (TAA) health care program. Furthermore, despite the myriad list of benefits to taxpayers that this bill will offer, it fails to give any relief to those working-class income taxpayers who have been marginalized by the extensive tax cuts of this Administration.

The elimination of the TAA health care program that would be imminent upon the enactment of this bill as drafted will negate consumer protections for eligible laid-off workers and certain pensioners who seek health care coverage. States that have not made health coverage available to laid-off workers and pensioners by August 2003 would be able to ignore the TAA consumer protections which assure that (1) all applicants would get coverage under State plans and (2) preclude plans from excluding coverage for pre-existing health conditions. It is a tremendous concern to me that we are proposing to abrogate existing worker protections when no dysfunction has not been identified that would warrant such a change.

Unlike the thousands of Houstonians laid off or terminated by American General, Compaq Computer Corp., Continental Airlines, Texaco and others this year, Enron's workers must contend with the company's bankruptcy filing and the threat it has posed to their remaining benefits. Although federal laws and limited insurance protect pension plans, a similar safety net does not exist for health care benefits. If an employer drops any coverage or consolidates plans for current employees, then the former workers have no rights to the old benefits and can only get what the employer offers. Furthermore, if an employer decides to stop offering health insurance altogether, the current employees and the COBRA participants will all lose their coverage. There is simply no legal obligation for employers to provide or continue health insurance. In addition, our employees are amenable to the threat of health care insurance cuts by employers who file under the bankruptcy code as this represents an attractive expense to cut. Corporations that attempt to reorganize under Chapter 11 tend to do so as a last resort because such actions undermine their abilities to retain key workers. Those with no hope of recovering from their financial troubles liquidate their assets under Chapter 7, terminate their health plans and other liabilities and cease to exist, leaving the employee with no options. For example, Bethlehem Steel Corp. and Wheeling-Pittsburgh Steel Corp., both of which are in Chapter 11 proceedings, have asked Congress and the Bush administration to pay their health-care contractual obligations to approximately 600,000 retirees of the two companies—estimated as high as $13 billion—so they can merge with U.S. Steel. They proposed the payment of the debt through a general appropriation or a tax on steel sold in the United States.

Mr. RANGEL's Substitute Amendment does not include anti-consumer changes to the TAA health credit law as does the drafted language of this bill. We have a duty to protect those who are most vulnerable to harmful tax treatment, and this Amendment would allow us to provide a safety net. Critical to my initiatives and the initiatives of many of my colleagues, the Amendment includes the provisions of the Senate-passed child tax credit expansion bill and Senate-passed military tax relief bill. H.R. 1528 has more than adequate breadth to include these items. The Amendment also adds provisions that will serve to prevent abusive tax shelters and assist low and middle-income taxpayers in complying with the tax laws such as an Earned Income Tax Credit (EITC) simplification, a balanced IRS audit program, enhanced low-income taxpayer clinics, a prohibition on EITC pre-certifications, and limits on excessive tax refund anticipation loan interest rates. Along with the many above-mentioned bipartisan and non-controversial taxpayer provisions, this Substitute Amendment will make H.R. 1528 work for more taxpayers and for our children as well as to allow us to, at minimum, show some appreciation for the men and women who serve our Country.

I oppose H.R. 1528 for the foregoing reasons and support the Substitute Amendment offered by Mr. RANGEL. I would ask that my colleagues also vote in this fashion.

Mr. POMEROY. Mr. Speaker, I yield myself such time as I may consume.

I am going to close debate on my side of the aisle, and I would do so with the following comments. My friend and Ways and Means colleague, the gentleman from Louisiana, raises on the question of health coverage for displaced workers the important issue of whether or not coverage is actually available for these workers or might there be because of these preexisting conditions circumstances where no coverage is available and by insisting on these protections we are actually depriving these workers of the availability to get health coverage.

I am pleased to respond to that concern by saying that negotiations at the State level are coming along very successfully, and so far 13 States have been successful at getting insurance companies to enter into an agreement to provide the coverage to these displaced workers under the consumer protections in the bill. Thirteen States. What concerns us about raising this issue at this time is that we think it sends a very bad signal from Congress to the States and the insurance companies in negotiations with them, that they might not have to comply with these consumer protections.

As an old insurance commissioner, I know darn well you give an insurance company the chance of not offering coverage to everybody, but, rather, cherry-picking, picking only the ones they want to cover as opposed to the mandate that they cover everybody, well, they are going to want to cherry-pick. Of course they are going to want to do that. If you give insurance companies the opportunity to say, well, we'll cover you except for the disability that you have or the pre-existing health condition that you have, of course insurance companies are going to want to restrict their coverage from those medical features that are so troublesome to the displaced workers. We think that passing this bill with this provision in it is going to bring negotiations at the State level potentially to a standstill because the insurance companies are going to hold out for a sweeter deal, and what a sweet deal it would be.

We are going to have a situation where the insurance companies, under the majority proposal, would be able to exclude who they want to. Of the individuals they underwrite, they will be able to exclude the medical conditions that they want to and they are still going to get the Federal Government paying 65 percent of the premium. Let us face it, it is not often you put forward Federal tax dollars to pay private insurance premiums. We have chosen to do so at this time because these are workers that lost their jobs because of trade agreements entered by this country. That is certified by the Department of Labor.

We think under those circumstances, having lost their job through no fault of their own, because of trade agreements entered and ratified here in Congress, that those workers need some help while they get their lives back on track, get a new livelihood in place, and that help certainly includes health insurance coverage to protect them and their families. We are even going to help pay for it. Under these circumstances, let us not let the insurance companies run roughshod by excluding who they want, by excluding the medical conditions that they want. We have got to hold for the whole package, give these workers the absolute right to get the coverage they need and the absolute right to get coverage for all of their medical conditions, not just those the insurance company is going to want to pick.

Work is coming along well at the State level. Again, 13 States concluding these agreements, others still in negotiation now. Now is not the time to take the pressure off. Now is not the time to give the insurance companies a pass. Now is not the time to walk away from the health care needs of our displaced workers. Hold the consumer protections, reject the majority bill, we will take this taxpayer protection right, remove the poison pill, bring it back here, as it should have been in the first place, and get on with reforming the Tax Code in the responsible ways but not in the ways that, because of the poison pill, hurt our displaced workers.

Mr. Speaker, I yield back the balance of my time.

Mr. MCCRERY. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the last point that the gentleman from North Dakota made about if this provision were to pass, then it could reduce the pressure on the States to enter into agreements which would create qualified plans under the trade bill we passed last year is a legitimate point. It is the only legitimate point he or his colleagues on the Democratic side have made today, but that is a legitimate point. We concede that. That is why we listened to the gentleman from North Dakota and his complaints earlier while the committee was considering this and we reduced the window within which unemployed workers could take advantage of this waiver.

Under the provision, as it now stands in this bill, they would only have until the end of calendar year 2004 to waive their rights under the trade bill and take advantage of the tax credit to purchase insurance for themselves and their family. So I concede that that is a legitimate point. We do not want the States to stop their efforts to create plans that would qualify for the credit under the Trade Act. We do not think the States will. In fact, of the speakers that were offered by the other side of the aisle today, Maryland, the first speaker, the State of Maryland, already has a qualified plan in place, so this provision in the bill today will not affect unemployed workers in Maryland at all; North Dakota has a provision in place, so it will not affect unemployed workers in North Dakota. Texas is very close to having a provision ready, we are told. The only State that is behind in this process is the State of Washington.

So we know that basically two-thirds of the States already either have a plan in place or are negotiating to get plans in place. The Treasury Department thinks, after researching this, that only about 20 States or so would not have plans in place by this August. So this provision in this bill would not affect all of those States that have plans in place by this August, probably not until September or October because this bill will not make it through the process before this fall.

But let us think about those States which for whatever reason, their legislatures do not meet this year, their insurance commissioner is not as adept as the gentleman from North Dakota was in getting these things done, for whatever reason, what about the unemployed workers in those States who want to use their credit to get insurance for their families and they do not have access to COBRA? They are left out in the cold.

I would say to my good friends on the other side, do you not care about these people and their families? Do you not want them to use the generous tax credit that we provided to get health insurance for their families? If you do not pass the provision that is in this bill, they cannot get insurance and utilize the credit to get it. Period. You will leave them with nothing. You will leave them bare. They will not have insurance. That is the fact. That is what we are trying to correct. We are trying to make sure that all those unemployed workers who want to use the credit to cover their families can do so. And so we have said to the States that have not yet complied with the requirements of the Trade Act, we are going to give you one more year to do that.

And in the meantime, any of your unemployed workers who want to use the tax credit can avail themselves of that by waiving the requirements of the Trade Act. It is not compulsory, it is voluntary, we are not going to twist anybody's arm to make them waive the requirements of the Trade Act. We are going to tell them if you want to waive that, you may. And if that enables you to use the tax credit to cover yourselves and your families, by golly, that is a good thing. And CBO estimates that 12,000 workers and their families will take advantage of this provision and will get coverage and who, if this bill does not pass, would not be able to get coverage.

I think, Mr. Speaker, what we have heard today from the other side is a lot of obfuscation. The truth is they never wanted the health tax credit to be used for anything other than COBRA. That is the truth. It was we Republicans who insisted that we think about unemployed workers who did not happen to come from a big company or from a company with employment coverage that would qualify under COBRA. We said, what about the people who work for small businesses? What about the people who did not have any coverage, they had to get individual coverage? Should we not have some compassion for those unemployed workers as well, not just unionized workers? We battled and fought and scraped and finally won, got a compromise so that those workers could get some advantage from the tax credit.

But the Democrats said, okay, we'll agree to the compromise, but we're going to have to have a provision that goes even further than the Republican-passed legislation, the Health Insurance Portability and Accountability Act, HIPAA.

That was a Republican bill. Up until that time, there were no guarantees for workers changing jobs. Health insurance was not portable at all. Everybody was going to be subject to those conditions that the gentleman from North Dakota talked about, preexisting conditions, no guaranteed issue, until Republicans passed the bill in 1996, I believe, called HIPAA, which said that if you had 18 months prior coverage in the health insurance system, then you do not have to worry about getting covered again. Insurance companies offering health insurance must guarantee you issue of that plan. And you are not subject to any preexisting conditions clauses in those insurance plans.

We did that. We passed that. We are the ones who put those guarantees in law. And so last year, we agreed for this small set of workers who lost their jobs because of trade actions or were covered under the Pension Benefit Guaranty Corporation that in that small set of workers, we would reduce that 18-month requirement to 3 months, so that if they only had 3 months prior coverage, they would not have to go through all the underwriting and so forth that workers used to have to go through before HIPAA. And we agreed to that. But now we find that we have large numbers of workers who are not able to avail themselves of the credit because States have not yet put into place plans that comply with that 3-month prior coverage requirement.

So in the meantime, while those States are getting those plans up and running, we say, let those individuals who want to waive that requirement, they may have had 18 months prior coverage and, therefore, they would still have those guarantees that the gentleman from North Dakota spoke about, why not let them voluntarily waive their requirements under the Trade Act, get the insurance for themselves and their families and then when all the States have these policies in place, the 3-month requirement will be there in those plans. I simply do not understand why the other side would object so strenuously to letting 12,000 families get health insurance who otherwise would not be able to get it if this provision does not pass.

I urge the House to have compassion for these workers as well as workers with COBRA coverage and pass this bill today.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). All time for debate on the bill has expired.

Pursuant to the order of the House of today, further proceedings on this bill will be postponed until tomorrow.

□ 1615

GENERAL LEAVE

Mr. MCCRERY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 8.

The SPEAKER pro tempore (Mr. LATOURETTE). Is there objection to the request of the gentleman from Louisiana?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. LATOURETTE). Under the Speaker's announced policy of January 7, 2003, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

THE SHAMBLES OF THE LEGISLATIVE AGENDA

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas (Ms. JACKSON-LEE) is recognized for 5 minutes.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I think it is important to recap what we have done today and what we are doing in this House. There are certain protocols that prohibit us from saying things like wake up, America, listen to the debates of this House, and to the concerns of this Nation. This is the holiday time, the time that schools are getting out, families are coming together for vacations. So this is a good time for the smoke and mirrors legislation of this body, dominated by those who have no simple or at least appreciation for the enormous task that we have in putting this Nation back together again.

Let me simply recount, Mr. Speaker, the journey that we are taking. We realize that 21 days this Nation was at war, and that we were able to come under budget for a war that many disagreed with but not with the valiant work of our young people. Unfortunately, as we projected about the needs of this Nation and a war with Iraq, we failed to take into consideration the aftermath, the tragedy of 51 young men and valiant heroes that have lost their lives since the ending of this war, the cost of maintaining 160,000-plus soldiers on the front lines, the $1 billion a month that we are spending in Afghanistan in the war against terrorism, the large number of dollars that are necessary and not yet expended with respect to homeland security.

As a member of the Select Committee on Homeland Security, I realize that many of our local governments are asking and pleading for dollars for their first responders.

In the backdrop of that, we have a growing deficit and an increasing unemployment. College graduates are coming out with wonderful diplomas and great smiles of admiration by their family, and yet they can find no work.

This body of course is now trying to grapple with the issue of a guaranteed Medicare prescription drug benefit for the seniors that we promised them for now 8 years, and what are we giving to them? A mere $400 billion. It sounds like a big number, but we are going to leave the seniors holding the bag by, in actuality, having a gap. That means rather than getting a guaranteed prescription drug benefit in Medicare, we are going to tell seniors to go out and be fishers of men, fishers of HMOs, fishers of low-cost drugs. This is what we are going to give them. They have to go out and shop for HMOs that will give them a drug benefit, and then if they spend up to $2,000, forget about it.

They have got to pay for it the rest of it until they hit $5,000. Some seniors will fall through the cracks, and maybe some will lose their lives because of their inability to get the prescription drugs. We can spend a whole bunch of money on doing things that are really not necessary, $1 trillion tax cut to the likes of Warren Buffett, who said that he is paying less taxes than his receptionist, one of the richest men in the world. We gave a big tax cut with a big deficit, and now we cannot give our seniors a protection that we have been pleading for for 8 years.

We now have come to the floor of the House and the eloquent statesmen who were making these points about the taxpayer bill that we just passed, or that we will vote on, and I wish all of us could have voted on it in a bipartisan way, the eloquence of saying we are giving a tax credit, but what they are doing is they are eliminating the opportunity for some laid-off workers to get health care by the State by passing this bill. So they are undermining the very needs of those who are in most need, working men and women.

Right now we have been trying to pass a child tax credit for those making between $11,000 and $26,000. Those are our young men and women in the United States military. They make $1,000 a month. Their families are back home. We are trying to give them a tax credit. What is happening? Republican friends want to give an $82 billion tax giveaway, stalling the bill so we cannot get the bill to the President's desk. The President said he would sign the Senate bill, the same bill we want to pass. Within hours, that bill could be signed right now at the picnic that they are getting ready to have. That bill could be signed, and we would be providing a tax cut to the young men and women, families that are overseas, military men and women making $1,000 a month.

Mr. Speaker, I have got to say that we have got to fix the shambles of the legislative agenda, begin to stand up and speak for the American people who are in need, and it is time for the American people to wake up and understand what is occurring on the floor of the House.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. GUTKNECHT) is recognized for 5 minutes.

(Mr. GUTKNECHT addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

PRESIDENTIAL INQUIRY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. MCDERMOTT) is recognized for 5 minutes.

Mr. MCDERMOTT. Mr. Speaker, the House has adjourned its regular business for today, and they have gone off to the White House for a picnic; so I do not suppose very many of them will be in their office listening to this, but I think they should at least consider the fact that today's newspapers and the BBC news, the ABC news, the Economist, all come together in saying the war is not over, boys. Three more dead in Baghdad in violence. There was a drive-by shooting at a petrol station. It sounds a little like some of our cities. And we are there bringing them democracy. I guess that is what democracy means to our President. I do not know. It is hard to know. But when I was reading these articles, I thought of one that I read recently. This is dated March 21, not so long ago. ''A United Nations survey of civilian damage caused by the allied bombardment of Iraq calls the results near apocalyptic. The survey, which was made public today, recommends an immediate end to the embargo on imports of food and other essential supplies to prevent imminent catastrophe.''

This article went on further to say that the U.S. position is that by ''making life uncomfortable for the Iraqi people, it,'' meaning sanctions, ''will eventually encourage them to remove President Saddam Hussein from power.'' This is what the situation was. This is from 1991. We intended to get rid of Saddam Hussein from 1991 on, at least. And for the President and his advisers to come around here saying it just happened since 9/11 and all that kind of stuff is absolutely nonsense.

At the time that one of the Air Force planners said big picture, we want people to know, get rid of this guy and we will be more than happy to assist in the rebuilding. We are not going to tolerate Saddam Hussein and his regime. Fix that and we will fix their electricity. That is what the United States was saying in 1991. This is the country that wants to bring democracy to Iraq. And it goes on.

I mean, it is really wonderful. One planner said, people say you did not recognize that it was going to have an effect on water or sewage? Well, what were we trying to do? Help out the Iraqi people? No. What we were doing with the attacks on infrastructure was to accelerate the effect of sanctions. We bombed the sewer pumping stations. We bombed the water pumping stations. We bombed the television. We bombed the telephone. We bombed the electrical. We bombed everything because we were going to inflict pain on the Iraqi people.

Now if we roll fast forward to today, people in the White House, and I do not know how they could have been thinking about it, Mr. Speaker, that these people were going to be just waiting, so excited to have the Americans come in and bring them democracy.

What kind of fools could plan and state publicly what they were doing and then expect people to be grateful that they were bombed, that their hospitals had no electricity for the refrigeration to save the children and the

blood and all the things that go on in a hospital that require electricity? We did it deliberately. And the President says, well, we had to wage this war because they had these weapons of mass destruction that were an imminent threat to us. We had destroyed their electrical system. We destroyed all kinds of things. We had reduced the value of their money.

I mean, I carry a 250 Dinar note in my wallet just to remind me of what this country can do. This is a 250 Dinar note. These are printed in Iraq. This was worth $875 in 1991; today, 12 cents. Do the Members think we did not crush their economy? Of course we did. And it was all because we wanted to bring them democracy, because we were going to free the world from weapons of mass destruction.

Mr. Speaker, I think we ought to have an inquiry in this House, conducted in public, as to what the President knew, when he knew it. How could he come to the well of the House and give us information that was known to be forgery about nuclear material?

It is time, Mr. President, when the picnic is over, you had better come up here and tell us the truth.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind all Members to address their remarks to the Chair.

FILNER-McHUGH LAW ENFORCEMENT OFFICERS EQUITY ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. FILNER) is recognized for 5 minutes.

Mr. FILNER. Mr. Speaker, I rise today to introduce legislation with the gentleman from the State of New York (Mr. MCHUGH). The purpose of our bill, called The Law Enforcement Officers Equity Act, H.R. 2442, is simply stated: Give law enforcement status to law enforcement officers.

Many Federal officials, for example, the Border Patrol, are classified as law enforcement officers because that is a classification that comes with certain salary and retirement benefits. But many other officers, officer who are trained to carry weapons, who wear body armor, who face the same daily risk as law enforcement officers are not so classified. These officers, for example, inspectors who work for the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement under the Department of Homeland Security, Veterans Affairs police officers, U.S. Mint police officers, Internal Revenue Service officers, and police officers in about two dozen other agencies, are not eligible for early retirement and other benefits designed to maintain a young and vigorous law enforcement workforce that we need to combat those who pose life-threatening risks to our society.

The tragic irony, Mr. Speaker, is that the only time these officers are classified as law enforcement officers is when they are killed in the line of duty. Then their names are inscribed on the wall of the National Law Enforcement Officers Memorial right here in Washington.

□ 1630

Let me say that again. It is only when they are killed that they are called law enforcement officers, and that is a tragic irony.

My district encompasses the entire California-Mexico border and is home to two of the busiest world border crossings in the entire world, so I am very familiar with the work of border inspectors. They wear bulletproof vests, they carry firearms, and, unfortunately, have to use them. Most importantly, these inspectors are subject to the same risks as other officers with whom they serve side by side and who do have the benefits of law enforcement status.

Our Law Enforcement Officers Equity Act will make important strides toward ensuring the safety of our country as these officers protect our borders, our ports of entry, our military and veterans installations and other sensitive government buildings. The bill ensures the strong and vigorous workforce necessary for our country to have the finest level of protection. Our country deserves no less, and these valiant officers who protect us deserve no less.

Any cost created by this act is offset by savings in training costs and increased revenue collection. A 20-year retirements bill for these employees will reduce turnover, increase yield, decrease recruitment, and development costs and enhance the retention of a well-trained and experienced workforce.

Mr. Speaker, the simple fact is that these officers have dangerous jobs and deserve to be recognized as law enforcement officers, just like others with whom they serve, side by side, and who share the same level of risk. I encourage my colleagues to join the gentleman from New York (Mr. MCHUGH) and me in cosponsoring H.R. 2442, the Law Enforcement Officers Equity Act.

The SPEAKER pro tempore (Mr. LATOURETTE). Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

(Mr. JONES of North Carolina addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

(Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. KING) is recognized for 5 minutes.

(Mr. KING of Iowa addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. RUSH) is recognized for 5 minutes.

(Mr. RUSH addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Illinois (Mrs. BIGGERT) is recognized for 5 minutes.

(Mrs. BIGGERT addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. LOFGREN) is recognized for 5 minutes.

(Ms. LOFGREN addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

(Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

(Ms. WOOLSEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi (Mr. TAYLOR) is recognized for 5 minutes.

(Mr. TAYLOR of Mississippi addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

ILLEGAL ALIENS TAKING AMERICAN JOBS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Colorado (Mr. TANCREDO) is recognized for 60 minutes as the designee of the majority leader.

Mr. TANCREDO. Mr. Speaker, a great deal of discussion has been undertaken on this floor for the purpose of addressing the issue of unemployment and for talking about the needs of workers in the United States.

We continually look at pieces of legislation that are designed to improve the economic conditions within the

country, to establish an environment in which people will be able and businesses would be able to create more jobs, to provide more jobs for Americans; and I certainly support the effort.

I certainly believe with all my heart that that is what we should be doing, and I believe in the stimulus package that we passed here. I wish it had been bigger. I think that that is the right direction for the country.

But it is also interesting to me to listen to the various interpretations of the problems that we have that are in fact causing people to be laid off or people who are and have been laid off to be unable to find jobs. Some of that is undoubtedly as a result of a sluggish economy, and I say I hope it will be helped by the passage of the legislation that we put through here and went over to the Senate and was signed by the President. I hope for that.

But there is another aspect of this jobs issue that I think needs our attention, no matter how unpleasant it is to talk about it. No matter how much we want to shy away from it, no matter what the political implications of discussing it might be, I think it is important to talk about the fact that in this country today we have somewhere around 13 million, some people say as high as 20 million, people who are living here illegally, employed here illegally.

We all probably know of folks that we think may be working here illegally. We see them on the street corner, we see them working in various positions and jobs, and there is this feeling that I wonder if those folks are here legally. They probably cannot speak the language, and you just wonder whether or not they are.

We all have seen that kind of thing, and we think it is anecdotal, we think it is unique to a particular area, a particular place, just to this restaurant or that particular construction site. But, of course, it is not unique to any locale in this country. It is a phenomenon that we have to address and have to understand, that these people are here.

For the most part I am sure they are well intentioned. They came, as we always say, for the same reason that my grandparents came, and for the same reason people came to this country from its inception, and that is to better their lives. No one is suggesting that all of those people who are here are here for nefarious purposes. That is, of course, untrue. But it is also true that they are taking jobs that Americans could take.

Now I hear the opposite often. I have been in various places where the mantra chanted is something like this: ''We have to have illegal immigration into the country because it helps us, it helps the economy, and we have people doing jobs that no one else would do, no American would do.''

Well, there is another part of that statement that could be said, but is seldom said, and that is they are doing jobs that maybe no American would do for the price that someone is willing to pay. That may be true. But I suggest to you that it is not an economic benefit to the United States.

In the long run, it does not even help the people who are in the lowest economic category, who are low-income earners, who are low-skilled people. It does not help them to have millions of people coming into the country, themselves with very few skills, taking those jobs that may be available, and, of course, therefore depressing the wage rate for everybody who works in that particular area.

Now, there is also the issue, of course, as to whether or not it is productive for the country because it adds to the economy and they pay taxes and we, therefore, are benefited by having so many illegal aliens in the country.

I would suggest that if you think that is true, if anybody believes that to be true, they should look at the research that has been done recently.

Certainly Virginia Abernathy comes to mind. She is a professor at Vanderbilt University and has done a lot of work on this issue, trying to determine whether or not in fact the country does benefit from having millions of people coming across this border illegally, taking jobs that other Americans could take. And she sums it up in a statement that I would paraphrase in this way. She says that it is indeed true that there are profits to be made by the importation of millions of low-skilled, low-wage workers into the country, but the profits are for a few. They are for the employer. But the costs that we incur for providing the infrastructure necessary to support those folks in terms of schooling, health care, housing, all of those costs are far greater, far greater, than we gain from the taxes paid by the people working in those particular jobs.

For the most part, again, it is low-skilled, low-wage jobs. Therefore, of course, they do not pay very much in income tax, if anything. They do not pay very much even in sales tax. They buy relatively little in comparison again to the costs of the infrastructure; and, therefore, it becomes essentially a burden to the taxpayers of this country to support.

The infrastructure is very costly. We are watching hospitals go out of business. We are watching costs increase dramatically for those people who are able to pay in order to take care of all those who cannot pay that come to the hospital for service, come into the health care system at any point for service.

There is a Federal law that says to hospitals they must treat anyone in emergency care, regardless of their status in the country; and that is a humane action on our part. It would be acceptable, it would be understandable, it would be defensible to have policies like that if in fact the Federal Government cared one bit about trying to defend its own borders, if in fact the Federal Government actually attempted to restrict entry into this country to those people who have permission to come, to those people who apply through a consular office or embassy, get a visa, come into the country, obtain a green card eventually.

There is a legal process to come into the country; and if we would simply restrict entrance into the country to those people, then you could understand why we could say to hospitals, you must in fact treat them. Then you could understand why the Federal Government tells all schools in the United States, every State, that they must educate the children of people who are here illegally. It is a humane thing to do.

But under the circumstances, when we choose not to defend our own borders, when we choose to essentially ignore any sort of immigration policy enforcement, then it is the height of arrogance to tell States they must take on this task.

Billions of dollars are being spent by States all over the Nation trying to pay for health care, education, housing and all of the other infrastructure costs that they incur as a result of our open borders policy. And that is what we have; and that is exactly what we should call it. It is an open borders policy.

Again, I know we do not like to think it, do not want to say it, do not want to suggest it, because there are a lot of people out there, that maybe John Q. Citizen cringes at that and says what do you mean, open borders policy, man? I am trying to keep my job, and I do not want to necessarily have to compete against someone coming across the border willing to work for a lot less than I am making.

Maybe that is heartless and cruel for them to think. We may want to tell these people that they should just simply accept the fact that they have to give up their job, or work for a lot less, be what we call underemployed, because, after all, there are millions of people seeking to come into this country who are also poor and looking for a better life. So there is this dilemma then, how do we treat it?

Well, Mr. Speaker, the whole world, the Third World, is waiting to come in. There are literally billions of people who would like to improve their status in life, and I would like their lives to be improved. No one wants to see people living in poverty. No one wants to see small children dying from diseases that could be cured. No one wants to see that.

I also know that we cannot, there are not enough resources in this country, to simply open the boarders and say everyone can come. What we have to do is try our best to create economic conditions in countries that are today laboring under such problems so that people will not be forced to leave and seek a life in another country. That is an acceptable and understandable way to do it. It is not understandable or acceptable to ignore the problem, to say

that John Q. Citizen, who is losing his job, that he is just simply being hard and xenophobic.

I do not think he is being xenophobic when his job is taken away, or her job. I think he is doing exactly, or she is doing exactly, what any of us would do under the circumstances. We would ask our government, why is this happening? Why are you allowing so many people to come into the country at a time when we have so few jobs available, when the unemployment rate has now reached historic highs?

I cannot answer the question, Mr. Speaker. There is no way that I can tell someone in a rational sense what our policy is and why we are in fact still accepting the concept of open borders. I do not know. If someone can explain it, please let me know, because I have a lot of letters to write to people who constantly write me and tell me of their plight and how they lost their job, and they have lost it to people who have just come across the border illegally; and they are asking what I am going to do about that. I have to explain to them, you know, there really does not seem to be any support in this body or in this government for implementing the kind of measures necessary to protect them.

We are actually taking in a million-and-a-half people approximately a year legally, and probably about that many illegally. This is historic. The United States of America, if we just settled on the legal side of that, is still the most open-hearted country in the world.

□ 1645

It accepts more illegal immigration than any other country in the world; more legal immigration, and certainly more illegal immigration, than any other country in the world, and this is to our detriment.

This is not a beneficial thing. It is not helping our economy. That is an old saw. It is not true. It is helping a few people. It is helping a few corporations. That is true. But it is not helping the man and the woman who have been here all of their lives, or who have become citizens of this country through a legal process and who are unemployed today because of our policy of open borders.

There are several programs that the Federal Government runs, visa programs, that are designed to bring more people in, to do jobs that again we are told cannot be done by Americans, by American citizens. Would my colleagues believe that we are told that there are millions of jobs going begging in the high-tech industry?

Who would believe that, Mr. Speaker? I ask my colleagues, who knows of a job available in the high-tech industry that is going begging? Because again, if my colleagues know about jobs that are available, let me know. I have a lot of people in my district who are unemployed and have been unemployed for over a year, and they ended up being a victim of that bubble that burst in the high-tech industry, and they are looking for jobs, and they would love to get reemployed into that industry. But most of them are doing something else now entirely, if they are working at all.

My friend and neighbor, it has been almost 2 years for him. He is doing some data entry for us and he is driving a limousine at night. And that is what is happening all over, of course, because people are trying to keep a roof over their heads and food on the table. And they would love to get a job back in that industry. But, Mr. Speaker, we are encouraging people to come from other countries to the United States for the purpose of taking jobs in the high-tech industry. These are called H–1b visa recipients.

Now, these are folks who are not coming over here to take a job that ''no one else would take,'' although we are told that, and that is supposed to be the scheme; that is supposed to be the idea behind H–1b and something else called L–1 visa programs, but it is not true. It is not true. These people are taking jobs, they are displacing American workers, by the hundreds of thousands. There are literally millions of folks in this country today holding these kinds of visas.

Now, we asked the INS, how many are here? No one knows how many people in this country have even come here through the H–1b visa program. The new Bureau of Citizenship and Immigration Service does not know. The Department of Labor does not know. No one in government anywhere can give me an accurate number, and the reason they cannot is because they do not keep those numbers. All they know is how many they hand out, about 195,000 a year we have handed out for several years now, and that is just the H–1b, and these folks do not go home when they lose their job, although they are supposed to. They stay.

So I am saying that it is now approaching a million people, if not more, that are here under an H–1b program that are taking jobs in ''that high-tech industry that no other American would take.'' Does anybody really buy that?

What we know is that they are being given these visas because they will work for less. It is a cheap labor program.

Now, let us just say it. If that is the program we want to run, let us tell Americans that is the program. Let us not even hide it under visa titles like H–1b and things nobody has the slightest idea what H–1b means or L–1 visas. I will tell my colleagues what it means, anybody who is listening: it is a cheap labor program. People want to pay less for labor. They know there are people outside the country who are willing to work for less, so let us get them in here.

The Organization for the Rights of American Workers, the acronym TORAW, states that in the year 2000, there were 355,000 H–1b visas issued, just in the year 2000. The cap for H–1b visas in that year was 115,000. That means that 240,000 received H–1b visas through loopholes and extensions. In 2001, 384,191 H–1b visas were issued. The cap was 107,500. That means that 276,691 people received H–1b visas through loopholes and extensions. Thus, the total amount of people who came here using H–1b visas in 2000 and 2001 totaled 739,796.

This is a program they told us would be short-lived, that it only was going to be there in order to take up the slack because we had this booming economy, we had so many jobs going begging. Has anybody heard that lately, something about a booming economy, something about jobs going begging? But 739,000 people were brought in here on H–1b visas in 2000 and 2001.

There is plenty of evidence that major American companies like Bank of America, Texas Instruments, Intel, General Electric, and Microsoft are actively recruiting today H–1b visa holders instead of American high-tech workers. Does anybody believe there are people who are not capable of these jobs; that Americans, the highest skilled, the greatest educational system in the world, touted constantly for our ability to produce the best engineers; the best people in this high-tech environment, that we are not capable, Americans cannot do the job, we have to go to India or someplace else to get the folks over here to take those jobs from us.

The San Francisco Business Times reported in November of 2002 that the Bank of America was eliminating 900 jobs by year end in its information technology operation. To add insult to injury, some of the laid-off workers were reportedly required to train their Indian counterparts in order to receive their severance packages. This is a common practice throughout the country.

According to a survey by the Denver Business Journal, 66.5 percent of American high-tech workers who responded said they took salary reductions in 2002, and more than 71.5 percent of them expect pay cuts in 2003. According to the Institute of Electrical and Electronics Engineers, or IEEE, a company can replace an American engineer who gets paid $70,000 annually with a Hungarian who would earn $25,690 in Hungary or a Russian who gets paid $14,000 for that job in Russia. This puts companies in the position to orchestrate and control salaries. The overall effect is to decrease the salaries of all high-tech positions.

Now, we say, well, is that not appropriate? Should they not do that? Well, again, that is a policy decision that this government needs to make and needs to tell the American citizens what we are doing. Again, all I am asking is for truth in advertising. These are not special visa programs; these are not designed just to bring people in here who are in great need because the jobs are jobs our people will not do.

These are cheap labor, cheap labor policies. That is what they are, and that is what we should call them.

Now, these people are succeeding, these companies, according to the Alumni Consulting Group, because in the last 3 years, the average high-tech professional salary has dropped radically, in some cases, up to 50 percent. An online search today of the three most popular high-tech job search sites, hotjobs.com, monster.com, and dice.com, showed that they were full of jobs being offered to H–1b holders.

Now there is a new problem that is emerging, the L–1 visa. The L–1 visa program allows intracompany transfers of foreign nationals who are company executives or managers or employees with specialized knowledge of the company's products or services. It was never intended to allow companies to replace American professional employees with lower-wage foreign nationals, but guess what? That is, of course, exactly what is happening, and on a massive scale.

NBC news reported on May 8 of this year that white collar computer consultants are losing out to cheaper foreign competition. These companies are outsourcing much of their technology and customer service work to foreign companies with the goal of reducing costs and increasing profits. I would suspect that these foreign companies are using L–1 visas to bring their manpower here to the United States.

As I said before, the L–1 visa program was intended to permit multinational companies to transfer foreign nationals who were company executives and managers or employees with specialized knowledge in the company's products and operations. Instead, it is being used to allow U.S. companies with offshore subsidiaries to bring in lower-wage IT workers. These companies are circumventing the congressionally-mandated safeguards and rules imposed under the H–1b program. And our government knows it. This is not news to anybody inside the Department of Labor or inside the administration. They just do not care.

In 2001, 328,480 L–1 visas were issued, which is an increase of 11 percent. Thus, the total amount of people who came here under L–1 visas in 2000 and 2001 was 623,138.

Business Week reported on March 10 of this year that L–1 visas were being used instead of H–1b visas by India's top two IT consulting firms. Half of Tata Consultancy Services' American-based workforce are here on L–1 visas, some 5,000 foreign IT professionals. Infosys has 3,000 IT professionals here on L–1 visas, 3,000.

Now, remember, these are supposed to be people with specialized skills, so specialized, and they are overseas, they are in the company headquarters in Bombay, but there is something so special about their ability that they have to bring them over here to work in their subsidiary. That is an L–1 visa. But of course, it is not that. It is anybody and everybody who they can get into the country, get over here to replace Americans who are now driving limousines at night.

Siemens in Florida contracted to have 20 of its American IT professionals replaced by foreign nationals brought in by Tata Consultancy Services. Tata used L–1 visas to import Indians at one-third of the salary of Americans laid off.

A member of my staff is a trained IT professional. Before he started working for me, he was a victim of the very problem I was talking about. When he asked his former company why he and the rest of his IT team had been laid off, they stated they were moving their project to India. They are doing this because the average Indian software engineer makes 88 percent less than the U.S. software engineer.

Companies are not the only ones guilty of this transgression. The State of New Mexico paid a firm in India $6 million to develop an online unemployment claim system. The State of New Jersey called a call center in India to handle calls from their welfare recipients. In New Jersey, calls go to India. The State of Pennsylvania Department of Corrections utilized an offshore company to develop its mission critical systems.

All of this shifting of jobs offshore has significantly slowed the recovery of our own economy, and it is something that we should tell our people about. This is something we should be truthful about. And these are all high-tech jobs I have been talking about recently. But remember, go back to the original discussion here about the people coming in here with low-skill, low-wage backgrounds and how much we need them.

Mr. Speaker, I remember distinctly, this may be now 6 or 8 months ago, but I remember an article that I read in the Rocky Mountain Newspaper in Denver, and there was an article, it was not an ad, it was an article about a job that had been posted by a restaurant by the name of, it was called Luna Restaurant. I know it, I have been there many times; a great Mexican restaurant in north Denver.

□ 1700

The reason why the posting of a job became a story rather than just an ad in the paper is because it was a job for a $3-an-hour waiter; and that one job posting, that one ad produced 600 applicants the first day. That is why it turned into a story, a news story, 600 applicants for a $3-an-hour job.

Mr. Speaker, it is possible, I suppose, that every one of the 600 applicants that day were illegal aliens, but I do not think so. Maybe a large number were, but I think a lot of the people who applied for that job were American citizens who needed the work.

So this old canard about they only come into the jobs no American will take is just that, it is a falsehood. We employ these falsehoods in order to maintain open borders. Both parties support the concept. The Democrats support it because it adds to their potential pool of voters for the Democratic Party. The Republicans support it because it supports cheap labor.

I will tell my colleagues, Mr. Speaker, if that is the policy that our government is undertaking, then it is simply the policy we should tell our constituents about. We should explain it to them. When my colleagues get a letter like this, handwritten, three pages long, talking about what happened to them, how they were displaced by foreign workers, we should write back and say it is the policy of this government to displace you, to move you into a lower economic income category because we believe in cheap labor and we believe that the politics of open borders helps our party, in this case the Democrats, as I say. The Republicans, it is the cheap labor side of things.

That is what we tell people. That is what we should do. That is how we should respond because that is the truth of the matter; and I hope that when we have people bring bills to the floor designed to do something about jobs, which we hear over and over again, do something about jobs, I just hope that they will think about one thing they could do. There is something that we could do tomorrow to improve the quality of life for millions and millions of American citizens. There is something that we could do tomorrow that could actually add maybe 10 million jobs for American citizens, and that is to enforce our immigration laws. Stop people from coming in here illegally, deport the people who are here illegally today, and we would automatically create 10 million jobs for American citizens.

So I want that discussed every single time there is a ''jobs'' bill brought in front of this Congress, because there is an easy way to do it. There is a moral way to do it. It is immoral for us to, in fact, displace American workers with cheap labor from outside our country. It is immoral for us to tell Americans that we do not have an open borders policy because we do, and there are ramifications to it, deep, serious ramifications to open borders.

If that is what the country wants, if 50 percent plus one of this body and the other body and the President of the United States signs it, that is what we will get; but that is what we are going to get. Even that does not happen that way. We are going to get it in a de facto way. We are going to get it without ever bringing it to the attention of the American public. We are all just going to look around one day and say, gosh, what happened to our economy? What happened to the country with the highest standard of living in the world? What happened to my job? At that point, it is, of course, too late.

Mr. Speaker, I hope that we will be more truthful in the discussion of this issue, and I hope that for all of our constituents' sake that we will begin to

uphold our law, begin to defend our borders and begin to, in fact, enforce immigration law.

A TRIBUTE TO THE ASSOCIATED UNDERGROUND CONTRACTORS OF MICHIGAN

The SPEAKER pro tempore (Mr. FRANKS of Arizona). Under a previous order of the House, the gentleman from Michigan (Mr. SMITH) is recognized for 5 minutes.

Mr. SMITH of Michigan. Mr. Speaker, I rise today to praise a community working together to accomplish an important goal. In an unprecedented effort, the members of the AUC, Michigan's heavy construction association, came together to renovate a unique historic site that we have in the State of Michigan, the Henry Ford. The Henry Ford museum and historical site includes Greenfield Village, the Henry Ford Museum and IMAX theater and the Benson Ford Research Center.

In 1929, Henry Ford started a living museum about American life. He wanted to collect and preserve objects that were used in everyday life. From the cider mill to the newly acquired electric car, over 83 historic structures on 90 acres celebrate the innovation and imagination of inventors whose ideas have changed our everyday life.

Mr. Speaker, last fall, in anticipation of the 100th anniversary of the Ford Motor Company, Henry Ford began a much-needed renovation. It faced all the problems of a modern town such as power outages, sewer failures, storm water flooding, decaying roads and treacherous sidewalks, as well as the equally challenging task of preserving a historic landmark.

Members of the AUC, Michigan's heavy construction association, donated their time, effort, equipment, materials, and innovative methods to solve these problems. More than 20 normally competitive contractors united to preserve 25,000 trees, replace nearly 35 miles of underground systems, and rebuild almost 11 miles of roads and sidewalks. They replaced sanitary sewers, water mains, storm sewers, irrigation piping, natural gas piping, and rewired electric and communication lines. Their expertise is estimated to have reduced the cost of renovation by nearly $10 million and completed it in less than a year. This was done by working together, management and labor, volunteers and professionals; and I just want today, Mr. Speaker, to commend the efforts of this community in their effort to save and revitalize Henry Ford.

Henry Ford himself once said, ''Coming together is a beginning, staying together is progress, and working together is success.'' We had a success. The members of the AUC and many others came together, stayed together, and worked together to successfully honor the legacy of a great man and preserve part of history for our children. For that, the members of AUC and all those who helped in this fine effort are to be commended.

HONORING MAUDELLE SHIREK

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. LEE) is recognized for 5 minutes.

Ms. LEE. Mr. Speaker, I am very pleased to introduce this resolution to honor the vice mayor of the city of Berkeley, a great leader for human and civil rights, for peace and disarmament, council member Vice Mayor Maudelle Shirek.

Today, is Vice Mayor Maudelle Shirek's 92nd birthday, 92nd; and in honor of her tremendous legacy, I am extremely proud to introduce the Maudelle Shirek Post Office resolution. While fighting for social justice is no rarity in Berkeley, Maudelle's name always stands above the rest because of her uncompromising fidelity to her ideals and compassion for people.

As one of my political heroes, Maudelle continues to fight for equality and social justice for all. She is truly a role model for women, especially for young African American women.

She not only inspired me to get involved in politics but also my predecessor, the honorable Ronald V. Dellums. Her commitments to investing in people have won the solid support for many years of voters in her district. She is recognized throughout the world as a distinguished leader.

One of my most memorable Maudelle stories was when she was arrested with about 109 others in an anti-apartheid protest at the University of California at Berkeley. Many of the protestors were many years younger, including myself. She knew very well the awesome power of standing for what is right, regardless of the consequences.

A granddaughter of slaves, Maudelle left rural Arkansas which, of course, was her home; and she came to California in the middle of World War II. Before long, she was campaigning for fair housing and for many, many civil rights issues for African Americans and others who had been left out and disenfranchised. She became a union organizer and an office manager of the Co-Op Credit Union. She has helped many, many families in terms of their financial stability in the 9th Congressional District, especially in the city of Berkeley. She has demonstrated throughout her life the need for coalition politics for the betterment of humankind.

Vice Mayor Shirek's community commitment really knows no limits. She helped found two Berkeley senior centers, one of which she really still actively oversees; and at 92 years of age, she still delivers meals to shut-in seniors or, if it is a Tuesday, she does all of the shopping for lunches at the New Light Senior Center, which she founded 28 years ago. She taught many, including myself, the value of eating nutritious foods in order to live a healthy life.

Vice Mayor Maudelle Shirek continues to speak for the voiceless and to defend our basic civil rights and civil liberties. Please join me in honoring Ms. Maudelle Shirek, our Vice Mayor of the city of Berkeley, who is a fierce and inspirational woman who tirelessly continues to fight to make this world fair and just, a world of peace for our children's future.

The Maudelle Shirek Post Office will be a testament to the enormous contributions of this great woman.

IN MEMORY OF FORMER NEVADA CONGRESSMAN DAVID GILMER TOWELL

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Mr. Speaker, I rise today to honor the life of, and announce the death of, former Nevada Congressman David Gilmer Towell, who lost his fight with cancer this past week.

Congressman Towell dedicated his life to both national and local politics from a very early age. In 1966, he founded the Douglas County Young Republicans; and within 4 years, he became the chairman of the Douglas County Republican Central Committee; and in 1972, he defeated a 10-year incumbent and was elected as Nevada's only Member of the House of Representatives.

In Congress, he would serve the people of Nevada with great distinction. He believed that government should be held accountable for a balanced budget and responsible to spending, those ideals which all of us in this House continue to echo and support 25 years later.

I extend my sympathies to his family and friends as we join together in mourning the loss of this valuable member of our community. His leadership of Nevada and of our country will serve as his legacy, and he will be remembered for years to come.

HEAD START AND PRESCRIPTION DRUGS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Maryland (Mr. CUMMINGS) is recognized for 60 minutes as the designee of the minority leader.

Mr. CUMMINGS. Mr. Speaker, it is certainly my pleasure this evening to come here to the floor of the House to address on behalf of the Congressional Black Caucus two issues that are of paramount concern. Both of them go to the very essence of life and both of them address two populations within these United States who are so often quite vulnerable.

Those issues go to addressing our Head Start program, which is one of

the most effective programs in the world with regard to lifting up our children so that they can be all that God meant for them to be; and the other one goes to our seniors, with regard to their need for prescription drugs.

□ 1715

Mr. Speaker, it seems to me that these generations, the generations that count on us the most, are being neglected, overlooked and underprotected by this Nation's policymakers. My Republican colleagues seemed to be running trains in opposite directions on the same track this week; and, as a result, the programs that benefit children and the services needed by seniors are inevitably headed on a collision course that benefits no one.

First, the House Committee on Education and the Workforce is considering the School Readiness Act of 2003. The supposed intention of this bill is to better prepare Head Start graduates to begin kindergarten, as well as to set high standards for preschool readiness, teacher qualifications and comprehensive services. I say the supposed intention, Mr. Speaker, because this bill is, in truth, a thinly veiled attempt to dismantle one of the best tools used by the Federal Government to combat the negative effects of poverty on child learning.

It seems evident to me that my Republican colleagues do not believe that the government's role is to provide social services or provide a safety net for the American people. So my colleagues on the other side of the aisle have begun to attack these social programs that lend a hand up to many in hopes of greatly enriching the few with tax cuts we simply cannot afford.

My Republican colleagues are masking the true intentions of this bill, Mr. Speaker, and their deceit must be exposed. But this is no surprise, because it has been done before, again and again. The tax cut that passed this House not too long ago, with its sunset provisions, is a good example of Republican attempts to mask the true purpose of legislation.

The administration, Mr. Speaker, is claiming that Head Start children do not perform as well as other children once they get to kindergarten. Just the other day, I was at the Union Baptist Church Head Start Center in Baltimore, which is approximately 3 minutes from my home. I went there, Mr. Speaker, to watch little children graduate from Head Start, to hear many of them read on a second and third grade level, yet still we have those on the other side of the aisle who say that Head Start simply does not work. I would say to them that they need to go to the Union Baptist Church in Baltimore, only a 50-minute drive from D.C., and they will see young, beautiful children born into poverty but enriched by caring parents, caring teachers, and administrators at their Head Start center, and they are going to be all that God meant for them to be.

But, Mr. Speaker, the comparison of Head Start students with students who are not from poverty situations is a false comparison. Studies have shown that those students who participate in Head Start versus those that are similarly situated but do not participate in Head Start are far better off having been exposed to the Head Start program. But I should be clear: Head Start is not intended to be a solution. It is intended to be a head start.

We cannot solve all the problems of society that these kids are exposed to in the Head Start program. I have often seen where children will come to school and because they have not had the advantage of having been in Head Start, a lot of times those students from poor areas are already behind. Then what happens is they will go into a school and the kindergarten teachers tell us that they have to spend a phenomenal amount of time making sure that the other children, the children who are behind, are able to catch up to the other children. So, therefore, all the children are held up.

Mr. Speaker, instead of skewing survey results that benefit certain political ideologies, what we should be focusing on is improving what we know works. What we should focus on is strengthening and expanding this vital program for our youth and not seek to undermine and eventually eliminate it as we know it.

Mr. Speaker, I now want to discuss Medicare and the proposed prescription drug plan. Mr. Speaker, one's retirement years are often referred to as the golden years. But, today, the high cost of living and our slowing economy are making these golden years very difficult ones to enjoy. For that reason, I urge the House to pass a Medicare prescription drug plan that will alleviate the burdens retired seniors face when they are on a fixed budget.

The median household income of 65 and over is a mere $23,118. In my home State of Maryland, 70,000 seniors currently live on incomes that fall below the Federal poverty line of $12,120, yet most of us know that one of the biggest obstacles to enjoying their golden years is the cost of prescription drugs. Eighty percent of American seniors take a prescription drug every day. Of this, approximately 5 million seniors must pay for prescription drugs that cost more than $4,500 a year, while almost 3 million must pay more than $5,800 for their medicines. If we do the math, this comes out to paying anywhere from $375 to $483 per month, on top of the challenges I just mentioned.

Mr. Speaker, beyond the numbers are the real stories of real people. When I visit senior citizens throughout my district, the one thing they ask is for us to be honest with them and to pass a meaningful and workable prescription drug plan; and they say, ''Please do it now, Congressman. We can't wait 5 years, because in 5 years we will be dead without our prescriptions.'' One lady told me she must go from pharmacy to pharmacy just to find free samples of the medicine she needs to survive. Another lady told me that she must cut her pills in half in order to save on the cost. And it is not unusual for me to hear stories about how seniors have gone without groceries, electricity, or other necessities just so they can pay for their prescription drugs. These are people that I hope my colleagues will think of as they vote on a Medicare prescription drug plan in the next few weeks.

I believe these stories I just shared are not unique to Baltimore. Every Member of this House probably has individuals such as the ones I described in his or her district. Yesterday, the Committee on Ways and Means passed H.R. 2473, the Prescription Drug and Medicare Modernization Act of 2003. That sounds awfully good in name, but it actually undermines the very nature of the health care program that serves more than 40 million elderly and disabled Americans. Although there is a prescription drug coverage provision in this bill, seniors still have to struggle to pay for their medicines.

Although the plan would cover 80 percent of drugs that cost between $251 and $2,000, this leaves out millions of people I mentioned earlier whose average cost of drugs is $4,500. This is because the bill passed by the Committee on Ways and Means would provide zero coverage for drugs that cost between $2,000 and $4,900. This is a huge gap where no assistance or coverage is available. I therefore urge my colleagues to, instead, adopt a Medicare prescription drug program that is affordable, available to all seniors and disabled Medicare beneficiaries, offers meaningful benefits, and is available within the traditional Medicare program.

We have introduced such a plan, H.R. 1199, the Medicare Prescription Drug Benefit Discount Act of 2003. I applaud my good friend and distinguished colleague from New York Congressman (Mr. RANGEL) for sponsoring this bill. I am also a cosponsor, along with most of the members of the Congressional Black Caucus.

Another concern I have about the Republican sponsored H.R. 2473 is that it relies heavily on privatization in order to manage cost. The problem with the GOP plan, Mr. Speaker, is that it would force seniors to use private insurance companies for drug coverage rather than relying on Medicare, which by the way seniors have paid for all their lives. They have worked day after day, year after year, given their blood, sweat and tears to support a program which now seems, if the Republicans' efforts are successful, to abandon them.

Although supporters of the GOP plan claim that competition would help control cost, the truth is that privatization would open a Pandora's box, because private insurance companies and managed care plans would design the new prescription drug plans. The private companies would also decide what

to charge and then decide which drugs seniors would get. And private insurance plans would only have to promise to stay in the program for 1 year. This would result in seniors being compelled to change plans, change doctors, and even change the drugs they take every 12 months.

Skeptics who are listening to me right now, Mr. Speaker, may be thinking that this is only speculation. But in April, I spoke with a group of seniors at the Vantage House Continuing Care Retirement Community in Columbia, Maryland, who testified that privatization would be detrimental to the health care needs of our seniors. For example, under a similar program called Medicare-Plus Choice, that was mandated by the Balanced Budget Act of 1997, many seniors have experienced obstacles in receiving quality health care. Medicare-Plus Choice is a Medicare program administered by an HMO.

The program was introduced to provide Medicare beneficiaries with access to greater benefits than the traditional Medicare program and, at the same time, to reduce Medicare spending. However, the Alliance of Retired Americans has reported that this goal has failed. For example, over 2.2 million beneficiaries have been involuntarily kicked out of the program since 1999, 327,000 of whom had no other Medicare-Plus Choice program available to them. Nearly 200,000 more beneficiaries are expected to be dropped by their Medicare-Plus Choice plan in 2003.

One of the main reasons for the policy cancellation is because providers, such as doctors and hospitals, are increasingly unwilling to accept HMO payments they consider inadequate to cover the cost of care. This is exactly what will happen if the Republican plan is adopted. If we really and truly want to make sure that seniors enjoy their golden years, then this particular bill take us in the wrong direction.

Finally, Mr. Speaker, I urge my colleagues to not overlook our concerns. This is not about politics, it is about people, my constituents, who have worked hard all their lives, who have built this country and made it one of the best countries in the world, and now they simply ask that they be treated fairly.

I also want to take a moment to thank our leader on the Democratic side, the gentlewoman from California (Ms. PELOSI). She has been at the forefront of both of these issues, addressing the issue of prescription drugs and addressing the issue of Head Start. Her sensitivity, her constant efforts to bring these issues before the American people is greatly appreciated by our caucus and I am sure greatly appreciated by all Americans.

Mr. Speaker, it gives me great honor and great privilege to yield to my colleague, the gentlewoman from California (Ms. WATSON).

□ 1730

Ms. WATSON. Mr. Speaker, I rise today to address my concerns about H.R. 2210, the School Readiness Act. The major changes and new requirements under title II and title I will damage the integrity and efficacy of the program. This overhaul reverses the precedence in achievement that was created by the No Child Left Behind Act. NCLB seeks to close the achievement gap through stronger standards and stronger Federal oversight. H.R. 2210 attempts to reach the same solution by eliminating standards and oversight.

Title I serves to weaken the performance standards of the current Head Start program. States will be able to lower teacher standards. H.R. 2210 decreases the percentage of funds reserved for training and technical assistance from no less than 2 percent to 1 to 2 percent. The bill requires minimal parental involvement. Head Start will become disassociated with the Department of Health and Human Services.

A process of contracting out monitoring programs strikes the requirement that HHS oversee Head Start. The block grant encourages States to refer families to outside services for assistance that was once under the jurisdiction of HHS. This nullifies the 13 areas of Head Start performance standards that maintain the program's high level of quality. Under this legislation, the Secretary approves applications from States that meet the loose eligibility criteria by default. In essence there is no oversight or evaluation of the quality of the State plan.

Mr. Speaker, since its inception under the guise of HHS, Head Start was designed to help the whole child. Current service offered through HHS cannot be carried out as effectively with minimum input by the Department.

Above all, States will be forced to reduce the overall number of Head Start children served. States have already been forced to cut early childhood education programs outside of Head Start due to the budget crunch. The block grant allows States to use Head Start funds to supplement other Federal programs. Governors may be able to use this money to cover budget deficits in their States. In California, that receives over $800 million for Head Start, at the same time there is a $38 billion budget deficit. With the block grant proposal, my State has the option to use $800 million to close this budgetary gap.

Changing the funding formula to block grants, under title II, creates a daunting scenario for the Head Start program. The four eligibility requirements under title II do not address quality or expertise. The legislation requires the bare minimum of States: an existing prekindergarten system, standards for school readiness, allocating no less than 50 percent of funds to grantees and their interagency coordination. All 50 States meet these requirements, but too few provide the quality level of services.

At present only three States provide all the services needed to get at-risk children ready to learn. These States provide the same set of eight comprehensive services required of Head Start through state-run prekindergarten programs.

Mr. Speaker, 30 States have such programs; yet only three are able to meet the standards that they created in order to prepare our children for success in school.

Now we want to give all 50 States this responsibility, knowing full well that these States have not proven that they are able to do so. This will be a great disservice to our Nation's youth. We must make better investments in our children and our future instead of stuffing the pockets of millionaires. An investment in our children equals an investment in our Nation's strength, in our Nation's security, and in the future.

The economic plans and the focus of the administration must be balanced between future consequences and immediate gain. We must also continue to keep the facts at the front of the debate so that the administration and Congress can make policy decisions based on the facts rather than on misguided interpretations and subjective judgments.

Since 1965, Head Start has been one of the most successful anti-poverty programs. According to a recent report of the President's Management Council, Head Start received the highest consumer satisfaction rating of any government agency or private business.

The program has helped millions of children prepare for school, become productive students and improve the quality of their lives. The current program narrows the readiness gap between Head Start children and their more affluent peers. Almost 70 percent of children enrolled in Head Start programs are from minority groups. One-third of these students are African Americans. Over 34,000 migrant and seasonal workers' children are served annually.

Improving Head Start can be done without this major overhaul. As in the past, improvement can be done under the existing structure.

Mr. Speaker, in 1998 Head Start supporters sought to ensure that at least 50 percent of all Head Start teachers acquire an associate of arts degree or better by the year 2003. The program has met this goal. The HeadsUp! Reading Network was established to train Head Start and other early childhood teachers across the Nation. These are improvements that we hope to establish through the No Child Left Behind Act. We have not yet met these goals, but Head Start has met its goals internally.

Mr. Speaker, I encourage my colleagues to maintain Head Start as it is. It is the duty of Congress to protect the current and the future security of our Nation. We must continue to help the children of migrant workers, at-risk youth, and their parents. By supporting Head Start in its current form, we will be doing just that.

Mr. CUMMINGS. Mr. Speaker, the gentlewoman from California (Ms. WATSON) talked about block granting and how so many States have deficits, and I understand that California has a large deficit; is that correct?

Ms. WATSON. We have a $38.5 billion deficit.

Mr. CUMMINGS. I think just about every State has a deficit, and I think one of the things that we have been most concerned about is if this money then goes to the States, this Head Start money goes to the States, we are afraid what might happen to that money on its way to our children.

Ms. WATSON. Certainly one would be tempted to fill in the gap. Because of our shortfall in funds and because of the oncoming tax cut, we will have fewer revenues and we will find programs like health competing against educational programs, and I do not know how they can be separated, and other social programs that are the safety net. You have to be compelled in some way when you have some money coming in to close the gap here and close the gap there. They are not going to be closed because they are too deep, but to address the needs with these funds intended for the Head Start program.

Mr. CUMMINGS. One of the things that came out during the Congressional Black Caucus hearing yesterday was a parent from Baltimore, a woman name Portia Deshields, and she said the Head Start program had opened her eyes to so much. First of all, she was a Head Start child, and she placed her child in Head Start. The child just developed by leaps and bounds, had some problems, but Head Start was able to refer them to an appropriate therapist, was able to bring about this type of psychological counseling that the child needed, and then the child was able to graduate from Head Start.

But the thing that was so interesting about what she said was by seeing what Head Start had done for her child and by being involved in Head Start, and as I understand it Head Start, the way the legislation is now, that is the present law, parents must be involved. It is a very, very important thing. She sat on the council for her Head Start organization; and the next thing she said she was so moved by what was going on with her child in Head Start and was so moved by the way she could affect her own Head Start program, she decided to go back to school, and in a few years she will be graduating from college. So her child was lifted up. And she and her family were lifted up.

Ms. WATSON. Head Start is needed now more so than ever. With the new TANF requirements, you as a welfare recipient have to go back to work when the child is 6 months old. That means you are not in the home from zero to 5 to help nurture that child and teach them because you are working, and you are working a full day. So we need Head Start now so children can be ready to learn when they go to kindergarten, simple things like tying one's shoe, buttoning one's jacket, being able to share and work with others, those things that were done in the home that will no longer be able to be done in the home because one parent has to go to work, and these are single-parent families so they do not have the time to train their child.

Head Start was created during the War on Poverty during the 1960s. It was the best thing we did to close the safety net. Why would we take a program which has had such successful outcomes, and these can be measured, and start whittling it away? I do not understand the thinking. It will cost us less in the long run to have a Head Start program and not a block grant in every State.

Mr. CUMMINGS. Research has shown that for every dollar we spend for Head Start, we save 4 to $7 later on. Of course we are talking about we help children avoid teenage pregnancy, juvenile delinquency, dropping out of school, which later on cost society quite a bit; but just as significant or more, the child has then missed out on his or her dream to be all that God meant for them to be. That is such a sad thing when they are denied the opportunity of getting to where they could be.

Ms. WATSON. The research clearly shows if you invest in the early years, there will be more of a guarantee of success in the later years.

Mr. CUMMINGS. Mr. Speaker, I appreciate the gentlewoman's clarification on those issues.

Mr. Speaker, I yield to the gentlewoman from California (Ms. LEE), someone who has been at the forefront of people issues. When children come on the Earth, we already know that they have gifts; and the question is what will we do as adults to help them develop those gifts. She has certainly been at the forefront of the Head Start program to make sure we maintain Head Start and make it better, as well as a Member who has worked very hard on this issue of prescription drugs.

Ms. LEE. Mr. Speaker, I thank the gentleman from Maryland (Mr. CUMMINGS), chairman of the Congressional Black Caucus, for the gentleman's leadership and for once again holding this Special Order to attempt to wake up America.

□ 1745

Tonight, of course, under the gentleman's leadership, we are once again talking about children and our senior citizens. Once again we are talking about the Bush administration's dismantling, total dismantling, of social programs. The Bush administration has really waged war on children and our senior citizens. They continue to dismantle, privatize, and create unfunded mandates that truly compound our State budget crisis and leave our children and our senior citizens behind. I have yet to see the compassionate conservatism which was promised over 2 years ago. Actually on my report card, the Bush administration gets first an F for attempting to block grant the section 8 program, which helps kids live in mixed income areas and have the chance to go to mixed and integrated schools, and for eliminating the drug elimination program which provides violence prevention efforts in public housing to increase their safety at home.

The Bush administration gets another F for attempting to block grant Medicare and Medicaid to the States and removing the responsibility of the Federal Government to provide health insurance to millions of children and to families by trying to give this to the States which are really suffering from fiscal shortfalls and extreme budget crises.

They also get an F for failing to include the 12 million children, 12 million, mind you, in their tax cut proposal. They also, based on my report card, get an F for attempting to privatize not only Social Security but the current Republican prescription drug benefit which will leave millions of seniors without coverage. They want to give really the insurance companies and the pharmaceutical companies another way to make more profits. In fact, according to Consumers Union, more seniors would pay more for medicines than they now do under their proposal. That is why they get an F for their prescription drug benefit plan.

They also get an F on the economy, because the Bush administration and this Congress has not provided a secure economy where families can provide for their children because they have jobs and a sense of stability and economic security, not because they have an alleged tax cut. They also get another F for their current Head Start attempts and for continuing to dismantle Head Start really, and that is what they are doing by block granting it and by reducing the effectiveness of Congress, State governments, and our communities.

Tonight, many of us are talking specifically about Head Start and why we cannot stand by and allow our Republican colleagues and the administration to move forward with their plan to test kids, mind you, at age 4, I believe, literacy testing. How cynical. Age 4. Their plan would require care givers as well as teachers to have college degrees instead of concern and sincere interest in their students and would reduce, instead of expand, the success of the current Head Start program. That is why they get an F on my report card for block granting Head Start.

Over the last 4 decades, Head Start nationwide has reached an unbelievable number of students. Since 1965, over 20 million children across the country have participated in Head Start. Last year alone, Head Start and Early Head Start programs worked with more than 900,000 children; that is 900,000 in over 2,500 local programs. In my own hometown of Oakland, California, 1,600 children are part of our area Head Start

program. But we are still not reaching enough kids. On any particular day, 300 to 400 young people are on a waiting list for the Oakland Head Start centers. In fact, all 30 centers have children on a waiting list, meaning that all areas are being affected; 300 to 400 children are far too many to have to begin school already behind. In fact, one child on a waiting list is one too many who do not have access to early participation. Just a couple of months ago, over 300 to 400 families, children, men and women, came to a rally and participated. In no uncertain terms they said very clearly to me, do not tamper with Head Start. If it ain't broke, do not fix it. Leave it alone. Let us put more money in Head Start. Do not subject us to the whims of the State budget crisis.

We cannot stand by and allow this administration and this Republican Congress to dismantle good programs like Head Start. We cannot allow them to succeed in the ongoing elimination, and that is what is going on. It is the systematic elimination of proven programs that benefit and lift up all people in our country. We cannot allow the President and the Republican Congress to dilute what has been one of our most successful programs over the last 4 decades. We must stop this assault on Head Start, we must stop this assault on our children, we must stop this assault on our senior citizens, we must stop this assault in terms of the bogus prescription drug benefit program that the Republicans are pushing, we must stop the assault on section 8, we must stop the assault on Social Security and in terms of our overall domestic economic agenda.

Mr. Speaker, I encourage my colleagues, all of us, to join with our Chair of the Congressional Black Caucus to once again this evening try in another instance to wake up America in terms of what type of dismal, very backwards policies that this Republican Congress and this administration are shoving down the American people's throats.

Mr. CUMMINGS. Mr. Speaker, the Congressional Black Caucus and the Congressional Hispanic Caucus work very closely on a number of issues. It so happens that we work on the two that we are addressing tonight. There is no greater leader that I have come to know than the head of the Hispanic Caucus, the gentleman from Texas (Mr. RODRIGUEZ). Our caucuses have worked hard on many issues. We may not have been able to stop everything, but we certainly were able to throw up a few roadblocks. The fact is that he comes tonight, and I am so glad that our caucuses could join together tonight to address this House.

I yield to my friend, the gentleman from Texas, the Chair of the Hispanic Caucus.

Mr. RODRIGUEZ. I want to thank the gentleman from Maryland for yielding. His leadership has also been noticed throughout the country. I want to personally thank him. I want to also specifically thank him for reaching out to the Hispanic community across this country and reaching out to the Hispanic Caucus. To me it has been a pleasure working with him. I know we have a great 2 more years to go, and I look forward to continuing to work with him.

I want to also congratulate him on the efforts that he just conducted and we had the pleasure of this week of attending a hearing on Head Start. I want to thank him for inviting me there. We had some beautiful panels that went before the Congressional Black Caucus to talk about the needs of Head Start and to talk about the research regarding Head Start and how to best reach our young people. I want to personally thank the gentleman for the leadership. I want to thank him for that energy that he shows in reaching out. I know that we probably have had for the first time in a long time both Hispanic and African Americans, more press conferences together than anyone else, and we are going to continue to do that. I know that there are a lot of issues that confront the African American community, as well as the Hispanic community, and everyone, the entire community in the country, that we are going to continue to work on. I want to thank the gentleman for his leadership.

Tonight we are here, and I am glad that I have an opportunity to be here to talk about the importance of Head Start. The adequate care in the development of our children is perhaps the greatest hope of America. For those who lack the resources, for those who face the social barriers, the educational barriers, the linguistic barriers, the cultural barriers in the pursuit of this necessary goal, we offer them a program that has worked and that is Head Start, a program that has been there for approximately 35 years, since 1965, a program that has shown that it can reach out to our youngsters and meet the needs.

As chairman of the Congressional Hispanic Caucus and also as a parent, and I speak as a father, recognizing the importance of Head Start, recognizing the importance of starting early with some of these youngsters. I just compare myself to my daughter also, where my daughter has had some opportunities to get access to a lot of books. When I was growing up, I did not have those opportunities, and I know that Head Start provides that initial effort that allows those youngsters to be able to compete.

Head Start is a highly successful program. Since its founding in 1965, the Head Start program has provided comprehensive child development and family support services to more than 18 million low-income preschool children and their families. I stress ''their families.'' Given the broad objectives of the programs, it is difficult to compare its success against other programs with more narrow objectives. For over 3 decades, Head Start has been there for our kids. Head Start is the first and foremost federally funded comprehensive child and family development program designed to meet the needs of low-income families with preschool children. This is why it must stay in the Department of Health and Human Services. It reaches out and works with young people.

Head Start currently is only serving 40 percent of the children that are eligible due to the lack of funding, and only 3 percent of the eligible infants and toddlers. So there is still a lot that we can do. Children born into families of poverty start at a marked disadvantage to their peers in the middle-income and wealthy families. Studies suggest that they do not have that richness of books in their home, proper nutrition or access to continued health care. And so Head Start was created to address this facet of issues, improving the richness of early learning experiences for not only young children but also for their parents as well.

In fact, Head Start focuses on families in fighting poverty in a comprehensive manner that has led the program to its success at getting children ready for school, improving their literacy and improving their skills and giving their parents the skills needed to become the child's first teacher, their best teacher, their parents. Administering the program through the Department of Health and Human Services ensures greater collaboration and the integrity of all the components essential to a child's and family's development. Providing comprehensive education, health and family community resources contribute to children's readiness, especially for low-income children and families. Transferring the program to the Department of Education would undermine the comprehensive program with no guarantees that these essential programmatic components would be preserved. So it is important that this program continues to remain in the Department of Health and Human Services. I know the administration has made every effort to try to change that.

In addition, the President in his 2004 budget proposal introduced initiatives that wage a war on the poorest children of our country, Head Start. The administration purports that moving Head Start to the Department of Education would be the best thing to do. In reality, this program has been working well under the Department of Health and Human Services. We cannot see how this can be improved when it has already been doing a good job. I can only conclude that the President fails to recognize the true value of Head Start. We must ensure that Head Start continues to provide our children with comprehensive services. If the administration continues to want to move Head Start to the Department of Education, if they want to continue to push to put it into a block grant, one can only conclude that this administration and that this President does

not support Head Start and is not willing to allow it and fund it at the level where it should be and allow it to continue to make progress.

Besides trying to dismantle the Head Start program, the President also announced in his 2004 budget an increase of only $148 million for Head Start. This small increase would not cover the inflation cost that is needed in order to make things happen and in order to continue to meet the needs of more than 60 percent of youngsters that qualify under this program that are not receiving services. And so this increase is not sufficient.

Further, the President's budget proposal of 2004 includes a legislative proposal to introduce an option available to the States to participate in an alternative financing system. Under his proposal, States would receive their Head Start funds under a flexible grant. States are grappling with their own budgets at the present time. In fact, we started this program through the Federal Government because States were unwilling to be responsive.

□ 1800

States such as Texas, for example, fund only kindergarten at half day. The local community has to fund the rest of it. So we can imagine what they would do with the resources. They would not go to Head Start. They would go somewhere else.

At the same time, the State funding for Early Childhood is at a dismal situation. After this last session, it even got worse, so that we are really concerned that the President's effort at trying to dismantle and attack Head Start is a way of trying to get the resources away from these kids that drastically need them to provide to the States. We are concerned that those resources will be used for other purposes.

I also want to take this opportunity to talk about an important aspect of Head Start that we very seldom talk about, and that is, I would like to take a moment on the seasonal and migrant Head Start programs. Many young migrants and seasonal children in the United States are taken into the fields because the parents have no other place to leave them while they are at work.

Now we are seeing these young people in the Carolinas and other States where we did not see them before, where some of these programs are still not in effect, and I have seen recent pictures taken where young people are right there, young kids of 2 and 3 and 4 years old, next to their parents while they work in the fields. Sometimes young children take care of their younger siblings in camps and fields while their parents work hard in the fields. Migrant and seasonal farm workers in various sectors of our Nation in the agricultural industry, from harvesting, to sorting, to processing, to everything in between; it is hard work, and it takes special skills.

But these families earn about $10,000 a year. These are the ones that pick the products and pick the food that we eat. These are the ones that we take for granted when we sit down to eat each night and not recognize that there are people out there doing this kind of work.

Migrant and seasonal Head Start programs serve nearly 32,000 migrant children and nearly 2,500 seasonal children annually. Seasonal and migrant Head Start programs operate in 39 States in every region of the country. These programs offer positive nutritional child care for children ages birth to school entry age. Thirty-five percent of the migrant and seasonal Head Start enrollment is comprised of infants and toddlers. Getting migrant and seasonal children out of unsafe environments is a starting point for migrant and seasonal Head Start programs.

But they do more than that. Migrant and seasonal Head Start programs answer basic needs of migrant and seasonal children, and it is important that these programs remain within the Department of Health and Human Services. Migrant and seasonal Head Start is very different from the other programs because it is the nature of farm labor. Children need full-day services often from 6:00 a.m. to 6:00 p.m. These programs have been there. We need additional resources for this area.

One of the things that I would question is that if they are transferred over to States, the fact that they exist in 39 States, the fact that they also have to have the flexibility to be able to work with these young people that come in on a seasonal basis that might be there temporarily, our schools are not geared to be able to address that need. The programs that are out there have been meeting that need for over 35 years, and they need more resources, but they have been there for those kids.

They know how to reach out to those kids, and this is one of the main reasons why this program has to remain with the Department of Health and Human Services, and it has to remain with those local communities instead of being put into a State grant.

So tonight I want to take this opportunity to thank the gentleman from Maryland (Mr. CUMMINGS) and thank the Congressional Black Caucus, in their efforts and just to continue to reaffirm that this President and this administration, when he ran for President, he promised to work in the area of education. He promised to deliver a program that would respond to the needs, and he indicated that education was one of his first priorities. But in return, his Leave No Child Behind has $9 billion of his own bill that he has not funded, and he has left us behind. When it comes to Head Start, the promise that he has is to put it into a block grant and basically destroy the program that hits us at the most vulnerable of this country.

So his promises have been empty words that have not been met. So I want to once again thank the gentleman for allowing me to be here tonight, and I want to also express my sincerest appreciation for the hard work that he does and the entire Congressional Black Caucus, and I look forward to working with him.

Mr. CUMMINGS. Mr. Speaker, we look forward to it too, and we really do thank the gentleman from Texas.

Mr. Speaker, I want to talk just for a moment about this whole issue of Head Start, and I would like to engage the gentlewoman from California (Ms. LEE) in a colloquy just very briefly.

One of the things we have in my district is a high school called Veneble High School, and this is for special education children, and one of the things that I have noticed is when I go to their graduations, so many of these children have speech defects. So many of them have problems walking. And the interesting thing that I noticed is that when I talked to the principal at one of the graduations, I said how did this happen? And she said if they had had the proper services when they were little, it would have made a world of difference. In other words, if they had had a speech therapist, maybe if a child were given braces to wear on his leg, by the time he got to be 4 or 5, he would have been able to walk properly. So these children then grow up with problems that could have been corrected earlier, and I think one of the advantages of the Head Start program is that it is comprehensive and they look at all aspects of the child's life and try to address them at that early age.

Has that been the gentlewoman's experience?

Ms. LEE. Mr. Speaker, the gentleman from Maryland hit it. That is exactly why moving Head Start from the Department of Health and Human Services into the Department of Education is not the right move because currently, our young people who are in Head Start, our children, receive comprehensive services. Their families receive the support. They receive not only a quality early childhood education, but they also receive those basic kinds of support services that they need to move on to lead a quality healthy life. Children from low socioeconomic backgrounds do not have the resources for healthcare. We know how much healthcare is costing now. Their parents do not have insurance coverage. They do not have access to dental clinics.

So Head Start provides for immunizations and all of those kinds of healthcare needs in a total package for young people who, by no fault of their own, just do not have any money to receive those types of basic services, and that is why moving it to the Department of Education is wrong and we have got to defeat this proposal.

Mr. CUMMINGS. I thank the gentlewoman.

Mr. Speaker, I am very pleased to yield to the distinguished gentleman from the great State of Illinois (Mr. DAVIS) who has also been at the forefront of the fight for Head Start and for prescription drugs for our seniors.

Mr. DAVIS of Illinois. Mr. Speaker, I want to commend the gentleman from Maryland (Mr. CUMMINGS) and the gentlewoman from California (Ms. LEE) and the gentleman from Texas (Mr. RODRIGUEZ) for the leadership that they have shown and displayed.

I just left the markup in the Committee on Education and the Workforce where we have been babbling, I guess one could say, all day long. We have been debating Head Start. And there are certain principles that we have tried to maintain, and one is that the program must be kept comprehensive. It must remain comprehensive and not be streamlined and categorized so that young people will get the full benefit of the most effective program that we have had coming out of the civil rights movement, coming out of the war on poverty. No other program has been as successful as this one.

We also have to make sure that the block granting does not creep in, and we have obviously crept up, and they are down to talking about eight States now that would be demonstration projects, but we have got to watch that because those eight States will still represent one-third of all the children in Head Start.

So if we are talking about eight States with large populations, with large populations of Head Start children, then that becomes a significant number. We are still opposed to the block granting all the way.

We know that we need additional funding, especially as we now have a mandate that 50 percent of the teachers ought to have a college degree by 2008. But how does one get a college degree if one is a Head Start teacher making $12,000, $15,000, $10,000, $11,000, $14,000 a year without some help. So we are proposing stipends and scholarships, things that are going to help those individuals.

And I was pleased to note that I did get an amendment accepted a few minutes ago that will call for the creation of a fatherhood initiative, and I noticed that the gentleman from Texas (Mr. RODRIGUEZ) mentioned that, as a father, we find that many fathers are absent from the lives of their children and that one of the things that we can do in Head Start is stimulate the growth and development of that.

So I just, again, want to commend all of my colleagues here, the gentleman from Maryland (Mr. CUMMINGS) as he leads the Congressional Black Caucus, the gentlewoman from California (Ms. LEE), and it was good to see the gentleman from Texas (Mr. RODRIGUEZ), chairman of the Congressional Hispanic Caucus, and I know that the gentleman from Alabama (Mr. DAVIS) is here, and the gentleman from New Jersey (Mr. PAYNE) who has been doing an outstanding job in the Committee on Education and the Workforce, we have been there together all day. So I thank the chairman so much.

Mr. CUMMINGS. Mr. Speaker, I thank the gentleman.

Let me just say this, Mr. Speaker. The Congressional Black Caucus is very concerned about this issue along with the Congressional Hispanic Caucus, and sometimes I think what happens is so often people will hear the words Congressional Black Caucus or hear the towards Congressional Hispanic Caucus and think that we are only addressing issues that affect African American and Hispanic people. That is simply not true. The issues that we address go to the very center of people's lives, and I can think of nothing greater that allows a person to be all that they can be than health issues, making sure they have prescriptions that they need and making sure that our children have the education that they need so that they can get to their destiny.

I have often said that our children are the living messages we send to a future we will never see, and the question is what kind of message do we send if we deny a child who was born into poverty? That child did not ask to be born into poverty, but he is born into poverty or she, and so that child has a struggle from the very, very beginning. And I think that if we can help a child at 3 years old and give that child a proper foundation so that they could then go forward in life and have what I call consistent appointments with success, then that child grows up, and that child possibly could be the person who finds a cure to pancreatic cancer or could become the President of the United States.

But when they are denied that opportunity at an early age, then so often they go off the road as a straight and narrow path, and the next thing we know, we see them as I see them in my district, so many of them dropping out of school, so many of young ladies having babies as teenagers, and we see the problems that they are confronted with. And Head Start is a program, Mr. Speaker, that has effectively addressed those problems, and again with regard to the prescription drugs, we have to stand up for our seniors.

GENERAL LEAVE

Mr. CUMMINGS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on my special order.

The SPEAKER pro tempore (Mr. FRANKS of Arizona). Is there objection to the request of the gentleman from Maryland?

There was no objection.

□ 1815

PRESERVING HEAD START

The SPEAKER pro tempore (Mr. FRANKS of Arizona). Under a previous order of the House, the gentleman from Alabama (Mr. DAVIS) is recognized for 5 minutes.

Mr. DAVIS of Alabama. Mr. Speaker, to a number of people around the country it is approximately 15 minutes after 6 in the East, about a quarter after 5 in my neck of the woods in central Alabama; and a lot of people are coming home right now from working on the assembly lines, a lot of people are coming from working in the nursing homes and the places where hard work is done in this country, and a lot of them picked up their children from Head Start.

A lot of them are coming home now, and they are watching this debate, and they are asking a very basic question: Why is this House even assessing the question of Head Start? Why is this House even talking about dismantling Head Start, when in their own lives they see this program has been so enormously successful?

There is an old maxim that if something is not broke, you do not fix it; and the perspective of a large number of people I represent in Birmingham, Alabama, and Selma and Tuscaloosa and in all of the rural counties in my State is that this has been a part of the War on Poverty that has endured. This program, which was launched in the 1960s, has endured, it has survived, and it has notably commanded bipartisan support.

As I talk to friends of mine on the other side of the aisle, particularly friends of mine who have served in State legislatures, a good many of them away from this floor will express that this is a program that has been successful.

So many people wonder why, as we talk about reform, as we talk about changing the educational system in this country, why we are targeting this particular program; and I will make three basic points to follow up on what my very able colleagues from Maryland and California said earlier.

The first one is that this program has been an enormously effective holistic program. It has been a program that has helped not simply make children more literate, but has frankly helped to make children better young men and women, better equipped to participate in school, better equipped to live in their communities.

It is not simply a reading program, it is not simply a literacy program, and to try to limit it or to cabinet it to just those areas deprives the program of some of its potential.

Another very basic point, as we talk about block granting this program even for just eight states, we know the reality of block grants has been that as the programs devolved to the States, the States are often unconstrained in how they spend the money. They are often unconstrained in their vision of how the money should be spent.

I know in my State of Alabama we are facing enormous budget consequences now, and in the States most of us represent our States are fiscally struggling. They are not asking for more programs to be put on their plate from an administrative or financing standpoint. If anything, they want

more help from Washington, D.C., not more requirement that they administer particular programs that are being transferred from Washington.

A third point: we often talk about representing the interests of people whose voices are not heard in our society. It is crystal clear to me that among the most unrepresented people that we have are the children who are living in poverty and the children who are living in families that are standing at the edge of economic security.

Just one week ago, this House failed to pass a child tax credit, a manageable child tax credit bill that would have helped a lot of those families. It would be a shame if next week or in the weeks to come that we decided that we were going to attack those families in just one more little way, by changing this program that has benefited so many of them.

In conclusion, Mr. Speaker, when this issue comes on the floor, when we begin to talk as a body about Head Start, I hope that we understand it has been a success, and I hope we understand that so many families in districts like mine around this country look to this program; and we ought to be finding a way to preserve it, we ought to be finding a way to help connect with these children, because if we lose them, as the gentleman from Maryland (Mr. CUMMINGS) said so well a few minutes ago, we are losing a potential talent base that we have not discovered. We are losing people that have the chance to do an enormous amount in their lives.

We need to be nurturing them, helping them; and this program has been an example of what government can do at its best. There are some of us in this body, Mr. Speaker, who still believe that government has a high and noble purpose. Not that it is the only answer, but that it can do something to touch and connect with the lives of people who have been left behind.

THE IMPORTANCE OF HEAD START

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PAYNE) is recognized for 5 minutes.

Mr. PAYNE. Mr. Speaker, as we continue to discuss the importance of Head Start, the Head Start program to our communities, I want to draw attention to a resolution that I offered, H. Res. 238, expressing support for the Head Start program, which has had such a positive impact on the lives of millions of children nationwide.

This resolution not only recognizes the contributions of Head Start; it also supports maintaining its current designation at the Department of Health and Human Services.

Earlier this week, I participated in a hearing convened by our chairman, the gentleman from Maryland (Mr. CUMMINGS) of the Congressional Black Caucus, where we had an opportunity to hear from those who are directly involved in administering the program, including Maxim Thorne, executive director of the New Jersey Head Start Association. He expressed his concern about the effort to block grant the program, which he said would have a devastating impact on New Jersey's Head Start children.

The majority backed off of the block grant to all of the programs, but selected eight States, one of which is New Jersey. The eight States carry about one-third of the children, as was indicated by the gentleman from Illinois (Mr. DAVIS).

Most of the States selected are States that have financial problems, as we have in New Jersey. In New Jersey, we are already grappling with the Abbott decision, which was a decision where our Supreme Court of New Jersey said that every child in New Jersey is entitled to a thorough and efficient education.

The State administration is before the courts asking for relief from that decision, saying that the budget is tight, they have constraints, they cannot fully fund this court order; and they are asking to be allowed to delay and defer programs under the Abbott decision.

What will happen when the Head Start money comes? It will be very tempting to see if perhaps this money can go further and be used in trying to comply with the Abbott decision. I think it is wrong, and I definitely oppose it, as do all of the members of the Democratic Party on the Committee on Education and the Workforce.

Also echoed by our executive director of the Head Start program was the provision which would allow for open discrimination of Head Start workers based on religion. This goes against everything our Nation stands for.

Mr. Speaker, Head Start has a proud and successful history. In 1964, President Lyndon Johnson gave his State of the Union Address before Congress and our Nation with an announcement to declare war on poverty. In his declaration, he believed, for the first time in history, poverty could be eradicated, and offered his proposal, the Economic Opportunity Act of 1964.

Despite opposition that believed poverty was on the decline from the heights of the Great Depression, President Johnson was undaunted. He declared the act does not merely expand old programs or improve what is already being done, it takes a new course. It strikes at the causes, not just the consequences of poverty. It can be a milestone in our 180-year search for a better life for our people.

After the bill was signed into law, an Office of Economic Opportunity was created to fulfill its mission. At the same time, a pediatrician by the name of Dr. Robert Cooke was asked by the head of this new office to lead a steering committee to come up with specialists to find out what should be done.

The Cooke memorandum outlined what we know as the Head Start program. Launched as an 8-week summer program, Head Start was designed to help break the cycle of poverty by providing preschool children of low-income families with a comprehensive program to help meet their emotional, social, health, nutritional, and psychological needs.

Since its inception, Head Start has served over 20 million children. Today it is a full-day, full-year program providing pre-school children of low-income, working families with a comprehensive program to meet their emotional, social, health, nutrition, and parental support needs.

Head Start's focus on the whole child extends to recognizing the importance of the family, not the institution. Throughout its history, Head Start has included parents in both their child's education and membership in the Head Start Policy Council, which serves as a vital link between the community and the public and private agencies. Parental involvement is a critical and integral part of the program. Economically deprived families are no longer seen as passive recipients of service, but rather as active, respected participants and decision-makers.

So, as I conclude, with the average child care cost in my State of New Jersey over $5,000 a child, thousands of children across the State and others would not have had access to an exceptional program that has them ready to learn by the time they enter kindergarten if Head Start was not there to serve them. Terms such as ''State options'' and ''coordination'' will mean shortchanging and ending a 38-year program which has proven to be successful to millions of children.

We need to move towards full funding of Head Start. We need to support and preserve the Head Start program. I look forward to working with my colleagues to accomplish this goal.

EXPANDING MEDICARE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. RUSH) is recognized for 5 minutes.

Mr. RUSH. Mr. Speaker, today in the Committee on Energy and Commerce we are marking up the most critical expansion of Medicare since its inception 37 years ago.

As you might have expected, Mr. Speaker, in my opinion, the bill is not perfect. It needs work. There are two amendments that I will introduce to strengthen the Medicare Prescription Drug and Modernization Act of 2003.

My first amendment will ensure that diseases that disproportionately affect the African American community will be highlighted in the disease management component of the bill. The diseases that need to be highlighted include prostate and colon cancer, hypertension, and obesity.

The current language in the chairman's mark does not include enough diseases that should be highlighted in

the preventive care management portion of the bill. There is disease management capacity in the bill, and it requires preventive care in Medicare. So, in my opinion, Medicare must address the diseases that proportionately affect minority populations.

We have to address a population who has been told that their life expectancy is 15 years lower than that of their white counterparts. African American men have a 34 percent greater chance of being diagnosed with prostate cancer and a 123 percent greater chance of dying from prostate cancer than white men.

African Americans' overall cancer rate is 33 percent higher than for whites overall. The incidence of this disease among African American men is among the highest in the world. From 1973 to 1992, the rates of death from prostate cancer among African American men increased by 41 percent. Blacks are more likely to get cancer and to die from this dreaded disease than other racial or ethnic groups.

It should not be difficult to understand my insistence at this opportune time in the Committee on Energy and Commerce that we address this particular matter. It is my hope that seniors will become educated about what they can do to lower their risk for cancer.

Medicare should serve as an educational vehicle. Seniors will learn how to eliminate stress, how to eat properly, and how to incorporate exercise in their lives. They must learn how they can lower their own risk and improve health care through their own behavior.

My amendment also addresses preventive care for hypertension. Hypertension, Mr. Speaker, is a leading cause of stroke. I am sure that we all know people, loved ones, who live dramatically different lives following a massive stroke. I am sure that we know people who have lost their lives prematurely following a massive stroke.

Whether the stroke impedes speech, or it requires that an amputation must take place, or just general paralysis is the prognosis, we must do what we can to curb the indicators for stroke.

□ 1830

Preventative care and hypertension is so critical to minorities in the Medicare population. In 2001, 2,500 African Americans died from stroke, the third leading cause of death for all racial and ethnic groups. African Americans were 40 percent more likely to die of strokes than whites in 2001, when differences in age distribution were taken into account.

Mr. Speaker, the prevalence of high blood pressure in African Americans is among the highest in the world. That is why my amendment is so critical to ensure the longevity of African American lives.

The final component of my amendment addresses the overarching impediment to good health, and that is obesity. Obesity is a trigger for both hypertension and cancer. We would be remiss not to address cancer and hypertension and neglect to draw the connection to a healthy diet and exercise. Therefore, we must examine the how and the why obesity is a trend in minority communities and among many minority populations.

I can answer the how and the why partially from my own experience. As I drive around my own communities in my own district, I see a scarcity, Mr. Speaker, of places that have grocery stores that have fresh fruits and vegetables. In my community, in my district, there is an abundance of fast food restaurants, and the proliferation of these establishments and the lack of healthy food choices spell disaster for a healthy population and for healthy relationships with food and exercise.

The bottom line, Mr. Speaker, is a serious Medicare program must provide a comprehensive preventative care program. This care must be multi-layered. It must address all diseases and, in the case of my amendment, must address diseases that are disproportionately killing people of color.

My amendment would ensure that diseases that disproportionately affect the African American community will be highlighted in the disease management component of the Medicare modernization bill.

APPOINTMENT OF MEMBERS TO THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The SPEAKER pro tempore (Mr. FRANKS of Arizona). Pursuant to 22 U.S.C. 3003, the Chair announces the Speaker's appointment of the following Members of the House to the Commission on Security and Cooperation in Europe:

Mr. SMITH of New Jersey, acting chairman;
Mr. WOLF of Virginia;
Mr. PITTS of Pennsylvania;
Mr. ADERHOLT of Alabama;
Mrs. NORTHUP of Kentucky;
Mr. CARDIN of Maryland;
Ms. SLAUGHTER of New York;
And Mr. HASTINGS of Florida.

CORRECTION TO THE CONGRESSIONAL RECORD OF MONDAY, JUNE 16, 2003, AT PAGE H5407

By Mr. THOMAS (for himself and Mr. TAUZIN). H.R. 2473. A bill to amend title XVIII of the Social Security Act to provide for a voluntary program for prescription drug coverage under the Medicare Program, to modernize the Medicare Program, and for other purposes; which was referred jointly to the Committee on Energy and Commerce and Ways and Means, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. JACKSON-LEE of Texas) to revise and extend their remarks and include extraneous material:)

Ms. JACKSON-LEE of Texas, for 5 minutes, today.
Mr. BROWN of Ohio, for 5 minutes, today.
Mr. DEFAZIO, for 5 minutes, today.
Mr. FILNER, for 5 minutes, today.
Mr. RUSH, for 5 minutes, today.
Ms. LOFGREN, for 5 minutes, today.
Ms. LEE, for 5 minutes, today.
Ms. KAPTUR, for 5 minutes, today.
Ms. WOOLSEY, for 5 minutes, today.
Mr. TAYLOR of Mississippi, for 5 minutes, today.
Mr. MCDERMOTT, for 5 minutes, today.

(The following Members (at the request of Mr. MCCRERY) to revise and extend their remarks and include extraneous material:)

Mrs. BIGGERT, for 5 minutes, today.
Mr. BURTON of Indiana, for 5 minutes, June 25.
Mr. BURGESS, for 5 minutes, today.

(The following Members (at their own request) to revise and extend their remarks and include extraneous material:)

Mr. DAVIS of Alabama, for 5 minutes, today.
Mr. PAYNE, for 5 minutes, today.

BILL PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House reports that on June 17, 2003 he presented to the President of the United States, for his approval, the following bill.

H.R. 1625. To designate the facility of the United States Postal Service located at 1114 Main Avenue in Clifton, New Jersey, as the ''Robert P. Hammer Post Office Building''.

ADJOURNMENT

Mr. RUSH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 33 minutes p.m.), the House adjourned until tomorrow, Thursday, June 19, 2003, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

2723. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Department's final rule — Methoprene, Watermelon Mosaic Virus-2 Coat Protein, and Zucchini Yellow Mosaic Virus Coat Protein; Final Tolerance Actions [OPP-2003-0159; FRL-7309-5] received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2724. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Glyphosate; Pesticide Tolerance [OPP-2003-0155; FRL-7308-8] received

June 12, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2725. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Imidacloprid; Pesticide Tolerances [OPP-2003-0103; FRL-7310-8] received June 12, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2726. A letter from the Deputy Secretary, Department of Defense, transmitting the semiannual report of the Inspector General and classified annex for the period October 1, 2002 — March 31, 2003, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Armed Services.

2727. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Clarifications to Existing National Emissions Standards for Hazardous Air Pollutants Delegations' Provisions [FRL-7508-8] (RIN: 2060-AJ26) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2728. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Connecticut, Massachusetts and Rhode Island; Nitrogen oxide Budget and Allowance Trading Program [R1-7218d; A-1-FRL-7513-2] received June 12, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2729. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana, New Mexico, Oklahoma and Bernalillo County, New Mexico; Negative Declarations [FRL- 7511-4] received June 12, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2730. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Bacillus Pumilus Strain QST2808; Temporary Exemption From the Requirement of a Tolerance [OPP-2003-0113; FRL-7301-1] received June 11, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2731. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Burkholderia Cepacia Complex; Significant New Use Rule [OPPT-2002-0041; FRL-7200-3] (RIN: 2070-AD43) received June 12, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2732. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Preliminary Assessment Information Reporting; Addition of Certain Chemicals [OPPT-2002-0061; FRL-7306-7] received June 12, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2733. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Utah: Final Authorization of State Hazardous Waste Management Program Revision [FRL- 7511-1] received June 12, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2734. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Peach Bottom Atomic Power Station, Susquehanna River, York County, Pennsylvania [COTP PHILADEPHIA 03-006] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2735. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, Pennsylvania [COTP PHILADELPHIA 03-007] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2736. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Suisun Bay, Concord, California [COTP San Francisco Bay 03-010] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2737. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; The Grand Opening Miami One, Miami, FL [COTP Miami 03-073] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2738. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Fireworks Display on the Willamette River, Milwaukie, OR [CGD 13-03-016] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2739. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; City of Stuart 4th of July Fireworks Display [COTP Miami 03-083] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2740. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Coral Reef Club 4th of July Fireworks Display, Miami, FL [COTP Miami 03-075] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2741. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Rivera Beach 4th of July Fireworks Display [COTP Miami 03-082] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2742. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: Town of Lantana July 4th Fireworks Display [COTP Miami 03-081] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2743. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Fireworks Display on Siuslaw River, Florence, OR and on Willamette River, Portland, OR [CGD 13-03-017] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2744. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, New Jersey [COTP PHILADELPHIA 03-003] (RIN: 1625-AA00) received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2745. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Limerick Generating Station, Schuylkill River, Montgomery County, Pennsylvania [COTP PHILADELPHIA 03-004] (RIN: 1625-AA00), pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2746. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Availability of ''Allocation of Fiscal Year 2003 Youth and the Environment Training and Employment Program Funds'' [FRL-7508-9] received June 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2747. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Partial Withdrawal of Direct Final Rule; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Pharmaceutical Manufacturing Point Source Category [FRL-7510-6] (RIN: 2040-AD85) received June 12, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

Under clause 2 of rule XIII, reports of committees were delivered to the clerk for printing and reference to the proper calendar, as follows:

Mr. LINCOLN DIAZ-BALART of Florida: Committee on Rules. House Resolution 283. Resolution providing for consideration of the bill (H.R. 660) to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees (Rept. 108–160). Referred to the House Calendar.

Mr. POMBO: Committee on Resources. House Concurrent Resolution 21. Resolution commemorating the Bicentennial of the Louisiana Purchase (Rept. 108–161). Referred to the House Calendar.

Mr. MANZULLO: Committee on Small Business. H.R. 1772. A bill to improve small business advocacy, and for other purposes; with amendments (Rept. 108–162). Referred to the Committee of the Whole House on the State of the Union.

Mr. GOSS: Permanent Select Committee on Intelligence. H.R. 2417. A bill to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; with an amendment (Rept. 108–163). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. MCINTYRE:

H.R. 2501. A bill to clarify the boundaries of Coastal Barrier Resources System Cape

Fear Unit NC-07P; to the Committee on Resources.

By Mr. BEREUTER:

H.R. 2502. A bill to amend the Internal Revenue Code of 1986 to reduce estate and gift tax rates, and for other purposes; to the Committee on Ways and Means.

By Mr. COLLINS (for himself, Mr. LEWIS of Georgia, Ms. JACKSON-LEE of Texas, Mr. ROGERS of Kentucky, Ms. LEE, Mr. CONYERS, Mr. ENGLISH, and Mr. FOLEY):

H.R. 2503. A bill to amend the Internal Revenue Code of 1986 to provide that tax attributes shall not be reduced in connection with a discharge of indebtedness in a title 11 case of a company having asbestos-related claims against it; to the Committee on Ways and Means.

By Mr. DAVIS of Illinois:

H.R. 2504. A bill to amend the Higher Education Act of 1965 to improve the opportunity for Federal student loan borrowers to consolidate their loans at reasonable interest rates; to the Committee on Education and the Workforce.

By Ms. DELAURO:

H.R. 2505. A bill to amend the Higher Education Act of 1965 to permit refinancing of student consolidation loans, increase Pell Grant maximum awards, and for other purposes; to the Committee on Education and the Workforce.

By Mr. ENGEL (for himself, Mrs. KELLY, Mr. OLVER, Mr. KIRK, Mr. MCGOVERN, and Mr. TOWNS):

H.R. 2506. A bill to provide for the establishment of the Kosovar-American Enterprise Fund to promote small business and microcredit lending and housing construction and reconstruction for Kosova; to the Committee on International Relations.

By Ms. HOOLEY of Oregon:

H.R. 2507. A bill to amend the Public Health Service Act to provide for a public response to the public health crisis of pain, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. INSLEE (for himself, Mr. SMITH of Washington, Mr. DICKS, Mr. MCDERMOTT, and Mr. LARSEN of Washington):

H.R. 2508. A bill to prohibit the Department of Energy from disposing low-level radioactive waste in certain landfills; to the Committee on Energy and Commerce.

By Mr. SAM JOHNSON of Texas:

H.R. 2509. A bill to amend the Internal Revenue Code of 1986 to provide for capital gains treatment for certain termination payments received by former insurance salesmen; to the Committee on Ways and Means.

By Ms. LEE:

H.R. 2510. A bill to designate the facility of the United States Postal Service located at 2000 Allston Way in Berkeley, California, as the ''Maudelle Shirek Post Office Building''; to the Committee on Government Reform.

By Mr. MICHAUD:

H.R. 2511. A bill to amend title 10, United States Code, to direct the Secretary of Defense to provide veterans who have a 100 percent service-connected disability with space-available travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces; to the Committee on Armed Services.

By Mr. SWEENEY:

H.R. 2512. A bill to establish a realistic, threat-based allocation of grant funds for first responders; to the Committee on the Judiciary.

By Mr. THOMPSON of California (for himself, Mrs. TAUSCHER, Mr. SANDLIN, Ms. WOOLSEY, Mr. ISRAEL, Mr. BOSWELL, Mr. BERRY, Mr. CASE, Mr. MATSUI, Mr. BISHOP of Georgia, Mr. FARR, and Mrs. CAPPS):

H.R. 2513. A bill to amend the Internal Revenue Code of 1986 to provide for the immediate and permanent repeal of the estate tax on family-owned businesses and farms, and for other purposes; to the Committee on Ways and Means.

By Mr. WEXLER (for himself, Mr. STARK, Mr. WAXMAN, Mr. BROWN of Ohio, Mr. FRANK of Massachusetts, Mr. NADLER, Mr. CONYERS, and Mr. GRIJALVA):

H.R. 2514. A bill to freeze and repeal portions of the tax cut enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 and to apply savings therefrom to a comprehensive Medicare outpatient prescription drug benefit; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. WILSON of New Mexico (for herself, Mr. GREEN of Texas, Mr. PICKERING, Mr. DINGELL, Mrs. CUBIN, Mr. CONYERS, Mr. SHADEGG, Mr. MARKEY, Mr. PITTS, Mr. BOUCHER, Mr. WALDEN of Oregon, Ms. ESHOO, Mr. TERRY, Mr. STUPAK, Mr. PENCE, Ms. MCCARTHY of Missouri, Mr. FRELINGHUYSEN, Mr. STRICKLAND, Mr. MCINNIS, Mrs. CAPPS, Ms. SCHAKOWSKY, Mr. RODRIGUEZ, Mr. BACA, Mr. FRANK of Massachusetts, Mr. CRAMER, Mr. SKELTON, and Mr. LANGEVIN):

H.R. 2515. A bill to prevent unsolicited commercial electronic mail; to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ROHRABACHER (for himself and Mr. LOBIONDO):

H. Con. Res. 222. Concurrent resolution expressing the sense of the Congress that a commemorative postage stamp should be issued in honor of the United States merchant marine; to the Committee on Government Reform.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

110. The SPEAKER presented a memorial of the Legislature of the State of Hawaii, relative to Senate Concurrent Resolution No. 176 memorializing the United States Congress to discontinue closures of U.S. military bases in the State of Hawaii; to the Committee on Armed Services.

111. Also, a memorial of the Senate of the State of Hawaii, relative to Senate Resolution No. 124 memorializing the United States Congress to discontinue closures of U.S. military bases in the State of Hawaii; to the Committee on Armed Services.

112. Also, a memorial of the General Assembly of the Commonwealth of Pennsylvania, relative to House Resolution No. 115 memorializing the Congress of the United States to commend President Bush's leadership in his effort to protect the United States against Saddam Hussein; and to express support and appreciation for the armed forces engaged in the operation; to the Committee on Armed Services.

113. Also, a memorial of the House of Representatives of the State of Kansas, relative to House Resolution No. 6027 memorializing the United States Congress to fund the F/A-22 Raptor Program; to the Committee on Armed Services.

114. Also, a memorial of the General Assembly of the State of Rhode Island, relative to House Resolution 2003-H 5201 memorializing the Congress of the United States to block the implementation of rules signed by the United States Environmental Protection Agency on December 31, 2002, which would weaken the New Source Review provision of the Clean Air Act; to the Committee on Energy and Commerce.

115. Also, a memorial of the House of Representatives of the State of Hawaii, relative to House Resolution No. 30 memorializing the United States Congress that the Speaker educate and sensitize members of Congress on the circumstances of the internment of civilians during World War II; to the Committee on the Judiciary.

116. Also, a memorial of the Senate of the State of Hawaii, relative to Senate Resolution No. 69 memorializing the United States Congress to support the passage of S. 68 to improve benefits for certain Filipino veterans of World War II; to the Committee on Veterans' Affairs.

117. Also, a memorial of the Senate of the State of Hawaii, relative to Senate Resolution No. 70 memorializing the United States Congress to support the passage of H.R. 664, to improve benefits for Filipino veterans of World War II and the surviving spouses of those veterans; to the Committee on Veterans' Affairs.

118. Also, a memorial of the General Assembly of the Commonwealth of Pennsylvania, relative to House Resolution No. 106 memorializing the Congress of the United States to impose a tariff on the importation of milk protein concentrates; to the Committee on Ways and Means.

119. Also, a memorial of the General Assembly of the Commonwealth of Pennsylvania, relative to House Resolution No. 38 memorializing the Congress of the United States to continue to grant pension moneys and Individual Retirement Accounts favorable tax treatment and to repeal the provisions of the 2001 tax relief legislation which impede such favorable treatment; to the Committee on Ways and Means.

120. Also, a memorial of the Legislature of the State of Texas, relative to Senate Concurrent Resolution No. 6 memorializing the United States Congress to amend the Internal Revenue Code of 1986 to provide that the volume cap for private activity bonds not apply to bonds for water and wastewater facilities; to the Committee on Ways and Means.

121. Also, a memorial of the Legislature of the State of Alaska, relative to Legislative Resolve No. 8 memorializing the United States Congress to support for President George W. Bush as this nation is engaged in combat; jointly to the Committees on Armed Services and International Relations.

122. Also, a memorial of the House of Representatives of the Commonwealth of Massachusetts, relative to a Resolution memorializing the United States Congress that the Massachusetts House of Representatives supports the efforts of the President, as Commander in Chief, in the conflict against Iraq; jointly to the Committees on International Relations and Armed Services.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 7: Mr. LEACH, Mr. HOSTETTLER, Mr. TURNER of Ohio, Mr. CRENSHAW, Mr. REGULA, Ms. HOOLEY of Oregon, and Mr. CULBERSON.

H.R. 33: Mr. EVANS.
H.R. 49: Mr. GILLMOR and Mrs. BLACKBURN.
H.R. 58: Mr. GEORGE MILLER of California, Mrs. DAVIS of California, and Mr. GREEN of Texas.
H.R. 236: Mr. MARKEY, Mr. BISHOP of New York, Mr. LAMPSON, Mr. CRAMER, and Mr. DEFAZIO.
H.R. 245: Mr. BALLANCE.
H.R. 260: Ms. LINDA T. SANCHEZ of California, and Mr. VAN HOLLEN.
H.R. 290: Mr. KING of New York, Mr. FILNER, Mr. WALSH, and Mr. REYES.
H.R. 296: Mr. WOLF and Mr. TERRY.
H.R. 303: Mrs. BONO and Mr. SHUSTER.
H.R. 339: Mr. CALVERT and Mr. DOOLITTLE.
H.R. 371: Ms. ESHOO.
H.R. 434: Mr. HALL.
H.R. 490: Mr. LEVIN.
H.R. 721: Ms. ESHOO.
H.R. 761: Mr. RYAN of Ohio.
H.R. 785: Mr. GUTIERREZ, Ms. ESHOO, and Mr. SANDERS.
H.R. 814: Mr. WELDON of Pennsylvania, Mr. DOYLE, Mr. PRICE of North Carolina, Mr. WATT, and Mrs. WILSON of New Mexico.
H.R. 833: Mrs. MYRICK.
H.R. 850: Mr. BOOZMAN.
H.R. 854: Ms. KAPTUR.
H.R. 872: Mr. GRAVES.
H.R. 879: Mr. WAMP and Mr. LUCAS of Kentucky.
H.R. 906: Mr. KENNEDY of Minnesota, Mr. CALVERT, Mr. EHLERS, Mr. REHBERG, Mr. LOBIONDO, Mr. SIMMONS, Mr. BOEHLERT, and Mr. JOHNSON of Illinois.
H.R. 919: Mr. LAHOOD and Mr. GILCHREST.
H.R. 941: Mr. PETERSON of Minnesota.
H.R. 953: Mr. LAHOOD.
H.R. 992: Mr. AKIN and Mrs. MYRICK.
H.R. 993: Mr. AKIN and Mrs. MYRICK.
H.R. 994: Mr. AKIN and Mrs. MYRICK.
H.R. 1002: Mr. SANDERS.
H.R. 1005: Mr. JANKLOW.
H.R. 1063: Mr. BRADY of Texas, Ms. CARSON of Indiana, and Mr. WILSON of South Carolina.
H.R. 1078: Mr. SOUDER and Mr. RUSH.
H.R. 1093: Mr. RANGEL.
H.R. 1097: Ms. LORETTA SANCHEZ of California, Mr. FROST, and Ms. NORTON.
H.R. 1157: Mr. MICHAUD.
H.R. 1196: Mr. EMANUEL and Mr. MICHAUD.
H.R. 1268: Mr. PAYNE and Mr. SANDERS.
H.R. 1315: Mr. WU, Mr. DUNCAN, and Mr. SULLIVAN.
H.R. 1354: Mr. PLATTS.
H.R. 1385: Ms. MCCARTHY of Missouri, Mr. PITTS, Mr. BACHUS, and Mr. ROTHMAN.
H.R. 1409: Mr. RENZI.
H.R. 1477: Mr. EVANS and Mr. BARTLETT of Maryland.
H.R. 1499: Mr. FRANK of Massachusetts.
H.R. 1508: Mrs. MALONEY, Mr. BELL, Mr. FRANK of Massachusetts, Mr. RUSH, Ms. SOLIS, Mr. RYAN of Ohio, Mr. STARK, and Mr. LYNCH.
H.R. 1517: Mr. MANZULLO.
H.R. 1530: Mr. LATHAM and Mr. LEACH.
H.R. 1567: Mr. BRADY of Texas.
H.R. 1639: Mr. HINCHEY and Mr. GEORGE MILLER of California.
H.R. 1653: Mr. WHITFIELD, Mr. MORAN of Kansas, Mr. GIBBONS, and Mr. BROWN of South Carolina.
H.R. 1676: Ms. LINDA T. SANCHEZ of California.
H.R. 1708: Mr. BURNS.
H.R. 1747: Mr. GUTIERREZ.
H.R. 1749: Mr. MORAN of Virginia.
H.R. 1754: Mr. FOLEY.
H.R. 1769: Mr. MILLER of Florida, Mr. COSTELLO, Mr. HOLDEN, and Ms. KILPATRICK.
H.R. 1784: Mr. COOPER and Mr. PICKERING.
H.R. 1813: Ms. ROYBAL-ALLARD, Mr. CUNNINGHAM, and Mr. FILNER.
H.R. 1819: Mr. CASE, Ms. CORRINE BROWN of Florida, and Mr. TERRY.
H.R. 1914: Mr. KING of Iowa, Mrs. MYRICK, Mr. SIMMONS, and Mr. BARTLETT of Maryland.
H.R. 1951: Mr. EMANUEL and Mr. PETERSON of Minnesota.
H.R. 2011: Ms. ROYBAL-ALLARD, MR. SHIMKUS, Mr. WAXMAN, Mr. VISCLOSKY, Mr. MCNULTY, and Mr. PETERSON of Minnesota.
H.R. 2022: Mr. LEACH, Mr. GRIJALVA, and Mr. PLATTS.
H.R. 2096: Mr. HOEFFEL, Mr. RAMSTAD, Mr. SOUDER, Mr. SENSENBRENNER, Mr. PAUL, Mr. FILNER, Mr. WEXLER, Mr. FRANK of Massachusetts, Mr. JONES of North Carolina, and Mr. WALSH.
H.R. 2134: Ms. KAPTUR.
H.R. 2154: Mr. DEAL of Georgia.
H.R. 2193: Mr. FRANK of Massachusetts and Mrs. TAUSCHER.
H.R. 2224: Mr. WOLF and Mr. CALVERT.
H.R. 2242: Mr. BLUMENAUER.
H.R. 2260: Mr. LANTOS, Mrs. BIGGERT, Mr. CROWLEY, Mr. BLUMENAUER, Mr. SIMMONS, Mr. PASTOR, Mr. CANNON, and Mr. NADLER.
H.R. 2318: Mr. GEORGE MILLER of California.
H.R. 2351: Mr. NETHERCUTT and Mr. CANNON.
H.R. 2418: Ms. NORTON.
H.R. 2440: Mr. CALVERT and Mr. VAN HOLLEN.
H.R. 2462: Mr. STARK, Mr. RANGEL, Mrs. JONES of Ohio, and Mr. TIERNEY.
H.R. 2464: Mr. FERGUSON, Mr. MCNULTY, Mr. FROST, and Mr. SHERMAN.
H.R. 2475: Ms. LEE.
H.R. 2478: Mr. OLVER.
H.R. 2494: Mr. RAMSTAD.
H.J. Res. 59: Mr. DELAHUNT and Mr. SHAYS.
H. Con. Res. 99: Mr. SANDERS.
H. Con. Res. 202: Mr. GILCHRIST, Mrs. CAPPS, Mr. GREEN of Texas, Mrs. TAUSCHER, Mr. BLUMENAUER, Mr. NADLER, Mr. PALLONE, Mr. LANTOS, Mr. VAN HOLLEN, Mr. MICHAUD, Mr. THOMPSON of California, Ms. ESHOO, Mr. DELAHUNT, Mr. KIND, Mr. MARKEY, Mr. CARDOZA, and Mr. CASE.
H. Con. Res. 211: Mr. GILLMOR, Mr. AKIN, Mr. BALLENGER, Mr. BELL, Mr. MCCOTTER, Mr. RAHALL, Mr. ENGEL, Mr. LANTOS, Mr. WOLF, Mr. WEXLER, Mr. FLAKE, Mr. SOUDER, and Mr. KIRK.
H. Res. 141: Mr. GRIJALVA.
H. Res. 198: Mr. MCCOTTER, Mr. MCHUGH, Mr. CHOCOLA, and Mr. CANTOR.
H. Res. 254: Mr. TERRY.
H. Res. 259: Mr. FRANK of Massachusetts.
H. Res. 267: Mr. REHBERG and Mr. BOOZMAN.
H. Res. 278: Mr. RODRIQUEZ.

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PROCEEDINGS AND DEBATES OF THE *108th* CONGRESS, FIRST SESSION

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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today, once again, we are pleased to have as our guest Chaplain the Reverend Charles V. Antonicelli, St. Joseph's Roman Catholic Church in Washington, DC.

PRAYER

The guest Chaplain offered the following prayer:

Heavenly Father, we praise Your name today. With the Psalmist we proclaim, ''Praise the Lord, my soul. I will praise the Lord all my life; I will sing praise to my God while I live.''

We thank You for the gift of life and for the talents and abilities You have given us. Help us, Lord, to put them to good use so that Your glory might shine through us.

Bless the men and women of this Senate as they seek to do Your will this day, bless their staff members who do so much work behind the scenes, and bless the pages who serve in this Chamber. Help them all to know the importance of their work here and let them know Your goodness to them.

We ask this in Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today the Senate will be in a period for morning business until 10 a.m. At 10 a.m., the Senate will resume consideration of S. 1, the prescription drug benefits bill. Chairman GRASSLEY will be in the Chamber at that time and will be prepared to offer the necessary changes to the legislation. It is then hoped we will begin an orderly consideration of amendments.

I know there are a number of Members on both sides of the aisle considering offering amendments. I encourage Senators to work with the chairman and ranking member, the managers of the bill, to schedule consideration of those amendments. As amendments are offered, we will begin scheduling votes in order to make progress on this bill over the course of this week.

As I had laid out previously, we will finish the legislation prior to the July 4 recess. I look forward to substantive debate as we go forward in addressing this bill.

We will have rollcall votes throughout today's session. For the information of all Senators so they can plan for the next week and a half, we will have votes on Friday and next Monday on this bill. We have had two good days of substantive opening statements where Members have been allowed to discuss their views on this important program of Medicare, how we can best strengthen it, how we can best improve it, and at the same time add a substantial prescription drug benefit in a way that can be sustained over the next 10, 15, 20 years, where we know there is going to be this unprecedented demographic shift of doubling of the number of seniors over the next 30 years.

So I am very pleased with the bipartisan progress we have made to date. I am pleased that we will be able to go with amendments early in the course of today and look forward to addressing a number of those amendments over the course of the day.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Nevada is recognized.

Mr. REID. As we all knew yesterday, the problem with not having amendments was that CBO had not completed scoring on the Medicare bill. It is my understanding there is scoring on the bill and Senators GRASSLEY and BAUCUS will offer either some technical changes or maybe a substitute to comply with mistakes made by staff during the very busy weekend they had.

Is that the understanding of the leader?

Mr. FRIST. Mr. President, that is generally my understanding. Again, for our colleagues, in order for the process to start and to allow us to really begin the amendment process, we have to have what is called a scoring from CBO. We were in touch with them at 8:30 and 9 this morning. It is my understanding we will have that scoring, but before I can say anything further with absolute certainty, we will know something in the next 30 minutes or so. Once we get that scoring that is both in the aggregate but also line by line—and we did not have a line by line at 7 this morning, and people are working around the clock on it, but once we have that line by line, we will be able to go directly to the managers' package and then also directly to the amendments. I am very hopeful that at 10 this morning that process will start.

Mr. REID. Mr. President, I say to the leader, now that we have had people make a lot of opening statements, we are waiting to offer amendments. Senator STABENOW is going to offer our first amendment, following whatever the managers decide to do with their opening amendments.

So we are anxious to go to work, and hopefully we can do that as soon as possible. However, as we all know, it cannot be done until the scoring is complete. Otherwise, a point of order

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

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would be available against any amendment. So we look forward to getting into this as quickly as we can.

Mr. FRIST. Again, all of this demonstrates that everybody is working as hard as they can to address this situation in a reasonable, step-by-step fashion. So I am very pleased with where we are today. Both sides are very anxious to begin the amendment process, which is very good because all too often people push their amendments off until the last minute and we have many amendments flowing. In this particular case, we have encouraged people to come forward and let the managers know what amendments they plan to offer and then talk about the amendments so they can adequately plan. Indeed, that is under way.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will begin a period for morning business until the hour of 10 a.m., with the time equally divided between the two leaders or their designees.

The Senator from the great State of New Hampshire.

ORDER OF PROCEDURE

Mr. GREGG. I ask unanimous consent that at 10, I be recognized to speak on the prescription drug/Medicare reform bill for up to half an hour.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. Mr. President, reserving the right to object.

Mr. REID. Mr. President, I was listening to someone else speak. What did my friend from New Hampshire say?

Mr. GREGG. I am seeking the right of recognition at 10 to speak on the Medicare bill for half an hour.

The PRESIDING OFFICER. Is there objection?

Mr. REID. My only question would be, and I say to my friend, I do know that we have Senator BOND and Senator MIKULSKI who asked to be recognized as in morning business, and if we do not go on the—well, I really do not see any problem with having debate on that.

Mr. GREGG. How long does Senator MIKULSKI wish to speak?

Mr. REID. She is in the Chamber. I did not see her behind me.

How long does the Senator wish to speak?

Ms. MIKULSKI. Speaking to the Senator through the Chair, my remarks are about 5 or 7 minutes. I might add, there is a crisis in national service with volunteers. Senator BOND and I have a legislative solution. That is why we wanted to speak in morning business.

The corporation is blaming Congress when they, my colleagues would be interested to know, oversubscribed by 20,000 volunteers. So Senator BOND wanted to share our fix with the people. I could do this in about 5 or 6 minutes.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Reserving the right to object, I do not see any problem at all having the Senator from New Hampshire begin his statement when the hour of 10 arrives. It is indicated that the two Senators will complete their statements prior to that time. I ask that following his statement, a Democrat, if one wishes to speak, be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. Reserving the right to object, my understanding is it would be for debate only until the managers come back to the Chamber. May we have a general understanding that this is for debate only until the managers come?

Mr. REID. I understood from the Senator from New Hampshire that that was part of his request, that it would be for debate only.

Mr. GREGG. That was not a part of the request, but if the leader wishes, I will make that part of the request.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New Hampshire? If not, it is so ordered.

Who seeks time? The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I wish to speak as in morning business.

The PRESIDING OFFICER. The Senator has that right.

Ms. MIKULSKI. I thank the Chair.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Ms. MIKULSKI. Mr. President, what a mess we have at the Corporation for National and Community Service. The Congress has funded 50,000 AmeriCorps volunteers, as we have year after year. But, guess what. The corporation has enrolled 70,000 volunteers. It seems the corporation cannot count. As a result, there will be fewer volunteers this year.

Fortunately, because of a bipartisan collegial relationship on the VA/HUD subcommittee, Senator BOND and I are going to fix this problem for the volunteers and for the communities they serve. We are introducing something called the Strengthen AmeriCorps Program Act, and, frankly, it gives AmeriCorps the fix it needs to straighten out the mess they created.

This bill is simple and straightforward. It gives the AmeriCorps Program the flexibility within the current funding for 2003 so there can be 50,000 AmeriCorps volunteers this year.

I have been reading in press reports, but most of all I have been getting calls from constituents and other Senators who support AmeriCorps. What are they concerned about? They are concerned that it appears there will be cuts by as much as 15,000 volunteers. I am concerned about that, too, and the effects on our communities and the young people who serve them while earning a scholarship for college.

I believe the public has a right to know what happened. So I want to explain to advocates and my colleagues what is happening and why the corporation has cut AmeriCorps. Congress has not cut AmeriCorps. It is because there is a persistent pattern of mismanagement at AmeriCorps. The corporation has over-enrolled 20,000 volunteers. When you make a mistake of 20,000 it is not a mistake, it is mismanagement. Two thousand would have been a mistake; 20,000 is mismanagement. The corporation has violated the law, mismanaged taxpayers dollars, and created uncertainty for our volunteers and our communities.

In April, at the VA/HUD subcommittee, I called on the National Service CEO, Dr. Leslie Lenkowsky, to fix the problem. He promised he would do that by June 1. But, guess what. He called on May 30 and said he just could not do it. Then out came the shrinking of the number of volunteers, and out came the blaming on Congress. Instead of fixing the problem, he blamed Congress. I wish the corporation was as good at accounting as it is blaming. They had 10 weeks to get their act together and they did not do it.

I was very stern with Dr. Lenkowsky and the Board of Directors at the hearing. I must say I thank the Board Chairman, Mr. Stephen Goldsmith, for responding constructively to the criticism of myself and other Members of the Congress. They took it to heart. They are beginning to reform national service. They are doing due diligence. They are putting more time into the oversight than, frankly, Dr. Lenkowsky.

Dr. Lenkowsky is the Chief Executive. He has failed to respond to the situation, failed to respond to the subcommittee request, failed volunteers, failed communities, and in the schools I went to when you get that many ''Fs'' you just flunk out.

Today, I am asking Dr. Lenkowsky to resign. I am really sorry we have gotten to this point, but we cannot continue this. I think if we are going to have a national service program, we need to have a national service program that serves the Nation and follows the directives of the Congress.

We have worked on a bipartisan basis in this subcommittee year after year after year. We saved this program. It is usually zeroed out in the House. It is a gimmick to get us to rescue it. And now, once again, thanks to the leadership and constructive relationship with Senator BOND, we are going to strengthen AmeriCorps. Without our cooperation and leadership at VA/HUD, AmeriCorps wouldn't even be here. So

we need to pass the Strengthen AmeriCorps Program quickly. It is an accounting fix that is certified and approved by OMB and GAO.

I support our President's call to national service. I want to work with President Bush in a bipartisan way to take national service into a new century. That is why I have worked with Senator MCCAIN, Senator BAYH, and others to do that. Most of all, I want to work with my colleague Senator BOND, once again, as we always have, to sustain national service. Now we have legislation to clean up the mess that the corporation had. But the only way I think the corporation is going to get any momentum is if its current executive either steps aside or steps down.

I hope Congress moves this bill in a matter of days. The Nation needs it because the volunteers need it and the communities need the volunteers.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, it is a real pleasure today to rise to join my colleague and good friend, the Senator from Maryland, in introducing legislation that will strengthen the Corporation for National Community Service, the AmeriCorps Program.

I assure my colleagues the Strengthen AmeriCorps Act of 2003 is a bipartisan bill introduced with Senator MIKULSKI as ranking member, and the chair of the Appropriations Committee and members of the authorizing committee. The Senator from Maryland and I believe the bill will not only address some of the corporation's accounting problems but, more importantly, it will protect and expand volunteer service opportunities across the Nation.

Many of my colleagues—I wouldn't be surprised if all of our colleagues—have heard from their constituents and the media in recent weeks about the potential cuts to the AmeriCorps Program. This bill addresses, to the best extent we can, those concerns—some have longstanding concerns about the management and financial problems of the corporation—by creating a budgeting mechanism that ensures the corporation has the funds needed to pay educational awards.

Under this bill, the corporation would be able to enroll about 50,000 AmeriCorps members without the need for additional funds. Looking at the allocation that is available for the VA/HUD subcommittee, additional funds are not a very great prospect at this time, I regret to say. We have to deal with what OMB has given us and the allocations we received from our distinguished and all-knowing senior colleagues on the Appropriations Committee.

It is truly unfortunate—my colleague has already referred to it—that there has been a plague of significant and longstanding management problems, neglected for many years, in the corporation. One notable result of this neglect has been the inappropriate and illegal practice of enrolling more AmeriCorps members than the corporation had budgeted. One would think a group of dedicated public servants running the AmeriCorps Program could count. They have not.

Last year, the corporation overenrolled the AmeriCorps Program by more than 20,000 people. They have done it year after year, the year before and the year before that and the year before that. They came to the VA/HUD and Independent Agencies Appropriations Committee to bail them out. We were able to provide $43 million more than requested in the 2003 appropriations bill to meet the needs of these members and more. But because of continued poor budgeting practices, the VA/HUD subcommittee also approved another $64 million in deficiency appropriations in the 2003 supplemental appropriations to cover additional shortfalls.

When the overenrollment problem first surfaced, we asked the GAO and the corporation's inspector general to review the accounting practices of the corporation and its internal controls to determine the causes of this problem. Further, we asked the GAO's Comptroller General to review the corporation's underlying statute to determine whether the corporation's practice complied with the law, and other fiscal laws such as the Anti-Deficiency Act.

Both the General Accounting Office and the IG found the corporation did not comply with the law by incorrectly recording its funding obligation. GAO identified several factors that led to the corporation's incorrect accounting practice. The factors included inappropriate obligation practices, little or no communication among key corporation executives, too much flexibility given to grantees regarding enrollments, and unreliable data on the number of AmeriCorps participants.

That is the official word. My unofficial word is they can't count.

GAO also found that the corporation was not following the law in recording its legal liabilities.

This bill responds to the problems identified by the auditors and allows the corporation to maximize the number of AmeriCorps enrollees that can participate in the program.

In short, the bill allows the corporation to fund AmeriCorps grants based on the estimate of the number of members who will likely complete and use their education award to ensure that the AmeriCorps Program is accountable to taxpayers and the volunteers.

It is our expectation the corporation will use conservative assumptions in developing its funding formula. This is especially important since the corporation has repeatedly failed to meet funding obligations resulting in action by Congress to provide additional funding, including deficiency appropriations.

I serve notice here and now: Don't come back to us if you screw it up again. You are not going to get bailed out.

Further, because of poor data, the bill requires the central reserve fund to give the corporation an extra cushion in case the actual usage rate exceeds the assumption used in the formulary.

We believe we should pass this legislation as quickly as possible. It provides for clarification of the corporation in determining grant award allocations to its grantees in the States. Without this legislation, uncertainty and disagreement will delay and limit the enrollment of AmeriCorps volunteers.

Considering the demand and need for the program, we cannot afford to wait. We designed this legislation with significant input from the administration. This is one of the President's top priorities. It has, I can assure you, their undivided attention.

We think it is a reasonable and fair approach to the issue. It mitigates harm to the AmeriCorps Program in a manner that will ensure accountability and fiscal integrity.

Keeping in mind the problems identified by the auditors which led to the enrollee freeze last November, we designed this legislation to ensure that we do not repeat those past mistakes. The enrollee freeze was unfortunate. It was an avoidable mistake, if the corporation had properly managed and monitored its programs.

We need to put these enrollment issues behind us. This program has had a difficult and star-crossed history. It is unfortunate. And we are here in June revisiting the implementation of the program to ensure both accountability and credibility. We need to ensure the State and local programs are meeting both the program requirements and the community needs.

I will tell my colleagues the corporation has hired a very strong CFO in getting a handle on these problems. And they do have the full attention of not only the administration through OMB but GAO and the IG.

I urge my colleagues to support this legislation.

I ask unanimous consent that the bill I wish to introduce on behalf of myself, the Senator from Maryland, and Senators SPECTER, COLLINS, ALEXANDER, SANTORUM, and KENNEDY be held at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Mr. President, reserving the right to object, as the Senator knows, by holding the bill at the desk, it will not be referred to the committee of jurisdiction which I happen to chair, and which the Senator from Missouri is a member, as is the Senator from Maryland, and whose abilities I greatly respect. Obviously, I always have reservations about not having a bill referred to the proper committee of jurisdiction and have it step outside the proper process in the Senate, which is the bill should go to the committee of jurisdiction.

But I believe the Senators from Missouri and Maryland are addressing a critical problem, and one for which, as appropriators, they have a unique responsibility. This issue has to be resolved. I hope in resolving it we can also address issues such as the Corporation of National Service, which is a very strong organization, and which because of the mismanagement of these funds may be cut out of the funding process.

But I am not going to make the objection which logically a chairman should make to this type of request of holding it at the desk because I do think the Senators from Maryland and Missouri are doing very excellent work here, and it needs to be passed quickly. Therefore, I am willing to forego the committee of jurisdiction to get this bill through.

I congratulate Senators for bringing the matter to the attention of the Senate.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? Without objection, it is so ordered.

Mr. BOND. Mr. President, I express my deep appreciation to the chairman of the committee. We have shared this with the staff. But it was done on a very tight time schedule. I apologize to him for not being able to talk with him directly about it. I assure him it is a brief bill. If he has any questions, we will be happy to work with him.

I hope we can bring it up as quickly as possible because of the compelling nature of resolving this problem. If we can get it passed quickly, I will be happy to make a note of the particular organization in which he is interested and ensure that our friends at the Corporation for National Service know about the high priority the chairman of the authorizing committee places on this organization.

Ms. MIKULSKI. Mr. President, I, too, want to express my appreciation to the chairman of the HELP Committee, Senator GREGG. I think it is gracious of him to let us keep the bill at the desk knowing the urgency of the need to test it.

I think the point he raises about the need for regular oversight on national service is well taken. I look forward to participating in that hearing. I thank him for his courtesy and for his sensitivity to the urgency of the situation and his commitments regarding volunteers.

Mr. GREGG. Mr. President, if the Senator will yield, I will simply say I am always courteous to appropriators.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I understand there was a unanimous consent request that the Senator from New Hampshire be recognized. Is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. GREGG. Mr. President, if the Senator will yield, how much time does the Senator need? I would be happy to yield on my time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I express my appreciation to the Senator from New Hampshire.

PRESCRIPTION DRUG BENEFITS

Mr. DURBIN. Mr. President, we are in the midst of debating a historic measure on the floor of the Senate; that is, the prescription drug bill. This is an issue which Americans understand. Seniors on fixed incomes understand how difficult it is to fill those prescription drugs to stay healthy.

For 8 or 10 years, we have been struggling to find some way to give them a helping hand to pay for their prescription drugs. There have been a lot of different proposals. Some people said the way to do it is to eliminate Medicare altogether. Others have said the best thing to do is put it, as appropriate, in Medicare.

What we have coming before us from the Senate Finance Committee by Senators GRASSLEY and BAUCUS is an effort to create a prescription drug benefit for seniors. To my mind, it falls short of what we need.

Isn't it interesting that in the course of this debate about this new bill there is one group which we have not heard from? Why is it the pharmaceutical companies and drug companies haven't said a word about the new prescription drug bill? I think the answer is obvious. Because this new prescription drug bill offered by Senators GRASSLEY and BAUCUS has no effort in it—none whatsoever, as far as I am concerned—to keep drug prices under control.

If you ask any family in America, or any senior, they will tell you the cost of prescription drugs has increased 10 to 20 percent a year. If you are a drug company, and the Federal Government says it is going to help your customers pay for the drugs, but they don't have to control your prices at all, you don't have to keep them under control, then, frankly, that is the best outcome you could hope for. You can continue to increase prices and know the Federal Government is going to pick up a portion of the tab.

Of course, if you are a customer buying prescription drugs, it is going to be an elusive target. Even though the Federal Government is offering you some help in paying for prescription drugs, if you do not do anything to contain the cost of prescription drugs, then ultimately it is going to go far beyond the family resources.

I stepped back and asked, Is there a better way to approach this? One that achieves the result, which is to help seniors pay for prescription drugs, and does it in a sensible way? I sat down and said: Take the $400 billion we allocated for this program and put into it some price competition. For example, in the Veterans' Administration we have established a formulary where they have said for 2,300 drugs, we will save 40 percent to 60 percent of the cost. If the drug company wants to do business with the Veterans' Administration, they have to bring down the prices. Let us apply the same principle to our use of the Medicare recipients and their drug prices.

I brought into question having this kind of formulary to reduce the cost. Then I brought in a proposal by Senators SCHUMER and GREGG that says let us encourage more generic drugs which are cheaper and just as effective. And then I added an element, which the Senator from Michigan, who is on the floor, has been pushing for and will offer as an amendment.

Why wouldn't we let the Medicare Program itself offer a prescription drug benefit? We know they have no profit margin. We know their cost of administration is lower than any drug company. So put those three things together, take the $400 billion, and what can you achieve?

Let me tell you what you can achieve. You can guarantee—guarantee; which this bill does not do—a $35 monthly premium for the seniors who volunteer to sign up for the program. You can eliminate the $275 deductible, which is part of the bill that is on the floor. And instead of a 50/50 split on the cost of prescription drugs, you can move to a 70-percent Government pay, 30 percent being paid by the seniors, and you can give full coverage. You do not have the gaps in coverage that are part of the existing bill on the floor.

How do you achieve this? Because, frankly, you keep the costs under control. You have generic drugs as part of it. You have Medicare as part of the competition. And what period of time would the $400 billion cover? We are waiting for an official CBO number, but we believe it would be a 5-year period. Then, at the end of 5 years, you can reauthorize the program, decide whether it has worked or whether it has not worked.

I think this approach, which we call Medisave, is much more preferable to the Grassley-Baucus bill because it does say to seniors: We are going to give you a better helping hand, 70 percent being paid by the Federal Government, no deductible, and a guaranteed $35 monthly premium. And the way we will achieve it is by reducing the cost of the drugs, as we do in the Veterans' Administration today. I think that is a sensible way to approach it.

To take the Grassley-Baucus approach is to open up the possibility that the drug costs will just continue to skyrocket 10 and 20 percent a year. And in that situation, the seniors will not be able to keep up with them.

The Senator from New Hampshire was kind enough to yield to me until 10:10. I see my friend, the Senator from Michigan, has come to the floor. If the Senator from New Hampshire would not mind, I will yield the remaining time I have until 10:10 to my colleague from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, I thank my friend from Illinois. I commend the Senator for his substitute. What the Senator is talking about is exactly what the seniors of America are asking us to do to make sure they have a comprehensive prescription drug benefit under Medicare which they know will be there, which is stable, dependable, where you can choose your own doctor no matter where you live in the country; that whether you live in the upper peninsula of Michigan or Chicago, IL, you will have an opportunity to receive the health care you need and deserve under Medicare.

By simply expanding that to include prescription drugs, and then coupling that with the ability to keep prices down, I believe this is the best possible approach to come before the Senate—in fact, the U.S. Congress. I am hopeful that colleagues, when this comes to the floor, will rally around this plan.

What Senator DURBIN has done is put together a plan designed for seniors, not designed for pharmaceutical companies or insurance companies, which is, unfortunately, why this process has become so complicated. For example, people look at me with bewilderment when I am explaining that for the private sector plans in their region, if there are two or more, they would have to take one. But if there isn't, they could have a backup, but then they would have to drop it and go back to an insurance plan. When I explain that plan, they scratch their heads and say: Why are you doing that?

Well, unfortunately, we have a plan put forward—and I have to say it is a valiant effort by many people to try to come to some consensus, and I appreciate that—but the reality is, it is designed much more to benefit the pharmaceutical companies in particular than it is our seniors.

Why is our approach not supported by the pharmaceutical industry? For one simple reason: If we have all 40 million seniors and people with disabilities in one insurance plan, they can negotiate a big group discount, which is what they should be able to do. They should be able to come together, as one insurance plan, and negotiate a group discount. As Senator DURBIN indicated, when you do that, you are not paying retail. In fact, the Federal Government does that on behalf of our veterans through the VA, and we are able to get about a 40-percent discount, which is a terrific deal for the veterans of this country. I am proud we do that, but why shouldn't that same opportunity be available for every senior, for every person with a disability under Medicare?

So I just wanted to rise to congratulate the Senator's vision on putting forward the right plan that makes sure that, in fact, our seniors know they can count on a $35 premium. They would also not have to have a deductible. Seventy percent, as I understand, of their prescription drug costs would be paid for. There would be no gap in coverage for the last few months of the year. Or if you found yourself getting to a point where you reached the end of your coverage, and then, unfortunately, your doctor indicates you have an even more serious illness to deal with, you would not be left wondering what to do to pay for that treatment and medication.

This plan does what our seniors in this country are asking for. I believe it does what we should be doing for them. It is what they need, and it is what they deserve. It is what they have been waiting for.

I commend the Senator from Illinois for putting forward this option of which I encourage all of our colleagues to come together to embrace, standing together to achieve a bipartisan victory that is in the best interest of our American seniors.

TAX RELIEF, SIMPLIFICATION, AND EQUITY ACT OF 2003

Mr. SMITH. Mr. President, I ask the Chair to lay before the Senate a message from the House with respect to H.R. 1308; that the Senate disagree to the House amendments to the Senate amendments, agree to the request for a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

Mr. REID. Reserving the right to object, I believe this is on the Lincoln child tax credit legislation; is that true?

Mr. SMITH. I believe that is true.

Mr. REID. I am glad this is happening. I hope the message to the Republican leaders, at least from us, is that it will be a real conference and that they will work toward resolving this most important issue. I have no objection.

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

The Presiding Officer said before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendments to the Senate amendments to the bill (H.R. 1308) entitled ''An Act to amend the Internal Revenue Code of 1986 to end certain abusive tax practices, to provide tax relief and simplification, and for other purposes'', and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House.

For consideration of the House amendments to the Senate amendments to the House bill, and modifications committed to conference: Mr. Thomas, Mr. DeLay, and Mr. Rangel.

The Presiding Officer (Mr. ALEXANDER) appointed Mr. GRASSLEY, Mr. NICKLES, Mr. LOTT, Mr. BAUCUS, and Mrs. LINCOLN conferees on the part of the Senate.

The PRESIDING OFFICER. The Senator from the great State of Nevada.

Mr. REID. Mr. President, the Senator from New Hampshire has been more than generous with his patience. I would ask, however, unanimous consent that the time until 11 o'clock be for debate only on this matter. I have spoken to the majority, and they are in agreement with that. So I ask the time until 11 o'clock be for debate only on the bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Has the bill been reported this morning?

The PRESIDING OFFICER. The Chair will now make that statement.

Mr. REID. Mr. President, my consent deals with the Medicare bill.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PRESCRIPTION DRUG AND MEDICARE IMPROVEMENT ACT OF 2003—Resumed

The PRESIDING OFFICER. Under the previous order, the hour of 10 a.m. having arrived, the Senate will proceed to the consideration of S. 1, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1) to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from New Hampshire.

Mr. GREGG. Mr. President, I rise to talk about an issue which we, as the Senate, are going to address for the next 2 weeks, which is the question of how to put in place a drug benefit and to reform the Medicare system so that it is more viable.

This is, obviously, the most significant piece of legislation in the area of spending on which any of us in this Congress will vote. In fact, in my years in Congress, this is the most significant piece of spending legislation I have ever seen because it represents the most dramatic expansion, the greatest expansion of an entitlement in our history; therefore, it needs to be done right. In my opinion, there are issues which need to be addressed and which we need to discuss in order to accomplish that.

To understand the issue and to put it in context, you have to go back to the beginning of the problem. And the beginning of the problem, I hate to say it, was when I was born—1946, 1947 through 1955. It was that postwar period, where America was full of itself, and our people were returning from the war, and we repopulated our country with the largest baby boom in the history of our country. That baby boom meant an explosion of people in our country, people who have contributed, I hope—people think immensely—over those years and decades since that

time. But in each decade, the postwar baby boom generation has moved forward, it has changed fundamentally, not only the demographics of the country but also the reaction of the country to various issues.

For example, in the 1950s, we had to build literally hundreds of elementary schools in order to accommodate this generation. In the 1960s, there was, of course, the great upheaval of social consciousness, which was driven primarily by the coming of age of the baby boom generation and their concerns about civil rights, about the war in Vietnam, about the rights of women.

So as this generation has moved through the tube of its time, there has been a bubble which has significantly changed all around them. Now that generation is headed for retirement and, as a result, our retirement systems which were put in place with a very appropriate social purpose of making sure that senior citizens were properly cared for, which arose out of the period of the Depression in the 1930s, where so many people suffered—I was not alive then, but history tells us and the people who experienced it tell us that this was a period of immense trauma—we as a culture decided we were wealthy enough and strong enough to make sure that never happened again to our seniors. So we put in place the Social Security system and the Medicare system as an effort to try to make sure seniors could live their final days of their retirement in dignity, financially and in health care.

These systems have been extraordinarily good systems for our Nation. But now as this generation heads into retirement, these systems are going to come under immense pressure. The whole concept of both of these systems was that there would be a pyramid where you would have a large number of people working and a smaller number of people retired, like a pyramid. So that the large number of people working could be paying into the retirement system and benefiting those people in retirement. So the pyramid would work as long as there was a larger working population than retired population.

The practical effect of the baby boom generation, the demographic effect, is that when we hit the retirement system, we go from a pyramid to basically a rectangle where essentially you will have about as many people working as retired.

For example, in 1950 there were 12.5 people working for every 1 person retired. This year, there is something like 3.3, 3.5 people working for every 1 person retired. By the time we hit 2030, there are going to be 2 people working for every 1 person retired. The number of people retired today is 40 million. The number of people who will be retired in the year 2030 will be 70 million, a 75 percent increase. So the system, which was structured to be a pyramid and has worked very well as a pyramid, simply won't work effectively as a rectangle. You can't have about as many people working, paying retirement benefits, as you have people taking those benefits because the practical effect of that is you would have to dramatically increase the taxes on working Americans in order to support nonworking retired Americans to a point where working Americans' lifestyles would be significantly reduced.

The debate today has to be put in the context of two fundamental issues: One, how do we benefit senior citizens with a reasonable drug program that is going to give them adequate drug care, adequate prescription drug opportunities; but, two—and we can't forget this issue in addressing the question—how do we make sure that in doing that, we don't set up a situation where the next generation of young people—these folks who are working as our pages, people who are in high school today, people who are in college today, people in their twenties today—don't end up with a tax burden that is so large that we significantly reduce the quality of their life because we have decided this year to give seniors a benefit which we cannot afford 5 or 10 years from now because there will be so many seniors who are retiring.

We have to keep in mind, as we go through this reform effort and the addition of a prescription drug benefit to Medicare, those two groups—seniors and young people who will have to pay the taxes, our children and grandchildren, in order to support that program.

This brings us to the question of what type of program should we have which can accomplish that. To begin with, we have to put in place a Medicare Program which is cost sensitive, which has in place marketplace forces which allow us to maintain a reasonable cost so that we don't have a growth rate in Medicare that is so great that it simply overwhelms the ability of working Americans to pay the taxes to support it.

We know, for example, we already have a $13.3 trillion unfunded liability in Medicare. We know, for example, that under the present Medicare system, the costs of Medicare are exceeding the income of Medicare by about 71 percent and that by 2026 the Medicare system will be insolvent under the present structure, insolvent because it has this huge unfunded liability as a result of the huge demographic group, the postwar baby boom generation, entering the system.

These are facts that cannot be changed. The people are alive, the baby boom generation exists, and we will retire. We will, therefore, be on the Medicare system and on the Social Security system.

We have to find some way to address the Medicare system in a manner which will allow us to make it affordable as we move into the outyears. This means putting some cost sensitivity into its structure. If we are going to add a new benefit to Medicare, we have to be sensitive that it does not at the same time create a massive new unfunded liability.

If, for example, we simply put on to the Medicare system a $330 billion new drug benefit, which was the proposal last year from someone—that was the number; today it is $400 billion—that $330 billion drug benefit over 10 years translates into a $4.6 trillion add-on in unfunded liability in the system, which just means you have to raise taxes by that much on working Americans, on our children and their children, in order to pay for it. So we have to be thoughtful about how we do this. As a parent and hopefully a future grandparent, I don't want to reduce the lifestyle of my children and their children and their ability to participate in the American dream simply to support me when I am retired.

What does this bill do? This bill has two fundamental problems, both of which go to the issue. First, it adds a $400 billion drug benefit, but it does it in a way that essentially says: We are going to take a lot of people who are already paying for their benefit, middle-income Americans, Americans who have worked and have obtained a retirement benefit, which includes a drug benefit, and we are going to move them from the private sector on to the public sector. We are essentially going to nationalize the drug delivery system for everybody who is over 65, whether they want it or not. That policy has some fundamental flaws.

What do we need as a drug benefit? What we need is to make sure that people who cannot afford to buy drugs today, people who are making the difficult decision between purchasing a meal or maintaining their residence and buying the drugs they need to be healthy, those folks who have to make that type of choice, that they have support, that they have a drug assistance program that helps them buy pharmaceuticals and assists them in a way that allows them to live a decent lifestyle without having to make terrible choices between the basics of life, such as food and housing versus their medical care.

We do need a drug benefit that does that, that takes care of the low-income individual who is not covered today by a drug benefit. And we need a drug benefit that says you don't have to spend your life savings in order to pay for your drugs. You don't have to wipe yourself out financially in order to be able to care for yourself physically as a result of your needs to purchase pharmaceuticals. So we need catastrophic coverage, where over a certain level you basically have an insurance program that comes in and pays your costs. But this bill doesn't do that.

What this bill does, as I mentioned, is it says to everyone that you shall have drug coverage, and it takes literally 40 percent of the seniors, as a conservative estimate, who presently have some sort of private coverage program and moves them onto the public coverage system. As a practical matter, in

doing that, it spends a lot of money but, more importantly, it creates a lot of outyear liability because it essentially says the Federal Government shall have a nationalized drug system for everybody over 65 which will be paid for by earning Americans who are in their twenties and thirties and trying to raise families. Whether or not they are wealthy, they are going to have this sort of drug benefit. That really doesn't make a whole lot of sense, in my opinion.

It would make much more sense if the drug benefit in the bill said something to the effect of, if you are a low-income individual and you don't qualify for a State program, which already gives you a drug benefit—which is Medicaid, basically—and your income is, say, under 200 percent of poverty—I'll just pick that as a number because I think that is a reasonable number—then you shall receive assistance in purchasing your prescription drugs. There are about 4 million to 5 million people in that category. There are 40 million seniors. In the category between those covered by Medicaid and those at 200 percent of poverty, there are approximately 4 million to 5 million people. The cost of doing that part of the drug benefit to make sure you had a reasonable drug benefit—and essentially those low-income seniors have the support they need to pay for their drugs—can be $135 billion to $185 billion, depending how you score it. But it would not be $400 billion.

So you could set up a reasonable program targeted at low-income seniors to make sure they had fair and reasonable coverage, with the support of the Government. Other seniors who are over that income level should have the protection of a catastrophic program. But they should not have the protection of a public program because they already have it.

It has been estimated that 75 percent of the seniors in the country today already have some form of drug coverage. Why should the Federal Government come in and replace that? Why should the Federal Government come in and say to General Motors, which negotiated a contract with its employees that when they retire they would get a health care package that gave them drug coverage—why should you, a person working at a restaurant in Claremont, NH, in your twenties, trying to raise two kids and send them to school—why should your Medicare and health insurance tax be taken to pay for a drug benefit for somebody who retired from General Motors, who already has a benefit under the terms of the agreement they negotiated with General Motors? All you are essentially doing is saying, if you do that, that some poor guy or woman who is working hard to make ends meet in Claremont, NH, in a restaurant is going to bear the burden of what General Motors should be bearing for its retirees. You are replacing the obligation of General Motors with the obligation of some poor guy or woman in their twenties or thirties who is trying to raise a family and is working in a restaurant, and they have two kids going to school. They have to buy a Chevrolet, which is a pretty expensive experience. They should not have to pay for the health care of the person who made that Chevrolet. But that is what this bill essentially does.

The bill basically frees up, within 5 years—not immediately because there are contracts in place—certainly by the time the baby boom generation retires, which is 2008, it basically frees up corporate America from any obligation to bear any cost relative to retirement in the area of drugs. Now, there may be some unions that will negotiate a strong contract with their corporations and they will force them to come and do some sort of wraparound. But the core of the drug benefit will always be from here on out, once this bill is passed, that the public sector will bear the burden of all the costs for drugs for all Americans, no matter how wealthy they are, no matter what their income is, whether they had a union contract, agreement, or a Medigap policy that covers the drug costs.

The practical effect of that is going to be that when the baby boom generation—my generation—hits retirement beginning in 2008, we are going to escalate the cost of this benefit radically—radically. So $400 billion is a conservative number for 10 years and, over the life of this program, $4.6 trillion is an incredibly conservative number. This benefit, which is a very legitimate benefit and a very appropriate benefit, should be targeted at people who need it, people who cannot afford it, people who are having to make the tough choices in their life between the food they eat, the housing they have, and the drugs they pay for. Those folks deserve Government support. But Bill Gates, when he retires, does not deserve Government support in the area of purchasing his drugs. Under this bill, he would get it.

So that is the first and most fundamental flaw in this bill. It essentially nationalizes and moves from the private sector literally millions of people who are presently capable of having, and who are in, programs that take care of their drug benefit. It does an aggressive job, I admit, on the low-income person and that should be kept in place. There are a variety of ways to do that. But we should not nationalize the system for everyone.

The second flaw in this bill, the most fundamental flaw, is the issue of how you control the overall cost of Medicare. This is at the essence of the future financial soundness of this country. Today, Medicare consumes about 14 percent of the GDP, if you include retirement benefits, Social Security, Medicare, and Medicaid. If you applied the projections to the Medicare, which are in place, the fact that we have a $13 trillion unfunded liability, and if you apply the unfunded liability projections to Social Security and Medicaid, then you will end up by 2030 having those three—Social Security, Medicare and Medicaid—absorbing 14 percent of the GDP. They do not do that today, obviously. Today, the Federal Government absorbs about 19 percent of the gross domestic product. So you could see that if you project the cost of Medicare and Social Security out to 2030 and you have it using up 14 percent of the gross national product, and today we do all Government spending, all the Government responsibilities, including education, national defense, and all the different issues of core Government needs we manage with 19 percent of the gross national product, we can see that by the time we get to the year 2030, there is not going to be anything left that the Federal Government is going to be able to do other than take care of the retirement accounts. We are not going to be able to do national defense, education, roads, parks—all the important functions to have a strong Government and a good society. They are not going to be affordable unless we are willing to radically increase the taxes on the working Americans of this country who will be our children and our grandchildren.

That is why I say reforming Medicare—and Social Security, for that matter, which I have already worked on extensively—is one of the most fundamental issues we face as a country, getting those costs under control in the outyears.

Does this bill do that? This bill attempts to create a market force in the area of Medicare by setting up something called PPOs, preferred provider groups. The practical effect, though, is there are very few likely scenarios under which the PPOs will be viable, under which private market forces will come into play. We will still have, basically, a price-controlled situation, a single-payer situation.

We cannot reform Medicare unless we bring into Medicare market forces. We cannot control the price and delivery of health care unless we start to put in place some sensitivity to the quality of care that is being delivered in the context of how it is being delivered, when it should be delivered, and the amount that should be delivered. We cannot do that in a single-payer system. We cannot do that in a price-controlled system. We can only do that if we have market forces that are competing and, thus, bringing to the table the essence of competition, which is competing on the basis of price and quality.

This bill in name attempts to do that through the PPO process. It is projected, however, by CBO, the Congressional Budget Office—there are so many initials thrown around; we confuse people—that only 2 percent of the Medicare recipients will take advantage of this market-oriented approach.

The White House and the Office of Management and Budget projects it at

a much higher level. They say 45 percent will take advantage of this program, and that is because they are optimistic, and it is because it is their plan. I think the Congressional Budget Office has taken a much fairer and objective look at this. They have said: What in this plan creates an atmosphere which would cause somebody to leave Medicare and move over to a private provider? There is virtually nothing in this plan that would cause somebody to do that. There is no market force which is allowed to be brought into play to accomplish that because of the way the pricing mechanism is set up under this bill.

The practical effect is that the market has been taken out of—at least in a real sense, not in an illusory sense; it is there as a stated purpose—but as a practical likely effect, it has been taken out of the game. So we are going to move forward into the next generation with the same program that we presently have with a drug benefit on top of it, which drug benefit essentially will cover everyone, no matter what their income levels are, no matter what their benefit structures are. They already exist.

Instead of improving the system, what we are going to end up with is the same old Medicare system, a 1950s car with a brand new paint job on it in the form of the drug benefit but without anything in it that is going to fundamentally improve it as it moves into the next generation and the need to control costs in the next generation.

The practical effect of it will be that the $13.3 trillion unfunded liability that already exists in Medicare will have $4.6 trillion of new unfunded liability put on top of that for the purpose of the drug benefit, which are all massive numbers, but they come down to this: For a child born today—John Jones or Mary Smith—when that child takes his or her first breath, that child gets with that breath a debt of $44,000 to pay for Medicare. That debt is going to have added to it $15,000 after this bill passes to pay for the new Medicare benefit.

Yes, this bill does take care of our seniors and our baby boom generation group who are becoming seniors in a very generous way. One-half of the equation is addressed—seniors. That is always politically very attractive. It polls very well. It gets you through the next election. It makes you a hero with groups of people who are concerned about seniors' rights. But the other half of the equation is our children and our children's children. It leaves them with an extraordinary bill and with no opportunity to affect it.

The great tragedy is this drug benefit gave us, the Congress and the executive branch, the first and best opportunity to substantively reform Medicare using the drug benefit basically as the carrot that brings along the reforms. We could have used this benefit in an extraordinarily constructive way to assure that my generation, the baby boom generation, is not an undue burden on our children and our grandchildren or on that fellow or woman working in a restaurant in Claremont.

Instead, what we have done with this bill is added a drug benefit which will make my generation very happy and seniors who are receiving it today very happy, which will leave in place a Medicare system that has a $13 trillion projected unfunded liability and which will leave with our kids a debt which is both unfair, inappropriate, and, ironically, unnecessary were we approaching this with better policy.

I suppose, in understated terms, I have reservations about this bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding, under the order now in effect, that a Democrat will be recognized; is that right?

The PRESIDING OFFICER. That is correct.

Mr. REID. Senator KENNEDY is here and ready to speak. Under the previous order, a Democrat is to be recognized to speak now. The Senator has until 11 o'clock if he wants to use that time. At 11 o'clock, the two managers of the bill will be recognized to offer a substitute.

Mr. KENNEDY. We now will be recognized?

Mr. REID. For debate only on the bill.

Mr. CRAIG. Mr. President, will the minority whip yield?

Mr. REID. I will be happy to.

Mr. CRAIG. Will it be possible for me to gain some time following the Senator from Massachusetts?

Mr. REID. Through the Chair, I ask the Senator from Massachusetts, how long does the Senator wish to speak? I say to the Senator from Massachusetts, Senator GREGG spoke for 30 minutes. Under the order, we have the time.

Mr. KENNEDY. We have 9 minutes?

Mr. REID. Senator KENNEDY has until the top of the hour.

Mr. KENNEDY. I want to accommodate my friend. Do I understand the Senator from Michigan intends to offer an amendment this morning?

Mr. REID. Mr. President, the intention, although there is no order in effect, is that at 11 o'clock, the two managers of the bill will be recognized and, at that time, they will offer their substitute. At that time, it will be open to amendment. It has been talked about for the last 2 days that Senator STABENOW will be recognized to offer an amendment.

Mr. KENNEDY. We have, therefore, about 20 minutes between now and 11 o'clock. I will be glad to divide that time.

Mr. CRAIG. I will require more time than that. The Senator, obviously, has the floor, as under the UC, which is fine. I am looking for a window of about 15 or 20 minutes maximum.

Mr. REID. Mr. President, I do not know if the two managers of the bill would be willing to start at 11:15 rather than 11. They are in the cloakroom. While Senator KENNEDY speaks, I will walk back and ask them.

Mr. CRAIG. That would be appreciated.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator from Idaho as well. As I indicated, I was willing to share the time we had up to 11. As soon as a Member is prepared to offer an amendment, I will yield the floor because I do think we have had a good opportunity to make general comments and opening statements over the period of these last 2 days, and I think the business of the Senate should require that we begin to address some of the areas which need addressing.

I understood my friend and colleague from Michigan will be in the Chamber shortly, and as soon as she is and it is agreeable with the managers, I will yield the floor.

To review very quickly, this is a momentous time. We give credit to the chairman and ranking member of the Finance Committee in moving this process forward in a way which I think can be a building foundation for addressing the critical issue which is on the minds of so many of our seniors, and that is a good, effective, reliable, affordable prescription drug program.

As has been mentioned previously, when we passed the Medicare Program in 1965, it provided for the hospitalization and physician fees, but it did not provide for prescription drugs. Only about 3 percent of all of the private sector insurance programs had a prescription drug program. What we have seen since that time is the extraordinary explosion of prescription drugs which are so necessary to enhance and improve the quality of life for so many of our seniors. They are as indispensable to our seniors as hospitalization and physician fees.

In 1965, we made a commitment and a pledge to our seniors that is really the basis of a program that was developed in the late 1950s. It was an issue that divided the two political parties in the 1960 campaign. President Kennedy felt strongly about developing a Medicare system for our seniors. We had failed to provide national health insurance for all Americans, a goal I am still committed to. It was Harry Truman's goal.

We are always reminded that we in the Senate, Republicans and Democrats, effectively have national health insurance. There is not a single Member of this body who does not take the Federal employees program, rejects that, and takes their own homegrown program. They all take the Federal employees program, which is heavily underwritten by the Federal Government. I do not know of a single program that exists in this country that has the taxpayer underwriting what we in the Congress and the Senate have, including a prescription drug program.

So I am always interested in those who complain about our efforts to try

and pass a good, effective prescription drug program when we have it ourselves. We have looked out after ourselves and we have been so slow in looking out after the needs of our fellow elderly citizens.

I arrived to the Chamber too late to hear my good friend—and he is my good friend—from New Hampshire talk about the indebtedness this bill will provide in terms of the children of this country. This is a $400 billion bill and it is going to mean several thousand dollars of indebtedness to the children who are being born today. Well, that pales in significance when we think that under the Republican administration of the last 2 ½ years we have passed a $2.3 billion tax reduction that is going to mean billions and hundreds of billions of dollars of indebtedness for our children.

This program at least is going to make a difference in terms of the quality of life for seniors who have built this country and sacrificed for their children and fought in the wars and fought to make sure we were going to have economic recovery. It is an investment in them rather than just to the wealthiest individuals. I welcome the opportunity to debate, if we are going to have the chance to do it, which is of greater value to the Nation, which is of greater value to our fellow human beings, these extraordinary tax cuts or the downpayment on the prescription drug program.

The principal reason we have been unable to bring this matter up and develop a bipartisan approach is because of ideology, which has been a part of the Republican commitment over the years, and that is to privatize Social Security and privatize Medicare. They have been opposed to Medicare, opposed to Social Security, from the time immemorial when these programs were passed. We heard the word ''socialism'' talked about all during the debates on the Medicare Program. Every other word was ''socialized medicine.'' We do not hear any of those words anymore. We hear words, as we heard from Newt Gingrich, ''we want to see Medicare wither on the vine.'' But they are opposed to it.

So this issue has been divisive because those of us who have been strongly committed to Medicare refuse to see that it is effectively dismantled by offering a prescription program that would be used to either bribe or coerce seniors out of the Medicare system into a private sector system and then to let the Medicare system wither on the vine. Our elderly people, our seniors, those who have contributed to this country, know their doctor, they know their neighborhood, they know their hospital, and they do not want to be forced out of Medicare into an uncertain system. Many of us in this body are going to resist that and fight that with every fiber in our body.

We have seen an alteration and change, and that is what has been developed in the Senate Finance Committee legislation, which will permit those who are under Medicare to be assured that no matter what part of the country they live in they are going to be able to have access to the prescription drug program that is outlined in this legislation.

For those who want to go into the HMOs, there will be at least the opportunity for those in the private sector who want to risk providing the benefit package that is in here, and want to take the chance, to be able to compete. That is the compromise that has certainly not satisfied everyone—I certainly would not have drafted the bill as it is drafted today—but nonetheless it is the compromise that came out of that committee and which I think Senator GRASSLEY and Senator BAUCUS deserve credit for.

They have established a foundation in which this prescription drug program can be enhanced, strengthened, and built upon, both during the debate over the next 6 days but also in the future years. As long as I am in the Senate and honored to represent the people of Massachusetts, I make the commitment and pledge that I am going to do everything I possibly can to make sure this is the kind of program which is worthy of our senior citizens in the future, but we will have a downpayment in this program with this legislation.

In the past, we reviewed very briefly the need for this program and the costs for this program. I think at the time that we are actually into the amendments, we do not have to go back and speak about the enormous costs our elderly are paying, how their CPI, their adjustment, is not enough to make up for these escalating costs; the fact that these prescription drugs are absolutely indispensable to the lives and well-being of millions of our citizens. We know that is the truth. We know we have an uncertain condition out there in terms of the seniors having access to the drugs. Many of them do not have it. Others are in retirement programs. An increasing number of the retirement programs are dropping individuals. Millions of others have them in Medicaid and that is being cut back in a number of our States, and they are being left out and left behind.

Millions are in HMOs, and almost half of those numbers have been dropped by the HMOs and other conditions have been put on in terms of restricting the amounts that will be expended by the HMOs in the prescription drug program which is disadvantaging these individuals to an enormous degree. Medigap is not picking up the process. The fact remains, our seniors are enormously vulnerable today. Never have they been more vulnerable.

This is against another background that I will just mention very briefly. We have seen in the Congress, in the Senate, over the period of this last 5 years the doubling of the NIH budget. Why was that done? The reason it was done is the recognition that we have had, Republicans and Democrats alike, of the enormous opportunities for breakthroughs, in prescription drugs primarily, and in new technologies to deal with the challenges in health care, mixing technologies and mixing prescription drugs to make further advances—which is certainly the goal of Dr. Sahni at the NIH.

These are very bold and challenging new initiatives in which they are involved. We have seen the mapping of the human genome, with all that means, in the predictability of how genes are going to function and so averting dangers that presents to patients in the future, anticipating that and developing medical technologies that can address that so we can prevent individuals from developing, in this instance I am talking about, several different types of cancers. The list goes on.

We have the most extraordinary opportunity now for breakthroughs in prescription drugs. Now that we have doubled the NIH budget, we have to ask ourselves what is the sense of making these breakthroughs and spending billions and billions of dollars if we are not going to get them out of the laboratory and into the homes of those who need them?

This bill is that downpayment that ensures the drugs get out of the laboratory and to those who need them. That is why it is so important we take action. We are seeing such progress. I see in my own State of Massachusetts—we have more biotech companies in our State than all of Western Europe. I am always amazed at the continued dreams in these research labs in terms of potential breakthroughs and the progress that is being made. It is beyond the possible imagination of so many of us, to think someday we might really conquer cancer, we might really conquer Alzheimer's, we might really conquer diabetes or other diseases. There are dreamers who believe it will be done, and in the none-too-distant future.

We want to put in place a process, a procedure, a delivery system which is affordable, dependable, reliable, so those breakthroughs can get out and get to them. That is what this bill does.

I will just review this because these issues were raised. One of the features, which is not a major feature but which I find has not been mentioned in most of the news reports, is that in January of next year 5 million seniors will receive a card—some might have to pay $25 for it but no more than $25—that will guarantee them $600 worth of prescription drugs. If they do not use all $600, if they use just $400, they can carry that over to next year. That is a real downpayment of this legislation. Five million people are going to receive that. Although the Medicare program will take 3 years to get implemented, this prescription drug card will soon provide needed relief to millions of seniors. That is an indicator to at least 5 million of our seniors, that help is coming, help is on its way.

Let me give three quick examples of an average senior citizen with an income of $15,000. That is the average senior citizen, if they have drug costs at the national average of $2,300. This is the group this legislation perhaps helps the least. We take great care of the 40 percent of the senior citizens with lowest incomes and we take care of those with catastrophic expenses. This is the group we hope to provide additional assistance. This individual would pay a $420 premium, and they would pay $1,298 for cost sharing, and they would receive $604. That may not sound like much, but that is $604 they do not get today.

Let's take the instance of an individual who has the same income, average income, and has a great deal of medical expenses; $15,000 income and they have $10,000 in expenses. They will end up paying the $4,500 but they get $5,400 in savings under this legislation. That is still a good deal—I'd like it to be better, but at least they will gain significantly from this legislation if they have those kinds of bills.

Let's take the same individual. By and large this is 40 percent of all the senior citizens—not half but not far from it. Let's look at a person just above the poverty line with $9,000 in income and the same $2,300 in drug expenses each year. That works out to about $190 per month.

Under this legislation, at $9,000 income, you would pay $5. That would mean a monthly savings of $185.

If your income is $12,000 and you pay out the $190 per month in expenses today, under this legislation you would pay $10 and would save $180 per month.

If your income is $13,500 and you have $190 in monthly costs, under this legislation you would pay $23 and save $168. That is a major relief for those families who are facing these extraordinary challenges across this country.

I see the ranking members of the Finance Committee now on the floor. Let me wind up.

Mr. President, listen to this: 83 percent of all Medicare beneficiaries are going to receive more out of this legislation than they will pay in. Today, in part B of the Medicare only about 50 percent of seniors get out more than they pay in. Under this legislation it would be 83 percent.

For those who go through what they call the doughnut hole, that is the period of time when they are not getting the full assistance I would like to see, it is important to recognize that two-thirds of those who go into the doughnut hole go out the other end into the catastrophic and get extra help. Only about 8 percent actually remain in that doughnut hole.

We are going to have the opportunity here to try to make some further adjustments to strengthen and improve this legislation.

Finally, let me say in watching what happened over in the House of Representatives, their legislation fails to have the kind of backup this legislation has in the delivery of the Medicare benefit, which is unacceptable. They have what they call a premium support program which effectively would undermine the Medicare system, which is completely unacceptable. The means testing is in there, which would require individuals to submit their tax forms to agencies of the Federal Government and insurance companies. I think that would be very offensive.

There are many different aspects of that legislation that are enormously troubling. But that is not this bill. That is not this bill.

So, again, I commend Senator GRASSLEY and Senator BAUCUS and our Republican leader, Senator FRIST, for all they have done working this through. I look forward to the opportunity to address these amendments.

I see the hour of 11 has arrived.

Mr. REID. Mr. President, even though there may not be a unanimous consent request that has been ordered, I ask that the two managers be recognized now; that following whatever they decide to do the Senator from Idaho be recognized to speak for up to 15 minutes; and following the statement of the Senator from Idaho that Senator STABENOW be recognized to offer an amendment. We talked about her amendment for a couple of days.

I ask all this in the form of a unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I am going to offer a modification in just a minute. We are going to wait for our staff to come and present the exact language which we will use in the unanimous consent request.

Before we do that, I have not had the opportunity to express my appreciation to the entire Senate for Senator BAUCUS's cooperation in bringing the bill here, and for everything we have done in order to bring a bipartisan bill here which was voted out of a committee on a 16–5 vote.

In other speeches, I have talked about people who have been working on this issue, such as Senator BREAUX with the Breaux Commission. I have talked about the tripartisan people who worked over the last 2 years to bring a bill before the Senate last year, all of which set the stage for some of the subject matter we have before us. Senator BAUCUS and I hope we will have a continuation of the bipartisanship that has been expressed so far in that vote.

But I haven't had a chance to tell the Senate of my appreciation to Senator BAUCUS in working both at the staff level and his staff—meaning the Finance Committee staff on the Democratic side, and the Finance Committee staff on the Republican side—doing a lot of nitty-gritty work to bring things together with a consensus that can be arrived at at the staff level, but, more importantly, a lot of the things Senator BAUCUS and I had to work out.

When it was all said and done, it was a very pleasant experience. I don't say that because of the relationship Senator BAUCUS and I have, but it is because of a continuation of the tradition of the Senate Finance Committee to do most of its business—albeit not all of its business—in a bipartisan way.

We would not have an issue before us like this—and a lot of other issues that have come out of the Senate Finance Committee—without that sort of cooperation.

I think this deserves a little more special attention of bipartisanship and Senator BAUCUS's cooperation. This is the first major expansion of Medicare in 35 years. This is something that candidates of both political parties have talked about the necessity of doing—providing prescription drugs for seniors.

There is something which is very much of an issue to Montana and to Iowa and to a lot of other States we call rural States. There is an inequity issue within Medicare reimbursement.

Working very closely with Senator BAUCUS last year to establish a Baucus-Grassley bill on Medicare rural equity, then moving this year to adopt the one earlier on a tax bill and duplicating that effort in this prescription drug bill was all done in a bipartisan way. You can only say it so many times, but I don't think you can say it enough either, because people think the Senate is always a highly partisan body. Sometimes we are too highly partisan. Sometimes it is OK to be partisan, I believe, in our system of government. But really nothing gets done in the Senate if there isn't some bipartisan cooperation. Obviously, I take this opportunity to thank Senator BAUCUS for that cooperation.

We still have not had that agreement presented to us yet. I am going to ask Senator BAUCUS if we should let Senator CRAIG go ahead and speak for his 15 minutes before we lay down our amendment.

Mr. BAUCUS. Mr. President, first I very much appreciate the kind words by the chairman of the committee. It is wonderful working with the Senator from Iowa. He is a good man.

With respect to the point made by the chairman, I agree. I think it makes sense at this time, since we are still trying to get papers ready, for the Senator from Idaho to proceed.

Mr. GRASSLEY. Mr. President, we will let the Senator from Idaho finish before we proceed with our unanimous consent.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I want to thank the Chairman of the Finance Committee and the ranking member for the work they have done on the Finance Committee on S. 1, the Medicare legislation.

The legislation before us today is a praiseworthy document, in that it is a

step forward toward the fundamental goals of providing prescription drug relief for America's seniors and strengthening the Medicare program. This is certainly not to suggest that this legislation is without flaws, but it does begin the process of improving Medicare for our children and our grandchildren down the road and in what we hope will be the right direction.

To paraphrase the words of a rather historic person, Benjamin Franklin, ''Is the sun rising, or is the sun setting'' on the promise of creating a federally funded but also privately competitive Medicare system that can succeed, both in holding down costs and in providing adequate coverage?

Only the future will tell whether what we have before us is the case of a sun rising on a new day in health care or simply a dramatic shift and a sun setting.

What I think is happening here today is the beginning of a very important debate for the remainder of this week and next week. I hope that passage of this legislation will prove to be a major step forward.

As chairman of the Special Committee on Aging, I have convened a variety of hearings over the last several months to carefully examine the difficulties of all of the issues that are going to be talked about here this week, including the long-term demographic pressures facing Medicare, the value of integrating competitive alternatives into the program, and the promise of making care coordination part of a strengthened and improved Medicare prescription drug coverage.

All of these are important. But there is no question that prescription drug coverage is the political engine that drives this debate, but it is just one of several grave challenges we face as we take up this important legislation.

There is no question that drug coverage for America's seniors is long overdue, especially for those in the greatest of need. Except for Medicare, virtually every health care insurance plan in America today covers prescription drugs. Medicare today is trapped in a 1960s model of health care delivery, and lags decades behind what the private sector has to offer.

This bill would address this problem. Beginning immediately, America's seniors would receive a drug discount card enabling them to purchase drugs at a significant discount. More importantly, in 2006 seniors would be able to enroll in federally subsidized Medicare drug coverage for a premium of about $35 a month—coverage that would be of greater per-dollar value than that currently offered through Medicare supplemental, Medigap, or wraparound plans.

I am especially pleased that this legislation devotes the greatest share of its drug assistance to seniors of low and modest income—most especially seniors below 160 percent of poverty. These seniors—those with annual incomes below about $13,500 for an individual, and about $18,200 for a couple—would receive special assistance of about 80 to 90 percent for their drug costs, depending on income.

The truth is, the proportion of seniors who truly cannot afford prescription drugs is relatively small—perhaps 25 percent. It is on these seniors in the greatest of need that our help should be focused.

Mr. President, even more important than drug coverage is the urgent need to begin putting Medicare on a more modern and secure footing as the 77-million-strong baby boomer generation moves even closer to retirement age. According to the Medicare Trustees, Medicare costs, even without any drug benefit, will more than triple over the next 75 years, placing a tremendous burden on future generations.

Despite this looming challenge, Medicare today remains clogged by rigid bureaucracy and complex regulations regulations that are already beginning to drive doctors and other health care providers out of this program, leaving our seniors, in many instances, without access to the health care they need.

Medicare, as we know it today, is micromanaged to the tiniest of details for medical payments and procedures, including the pricing and regulation of more than 7,000 medical procedures and over 500 hospital procedures. Why are we so intent on micromanaging the system? Medicare regulations now total more than 110,000 pages of rules and regulations.

Perhaps it is not surprising, then, that doctors and hospitals report having to spend half an hour to an hour in paperwork for every hour spent in patient care. In other words, there is often more intensity on doing the paperwork right than there is on good health care procedures for the patient and all because of a Federal system that is so heavily micromanaged. And of course, the risks to providers are high if they fail to perform the required regulatory tasks in the most minute of ways.

Even more distressing, the heavily bureaucratic Medicare Program has ultimately failed to keep up with the kinds of medical and health care coverage innovations most of the rest of us take for granted. For example, the current Medicare Program only covers a handful of preventive screenings and tests and in most cases will not even pay for a standard physical.

Medicare also lags far behind the private sector in its use of care coordination and disease management systems under which a patient's care is coordinated and optimized, promoting better health outcomes and fewer days of hospitalization.

For certain chronic conditions, such as diabetes and congestive heart failure, as many as 83 to 97 percent of America's health care plans now offer such care coordination. Medicare, meanwhile, has only barely begun to experiment with demonstration projects in this area and some prominent experts, such as former CBO Director Dan Crippen, doubt that care management can ever work effectively in Medicare as we know it today.

The bill before us seeks to bring Medicare into the 21st century, not just by providing prescription drug coverage, but also by offering seniors the choice to enroll in federally supervised but privately operated health care plans the same kind of choices and coverage currently enjoyed by millions of other Americans under age 65. Ideally, these plans could include preferred provider organizations, fee-for-service plans, HMOs, and even medical savings accounts.

The current Medicare system forces seniors to hunt for and purchase supplemental plans for many of the things that Medicare does not cover. By contrast, the new Medicare Advantage plans would give seniors one-stop shopping for comprehensive and integrated coverage including prescription drugs, preventive care, care coordination, and protection against high catastrophic medical bills, benefits which are largely unheard of in the traditional Medicare plan of today.

Importantly, these new choices would be entirely voluntary. Seniors who want to keep their current coverage and stay in traditional Medicare would be free to do so. Also, the new prescription drug program would be offered in both the traditional program and in the new Medicare Advantage plans. No senior would see any reduction in Medicare benefits under this bill. No benefits would be taken away—none.

I am also extremely pleased this bill includes a significant and necessary package of improvements in rural health care and reimbursement. Among other changes, this legislation would improve certain categories of rural payment and would make needed rule changes to assist critical access hospitals and other rural providers.

For far too long, doctors and hospitals in Idaho and other rural States have suffered under payment classifications and reimbursement levels that put them at a significant disadvantage and that make the already difficult job of providing health care in rural America even more daunting.

The underlying framework of this bill is a sound one, and it follows the basic principles laid out by President Bush earlier this year—namely, to strengthen traditional Medicare and keep it as an alternative for those seniors who want it, but also to provide a new foundation for the future, one built on choices, competition, and innovation.

This said, however, I am gravely troubled by certain aspects of this bill's current design—particularly the fact that we have not incorporated in it enough competitive alternatives.

First, I believe it is a mistake to offer exactly equivalent drug benefits in the older, more traditional program

and in the new Medicare Advantage plans—and thereby not create a strong competitive advantage for the Medicare Advantage programs. This is an important issue in causing seniors to make selections toward the marketplace and toward a variety of alternatives—rather than to be fearfully hunkered down, if you will, in the old program. If we truly believe, as I do, that structured competition, rather than a perpetuation of top-down bureaucratic health care, is the better future for Medicare, our legislation should reflect this commitment.

Second, this bill unwisely imposes a ceiling, or benchmark, on the amount the Federal Government will pay the new Medicare Advantage plans. What we want is a variety of robust competitive alternatives in the marketplace, and capping or creating a ceiling may threaten that goal.

Third, the legislation creates an unnecessarily heavy-handed and restrictive bidding system for the Medicare Advantage Program. Under this program, HHS would choose only three winning plans for each of ten national regions. Far preferable would be a system like the Federal Health Benefits Program, under which any plan meeting basic federal standards would be permitted to compete. It should be the marketplace, not HHS bureaucrats, who decide which plans succeed or fail.

Fourth, I am concerned by this legislation's overall high level of complexity and prescriptiveness—prescriptiveness that threatens to add appreciably to the 110,000 pages of regulation already in place. Shame on us if we do that. This bill, which I suspect weighs a few pounds, has hundreds and hundreds of pages. I hope that, for every page of legislation we do not also see 25 or 30 pages of ensuing regulation. If that is the case, we will have created the opposite of what we should intend—namely walking away from the bureaucracy and into the marketplace, into the opportunity of choice, and into a much freer environment—one that providers want to join, and one that provides optimum health care for the senior of today.

Over the course of the next week and a half, hopefully, amendments will take us toward simplicity instead of toward the kind of micromanagement we have seen in the past. History should not repeat itself here, and I think all of us should be concerned that it might. This is because we have the great tendency to err on the side of the bureaucracy and the side of regulation, when, in fact, the marketplace—as shown by the hearings I have held—can, in fact, be the greater arbiter of health care when effective competition is provided.

These concerns are by no means exhaustive. Like many of my colleagues, I am also concerned about the complexity and stability of the proposed system for providing drug coverage in the traditional Medicare program, and I worry about the possibility that some employers may react to the new Federal drug coverage by cutting back or dropping benefits they currently provide to their retirees.

Finally, I want to caution my colleagues, in no uncertain terms, that neither this bill nor any of the alternative Democratic proposals offers a magic bullet for Medicare's future. The financial and demographic outlook for Medicare is sobering in the extreme, and nothing can change the fact that hard choices lie ahead, regardless of what we do this year. This legislation could improve our prospects, but it is, at best, only a first step.

Majority Leader FRIST, Senator GRASSLEY, and others on the Finance Committee deserve tremendous credit for bringing us to where we are today, as does President Bush for making prescription drugs and Medicare reform a top priority this year.

The coming weeks will be critical ones. I hope we can succeed in producing a bill worthy of this historic opportunity.

Mr. President, I again thank the chairman and the ranking member. I also thank Senator FRIST, our leader, for insisting that this issue get to the floor for the kind of debate I trust we will have—and for working with the House toward putting on our President's desk something that we have long promised America's seniors: That those who are truly needy will have access to prescription drugs and all seniors will have access to a modernized Medicare Program.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MODIFICATION TO COMMITTEE AMENDMENT

Mr. GRASSLEY. Mr. President, with the authority of the majority of the Finance Committee, I now modify my committee substitute and the modification is at the desk.

The PRESIDING OFFICER. The amendment is so modified.

The committee amendment, as modified, is as follows:

SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECURITY ACT; REFERENCES TO BIPA AND SECRETARY; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Prescription Drug and Medicare Improvement Act of 2003''.

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) BIPA; SECRETARY.—In this Act:

(1) BIPA.—The term ''BIPA'' means the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(d) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendments to Social Security Act; references to BIPA and Secretary; table of contents.

TITLE I—MEDICARE PRESCRIPTION DRUG BENEFIT

Subtitle A—Medicare Voluntary Prescription Drug Delivery Program

Sec. 101. Medicare voluntary prescription drug delivery program.

''PART D—VOLUNTARY PRESCRIPTION DRUG DELIVERY PROGRAM

''Sec. 1860D. Definitions; treatment of references to provisions in MedicareAdvantage program.

''Subpart 1—Establishment of Voluntary Prescription Drug Delivery Program

''Sec. 1860D–1. Establishment of voluntary prescription drug delivery program.

''Sec. 1860D–2. Enrollment under program.

''Sec. 1860D–3. Election of a Medicare Prescription Drug plan.

''Sec. 1860D–4. Providing information to beneficiaries.

''Sec. 1860D–5. Beneficiary protections.

''Sec. 1860D–6. Prescription drug benefits.

''Sec. 1860D–7. Requirements for entities offering Medicare Prescription Drug plans; establishment of standards.

''Subpart 2—Prescription Drug Delivery System

''Sec. 1860D–10. Establishment of service areas.

''Sec. 1860D–11. Publication of risk adjusters.

''Sec. 1860D–12. Submission of bids for proposed Medicare Prescription Drug plans.

''Sec. 1860D–13. Approval of proposed Medicare Prescription Drug plans.

''Sec. 1860D–14. Computation of monthly standard prescription drug coverage premiums.

''Sec. 1860D–15. Computation of monthly national average premium.

''Sec. 1860D–16. Payments to eligible entities.

''Sec. 1860D–17. Computation of monthly beneficiary obligation.

''Sec. 1860D–18. Collection of monthly beneficiary obligation.

''Sec. 1860D–19. Premium and cost-sharing subsidies for low-income individuals.

''Sec. 1860D–20. Reinsurance payments for expenses incurred in providing prescription drug coverage above the annual out-of-pocket threshold.

''Sec. 1860D–21. Direct subsidy for sponsor of a qualified retiree prescription drug plan for plan enrollees eligible for, but not enrolled in, this part.

''Subpart 3—Miscellaneous Provisions

''Sec. 1860D–25. Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.

''Sec. 1860D–26. Other related provisions.
Sec. 102. Study and report on permitting part B only individuals to enroll in medicare voluntary prescription drug delivery program.
Sec. 103. Rules relating to medigap policies that provide prescription drug coverage.
Sec. 104. Medicaid and other amendments related to low-income beneficiaries.
Sec. 105. Expansion of membership and duties of Medicare Payment Advisory Commission (MedPAC).
Sec. 106. Study regarding variations in spending and drug utilization.
Subtitle B—Medicare Prescription Drug Discount Card and Transitional Assistance for Low-Income Beneficiaries
Sec. 111. Medicare prescription drug discount card and transitional assistance for low-income beneficiaries.
Subtitle C—Standards for Electronic Prescribing
Sec. 121. Standards for electronic prescribing.
Subtitle D—Other Provisions
Sec. 131. Additional requirements for annual financial report and oversight on medicare program.
Sec. 132. Trustees' report on medicare's unfunded obligations.
TITLE II—MEDICAREADVANTAGE
Subtitle A—MedicareAdvantage Competition
Sec. 201. Eligibility, election, and enrollment.
Sec. 202. Benefits and beneficiary protections.
Sec. 203. Payments to MedicareAdvantage organizations.
Sec. 204. Submission of bids; premiums.
Sec. 205. Special rules for prescription drug benefits.
Sec. 206. Facilitating employer participation.
Sec. 207. Administration by the Center for Medicare Choices.
Sec. 208. Conforming amendments.
Sec. 209. Effective date.
Subtitle B—Preferred Provider Organizations
Sec. 211. Establishment of MedicareAdvantage preferred provider program option.
Subtitle C—Other Managed Care Reforms
Sec. 221. Extension of reasonable cost contracts.
Sec. 222. Specialized Medicare+Choice plans for special needs beneficiaries.
Sec. 223. Payment by PACE providers for medicare and medicaid services furnished by noncontract providers.
Sec. 224. Institute of Medicine evaluation and report on health care performance measures.
Sec. 225. Expanding the work of medicare quality improvement organizations to include parts C and D.
TITLE III—CENTER FOR MEDICARE CHOICES
Sec. 301. Establishment of the Center for Medicare Choices.
Sec. 302. Miscellaneous administrative provisions.
TITLE IV—MEDICARE FEE-FOR-SERVICE IMPROVEMENTS
Subtitle A—Provisions Relating to Part A
Sec. 401. Equalizing urban and rural standardized payment amounts under the medicare inpatient hospital prospective payment system.
Sec. 402. Adjustment to the medicare inpatient hospital PPS wage index to revise the labor-related share of such index.
Sec. 403. Medicare inpatient hospital payment adjustment for low-volume hospitals.
Sec. 404. Fairness in the medicare disproportionate share hospital (DSH) adjustment for rural hospitals.
Sec. 405. Critical access hospital (CAH) improvements.
Sec. 406. Authorizing use of arrangements to provide core hospice services in certain circumstances.
Sec. 407. Services provided to hospice patients by nurse practitioners, clinical nurse specialists, and physician assistants.
Sec. 408. Authority to include costs of training of psychologists in payments to hospitals under medicare.
Sec. 409. Revision of Federal rate for hospitals in Puerto Rico.
Sec. 410. Authority regarding geriatric fellowships.
Sec. 411. Clarification of congressional intent regarding the counting of residents in a nonprovider setting and a technical amendment regarding the 3-year rolling average and the IME ratio.
Sec. 412. Limitation on charges for inpatient hospital contract health services provided to Indians by medicare participating hospitals.
Sec. 413. GAO study and report on appropriateness of payments under the prospective payment system for inpatient hospital services.
Subtitle B—Provisions Relating to Part B
Sec. 421. Establishment of floor on geographic adjustments of payments for physicians' services.
Sec. 422. Medicare incentive payment program improvements.
Sec. 423. Increase in renal dialysis composite rate.
Sec. 424. Extension of hold harmless provisions for small rural hospitals and treatment of certain sole community hospitals to limit decline in payment under the OPD PPS.
Sec. 425. Increase in payments for certain services furnished by small rural and sole community hospitals under medicare prospective payment system for hospital outpatient department services.
Sec. 426. Increase for ground ambulance services furnished in a rural area.
Sec. 427. Ensuring appropriate coverage of air ambulance services under ambulance fee schedule.
Sec. 428. Treatment of certain clinical diagnostic laboratory tests furnished by a sole community hospital.
Sec. 429. Improvement in rural health clinic reimbursement.
Sec. 430. Elimination of consolidated billing for certain services under the medicare PPS for skilled nursing facility services.
Sec. 431. Freeze in payments for certain items of durable medical equipment and certain orthotics; establishment of quality standards and accreditation requirements for DME providers.
Sec. 432. Application of coinsurance and deductible for clinical diagnostic laboratory tests.
Sec. 433. Basing medicare payments for covered outpatient drugs on market prices.
Sec. 434. Indexing part B deductible to inflation.
Sec. 435. Revisions to reassignment provisions.
Sec. 436. Extension of treatment of certain physician pathology services under medicare.
Sec. 437. Adequate reimbursement for outpatient pharmacy therapy under the hospital outpatient PPS.
Sec. 438. Limitation of application of functional equivalence standard.
Sec. 439. Medicare coverage of routine costs associated with certain clinical trials.
Sec. 440. Waiver of part B late enrollment penalty for certain military retirees; special enrollment period.
Sec. 441. Demonstration of coverage of chiropractic services under medicare.
Sec. 442. Medicare health care quality demonstration programs.
Sec. 443. Medicare complex clinical care management payment demonstration.
Sec. 444. Medicare fee-for-service care coordination demonstration program.
Sec. 445. GAO study of geographic differences in payments for physicians' services.
Subtitle C—Provisions Relating to Parts A and B
Sec. 451. Increase for home health services furnished in a rural area.
Sec. 452. Limitation on reduction in area wage adjustment factors under the prospective payment system for home health services.
Sec. 453. Clarifications to certain exceptions to medicare limits on physician referrals.
Sec. 454. Demonstration program for substitute adult day services.
TITLE V—MEDICARE APPEALS, REGULATORY, AND CONTRACTING IMPROVEMENTS
Subtitle A—Regulatory Reform
Sec. 501. Rules for the publication of a final regulation based on the previous publication of an interim final regulation.
Sec. 502. Compliance with changes in regulations and policies.
Sec. 503. Report on legal and regulatory inconsistencies.
Subtitle B—Appeals Process Reform
Sec. 511. Submission of plan for transfer of responsibility for medicare appeals.
Sec. 512. Expedited access to judicial review.
Sec. 513. Expedited review of certain provider agreement determinations.
Sec. 514. Revisions to medicare appeals process.
Sec. 515. Hearing rights related to decisions by the Secretary to deny or not renew a medicare enrollment agreement; consultation before changing provider enrollment forms.
Sec. 516. Appeals by providers when there is no other party available.
Sec. 517. Provider access to review of local coverage determinations.
Subtitle C—Contracting Reform
Sec. 521. Increased flexibility in medicare administration.

Subtitle D—Education and Outreach Improvements
Sec. 531. Provider education and technical assistance.
Sec. 532. Access to and prompt responses from medicare contractors.
Sec. 533. Reliance on guidance.
Sec. 534. Medicare provider ombudsman.
Sec. 535. Beneficiary outreach demonstration programs.
Subtitle E—Review, Recovery, and Enforcement Reform
Sec. 541. Prepayment review.
Sec. 542. Recovery of overpayments.
Sec. 543. Process for correction of minor errors and omissions on claims without pursuing appeals process.
Sec. 544. Authority to waive a program exclusion.
TITLE VI—OTHER PROVISIONS
Sec. 601. Increase in medicaid DSH allotments for fiscal years 2004 and 2005.
Sec. 602. Increase in floor for treatment as an extremely low DSH State under the medicaid program for fiscal years 2004 and 2005.
Sec. 603. Increased reporting requirements to ensure the appropriateness of payment adjustments to disproportionate share hospitals under the medicaid program.
Sec. 604. Clarification of inclusion of inpatient drug prices charged to certain public hospitals in the best price exemptions for the medicaid drug rebate program.
Sec. 605. Assistance with coverage of legal immigrants under the medicaid program and SCHIP.
Sec. 606. Establishment of consumer ombudsman account.
Sec. 607. GAO study regarding impact of assets test for low-income beneficiaries.
Sec. 608. Health care infrastructure improvement.
Sec. 609. Capital infrastructure revolving loan program.
Sec. 610. Federal reimbursement of emergency health services furnished to undocumented aliens.
Sec. 611. Increase in appropriation to the health care fraud and abuse control account.
Sec. 612. Increase in civil penalties under the False Claims Act.
Sec. 613. Increase in civil monetary penalties under the Social Security Act.
Sec. 614. Extension of customs user fees.
TITLE I—MEDICARE PRESCRIPTION DRUG BENEFIT
Subtitle A—Medicare Voluntary Prescription Drug Delivery Program
SEC. 101. MEDICARE VOLUNTARY PRESCRIPTION DRUG DELIVERY PROGRAM.

(a) ESTABLISHMENT.—Title XVIII (42 U.S.C. 1395 et seq.) is amended by redesignating part D as part E and by inserting after part C the following new part:

''PART D—VOLUNTARY PRESCRIPTION DRUG DELIVERY PROGRAM

''DEFINITIONS; TREATMENT OF REFERENCES TO PROVISIONS IN MEDICAREADVANTAGE PROGRAM

''SEC. 1860D. (a) DEFINITIONS.—In this part:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Center for Medicare Choices as established under section 1808.

''(2) COVERED DRUG.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), and (D), the term 'covered drug' means—

''(i) a drug that may be dispensed only upon a prescription and that is described in clause (i) or (ii) of subparagraph (A) of section 1927(k)(2); or

''(ii) a biological product described in clauses (i) through (iii) of subparagraph (B) of such section; or

''(iii) insulin described in subparagraph (C) of such section;

and such term includes a vaccine licensed under section 351 of the Public Health Service Act and any use of a covered drug for a medically accepted indication (as defined in section 1927(k)(6)).

''(B) EXCLUSIONS.—

''(i) IN GENERAL.—The term 'covered drug' does not include drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under section 1927(d)(2), other than subparagraph (E) thereof (relating to smoking cessation agents), or under section 1927(d)(3).

''(ii) AVOIDANCE OF DUPLICATE COVERAGE.—A drug prescribed for an individual that would otherwise be a covered drug under this part shall not be so considered if payment for such drug is available under part A or B, but shall be so considered if such payment is not available under part A or B or because benefits under such parts have been exhausted.

''(C) APPLICATION OF FORMULARY RESTRICTIONS.—A drug prescribed for an individual that would otherwise be a covered drug under this part shall not be so considered under a plan if the plan excludes the drug under a formulary and such exclusion is not successfully resolved under subsection (d) or (e)(2) of section 1860D–5.

''(D) APPLICATION OF GENERAL EXCLUSION PROVISIONS.—A Medicare Prescription Drug plan or a MedicareAdvantage plan may exclude from qualified prescription drug coverage any covered drug—

''(i) for which payment would not be made if section 1862(a) applied to part D; or

''(ii) which are not prescribed in accordance with the plan or this part.

Such exclusions are determinations subject to reconsideration and appeal pursuant to section 1860D–5(e).

''(3) ELIGIBLE BENEFICIARY.—The term 'eligible beneficiary' means an individual who is entitled to, or enrolled for, benefits under part A and enrolled under part B (other than a dual eligible individual, as defined in section 1860D–19(a)(4)(E)).

''(4) ELIGIBLE ENTITY.—The term 'eligible entity' means any risk-bearing entity that the Administrator determines to be appropriate to provide eligible beneficiaries with the benefits under a Medicare Prescription Drug plan, including—

''(A) a pharmaceutical benefit management company;

''(B) a wholesale or retail pharmacist delivery system;

''(C) an insurer (including an insurer that offers medicare supplemental policies under section 1882);

''(D) any other risk-bearing entity; or

''(E) any combination of the entities described in subparagraphs (A) through (D).

''(5) INITIAL COVERAGE LIMIT.—The term 'initial coverage limit' means the limit as established under section 1860D–6(c)(3), or, in the case of coverage that is not standard prescription drug coverage, the comparable limit (if any) established under the coverage.

''(6) MEDICAREADVANTAGE ORGANIZATION; MEDICAREADVANTAGE PLAN.—The terms 'MedicareAdvantage organization' and 'MedicareAdvantage plan' have the meanings given such terms in subsections (a)(1) and (b)(1), respectively, of section 1859 (relating to definitions relating to MedicareAdvantage organizations).

''(7) MEDICARE PRESCRIPTION DRUG PLAN.—The term 'Medicare Prescription Drug plan' means prescription drug coverage that is offered under a policy, contract, or plan—

''(A) that has been approved under section 1860D–13; and

''(B) by an eligible entity pursuant to, and in accordance with, a contract between the Administrator and the entity under section 1860D–7(b).

''(8) PRESCRIPTION DRUG ACCOUNT.—The term 'Prescription Drug Account' means the Prescription Drug Account (as established under section 1860D–25) in the Federal Supplementary Medical Insurance Trust Fund under section 1841.

''(9) QUALIFIED PRESCRIPTION DRUG COVERAGE.—The term 'qualified prescription drug coverage' means the coverage described in section 1860D–6(a)(1).

''(10) STANDARD PRESCRIPTION DRUG COVERAGE.—The term 'standard prescription drug coverage' means the coverage described in section 1860D–6(c).

''(b) APPLICATION OF MEDICAREADVANTAGE PROVISIONS UNDER THIS PART.—For purposes of applying provisions of part C under this part with respect to a Medicare Prescription Drug plan and an eligible entity, unless otherwise provided in this part such provisions shall be applied as if—

''(1) any reference to a MedicareAdvantage plan included a reference to a Medicare Prescription Drug plan;

''(2) any reference to a provider-sponsored organization included a reference to an eligible entity;

''(3) any reference to a contract under section 1857 included a reference to a contract under section 1860D–7(b); and

''(4) any reference to part C included a reference to this part.

''Subpart 1—Establishment of Voluntary Prescription Drug Delivery Program

''ESTABLISHMENT OF VOLUNTARY PRESCRIPTION DRUG DELIVERY PROGRAM

''SEC. 1860D–1. (a) PROVISION OF BENEFIT.—

''(1) IN GENERAL.—The Administrator shall provide for and administer a voluntary prescription drug delivery program under which each eligible beneficiary enrolled under this part shall be provided with access to qualified prescription drug coverage as follows:

''(A) MEDICAREADVANTAGE ENROLLEES RECEIVE COVERAGE THROUGH MEDICAREADVANTAGE PLAN.—

''(i) IN GENERAL.—Except as provided in clause (ii), an eligible beneficiary who is enrolled under this part and enrolled in a MedicareAdvantage plan offered by a MedicareAdvantage organization shall receive coverage of benefits under this part through such plan.

''(ii) EXCEPTION FOR ENROLLEES IN MEDICAREADVANTAGE MSA PLANS.—An eligible beneficiary who is enrolled under this part and enrolled in an MSA plan under part C shall receive coverage of benefits under this part through enrollment in a Medicare Prescription Drug plan that is offered in the geographic area in which the beneficiary resides. For purposes of this part, the term 'MSA plan' has the meaning given such term in section 1859(b)(3).

''(iii) EXCEPTION FOR ENROLLEES IN MEDICAREADVANTAGE PRIVATE FEE-FOR-SERVICE PLANS.—An eligible beneficiary who is enrolled under this part and enrolled in a private fee-for-service plan under part C shall—

''(i) receive benefits under this part through such plan if the plan provides qualified prescription drug coverage; and

''(ii) if the plan does not provide qualified prescription drug coverage, receive coverage of benefits under this part through enrollment in a Medicare Prescription Drug plan

that is offered in the geographic area in which the beneficiary resides. For purposes of this part, the term 'private fee-for-service plan' has the meaning given such term in section 1859(b)(2).

''(B) FEE-FOR-SERVICE ENROLLEES RECEIVE COVERAGE THROUGH A MEDICARE PRESCRIPTION DRUG PLAN.—An eligible beneficiary who is enrolled under this part but is not enrolled in a MedicareAdvantage plan (except for an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage) shall receive coverage of benefits under this part through enrollment in a Medicare Prescription Drug plan that is offered in the geographic area in which the beneficiary resides.

''(2) VOLUNTARY NATURE OF PROGRAM.—Nothing in this part shall be construed as requiring an eligible beneficiary to enroll in the program under this part.

''(3) SCOPE OF BENEFITS.—Pursuant to section 1860D–6(b)(3)(C), the program established under this part shall provide for coverage of all therapeutic categories and classes of covered drugs (although not necessarily for all drugs within such categories and classes).

''(4) PROGRAM TO BEGIN IN 2006.—The Administrator shall establish the program under this part in a manner so that benefits are first provided beginning on January 1, 2006.

''(b) ACCESS TO ALTERNATIVE PRESCRIPTION DRUG COVERAGE.—In the case of an eligible beneficiary who has creditable prescription drug coverage (as defined in section 1860D–2(b)(1)(F)), such beneficiary—

''(1) may continue to receive such coverage and not enroll under this part; and

''(2) pursuant to section 1860D–2(b)(1)(C), is permitted to subsequently enroll under this part without any penalty and obtain access to qualified prescription drug coverage in the manner described in subsection (a) if the beneficiary involuntarily loses such coverage.

''(c) FINANCING.—The costs of providing benefits under this part shall be payable from the Prescription Drug Account.

''ENROLLMENT UNDER PROGRAM

''SEC. 1860D–2. (a) ESTABLISHMENT OF ENROLLMENT PROCESS.—

''(1) PROCESS SIMILAR TO PART B ENROLLMENT.—The Administrator shall establish a process through which an eligible beneficiary (including an eligible beneficiary enrolled in a MedicareAdvantage plan offered by a MedicareAdvantage organization) may make an election to enroll under this part. Such process shall be similar to the process for enrollment in part B under section 1837, including the deeming provisions of such section.

''(2) CONDITION OF ENROLLMENT.—An eligible beneficiary must be enrolled under this part in order to be eligible to receive access to qualified prescription drug coverage.

''(b) SPECIAL ENROLLMENT PROCEDURES.—

''(1) LATE ENROLLMENT PENALTY.—

''(A) INCREASE IN MONTHLY BENEFICIARY OBLIGATION.—Subject to the succeeding provisions of this paragraph, in the case of an eligible beneficiary whose coverage period under this part began pursuant to an enrollment after the beneficiary's initial enrollment period under part B (determined pursuant to section 1837(d)) and not pursuant to the open enrollment period described in paragraph (2), the Administrator shall establish procedures for increasing the amount of the monthly beneficiary obligation under section 1860D–17 applicable to such beneficiary by an amount that the Administrator determines is actuarially sound for each full 12-month period (in the same continuous period of eligibility) in which the eligible beneficiary could have been enrolled under this part but was not so enrolled.

''(B) PERIODS TAKEN INTO ACCOUNT.—For purposes of calculating any 12-month period under subparagraph (A), there shall be taken into account—

''(i) the months which elapsed between the close of the eligible beneficiary's initial enrollment period and the close of the enrollment period in which the beneficiary enrolled; and

''(ii) in the case of an eligible beneficiary who reenrolls under this part, the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which the beneficiary reenrolled.

''(C) PERIODS NOT TAKEN INTO ACCOUNT.—

''(i) IN GENERAL.—For purposes of calculating any 12-month period under subparagraph (A), subject to clause (ii), there shall not be taken into account months for which the eligible beneficiary can demonstrate that the beneficiary had creditable prescription drug coverage (as defined in subparagraph (F)).

''(ii) BENEFICIARY MUST INVOLUNTARILY LOSE COVERAGE.—Clause (i) shall only apply with respect to coverage—

''(I) in the case of coverage described in clause (ii) of subparagraph (F), if the plan terminates, ceases to provide, or reduces the value of the prescription drug coverage under such plan to below the actuarial value of standard prescription drug coverage (as determined under section 1860D–6(f));

''(II) in the case of coverage described in clause (i), (iii), or (iv) of subparagraph (F), if the beneficiary is involuntarily disenrolled or becomes ineligible for such coverage; or

''(III) in the case of a beneficiary with coverage described in clause (v) of subparagraph (F), if the issuer of the policy terminates coverage under the policy.

''(D) PERIODS TREATED SEPARATELY.—Any increase in an eligible beneficiary's monthly beneficiary obligation under subparagraph (A) with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which the beneficiary may have.

''(E) CONTINUOUS PERIOD OF ELIGIBILITY.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of this paragraph, an eligible beneficiary's 'continuous period of eligibility' is the period that begins with the first day on which the beneficiary is eligible to enroll under section 1836 and ends with the beneficiary's death.

''(ii) SEPARATE PERIOD.—Any period during all of which an eligible beneficiary satisfied paragraph (1) of section 1836 and which terminated in or before the month preceding the month in which the beneficiary attained age 65 shall be a separate 'continuous period of eligibility' with respect to the beneficiary (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this paragraph).

''(F) CREDITABLE PRESCRIPTION DRUG COVERAGE DEFINED.—Subject to subparagraph (G), for purposes of this part, the term 'creditable prescription drug coverage' means any of the following:

''(i) DRUG-ONLY COVERAGE UNDER MEDICAID.—Coverage of covered outpatient drugs (as defined in section 1927) under title XIX or a waiver under 1115 that is provided to an individual who is not a dual eligible individual (as defined in section 1860D–19(a)(4)(E)).

''(ii) PRESCRIPTION DRUG COVERAGE UNDER A GROUP HEALTH PLAN.—Any outpatient prescription drug coverage under a group health plan, including a health benefits plan under chapter 89 of title 5, United States Code (commonly known as the Federal employees health benefits program), and a qualified retiree prescription drug plan (as defined in section 1860D–20(e)(4)).

''(iii) STATE PHARMACEUTICAL ASSISTANCE PROGRAM.—Coverage of prescription drugs under a State pharmaceutical assistance program.

''(iv) VETERANS' COVERAGE OF PRESCRIPTION DRUGS.—Coverage of prescription drugs for veterans, and survivors and dependents of veterans, under chapter 17 of title 38, United States Code.

''(v) PRESCRIPTION DRUG COVERAGE UNDER MEDIGAP POLICIES.—Coverage under a medicare supplemental policy under section 1882 that provides benefits for prescription drugs (whether or not such coverage conforms to the standards for packages of benefits under section 1882(p)(1)).

''(G) REQUIREMENT FOR CREDITABLE COVERAGE.—Coverage described in clauses (i) through (v) of subparagraph (F) shall not be considered to be creditable coverage under this part unless the coverage provides coverage of the cost of prescription drugs the actuarial value of which (as defined by the Administrator) to the beneficiary equals or exceeds the actuarial value of standard prescription drug coverage (as determined under section 1860D–6(f)).

''(H) DISCLOSURE.—

''(i) IN GENERAL.—Each entity that offers coverage of the type described in clause (ii) (iii), (iv), or (v) of subparagraph (F) shall provide for disclosure, consistent with standards established by the Administrator, of whether the coverage provides coverage of the cost of prescription drugs the actuarial value of which (as defined by the Administrator) to the beneficiary equals or exceeds the actuarial value of standard prescription drug coverage (as determined under section 1860D–6(f)).

''(ii) WAIVER OF LIMITATIONS.—An individual may apply to the Administrator to waive the application of subparagraph (G) if the individual establishes that the individual was not adequately informed that the coverage the beneficiary was enrolled in did not provide the level of benefits required in order for the coverage to be considered creditable coverage under subparagraph (F).

''(2) INITIAL ELECTION PERIODS.—

''(A) OPEN ENROLLMENT PERIOD FOR CURRENT BENEFICIARIES IN WHICH LATE ENROLLMENT PROCEDURES DO NOT APPLY.—In the case of an individual who is an eligible beneficiary as of November 1, 2005, there shall be an open enrollment period of 6 months beginning on that date under which such beneficiary may enroll under this part without the application of the late enrollment procedures established under paragraph (1)(A).

''(B) INDIVIDUAL COVERED IN FUTURE.—In the case of an individual who becomes an eligible beneficiary after such date, there shall be an initial election period which is the same as the initial enrollment period under section 1837(d).

''(3) SPECIAL ENROLLMENT PERIOD FOR BENEFICIARIES WHO INVOLUNTARILY LOSE CREDITABLE PRESCRIPTION DRUG COVERAGE.—

''(A) ESTABLISHMENT.—The Administrator shall establish a special open enrollment period (as described in subparagraph (B)) for an eligible beneficiary that loses creditable prescription drug coverage.

''(B) SPECIAL OPEN ENROLLMENT PERIOD.—The special open enrollment period described in this subparagraph is the 63-day period that begins on—

''(i) in the case of a beneficiary with coverage described in clause (ii) of paragraph (1)(F), the later of the date on which the plan terminates, ceases to provide, or substantially reduces (as defined by the Administrator) the value of the prescription drug coverage under such plan or the date the beneficiary is provided with notice of such termination or reduction;

''(ii) in the case of a beneficiary with coverage described in clause (i), (iii), or (iv) of paragraph (1)(F), the later of the date on which the beneficiary is involuntarily disenrolled or becomes ineligible for such coverage or the date the beneficiary is provided with notice of such loss of eligibility; or

''(iii) in the case of a beneficiary with coverage described in clause (v) of paragraph (1)(F), the latter of the date on which the issuer of the policy terminates coverage under the policy or the date the beneficiary is provided with notice of such termination.

''(c) PERIOD OF COVERAGE.—

''(1) IN GENERAL.—Except as provided in paragraph (2) and subject to paragraph (3), an eligible beneficiary's coverage under the program under this part shall be effective for the period provided in section 1838, as if that section applied to the program under this part.

''(2) OPEN AND SPECIAL ENROLLMENT.—

''(A) OPEN ENROLLMENT.—An eligible beneficiary who enrolls under the program under this part pursuant to subsection (b)(2) shall be entitled to the benefits under this part beginning on January 1, 2006.

''(B) SPECIAL ENROLLMENT.—Subject to paragraph (3), an eligible beneficiary who enrolls under the program under this part pursuant to subsection (b)(3) shall be entitled to the benefits under this part beginning on the first day of the month following the month in which such enrollment occurs.

''(3) LIMITATION.—Coverage under this part shall not begin prior to January 1, 2006.

''(d) TERMINATION.—

''(1) IN GENERAL.—The causes of termination specified in section 1838 shall apply to this part in the same manner as such causes apply to part B.

''(2) COVERAGE TERMINATED BY TERMINATION OF COVERAGE UNDER PART A OR B.—

''(A) IN GENERAL.—In addition to the causes of termination specified in paragraph (1), the Administrator shall terminate an individual's coverage under this part if the individual is no longer enrolled in both parts A and B.

''(B) EFFECTIVE DATE.—The termination described in subparagraph (A) shall be effective on the effective date of termination of coverage under part A or (if earlier) under part B.

''(3) PROCEDURES REGARDING TERMINATION OF A BENEFICIARY UNDER A PLAN.—The Administrator shall establish procedures for determining the status of an eligible beneficiary's enrollment under this part if the beneficiary's enrollment in a Medicare Prescription Drug plan offered by an eligible entity under this part is terminated by the entity for cause (pursuant to procedures established by the Administrator under section 1860D–3(a)(1)).

''ELECTION OF A MEDICARE PRESCRIPTION DRUG PLAN

''SEC. 1860D–3. (a) IN GENERAL.—

''(1) PROCESS.—

''(A) ELECTION.—

''(i) IN GENERAL.—The Administrator shall establish a process through which an eligible beneficiary who is enrolled under this part but not enrolled in a MedicareAdvantage plan (except for an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage) offered by a MedicareAdvantage organization—

''(I) shall make an election to enroll in any Medicare Prescription Drug plan that is offered by an eligible entity and that serves the geographic area in which the beneficiary resides; and

''(II) may make an annual election to change the election under this clause.

''(ii) CLARIFICATION REGARDING ENROLLMENT.—The process established under clause (i) shall include, in the case of an eligible beneficiary who is enrolled under this part but who has failed to make an election of a Medicare Prescription Drug plan in an area, for the enrollment in any Medicare Prescription Drug plan that has been designated by the Administrator in the area. The Administrator shall establish a process for designating a plan or plans in order to carry out the preceding sentence.

''(B) REQUIREMENTS FOR PROCESS.—In establishing the process under subparagraph (A), the Administrator shall—

''(i) use rules similar to the rules for enrollment, disenrollment, and termination of enrollment with a MedicareAdvantage plan under section 1851, including—

''(I) the establishment of special election periods under subsection (e)(4) of such section; and

''(II) the application of the guaranteed issue and renewal provisions of section 1851(g) (other than clause (i) and the second sentence of clause (ii) of paragraph (3)(C), relating to default enrollment); and

''(ii) coordinate enrollments, disenrollments, and terminations of enrollment under part C with enrollments, disenrollments, and terminations of enrollment under this part.

''(2) FIRST ENROLLMENT PERIOD FOR PLAN ENROLLMENT.—The process developed under paragraph (1) shall ensure that eligible beneficiaries who enroll under this part during the open enrollment period under section 1860D–2(b)(2) are permitted to elect an eligible entity prior to January 1, 2006, in order to ensure that coverage under this part is effective as of such date.

''(b) ENROLLMENT IN A MEDICAREADVANTAGE PLAN.—

''(1) IN GENERAL.—An eligible beneficiary who is enrolled under this part and enrolled in a MedicareAdvantage plan (except for an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage) offered by a MedicareAdvantage organization shall receive access to such coverage under this part through such plan.

''(2) RULES.—Enrollment in a MedicareAdvantage plan is subject to the rules for enrollment in such plan under section 1851.

''(c) INFORMATION TO ENTITIES TO FACILITATE ENROLLMENT.—Notwithstanding any other provision of law, the Administrator may provide to each eligible entity with a contract under this part such information about eligible beneficiaries as the Administrator determines to be necessary to facilitate efficient enrollment by such beneficiaries with such entities. The Administrator may provide such information only so long as and to the extent necessary to carry out such objective.

''PROVIDING INFORMATION TO BENEFICIARIES

''SEC. 1860D–4. (a) ACTIVITIES.—

''(1) IN GENERAL.—The Administrator shall conduct activities that are designed to broadly disseminate information to eligible beneficiaries (and prospective eligible beneficiaries) regarding the coverage provided under this part.

''(2) SPECIAL RULE FOR FIRST ENROLLMENT UNDER THE PROGRAM.—The activities described in paragraph (1) shall ensure that eligible beneficiaries are provided with such information at least 30 days prior to the first enrollment period described in section 1860D–3(a)(2).

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—The activities described in subsection (a) shall—

''(A) be similar to the activities performed by the Administrator under section 1851(d);

''(B) be coordinated with the activities performed by—

''(i) the Administrator under such section; and

''(ii) the Secretary under section 1804; and

''(C) provide for the dissemination of information comparing the plans offered by eligible entities under this part that are available to eligible beneficiaries residing in an area.

''(2) COMPARATIVE INFORMATION.—The comparative information described in paragraph (1)(C) shall include a comparison of the following:

''(A) BENEFITS.—The benefits provided under the plan and the formularies and grievance and appeals processes under the plan.

''(B) MONTHLY BENEFICIARY OBLIGATION.—The monthly beneficiary obligation under the plan.

''(C) QUALITY AND PERFORMANCE.—The quality and performance of the eligible entity offering the plan.

''(D) BENEFICIARY COST-SHARING.—The cost-sharing required of eligible beneficiaries under the plan.

''(E) CONSUMER SATISFACTION SURVEYS.—The results of consumer satisfaction surveys regarding the plan and the eligible entity offering such plan (conducted pursuant to section 1860D–5(h).

''(F) ADDITIONAL INFORMATION.—Such additional information as the Administrator may prescribe.

''BENEFICIARY PROTECTIONS

''SEC. 1860D–5. (a) DISSEMINATION OF INFORMATION.—

''(1) GENERAL INFORMATION.—An eligible entity offering a Medicare Prescription Drug plan shall disclose, in a clear, accurate, and standardized form to each enrollee at the time of enrollment, and at least annually thereafter, the information described in section 1852(c)(1) relating to such plan. Such information includes the following:

''(A) Access to covered drugs, including access through pharmacy networks.

''(B) How any formulary used by the entity functions.

''(C) Copayments, coinsurance, and deductible requirements.

''(D) Grievance and appeals processes.

The information described in the preceding sentence shall also be made available on request to prospective enrollees during open enrollment periods.

''(2) DISCLOSURE UPON REQUEST OF GENERAL COVERAGE, UTILIZATION, AND GRIEVANCE INFORMATION.—Upon request of an individual eligible to enroll in a Medicare Prescription Drug plan, the eligible entity offering such plan shall provide information similar (as determined by the Administrator) to the information described in subparagraphs (A), (B), and (C) of section 1852(c)(2) to such individual.

''(3) RESPONSE TO BENEFICIARY QUESTIONS.—An eligible entity offering a Medicare Prescription Drug plan shall have a mechanism for providing on a timely basis specific information to enrollees upon request, including information on the coverage of specific drugs and changes in its formulary.

''(4) CLAIMS INFORMATION.—An eligible entity offering a Medicare Prescription Drug plan must furnish to enrolled individuals in a form easily understandable to such individuals—

''(A) an explanation of benefits (in accordance with section 1806(a) or in a comparable manner); and

''(B) when prescription drug benefits are provided under this part, a notice of the benefits in relation to the initial coverage limit and annual out-of-pocket limit for the current year (except that such notice need not be provided more often than monthly).

''(5) APPROVAL OF MARKETING MATERIAL AND APPLICATION FORMS.—The provisions of section 1851(h) shall apply to marketing material and application forms under this part in the same manner as such provisions apply to marketing material and application forms under part C.

''(b) ACCESS TO COVERED DRUGS.—

''(1) ACCESS TO NEGOTIATED PRICES FOR PRESCRIPTION DRUGS.—An eligible entity offering a Medicare Prescription Drug plan shall have in place procedures to ensure that beneficiaries are not charged more than the negotiated price of a covered drug. Such procedures shall include the issuance of a card (or other technology) that may be used by an enrolled beneficiary for the purchase of prescription drugs for which coverage is not otherwise provided under the Medicare Prescription Drug plan.

''(2) ASSURING PHARMACY ACCESS.—

''(A) IN GENERAL.—An eligible entity offering a Medicare Prescription Drug plan shall secure the participation in its network of a sufficient number of pharmacies that dispense (other than by mail order) drugs directly to patients to ensure convenient access (as determined by the Administrator and including adequate emergency access) for enrolled beneficiaries, in accordance with standards established by the Administrator under section 1860D–7(g) that ensure such convenient access. Such standards shall take into account reasonable distances to pharmacy services in both urban and rural areas.

''(B) USE OF POINT-OF-SERVICE SYSTEM.—An eligible entity offering a Medicare Prescription Drug plan shall establish an optional point-of-service method of operation under which—

''(i) the plan provides access to any or all pharmacies that are not participating pharmacies in its network; and

''(ii) the plan may charge beneficiaries through adjustments in copayments any additional costs associated with the point-of-service option.

The additional copayments so charged shall not count toward the application of section 1860D–6(c).

''(3) REQUIREMENTS ON DEVELOPMENT AND APPLICATION OF FORMULARIES.—If an eligible entity offering a Medicare Prescription Drug plan uses a formulary, the following requirements must be met:

''(A) PHARMACY AND THERAPEUTIC (P&T) COMMITTEE.—

''(i) IN GENERAL.—The eligible entity must establish a pharmacy and therapeutic committee that develops and reviews the formulary.

''(ii) COMPOSITION.—A pharmacy and therapeutic committee shall include at least 1 academic expert, at least 1 practicing physician, and at least 1 practicing pharmacist, all of whom have expertise in the care of elderly or disabled persons, and a majority of the members of such committee shall consist of individuals who are a practicing physician or a practicing pharmacist (or both).

''(B) FORMULARY DEVELOPMENT.—In developing and reviewing the formulary, the committee shall base clinical decisions on the strength of scientific evidence and standards of practice, including assessing peer-reviewed medical literature, such as randomized clinical trials, pharmacoeconomic studies, outcomes research data, and on such other information as the committee determines to be appropriate.

''(C) INCLUSION OF DRUGS IN ALL THERAPEUTIC CATEGORIES AND CLASSES.—

''(i) IN GENERAL.—The formulary must include drugs within each therapeutic category and class of covered drugs (as defined by the Administrator), although not necessarily for all drugs within such categories and classes.

''(ii) REQUIREMENT.—In defining therapeutic categories and classes of covered drugs pursuant to clause (i), the Administrator shall use—

''(I) the compendia referred to section 1927(g)(1)(B)(i); and

''(II) other recognized sources of drug classifications and categorizations determined appropriate by the Administrator.

''(D) PROVIDER EDUCATION.—The committee shall establish policies and procedures to educate and inform health care providers concerning the formulary.

''(E) NOTICE BEFORE REMOVING DRUGS FROM FORMULARY.—Any removal of a drug from a formulary shall take effect only after appropriate notice is made available to beneficiaries, physicians, and pharmacists.

''(F) APPEALS AND EXCEPTIONS TO APPLICATION.—The eligible entity must have, as part of the appeals process under subsection (e), a process for timely appeals for denials of coverage based on such application of the formulary.

''(c) COST AND UTILIZATION MANAGEMENT; QUALITY ASSURANCE; MEDICATION THERAPY MANAGEMENT PROGRAM.—

''(1) IN GENERAL.—An eligible entity shall have in place the following with respect to covered drugs:

''(A) A cost-effective drug utilization management program, including incentives to reduce costs when appropriate.

''(B) Quality assurance measures to reduce medical errors and adverse drug interactions and to improve medication use, which—

''(i) shall include a medication therapy management program described in paragraph (2); and

''(ii) may include beneficiary education programs, counseling, medication refill reminders, and special packaging.

''(C) A program to control fraud, abuse, and waste.

Nothing in this section shall be construed as impairing an eligible entity from applying cost management tools (including differential payments) under all methods of operation.

''(2) MEDICATION THERAPY MANAGEMENT PROGRAM.—

''(A) IN GENERAL.—A medication therapy management program described in this paragraph is a program of drug therapy management and medication administration that is designed to assure, with respect to beneficiaries with chronic diseases (such as diabetes, asthma, hypertension, hyperlipidemia, and congestive heart failure) or multiple prescriptions, that covered drugs under the Medicare Prescription Drug plan are appropriately used to optimize therapeutic outcomes through improved medication use and to achieve therapeutic goals and reduce the risk of adverse events, including adverse drug interactions.

''(B) ELEMENTS.—Such program may include—

''(i) enhanced beneficiary understanding of such appropriate use through beneficiary education, counseling, and other appropriate means;

''(ii) increased beneficiary adherence with prescription medication regimens through medication refill reminders, special packaging, and other appropriate means; and

''(iii) detection of patterns of overuse and underuse of prescription drugs.

''(C) DEVELOPMENT OF PROGRAM IN COOPERATION WITH LICENSED PHARMACISTS.—The program shall be developed in cooperation with licensed and practicing pharmacists and physicians.

''(D) CONSIDERATIONS IN PHARMACY FEES.—The eligible entity offering a Medicare Prescription Drug plan shall take into account, in establishing fees for pharmacists and others providing services under the medication therapy management program, the resources and time used in implementing the program.

''(3) PUBLIC DISCLOSURE OF PHARMACEUTICAL PRICES FOR EQUIVALENT DRUGS.—The eligible entity offering a Medicare Prescription Drug plan shall provide that each pharmacy or other dispenser that arranges for the dispensing of a covered drug shall inform the beneficiary at the time of purchase of the drug of any differential between the price of the prescribed drug to the enrollee and the price of the lowest cost generic drug covered under the plan that is therapeutically equivalent and bioequivalent.

''(d) GRIEVANCE MECHANISM, COVERAGE DETERMINATIONS, AND RECONSIDERATIONS.—

''(1) IN GENERAL.—An eligible entity shall provide meaningful procedures for hearing and resolving grievances between the eligible entity (including any entity or individual through which the eligible entity provides covered benefits) and enrollees with Medicare Prescription Drug plans of the eligible entity under this part in accordance with section 1852(f).

''(2) APPLICATION OF COVERAGE DETERMINATION AND RECONSIDERATION PROVISIONS.—The requirements of paragraphs (1) through (3) of section 1852(g) shall apply to an eligible entity with respect to covered benefits under the Medicare Prescription Drug plan it offers under this part in the same manner as such requirements apply to a MedicareAdvantage organization with respect to benefits it offers under a MedicareAdvantage plan under part C.

''(3) REQUEST FOR REVIEW OF TIERED FORMULARY DETERMINATIONS.—In the case of a Medicare Prescription Drug plan offered by an eligible entity that provides for tiered cost-sharing for drugs included within a formulary and provides lower cost-sharing for preferred drugs included within the formulary, an individual who is enrolled in the plan may request coverage of a nonpreferred drug under the terms applicable for preferred drugs if the prescribing physician determines that the preferred drug for treatment of the same condition is not as effective for the individual or has adverse effects for the individual.

''(e) APPEALS.—

''(1) IN GENERAL.—Subject to paragraph (2), the requirements of paragraphs (4) and (5) of section 1852(g) shall apply to an eligible entity with respect to drugs not included on any formulary in a manner that is similar (as determined by the Administrator) to the manner that such requirements apply to a MedicareAdvantage organization with respect to benefits it offers under a MedicareAdvantage plan under part C.

''(2) FORMULARY DETERMINATIONS.—An individual who is enrolled in a Medicare Prescription Drug plan offered by an eligible entity may appeal to obtain coverage for a covered drug that is not on a formulary of the entity under the terms applicable for a formulary drug if the prescribing physician determines that the formulary drug for treatment of the same condition is not as effective for the individual or has adverse effects for the individual.

''(f) PRIVACY, CONFIDENTIALITY, AND ACCURACY OF ENROLLEE RECORDS.—Insofar as an eligible entity maintains individually identifiable medical records or other health information regarding eligible beneficiaries enrolled in the Medicare Prescription Drug plan offered by the entity, the entity shall have in place procedures to—

''(1) safeguard the privacy of any individually identifiable beneficiary information in a manner consistent with the Federal regulations (concerning the privacy of individually identifiable health information) promulgated

under section 264(c) of the Health Insurance Portability and Accountability Act of 1996;

''(2) maintain such records and information in a manner that is accurate and timely;

''(3) ensure timely access by such beneficiaries to such records and information; and

''(4) otherwise comply with applicable laws relating to patient privacy and confidentiality.

''(g) UNIFORM MONTHLY PLAN PREMIUM.—An eligible entity shall ensure that the monthly plan premium for a Medicare Prescription Drug plan charged under this part is the same for all eligible beneficiaries enrolled in the plan.

''(h) CONSUMER SATISFACTION SURVEYS.—An eligible entity shall conduct consumer satisfaction surveys with respect to the plan and the entity. The Administrator shall establish uniform requirements for such surveys.

''PRESCRIPTION DRUG BENEFITS

''SEC. 1860D–6. (a) REQUIREMENTS.—

''(1) IN GENERAL.—For purposes of this part and part C, the term 'qualified prescription drug coverage' means either of the following:

''(A) STANDARD PRESCRIPTION DRUG COVERAGE WITH ACCESS TO NEGOTIATED PRICES.—Standard prescription drug coverage (as defined in subsection (c)) and access to negotiated prices under subsection (e).

''(B) ACTUARIALLY EQUIVALENT PRESCRIPTION DRUG COVERAGE WITH ACCESS TO NEGOTIATED PRICES.—Coverage of covered drugs which meets the alternative coverage requirements of subsection (d) and access to negotiated prices under subsection (e), but only if it is approved by the Administrator as provided under subsection (d).

''(2) PERMITTING ADDITIONAL PRESCRIPTION DRUG COVERAGE.—

''(A) IN GENERAL.—Subject to subparagraph (B) and section 1860D–13(c)(2), nothing in this part shall be construed as preventing qualified prescription drug coverage from including coverage of covered drugs that exceeds the coverage required under paragraph (1).

''(B) REQUIREMENT.—An eligible entity may not offer a Medicare Prescription Drug plan that provides additional benefits pursuant to subparagraph (A) in an area unless the eligible entity offering such plan also offers a Medicare Prescription Drug plan in the area that only provides the coverage of prescription drugs that is required under paragraph (1).

''(3) COST CONTROL MECHANISMS.—In providing qualified prescription drug coverage, the entity offering the Medicare Prescription Drug plan or the MedicareAdvantage plan may use a variety of cost control mechanisms, including the use of formularies, tiered copayments, selective contracting with providers of prescription drugs, and mail order pharmacies.

''(b) APPLICATION OF SECONDARY PAYOR PROVISIONS.—The provisions of section 1852(a)(4) shall apply under this part in the same manner as they apply under part C.

''(c) STANDARD PRESCRIPTION DRUG COVERAGE.—For purposes of this part and part C, the term 'standard prescription drug coverage' means coverage of covered drugs that meets the following requirements:

''(1) DEDUCTIBLE.—

''(A) IN GENERAL.—The coverage has an annual deductible—

''(i) for 2006, that is equal to $275; or

''(ii) for a subsequent year, that is equal to the amount specified under this paragraph for the previous year increased by the percentage specified in paragraph (5) for the year involved.

''(B) ROUNDING.—Any amount determined under subparagraph (A)(ii) that is not a multiple of $1 shall be rounded to the nearest multiple of $1.

''(2) LIMITS ON COST-SHARING.—The coverage has cost-sharing (for costs above the annual deductible specified in paragraph (1) and up to the initial coverage limit under paragraph (3)) that is equal to 50 percent or that is actuarially consistent (using processes established under subsection (f)) with an average expected payment of 50 percent of such costs.

''(3) INITIAL COVERAGE LIMIT.—

''(A) IN GENERAL.—Subject to paragraph (4), the coverage has an initial coverage limit on the maximum costs that may be recognized for payment purposes (including the annual deductible)—

''(i) for 2006, that is equal to $4,500; or

''(ii) for a subsequent year, that is equal to the amount specified in this paragraph for the previous year, increased by the annual percentage increase described in paragraph (5) for the year involved.

''(B) ROUNDING.—Any amount determined under subparagraph (A)(ii) that is not a multiple of $1 shall be rounded to the nearest multiple of $1.

''(4) LIMITATION ON OUT-OF-POCKET EXPENDITURES BY BENEFICIARY.—

''(A) IN GENERAL.—The coverage provides benefits with cost-sharing that is equal to 10 percent after the individual has incurred costs (as described in subparagraph (C)) for covered drugs in a year equal to the annual out-of-pocket limit specified in subparagraph (B).

''(B) ANNUAL OUT-OF-POCKET LIMIT.—

''(i) IN GENERAL.—For purposes of this part, the 'annual out-of-pocket limit' specified in this subparagraph—

''(I) for 2006, is equal to $3,700; or

''(II) for a subsequent year, is equal to the amount specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (5) for the year involved.

''(ii) ROUNDING.—Any amount determined under clause (i)(II) that is not a multiple of $1 shall be rounded to the nearest multiple of $1.

''(C) APPLICATION.—In applying subparagraph (A)—

''(i) incurred costs shall only include costs incurred, with respect to covered drugs, for the annual deductible (described in paragraph (1)), cost-sharing (described in paragraph (2)), and amounts for which benefits are not provided because of the application of the initial coverage limit described in paragraph (3) (including costs incurred for covered drugs described in section 1860D(a)(2)(C)); and

''(ii) such costs shall be treated as incurred only if they are paid by the individual (or by another individual, such as a family member, on behalf of the individual), under section 1860D–19, under title XIX, or under a State pharmaceutical assistance program and the individual (or other individual) is not reimbursed through insurance or otherwise, a group health plan, or other third-party payment arrangement for such costs.

''(D) INFORMATION REGARDING THIRD-PARTY REIMBURSEMENT.—In order to ensure compliance with the requirements of subparagraph (C)(ii), the Administrator is authorized to establish procedures, in coordination with the Secretary of Treasury and the Secretary of Labor, for determining whether costs for individuals are being reimbursed through insurance or otherwise, a group health plan, or other third-party payment arrangement, and for alerting the entities in which such individuals are enrolled about such reimbursement arrangements. An entity with a contract under this part may also periodically ask individuals enrolled in a plan offered by the entity whether the individuals have or expect to receive such third-party reimbursement. A material misrepresentation of the information described in the preceding sentence by an individual (as defined in standards set by the Administrator and determined through a process established by the Administrator) shall constitute grounds for termination of enrollment under section 1860D–2(d).

''(5) ANNUAL PERCENTAGE INCREASE.—For purposes of this part, the annual percentage increase specified in this paragraph for a year is equal to the annual percentage increase in average per capita aggregate expenditures for covered drugs in the United States for beneficiaries under this title, as determined by the Administrator for the 12-month period ending in July of the previous year.

''(d) ALTERNATIVE COVERAGE REQUIREMENTS.—A Medicare Prescription Drug plan or MedicareAdvantage plan may provide a different prescription drug benefit design from the standard prescription drug coverage described in subsection (c) so long as the Administrator determines (based on an actuarial analysis by the Administrator) that the following requirements are met and the plan applies for, and receives, the approval of the Administrator for such benefit design:

''(1) ASSURING AT LEAST ACTUARIALLY EQUIVALENT PRESCRIPTION DRUG COVERAGE.—

''(A) ASSURING EQUIVALENT VALUE OF TOTAL COVERAGE.—The actuarial value of the total coverage (as determined under subsection (f)) is at least equal to the actuarial value (as so determined) of standard prescription drug coverage.

''(B) ASSURING EQUIVALENT UNSUBSIDIZED VALUE OF COVERAGE.—The unsubsidized value of the coverage is at least equal to the unsubsidized value of standard prescription drug coverage. For purposes of this subparagraph, the unsubsidized value of coverage is the amount by which the actuarial value of the coverage (as determined under subsection (f)) exceeds the actuarial value of the amounts associated with the application of section 1860D–17(c) and reinsurance payments under section 1860D–20 with respect to such coverage.

''(C) ASSURING STANDARD PAYMENT FOR COSTS AT INITIAL COVERAGE LIMIT.—The coverage is designed, based upon an actuarially representative pattern of utilization (as determined under subsection (f)), to provide for the payment, with respect to costs incurred that are equal to the initial coverage limit under subsection (c)(3), of an amount equal to at least the product of—

''(i) such initial coverage limit minus the deductible under subsection (c)(1); and

''(ii) the percentage specified in subsection (c)(2).

Benefits other than qualified prescription drug coverage shall not be taken into account for purposes of this paragraph.

''(2) DEDUCTIBLE AND LIMITATION ON OUT-OF-POCKET EXPENDITURES BY BENEFICIARIES MAY NOT VARY.—The coverage may not vary the deductible under subsection (c)(1) for the year or the limitation on out-of-pocket expenditures by beneficiaries described in subsection (c)(4) for the year.

''(e) ACCESS TO NEGOTIATED PRICES.—

''(1) ACCESS.—

''(A) IN GENERAL.—Under qualified prescription drug coverage offered by an eligible entity or a MedicareAdvantage organization, the entity or organization shall provide beneficiaries with access to negotiated prices used for payment for covered drugs, regardless of the fact that no benefits may be payable under the coverage with respect to such drugs because of the application of the deductible, any cost-sharing, or an initial coverage limit (described in subsection (c)(3)). For purposes of this part, the term 'negotiated prices' includes all discounts, direct

or indirect subsidies, rebates, or other price concessions or direct or indirect remunerations.

''(B) MEDICAID RELATED PROVISIONS.—Insofar as a State elects to provide medical assistance under title XIX for a drug based on the prices negotiated under a Medicare Prescription Drug plan under this part, the requirements of section 1927 shall not apply to such drugs. The prices negotiated under a Medicare Prescription Drug plan with respect to covered drugs, under a MedicareAdvantage plan with respect to such drugs, or under a qualified retiree prescription drug plan (as defined in section 1860D–20(e)(4)) with respect to such drugs, on behalf of eligible beneficiaries, shall (notwithstanding any other provision of law) not be taken into account for the purposes of establishing the best price under section 1927(c)(1)(C).

''(2) CARDS OR OTHER TECHNOLOGY.—

''(A) IN GENERAL.—In providing the access under paragraph (1), the eligible entity or MedicareAdvantage organization shall issue a card or use other technology pursuant to section 1860D–5(b)(1).

''(B) NATIONAL STANDARDS.—

''(i) DEVELOPMENT.—The Administrator shall provide for the development of national standards relating to a standardized format for the card or other technology required under subparagraph (A). Such standards shall be compatible with parts C and D of title XI and may be based on standards developed by an appropriate standard setting organization.

''(ii) CONSULTATION.—In developing the standards under clause (i), the Administrator shall consult with the National Council for Prescription Drug Programs and other standard-setting organizations determined appropriate by the Administrator.

''(iii) IMPLEMENTATION.—The Administrator shall implement the standards developed under clause (i) by January 1, 2008.

''(f) ACTUARIAL VALUATION; DETERMINATION OF ANNUAL PERCENTAGE INCREASES.—

''(1) PROCESSES.—For purposes of this section, the Administrator shall establish processes and methods—

''(A) for determining the actuarial valuation of prescription drug coverage, including—

''(i) an actuarial valuation of standard prescription drug coverage and of the reinsurance payments under section 1860D–20;

''(ii) the use of generally accepted actuarial principles and methodologies; and

''(iii) applying the same methodology for determinations of alternative coverage under subsection (d) as is used with respect to determinations of standard prescription drug coverage under subsection (c); and

''(B) for determining annual percentage increases described in subsection (c)(5).

Such processes shall take into account any effect that providing actuarially equivalent prescription drug coverage rather than standard prescription drug coverage has on drug utilization.

''(2) USE OF OUTSIDE ACTUARIES.—Under the processes under paragraph (1)(A), eligible entities and MedicareAdvantage organizations may use actuarial opinions certified by independent, qualified actuaries to establish actuarial values, but the Administrator shall determine whether such actuarial values meet the requirements under subsection (c)(1).

''REQUIREMENTS FOR ENTITIES OFFERING MEDICARE PRESCRIPTION DRUG PLANS; ESTABLISHMENT OF STANDARDS

''SEC. 1860D–7. (a) GENERAL REQUIREMENTS.—An eligible entity offering a Medicare Prescription Drug plan shall meet the following requirements:

''(1) LICENSURE.—Subject to subsection (c), the entity is organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a Medicare Prescription Drug plan.

''(2) ASSUMPTION OF FINANCIAL RISK.—

''(A) IN GENERAL.—Subject to subparagraph (B) and subsections (d)(2) and (e) of section 1860D–13, to the extent that the entity is at risk pursuant to such section 1860D–16, the entity assumes financial risk on a prospective basis for the benefits that it offers under a Medicare Prescription Drug plan and that is not covered under section 1860D–20.

''(B) REINSURANCE PERMITTED.—To the extent that the entity is at risk pursuant to section 1860D–16, the entity may obtain insurance or make other arrangements for the cost of coverage provided to any enrolled member under this part.

''(3) SOLVENCY FOR UNLICENSED ENTITIES.—In the case of an eligible entity that is not described in paragraph (1) and for which a waiver has been approved under subsection (c), such entity shall meet solvency standards established by the Administrator under subsection (d).

''(b) CONTRACT REQUIREMENTS.—The Administrator shall not permit an eligible beneficiary to elect a Medicare Prescription Drug plan offered by an eligible entity under this part, and the entity shall not be eligible for payments under section 1860D–16 or 1860D–20, unless the Administrator has entered into a contract under this subsection with the entity with respect to the offering of such plan. Such a contract with an entity may cover more than 1 Medicare Prescription Drug plan. Such contract shall provide that the entity agrees to comply with the applicable requirements and standards of this part and the terms and conditions of payment as provided for in this part.

''(c) WAIVER OF CERTAIN REQUIREMENTS IN ORDER TO ENSURE BENEFICIARY CHOICE.—

''(1) IN GENERAL.—In the case of an eligible entity that seeks to offer a Medicare Prescription Drug plan in a State, the Administrator shall waive the requirement of subsection (a)(1) that the entity be licensed in that State if the Administrator determines, based on the application and other evidence presented to the Administrator, that any of the grounds for approval of the application described in paragraph (2) have been met.

''(2) GROUNDS FOR APPROVAL.—The grounds for approval under this paragraph are the grounds for approval described in subparagraphs (B), (C), and (D) of section 1855(a)(2), and also include the application by a State of any grounds other than those required under Federal law.

''(3) APPLICATION OF WAIVER PROCEDURES.—With respect to an application for a waiver (or a waiver granted) under this subsection, the provisions of subparagraphs (E), (F), and (G) of section 1855(a)(2) shall apply.

''(4) REFERENCES TO CERTAIN PROVISIONS.—For purposes of this subsection, in applying the provisions of section 1855(a)(2) under this subsection to Medicare Prescription Drug plans and eligible entities—

''(A) any reference to a waiver application under section 1855 shall be treated as a reference to a waiver application under paragraph (1); and

''(B) any reference to solvency standards were treated as a reference to solvency standards established under subsection (d).

''(d) SOLVENCY STANDARDS FOR NON-LICENSED ENTITIES.—

''(1) ESTABLISHMENT AND PUBLICATION.—The Administrator, in consultation with the National Association of Insurance Commissioners, shall establish and publish, by not later than January 1, 2005, financial solvency and capital adequacy standards for entities described in paragraph (2).

''(2) COMPLIANCE WITH STANDARDS.—An eligible entity that is not licensed by a State under subsection (a)(1) and for which a waiver application has been approved under subsection (c) shall meet solvency and capital adequacy standards established under paragraph (1). The Administrator shall establish certification procedures for such eligible entities with respect to such solvency standards in the manner described in section 1855(c)(2).

''(e) LICENSURE DOES NOT SUBSTITUTE FOR OR CONSTITUTE CERTIFICATION.—The fact that an entity is licensed in accordance with subsection (a)(1) or has a waiver application approved under subsection (c) does not deem the eligible entity to meet other requirements imposed under this part for an eligible entity.

''(f) INCORPORATION OF CERTAIN MEDICAREADVANTAGE CONTRACT REQUIREMENTS.—The following provisions of section 1857 shall apply, subject to subsection (c)(4), to contracts under this section in the same manner as they apply to contracts under section 1857(a):

''(1) PROTECTIONS AGAINST FRAUD AND BENEFICIARY PROTECTIONS.—Section 1857(d).

''(2) INTERMEDIATE SANCTIONS.—Section 1857(g), except that in applying such section—

''(A) the reference in section 1857(g)(1)(B) to section 1854 is deemed a reference to this part; and

''(B) the reference in section 1857(g)(1)(F) to section 1852(k)(2)(A)(ii) shall not be applied.

''(3) PROCEDURES FOR TERMINATION.—Section 1857(h).

''(g) OTHER STANDARDS.—The Administrator shall establish by regulation other standards (not described in subsection (d)) for eligible entities and Medicare Prescription Drug plans consistent with, and to carry out, this part. The Administrator shall publish such regulations by January 1, 2005.

''(h) PERIODIC REVIEW AND REVISION OF STANDARDS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Administrator shall periodically review the standards established under this section and, based on such review, may revise such standards if the Administrator determines such revision to be appropriate.

''(2) PROHIBITION OF MIDYEAR IMPLEMENTATION OF SIGNIFICANT NEW REGULATORY REQUIREMENTS.—The Administrator may not implement, other than at the beginning of a calendar year, regulations under this section that impose new, significant regulatory requirements on an eligible entity or a Medicare Prescription Drug plan.

''(h) RELATION TO STATE LAWS.—

''(1) IN GENERAL.—The standards established under this part shall supersede any State law or regulation (including standards described in paragraph (2)) with respect to Medicare Prescription Drug plans which are offered by eligible entities under this part—

''(A) to the extent such law or regulation is inconsistent with such standards; and

''(B) in the same manner as such laws and regulations are superseded under section 1856(b)(3).

''(2) STANDARDS SPECIFICALLY SUPERSEDED.—State standards relating to the following are superseded under this section:

''(A) Benefit requirements, including requirements relating to cost-sharing and the structure of formularies.

''(B) Premiums.

''(C) Requirements relating to inclusion or treatment of providers.

''(D) Coverage determinations (including related appeals and grievance processes).

''(E) Requirements relating to marketing materials and summaries and schedules of

benefits regarding a Medicare Prescription Drug plan.

''(3) PROHIBITION OF STATE IMPOSITION OF PREMIUM TAXES.—No State may impose a premium tax or similar tax with respect to—

''(A) monthly beneficiary obligations paid to the Administrator for Medicare Prescription Drug plans under this part; or

''(B) any payments made by the Administrator under this part to an eligible entity offering such a plan.

''Subpart 2—Prescription Drug Delivery System

''ESTABLISHMENT OF SERVICE AREAS

''SEC. 1860D–10. (a) ESTABLISHMENT.—

''(1) INITIAL ESTABLISHMENT.—Not later than April 15, 2005, the Administrator shall establish and publish the service areas in which Medicare Prescription Drug plans may offer benefits under this part.

''(2) PERIODIC REVIEW AND REVISION OF SERVICE AREAS.—The Administrator shall periodically review the service areas applicable under this section and, based on such review, may revise such service areas if the Administrator determines such revision to be appropriate.

''(b) REQUIREMENTS FOR ESTABLISHMENT OF SERVICE AREAS.—

''(1) IN GENERAL.—The Administrator shall establish the service areas under subsection (a) in a manner that—

''(A) maximizes the availability of Medicare Prescription Drug plans to eligible beneficiaries; and

''(B) minimizes the ability of eligible entities offering such plans to favorably select eligible beneficiaries.

''(2) ADDITIONAL REQUIREMENTS.—The Administrator shall establish the service areas under subsection (a) consistent with the following requirements:

''(A) There shall be at least 10 service areas.

''(B) Each service area must include at least 1 State.

''(C) The Administrator may not divide States so that portions of the State are in different service areas.

''(D) To the extent possible, the Administrator shall include multistate metropolitan statistical areas in a single service area. The Administrator may divide metropolitan statistical areas where it is necessary to establish service areas of such size and geography as to maximize the participation of Medicare Prescription Drug plans.

''(3) MAY CONFORM TO MEDICAREADVANTAGE PREFERRED PROVIDER REGIONS.—The Administrator may conform the service areas established under this section to the preferred provider regions established under section 1858(a)(3).

''PUBLICATION OF RISK ADJUSTERS

''SEC. 1860D–11. (a) PUBLICATION.—Not later than April 15 of each year (beginning in 2005), the Administrator shall publish the risk adjusters established under subsection (b) to be used in computing—

''(1) the amount of payment to Medicare Prescription Drug plans in the subsequent year under section 1860D–16(a), insofar as it is attributable to standard prescription drug coverage (or actuarially equivalent prescription drug coverage); and

''(2) the amount of payment to MedicareAdvantage plans in the subsequent year under section 1858A(c), insofar as it is attributable to standard prescription drug coverage (or actuarially equivalent prescription drug coverage).

''(b) ESTABLISHMENT OF RISK ADJUSTERS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Administrator shall establish an appropriate methodology for adjusting the amount of payment to plans referred to in subsection (a) to take into account variation in costs based on the differences in actuarial risk of different enrollees being served. Any such risk adjustment shall be designed in a manner as to not result in a change in the aggregate payments described in paragraphs (1) and (2) of subsection (a).

''(2) CONSIDERATIONS.—In establishing the methodology under paragraph (1), the Administrator may take into account the similar methodologies used under section 1853(a)(3) to adjust payments to MedicareAdvantage organizations.

''(3) DATA COLLECTION.—In order to carry out this subsection, the Administrator shall require—

''(A) eligible entities to submit data regarding drug claims that can be linked at the beneficiary level to part A and part B data and such other information as the Administrator determines necessary; and

''(B) MedicareAdvantage organizations (except MSA plans or a private fee-for-service plan that does not provide qualified prescription drug coverage) to submit data regarding drug claims that can be linked to other data that such organizations are required to submit to the Administrator and such other information as the Administrator determines necessary.

''SUBMISSION OF BIDS FOR PROPOSED MEDICARE PRESCRIPTION DRUG PLANS

''SEC. 1860D–12. (a) SUBMISSION.—

''(1) IN GENERAL.—Each eligible entity that intends to offer a Medicare Prescription Drug plan in an area in a year (beginning with 2006) shall submit to the Administrator, at such time in the previous year and in such manner as the Administrator may specify, such information as the Administrator may require, including the information described in subsection (b).

''(2) ANNUAL SUBMISSION.—An eligible entity shall submit the information required under paragraph (1) with respect to a Medicare Prescription Drug plan that the entity intends to offer on an annual basis.

''(b) INFORMATION DESCRIBED.—The information described in this subsection includes information on each of the following:

''(1) The benefits under the plan (as required under section 1860D–6).

''(2) The actuarial value of the qualified prescription drug coverage.

''(3) The amount of the monthly plan premium under the plan, including an actuarial certification of—

''(A) the actuarial basis for such monthly plan premium;

''(B) the portion of such monthly plan premium attributable to standard prescription drug coverage or actuarially equivalent prescription drug coverage and, if applicable, to benefits that are in addition to such coverage; and

''(C) the reduction in such monthly plan premium resulting from the payments provided under section 1860D–20.

''(4) The service area for the plan.

''(5) Whether the entity plans to use any funds in the plan stabilization reserve fund in the Prescription Drug Account that are available to the entity to stabilize or reduce the monthly plan premium submitted under paragraph (3), and if so, the amount in such reserve fund that is to be used.

''(6) Such other information as the Administrator may require to carry out this part.

''(c) OPTIONS REGARDING SERVICE AREAS.—

''(1) IN GENERAL.—The service area of a Medicare Prescription Drug plan shall be either—

''(A) the entire area of 1 of the service areas established by the Administrator under section 1860D–10; or

''(B) the entire area covered by the medicare program.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed as prohibiting an eligible entity from submitting separate bids in multiple service areas as long as each bid is for a single service area.

''APPROVAL OF PROPOSED MEDICARE PRESCRIPTION DRUG PLANS

''SEC. 1860D–13. (a) APPROVAL.—

''(1) IN GENERAL.—The Administrator shall review the information filed under section 1860D–12 and shall approve or disapprove the Medicare Prescription Drug plan.

''(2) REQUIREMENTS FOR APPROVAL.—The Administrator may not approve a Medicare Prescription Drug plan unless the following requirements are met:

''(A) COMPLIANCE WITH REQUIREMENTS.—The plan and the entity offering the plan comply with the requirements under this part.

''(B) APPLICATION OF FEHBP STANDARD.—(i) The portion of the monthly plan premium submitted under section 1860D–12(b) that is attributable to standard prescription drug coverage reasonably and equitably reflects the actuarial value of the standard prescription drug coverage less the actuarial value of the reinsurance payments under section 1860D–20 and the amount of any funds in the plan stabilization reserve fund in the Prescription Drug Account used to stabilize or reduce the monthly plan premium.

''(ii) If the plan provides additional prescription drug coverage pursuant to section 1860D–6(a)(2), the monthly plan premium reasonably and equitably reflects the actuarial value of the coverage provided less the actuarial value of the reinsurance payments under section 1860D–20 and the amount of any funds in the plan stabilization reserve fund in the Prescription Drug Account used to stabilize or reduce the monthly plan premium.

''(b) NEGOTIATION.—In exercising the authority under subsection (a), the Administrator shall have the authority to—

''(1) negotiate the terms and conditions of the proposed monthly plan premiums submitted and other terms and conditions of a proposed plan; and

''(2) disapprove, or limit enrollment in, a proposed plan based on—

''(A) the costs to beneficiaries under the plan;

''(B) the quality of the coverage and benefits under the plan;

''(C) the adequacy of the network under the plan; or

''(D) other factors determined appropriate by the Administrator.

''(c) SPECIAL RULES FOR APPROVAL.—The Administrator may approve a Medicare Prescription Drug plan submitted under section 1860D–12 only if the benefits under such plan—

''(1) include the required benefits under section 1860D–6(a)(1); and

''(2) are not designed in such a manner that the Administrator finds is likely to result in favorable selection of eligible beneficiaries.

''(d) ACCESS TO COMPETITIVE COVERAGE.—

''(1) NUMBER OF CONTRACTS.—The Administrator, consistent with the requirements of this part and the goal of containing costs under this title, shall, with respect to a year, approve at least 2 contracts to offer a Medicare Prescription Drug plan in each service area (established under section 1860D–10) for the year.

''(2) AUTHORITY TO REDUCE RISK TO ENSURE ACCESS.—

''(A) IN GENERAL.—Subject to subparagraph (B), if the Administrator determines, with respect to an area, that the access required under paragraph (1) is not going to be provided in the area during the subsequent year, the Administrator shall—

''(i) adjust the percents specified in paragraphs (2) and (4) of section 1860D–16(b) in an area in a year; or

''(ii) increase the percent specified in section 1860D–20(c)(1) in an area in a year.

The administrator shall exercise the authority under the preceding sentence only so long as (and to the extent) necessary to assure the access guaranteed under paragraph (1).

''(B) REQUIREMENTS FOR USE OF AUTHORITY.—In exercising authority under subparagraph (A), the Administrator—

''(i) shall not provide for the full underwriting of financial risk for any eligible entity;

''(ii) shall not provide for any underwriting of financial risk for a public eligible entity with respect to the offering of a nationwide Medicare Prescription Drug plan; and

''(iii) shall seek to maximize the assumption of financial risk by eligible entities to ensure fair competition among Medicare Prescription Drug plans.

''(C) REQUIREMENT TO ACCEPT 2 FULL-RISK QUALIFIED BIDS BEFORE EXERCISING AUTHORITY.—The Administrator may not exercise the authority under subparagraph (A) with respect to an area and year if 2 or more qualified bids are submitted by eligible entities to offer a Medicare Prescription Drug plan in the area for the year under paragraph (1) before the application of subparagraph (A).

''(D) REPORTS.—The Administrator, in each annual report to Congress under section 1808(c)(1)(D), shall include information on the exercise of authority under subparagraph (A). The Administrator also shall include such recommendations as may be appropriate to limit the exercise of such authority.

''(e) GUARANTEED ACCESS.—

''(1) ACCESS.—In order to assure access to qualified prescription drug coverage in an area, the Administrator shall take the following steps:

''(A) DETERMINATION.—Not later than September 1 of each year (beginning in 2005) and for each area (established under section 1860D–10), the Administrator shall make a determination as to whether the access required under subsection (d)(1) is going to be provided in the area during the subsequent year. Such determination shall be made after the Administrator has exercised the authority under subsection (d)(2).

''(B) CONTRACT WITH AN ENTITY TO PROVIDE COVERAGE IN AN AREA.—Subject to paragraph (3), if the Administrator makes a determination under subparagraph (A) that the access required under subsection (d)(1) is not going to be provided in an area during the subsequent year, the Administrator shall enter into a contract with an entity to provide eligible beneficiaries enrolled under this part (and not, except for an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage enrolled in a MedicareAdvantage plan) and residing in the area with standard prescription drug coverage (including access to negotiated prices for such beneficiaries pursuant to section 1860D–6(e)) during the subsequent year. An entity may be awarded a contract for more than 1 of the areas for which the Administrator is required to enter into a contract under this paragraph but the Administrator may enter into only 1 such contract in each such area. An entity with a contract under this part shall meet the requirements described in section 1860D–5 and such other requirements determined appropriate by the Administrator.

''(C) REQUIREMENT TO ACCEPT 2 REDUCED-RISK QUALIFIED BIDS BEFORE ENTERING INTO CONTRACT.—The Administrator may not enter into a contract under subparagraph (B) with respect to an area and year if 2 or more qualified bids are submitted by eligible entities to offer a Medicare Prescription Drug plan in the area for the year after the Administrator has exercised the authority under subsection (d)(2) in the area for the year.

''(D) ENTITY REQUIRED TO MEET BENEFICIARY PROTECTION AND OTHER REQUIREMENTS.—An entity with a contract under subparagraph (B) shall meet the requirements described in section 1860D–5 and such other requirements determined appropriate by the Administrator.

''(E) COMPETITIVE PROCEDURES.—Competitive procedures (as defined in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5))) shall be used to enter into a contract under subparagraph (B).

''(2) MONTHLY BENEFICIARY OBLIGATION FOR ENROLLMENT.—

''(A) IN GENERAL.—In the case of an eligible beneficiary receiving access to qualified prescription drug coverage through enrollment with an entity with a contract under paragraph (1)(B), the monthly beneficiary obligation of such beneficiary for such enrollment shall be an amount equal to the applicable percent (as determined under section 1860D–17(c)) of the monthly national average premium (as computed under section 1860D–15) for the area for the year, as adjusted using the geographic adjuster under subparagraph (B).

''(B) ESTABLISHMENT OF GEOGRAPHIC ADJUSTER.—The Administrator shall establish an appropriate methodology for adjusting the monthly beneficiary obligation (as computed under subparagraph (A)) for the year in an area to take into account differences in drug prices among areas. In establishing such methodology, the Administrator may take into account differences in drug utilization between eligible beneficiaries in an area and eligible beneficiaries in other areas and the results of the ongoing study required under section 106 of the Prescription Drug and Medicare Improvement Act of 2003. Any such adjustment shall be applied in a manner so as to not result in a change in the aggregate payments made under this part that would have been made if the Administrator had not applied such adjustment.

''(3) PAYMENTS UNDER THE CONTRACT.—

''(A) IN GENERAL.—A contract entered into under paragraph (1)(B) shall provide for—

''(i) payment for the negotiated costs of covered drugs provided to eligible beneficiaries enrolled with the entity; and

''(ii) payment of prescription management fees that are tied to performance requirements established by the Administrator for the management, administration, and delivery of the benefits under the contract.

''(B) PERFORMANCE REQUIREMENTS.—The performance requirements established by the Administrator pursuant to subparagraph (A)(ii) shall include the following:

''(i) The entity contains costs to the Prescription Drug Account and to eligible beneficiaries enrolled under this part and with the entity.

''(ii) The entity provides such beneficiaries with quality clinical care.

''(iii) The entity provides such beneficiaries with quality services.

''(C) ENTITY ONLY AT RISK TO THE EXTENT OF THE FEES TIED TO PERFORMANCE REQUIREMENTS.—An entity with a contract under paragraph (1)(B) shall only be at risk for the provision of benefits under the contract to the extent that the management fees paid to the entity are tied to performance requirements under subparagraph (A)(ii).

''(4) ELIGIBLE ENTITY THAT SUBMITTED A BID FOR THE AREA NOT ELIGIBLE TO BE AWARDED THE CONTRACT.—An eligible entity that submitted a bid to offer a Medicare Prescription Drug plan for an area for a year under section 1860D–12, including a bid submitted after the Administrator has exercised the authority under subsection (d)(2), may not be awarded a contract under paragraph (1)(B) for that area and year. The previous sentence shall apply to an entity that was awarded a contract under paragraph (1)(B) for the area in the previous year and submitted such a bid under section 1860D–12 for the year.

''(5) TERM OF CONTRACT.—A contract entered into under paragraph (1)(B) shall be for a 1-year period. Such contract may provide for renewal at the discretion of the Administrator if the Administrator is required to enter into a contract under such paragraph with respect to the area covered by such contract for the subsequent year.

''(6) ENTITY NOT PERMITTED TO MARKET OR BRAND THE CONTRACT.—An entity with a contract under paragraph (1)(B) may not engage in any marketing or branding of such contract.

''(7) RULES FOR AREAS WHERE ONLY 1 COMPETITIVELY BID PLAN WAS APPROVED.—In the case of an area where (before the application of this subsection) only 1 Medicare Prescription Drug plan was approved for a year—

''(A) the plan may (at the option of the plan) be offered in the area for the year (under rules applicable to such plans under this part and not under this subsection);

''(B) eligible beneficiaries described in paragraph (1)(B) may receive access to qualified prescription drug coverage through enrollment in the plan or with an entity with a contract under paragraph (1)(B); and

''(C) for purposes of applying section 1860D–3(a)(1)(A)(ii), such plan shall be the plan designated in the area under such section.

''(f) TWO-YEAR CONTRACTS.—Except for a contract entered into under subsection (e)(1)(B), a contract approved under this part (including a contract under) shall be for a 2-year period.

''COMPUTATION OF MONTHLY STANDARD PRESCRIPTION DRUG COVERAGE PREMIUMS

''SEC. 1860D–14. (a) IN GENERAL.—For each year (beginning with 2006), the Administrator shall compute a monthly standard prescription drug coverage premium for each Medicare Prescription Drug plan approved under section 1860D–13 and for each MedicareAdvantage plan.

''(b) REQUIREMENTS.—The monthly standard prescription drug coverage premium for a plan for a year shall be equal to—

''(1) in the case of a plan offered by an eligible entity or MedicareAdvantage organization that provides standard prescription drug coverage or an actuarially equivalent prescription drug coverage and does not provide additional prescription drug coverage pursuant to section 1860D–6(a)(2), the monthly plan premium approved for the plan under section 1860D–13 for the year; and

''(2) in the case of a plan offered by an eligible entity or MedicareAdvantage organization that provides additional prescription drug coverage pursuant to section 1860D–6(a)(2)—

''(A) an amount that reflects only the actuarial value of the standard prescription drug coverage offered under the plan; or

''(B) if determined appropriate by the Administrator, the monthly plan premium approved under section 1860D–13 for the year for the Medicare Prescription Drug plan (or, if applicable, the MedicareAdvantage plan) that, as required under section 1860D–6(a)(2)(B) for a Medicare Prescription Drug plans and a MedicareAdvantage plan—

''(i) is offered by such entity or organization in the same area as the plan; and

''(ii) does not provide additional prescription drug coverage pursuant to such section.

''COMPUTATION OF MONTHLY NATIONAL AVERAGE PREMIUM

''SEC. 1860D–15. (a) COMPUTATION.—

''(1) IN GENERAL.—For each year (beginning with 2006) the Administrator shall compute a monthly national average premium equal to the average of the monthly standard prescription drug coverage premium for each Medicare Prescription Drug plan and each MedicareAdvantage plan (as computed under section 1860D–14). Such premium may be adjusted pursuant to any methodology determined under subsection (b), as determined appropriate by the Administrator.

''(2) WEIGHTED AVERAGE.—The monthly national average premium computed under paragraph (1) shall be a weighted average, with the weight for each plan being equal to the average number of beneficiaries enrolled under such plan in the previous year.

''(b) GEOGRAPHIC ADJUSTMENT.—The Administrator shall establish an appropriate methodology for adjusting the monthly national average premium (as computed under subsection (a)) for the year in an area to take into account differences in prices for covered drugs among different areas. In establishing such methodology, the Administrator may take into account differences in drug utilization between eligible beneficiaries in that area and other eligible beneficiaries and the results of the ongoing study required under section 106 of the Prescription Drug and Medicare Improvement Act of 2003. Any such adjustment shall be applied in a manner as to not result in a change in aggregate payments made under this part than would have been made if the Administrator had not applied such adjustment.

''(c) SPECIAL RULE FOR 2006.—For purposes of applying this section for 2006, the Administrator shall establish procedures for determining the weighted average under subsection (a)(2) for 2005.

''PAYMENTS TO ELIGIBLE ENTITIES

''SEC. 1860D–16. (a) PAYMENT OF MONTHLY PLAN PREMIUMS.—For each year (beginning with 2006), the Administrator shall pay to each entity offering a Medicare Prescription Drug plan in which an eligible beneficiary is enrolled an amount equal to the full amount of the monthly plan premium approved for the plan under section 1860D–13 on behalf of each eligible beneficiary enrolled in such plan for the year, as adjusted using the risk adjusters that apply to the standard prescription drug coverage published under section 1860D–11.

''(b) PORTION OF TOTAL PAYMENTS OF MONTHLY PLAN PREMIUMS SUBJECT TO RISK.—

''(1) NOTIFICATION OF SPENDING UNDER THE PLAN.—

''(A) IN GENERAL.—For each year (beginning in 2007), the eligible entity offering a Medicare Prescription Drug plan shall notify the Administrator of the following:

''(i) TOTAL ACTUAL COSTS.—The total amount of costs that the entity incurred in providing standard prescription drug coverage (or prescription drug coverage that is actuarially equivalent pursuant to section 1860D–6(a)(1)(B)) for all enrollees under the plan in the previous year.

''(ii) ACTUAL COSTS FOR SPECIFIC DRUGS.—With respect to the total amount under clause (i) for the year, a breakdown of—

''(I) each covered drug that constitutes a portion of such amount;

''(II) the negotiated price for the eligible entity for each such drug;

''(III) the number of prescriptions; and

''(IV) the average beneficiary coinsurance rate for a each covered drug that constitutes a portion of such amount.

''(B) CERTAIN EXPENSES NOT INCLUDED.—The amounts under clauses (i) and (ii)(II) of subparagraph (A) may not include—

''(i) administrative expenses incurred in providing the coverage described in subparagraph (A)(i);

''(ii) amounts expended on providing additional prescription drug coverage pursuant to section 1860D–6(a)(2); or

''(iii) amounts expended for which the entity is subsequently provided with reinsurance payments under section 1860D–20.

''(2) ADJUSTMENT OF PAYMENT.—

''(A) NO ADJUSTMENT IF ALLOWABLE COSTS WITHIN RISK CORRIDOR.—If the allowable costs (specified in paragraph (3)) for the plan for the year are not more than the first threshold upper limit of the risk corridor (specified in paragraph (4)(A)(iii)) and are not less than the first threshold lower limit of the risk corridor (specified in paragraph (4)(A)(i)) for the plan for the year, then no additional payments shall be made by the Administrator and no payments shall be made by (or collected from) the eligible entity offering the plan.

''(B) INCREASE IN PAYMENT IF ALLOWABLE COSTS ABOVE UPPER LIMIT OF RISK CORRIDOR.—

''(i) IN GENERAL.—If the allowable costs for the plan for the year are more than the first threshold upper limit of the risk corridor for the plan for the year, then the Administrator shall increase the total of the monthly payments made to the entity offering the plan for the year under subsection (a) by an amount equal to the sum of—

''(I) the applicable percent (as defined in subparagraph (D)) of such allowable costs which are more than such first threshold upper limit of the risk corridor and not more than the second threshold upper limit of the risk corridor for the plan for the year (as specified under paragraph (4)(A)(iv)); and

''(II) 90 percent of such allowable costs which are more than such second threshold upper limit of the risk corridor.

''(ii) SPECIAL TRANSITIONAL CORRIDOR FOR 2006 AND 2007.—If the Administrator determines with respect to 2006 or 2007 that at least 60 percent of Medicare Prescription Drug plans and MedicareAdvantage Plans (excluding MSA plans or private fee-for-service plans that do not provide qualified prescription drug coverage) have allowable costs for the plan for the year that are more than the first threshold upper limit of the risk corridor for the plan for the year and that such plans represent at least 60 percent of eligible beneficiaries enrolled under this part, clause (i)(I) shall be applied by substituting '90 percent' for 'applicable percent'.

''(C) PLAN PAYMENT IF ALLOWABLE COSTS BELOW LOWER LIMIT OF RISK CORRIDOR.—If the allowable costs for the plan for the year are less than the first threshold lower limit of the risk corridor for the plan for the year, then the entity offering the plan shall a make a payment to the Administrator of an amount (or the Administrator shall otherwise recover from the plan an amount) equal to—

''(i) the applicable percent (as so defined) of such allowable costs which are less than such first threshold lower limit of the risk corridor and not less than the second threshold lower limit of the risk corridor for the plan for the year (as specified under paragraph (4)(A)(ii)); and

''(ii) 90 percent of such allowable costs which are less than such second threshold lower limit of the risk corridor.

''(D) APPLICABLE PERCENT DEFINED.—For purposes of this paragraph, the term 'applicable percent' means—

''(i) for 2006 and 2007, 75 percent; and

''(ii) for 2008 and subsequent years, 50 percent.

''(3) ESTABLISHMENT OF ALLOWABLE COSTS.—

''(A) IN GENERAL.—For each year, the Administrator shall establish the allowable costs for each Medicare Prescription Drug plan for the year. The allowable costs for a plan for a year shall be equal to the amount described in paragraph (1)(A)(i) for the plan for the year, adjusted under subparagraph (B)(ii).

''(B) REPRICING OF COSTS.—

''(i) CALCULATION OF AVERAGE PLAN COST.—Utilizing the information obtained under paragraph (1)(A)(ii) and section 1860D–20(b)(1)(B), for each year (beginning with 2006), the Administrator shall establish an average negotiated price with respect to all Medicare Prescription Drug plans for each covered drug.

''(ii) ADJUSTMENT IF ACTUAL COSTS EXCEED AVERAGE COSTS.—With respect to a Medicare Prescription Drug plan for a year, the Administrator shall reduce the amount described in paragraph (1)(A)(i) for the plan for the year to the extent such amount is based on costs of specific covered drugs furnished under the plan in the year (as specified under paragraph (1)(A)(ii)) for which the negotiated prices are greater than the average negotiated price for the covered drug for the year (as determined under clause (i)).

''(4) ESTABLISHMENT OF RISK CORRIDORS.—

''(A) IN GENERAL.—For each year (beginning with 2006), the Administrator shall establish a risk corridor for each Medicare Prescription Drug plan. The risk corridor for a plan for a year shall be equal to a range as follows:

''(i) FIRST THRESHOLD LOWER LIMIT.—The first threshold lower limit of such corridor shall be equal to—

''(I) the target amount described in subparagraph (B) for the plan; minus

''(II) an amount equal to the first threshold risk percentage for the plan (as determined under subparagraph (C)(i)) of such target amount.

''(ii) SECOND THRESHOLD LOWER LIMIT.—The second threshold lower limit of such corridor shall be equal to—

''(I) the target amount described in subparagraph (B) for the plan; minus

''(II) an amount equal to the second threshold risk percentage for the plan (as determined under subparagraph (C)(ii)) of such target amount.

''(iii) FIRST THRESHOLD UPPER LIMIT.—The first threshold upper limit of such corridor shall be equal to the sum of—

''(I) such target amount; and

''(II) the amount described in clause (i)(II).

''(iv) SECOND THRESHOLD UPPER LIMIT.—The second threshold upper limit of such corridor shall be equal to the sum of—

''(I) such target amount; and

''(II) the amount described in clause (ii)(II).

''(B) TARGET AMOUNT DESCRIBED.—The target amount described in this paragraph is, with respect to a Medicare Prescription Drug plan offered by an eligible entity in a year—

''(i) in the case of a plan offered by an eligible entity that provides standard prescription drug coverage or actuarially equivalent prescription drug coverage and does not provide additional prescription drug coverage pursuant to section 1860D–6(a)(2), an amount equal to the total of the monthly plan premiums paid to such entity for such plan for the year pursuant to subsection (a), reduced by the percentage specified in subparagraph (D); and

''(ii) in the case of a plan offered by an eligible entity that provides additional prescription drug coverage pursuant to section 1860D–6(a)(2), an amount equal to the total of the monthly plan premiums paid to such entity for such plan for the year pursuant to subsection (a) that are related to standard prescription drug coverage (determined using the rules under section 1860D–14(b)), reduced by the percentage specified in subparagraph (D).

''(C) FIRST AND SECOND THRESHOLD RISK PERCENTAGE DEFINED.—

''(i) FIRST THRESHOLD RISK PERCENTAGE.—Subject to clause (iii), for purposes of this section, the first threshold risk percentage is—

''(I) for 2006 and 2007, and 2.5 percent;

''(II) for 2008 through 2011, 5 percent; and

''(III) for 2012 and subsequent years, a percentage established by the Administrator, but in no case less than 5 percent.

''(ii) SECOND THRESHOLD RISK PERCENTAGE.—Subject to clause (iii), for purposes of this section, the second threshold risk percentage is—

''(I) for 2006 and 2007, 5.0 percent;

''(II) for 2008 through 2011, 10 percent

''(III) for 2012 and subsequent years, a percentage established by the Administrator that is greater than the percent established for the year under clause (i)(III), but in no case less than 10 percent.

''(iii) REDUCTION OF RISK PERCENTAGE TO ENSURE 2 PLANS IN AN AREA.—Pursuant to paragraph (2) of section 1860D–13(d), the Administrator may reduce the applicable first or second threshold risk percentage in an area in a year in order to ensure the access to plans required under paragraph (1) of such section.

''(D) TARGET AMOUNT NOT TO INCLUDE ADMINISTRATIVE EXPENSES NEGOTIATED BETWEEN THE ADMINISTRATOR AND THE ENTITY OFFERING THE PLAN.—For each year (beginning in 2006), the Administrator and the entity offering a Medicare Prescription Drug plan shall negotiate, as part of the negotiation process described in section 1860D–13(b) during the previous year, the percentage of the payments to the entity under subsection (a) with respect to the plan that are attributable and reasonably incurred for administrative expenses for providing standard prescription drug coverage or actuarially equivalent prescription drug coverage in the year.

''(5) PLANS AT RISK FOR ENTIRE AMOUNT OF ADDITIONAL PRESCRIPTION DRUG COVERAGE.—An eligible entity that offers a Medicare Prescription Drug plan that provides additional prescription drug coverage pursuant to section 1860D–6(a)(2) shall be at full financial risk for the provision of such additional coverage.

''(6) NO EFFECT ON ELIGIBLE BENEFICIARIES.—No change in payments made by reason of this subsection shall affect the beneficiary obligation under section 1860D–17 for the year in which such change in payments is made.

''(7) DISCLOSURE OF INFORMATION.—

''(A) IN GENERAL.—Each contract under this part shall provide that—

''(i) the entity offering a Medicare Prescription Drug plan shall provide the Administrator with such information as the Administrator determines is necessary to carry out this section; and

''(ii) the Administrator shall have the right to inspect and audit any books and records of the eligible entity that pertain to the information regarding costs provided to the Administrator under paragraph (1).

''(B) RESTRICTION ON USE OF INFORMATION.—Information disclosed or obtained pursuant to the provisions of this section may be used by officers and employees of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this section.

''(c) STABILIZATION RESERVE FUND.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—There is established, within the Prescription Drug Account, a stabilization reserve fund in which the Administrator shall deposit amounts on behalf of eligible entities in accordance with paragraph (2) and such amounts shall be made available by the Secretary for the use of eligible entities in contract year 2008 and subsequent contract years in accordance with paragraph (3).

''(B) REVERSION OF UNUSED AMOUNTS.—Any amount in the stabilization reserve fund established under subparagraph (A) that is not expended by an eligible entity in accordance with paragraph (3) or that was deposited for the use of an eligible entity that no longer has a contract under this part shall revert for the use of the Prescription Drug Account.

''(2) DEPOSIT OF AMOUNTS FOR 5 YEARS.—

''(A) IN GENERAL.—If the target amount for a Medicare Prescription Drug plan for 2006, 2007, 2008, 2009, or 2010 (as determined under subsection (b)(4)(B)) exceeds the applicable costs for the plan for the year by more than 3 percent, then—

''(i) the entity offering the plan shall make a payment to the Administrator of an amount (or the Administrator shall otherwise recover from the plan an amount) equal to the portion of such excess that is in excess of 3 percent of the target amount; and

''(ii) the Administrator shall deposit an amount equal to the amount collected or otherwise recovered under clause (i) in the stabilization reserve fund on behalf of the eligible entity offering such plan.

''(B) APPLICABLE COSTS.—For purposes of subparagraph (A), the term 'applicable costs' means, with respect to a Medicare Prescription Drug plan and year, an amount equal the sum of—

''(i) the allowable costs for the plan and year (as determined under subsection (b)(3)(A); and

''(ii) the total amount by which monthly payments to the plan were reduced (or otherwise recovered from the plan) for the year under subsection (b)(2)(C).

''(3) USE OF RESERVE FUND TO STABILIZE OR REDUCE MONTHLY PLAN PREMIUMS.—

''(A) IN GENERAL.—For any contract year beginning after 2007, an eligible entity offering a Medicare Prescription Drug plan may use funds in the stabilization reserve fund in the Prescription Drug Account that were deposited in such fund on behalf of the entity to stabilize or reduce monthly plan premiums submitted under section 1860D–12(b)(3).

''(B) PROCEDURES.—The Administrator shall establish procedures for—

''(i) reducing monthly plan premiums submitted under section 1860D–12(b)(3) pursuant to subparagraph (A); and

''(ii) making payments from the plan stabilization reserve fund in the Prescription Drug Account to eligible entities that inform the Secretary under section 1860D–12(b)(5) of the entity's intent to use funds in such reserve fund to reduce such premiums.

''(d) PORTION OF PAYMENTS OF MONTHLY PLAN PREMIUMS ATTRIBUTABLE TO ADMINISTRATIVE EXPENSES TIED TO PERFORMANCE REQUIREMENTS.—

''(1) IN GENERAL.—The Administrator shall establish procedures to adjust the portion of the payments made to an entity under subsection (a) that are attributable to administrative expenses (as determined pursuant to subsection (b)(4)(D)) to ensure that the entity meets the performance requirements described in clauses (ii) and (iii) of section 1860D–13(e)(4)(B).

''(2) NO EFFECT ON ELIGIBLE BENEFICIARIES.—No change in payments made by reason of this subsection shall affect the beneficiary obligation under section 1860D–17 for the year in which such change in payments is made.

''(e) PAYMENT TERMS.—

''(1) ADMINISTRATOR PAYMENTS.—Payments to an entity offering a Medicare Prescription Drug plan under this section shall be made in a manner determined by the Administrator and based upon the manner in which payments are made under section 1853(a) (relating to payments to MedicareAdvantage organizations).

''(2) PLAN PAYMENTS.—The Administrator shall establish a process for collecting (or other otherwise recovering) amounts that an entity offering a Medicare Prescription Drug plan is required to make to the Administrator under this section.

''(f) PAYMENTS TO MEDICAREADVANTAGE PLANS.—For provisions related to payments to MedicareAdvantage organizations offering MedicareAdvantage plans for qualified prescription drug coverage made available under the plan, see section 1858A(c).

''(g) SECONDARY PAYER PROVISIONS.—The provisions of section 1862(b) shall apply to the benefits provided under this part.

''COMPUTATION OF MONTHLY BENEFICIARY OBLIGATION

''SEC. 1860D–17. (a) BENEFICIARIES ENROLLED IN A MEDICARE PRESCRIPTION DRUG PLAN.—In the case of an eligible beneficiary enrolled under this part and in a Medicare Prescription Drug plan, the monthly beneficiary obligation for enrollment in such plan in a year shall be determined as follows:

''(1) MONTHLY PLAN PREMIUM EQUALS MONTHLY NATIONAL AVERAGE PREMIUM.—If the amount of the monthly plan premium approved by the Administrator under section 1860D–13 for a Medicare Prescription Drug plan for the year is equal to the monthly national average premium (as computed under section 1860D–15) for the area for the year, the monthly beneficiary obligation of the eligible beneficiary in that year shall be an amount equal to the applicable percent (as determined in subsection (c)) of the amount of such monthly national average premium.

''(2) MONTHLY PLAN PREMIUM LESS THAN MONTHLY NATIONAL AVERAGE PREMIUM.—If the amount of the monthly plan premium approved by the Administrator under section 1860D–13 for the Medicare Prescription Drug plan for the year is less than the monthly national average premium (as computed under section 1860D–15) for the area for the year, the monthly beneficiary obligation of the eligible beneficiary in that year shall be an amount equal to—

''(A) the applicable percent of the amount of such monthly national average premium; minus

''(B) the amount by which such monthly national average premium exceeds the amount of the monthly plan premium approved by the Administrator for the plan.

''(3) MONTHLY PLAN PREMIUM EXCEEDS MONTHLY NATIONAL AVERAGE PREMIUM.—If the amount of the monthly plan premium approved by the Administrator under section 1860D–13 for a Medicare Prescription Drug plan for the year exceeds the monthly national average premium (as computed under section 1860D–15) for the area for the year, the monthly beneficiary obligation of the eligible beneficiary in that year shall be an amount equal to the sum of—

''(A) the applicable percent of the amount of such monthly national average premium; plus

''(B) the amount by which the monthly plan premium approved by the Administrator for the plan exceeds the amount of such monthly national average premium.

''(b) BENEFICIARIES ENROLLED IN A MEDICAREADVANTAGE PLAN.—In the case of an eligible beneficiary that is enrolled in a MedicareAdvantage plan (except for an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage), the Medicare monthly beneficiary obligation for qualified prescription drug coverage shall be determined pursuant to section 1858A(d).

''(c) APPLICABLE PERCENT.—For purposes of this section, except as provided in section

1860D–19 (relating to premium subsidies for low-income individuals), the applicable percent for any year is the percentage equal to a fraction—

''(1) the numerator of which is 30 percent; and

''(2) the denominator of which is 100 percent minus a percentage equal to—

''(A) the total reinsurance payments which the Administrator estimates will be made under section 1860D–20 to qualifying entities described in subsection (e)(3) of such section during the year; divided by

''(B) the sum of—

''(i) the amount estimated under subparagraph (A) for the year; and

''(ii) the total payments which the Administrator estimates will be made under sections 1860D–16 and 1858A(c) during the year that relate to standard prescription drug coverage (or actuarially equivalent prescription drug coverage).

''COLLECTION OF MONTHLY BENEFICIARY OBLIGATION

''SEC. 1860D–18. (a) COLLECTION OF AMOUNT IN SAME MANNER AS PART B PREMIUM.—

''(1) IN GENERAL.—Subject to paragraph (2), the amount of the monthly beneficiary obligation (determined under section 1860D–17) applicable to an eligible beneficiary under this part (after application of any increase under section 1860D–2(b)(1)(A)) shall be collected and credited to the Prescription Drug Account in the same manner as the monthly premium determined under section 1839 is collected and credited to the Federal Supplementary Medical Insurance Trust Fund under section 1840.

''(2) PROCEDURES FOR SPONSOR TO PAY OBLIGATION ON BEHALF OF RETIREE.—The Administrator shall establish procedures under which an eligible beneficiary enrolled in a Medicare Prescription Drug plan may elect to have the sponsor (as defined in paragraph (5) of section 1860D–20(e)) of employment-based retiree health coverage (as defined in paragraph (4)(B) of such section) in which the beneficiary is enrolled pay the amount of the monthly beneficiary obligation applicable to the beneficiary under this part directly to the Administrator.

''(b) INFORMATION NECESSARY FOR COLLECTION.—In order to carry out subsection (a), the Administrator shall transmit to the Commissioner of Social Security—

''(1) by the beginning of each year, the name, social security account number, monthly beneficiary obligation owed by each individual enrolled in a Medicare Prescription Drug plan for each month during the year, and other information determined appropriate by the Administrator; and

''(2) periodically throughout the year, information to update the information previously transmitted under this paragraph for the year.

''(c) COLLECTION FOR BENEFICIARIES ENROLLED IN A MEDICAREADVANTAGE PLAN.—For provisions related to the collection of the monthly beneficiary obligation for qualified prescription drug coverage under a MedicareAdvantage plan, see section 1858A(e).

''PREMIUM AND COST-SHARING SUBSIDIES FOR LOW-INCOME INDIVIDUALS

''SEC. 1860D–19. (a) AMOUNT OF SUBSIDIES.—

''(1) FULL PREMIUM SUBSIDY AND REDUCTION OF COST-SHARING FOR QUALIFIED MEDICARE BENEFICIARIES.—In the case of a qualified medicare beneficiary (as defined in paragraph (4)(A))—

''(A) section 1860D–17 shall be applied—

''(i) in subsection (c), by substituting '0 percent' for the applicable percent that would otherwise apply under such subsection; and

''(ii) in subsection (a)(3)(B), by substituting 'the amount of the monthly plan premium for the Medicare Prescription Drug plan with the lowest monthly plan premium in the area that the beneficiary resides' for 'the amount of such monthly national average premium', but only if there is no Medicare Prescription Drug plan offered in the area in which the individual resides that has a monthly plan premium for the year that is equal to or less than the monthly national average premium (as computed under section 1860D–15) for the area for the year;

''(B) the annual deductible applicable under section 1860D–6(c)(1) in a year shall be reduced to $0;

''(C) section 1860D–6(c)(2) shall be applied by substituting '2.5 percent' for '50 percent' each place it appears;

''(D) such individual shall be responsible for cost-sharing for the cost of any covered drug provided in the year (after the individual has reached the initial coverage limit described in section 1860D–6(c)(3) and before the individual has reached the annual out-of-pocket limit under section 1860D–6(c)(4)(A)), that is equal to 5.0 percent; and

''(E) section 1860D–6(c)(4)(A) shall be applied by substituting '2.5 percent' for '10 percent'.

In no case may the application of subparagraph (A) result in a monthly beneficiary obligation that is below 0.

''(2) FULL PREMIUM SUBSIDY AND REDUCTION OF COST-SHARING FOR SPECIFIED LOW INCOME MEDICARE BENEFICIARIES AND QUALIFYING INDIVIDUALS.—In the case of a specified low income medicare beneficiary (as defined in paragraph (4)(B)) or a qualifying individual (as defined in paragraph (4)(C))—

''(A) section 1860D–17 shall be applied—

''(i) in subsection (c), by substituting '0 percent' for the applicable percent that would otherwise apply under such subsection; and

''(ii) in subsection (a)(3)(B), by substituting 'the amount of the monthly plan premium for the Medicare Prescription Drug plan with the lowest monthly plan premium in the area that the beneficiary resides' for 'the amount of such monthly national average premium', but only if there is no Medicare Prescription Drug plan offered in the area in which the individual resides that has a monthly plan premium for the year that is equal to or less than the monthly national average premium (as computed under section 1860D–15) for the area for the year;

''(B) the annual deductible applicable under section 1860D–6(c)(1) in a year shall be reduced to $0;

''(C) section 1860D–6(c)(2) shall be applied by substituting '5.0 percent' for '50 percent' each place it appears;

''(D) such individual shall be responsible for cost-sharing for the cost of any covered drug provided in the year (after the individual has reached the initial coverage limit described in section 1860D–6(c)(3) and before the individual has reached the annual out-of-pocket limit under section 1860D–6(c)(4)(A)), that is equal to 10.0 percent; and

''(E) section 1860D–6(c)(4)(A) shall be applied by substituting '2.5 percent' for '10 percent'.

In no case may the application of subparagraph (A) result in a monthly beneficiary obligation that is below 0.

''(3) SLIDING SCALE PREMIUM SUBSIDY AND REDUCTION OF COST-SHARING FOR SUBSIDY-ELIGIBLE INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a subsidy-eligible individual (as defined in paragraph (4)(D))—

''(i) section 1860D–17 shall be applied—

''(I) in subsection (c), by substituting 'subsidy percent' for the applicable percentage that would otherwise apply under such subsection; and

''(II) in subparagraphs (A) and (B) of subsection (a)(3), by substituting 'the amount of the monthly plan premium for the Medicare Prescription Drug plan with the lowest monthly plan premium in the area that the beneficiary resides' for 'the amount of such monthly national average premium', but only if there is no Medicare Prescription Drug plan offered in the area in which the individual resides that has a monthly plan premium for the year that is equal to or less than the monthly national average premium (as computed under section 1860D–15) for the area for the year; and

''(ii) the annual deductible applicable under section 1860D–6(c)(1)—

''(I) for 2006, shall be reduced to $50; and

''(II) for a subsequent year, shall be reduced to the amount specified under this clause for the previous year increased by the percentage specified in section 1860D–6(c)(5) for the year involved;

''(iii) section 1860D–6(c)(2) shall be applied by substituting '10.0 percent' for '50 percent' each place it appears;

''(iv) such individual shall be responsible for cost-sharing for the cost of any covered drug provided in the year (after the individual has reached the initial coverage limit described in section 1860D–6(c)(3) and before the individual has reached the annual out-of-pocket limit under section 1860D–6(c)(4)(A)), that is equal to 20.0 percent; and

''(v) such individual shall be responsible for the cost-sharing described in section 1860D–6(c)(4)(A).

In no case may the application of clause (i) result in a monthly beneficiary obligation that is below 0.

''(B) SUBSIDY PERCENT DEFINED.—For purposes of subparagraph (A)(i), the term 'subsidy percent' means, with respect to a State, a percent determined on a linear sliding scale ranging from—

''(i) 0 percent with respect to a subsidy-eligible individual residing in the State whose income does not exceed 135 percent of the poverty line; to

''(ii) the highest percentage that would otherwise apply under section 1860D–17 in the service area in which the subsidy-eligible individual resides, in the case of a subsidy-eligible individual residing in the State whose income equals 160 percent of the poverty line.

''(4) DEFINITIONS.—In this part:

''(A) QUALIFIED MEDICARE BENEFICIARY.—Subject to subparagraph (H), the term 'qualified medicare beneficiary' means an individual who—

''(i) is enrolled under this part, including an individual who is enrolled under a MedicareAdvantage plan;

''(ii) is described in section 1905(p)(1); and

''(iii) is not—

''(I) a specified low-income medicare beneficiary;

''(II) a qualifying individual; or

''(III) a dual eligible individual.

''(B) SPECIFIED LOW INCOME MEDICARE BENEFICIARY.—Subject to subparagraph (H), the term 'specified low income medicare beneficiary' means an individual who—

''(i) is enrolled under this part, including an individual who is enrolled under a MedicareAdvantage plan;

''(ii) is described in section 1902(a)(10)(E)(iii); and

''(iii) is not—

''(I) a qualified medicare beneficiary;

''(II) a qualifying individual; or

''(III) a dual eligible individual.

''(C) QUALIFYING INDIVIDUAL.—Subject to subparagraph (H), the term 'qualifying individual' means an individual who—

''(i) is enrolled under this part, including an individual who is enrolled under a MedicareAdvantage plan;

''(ii) is described in section 1902(a)(10)(E)(iv) (without regard to any termination of the application of such section under title XIX); and

''(iii) is not—

''(I) a qualified medicare beneficiary;

''(II) a specified low-income medicare beneficiary; or

''(III) a dual eligible individual.

''(D) SUBSIDY-ELIGIBLE INDIVIDUAL.—Subject to subparagraph (H), the term 'subsidy-eligible individual' means an individual—

''(i) who is enrolled under this part, including an individual who is enrolled under a MedicareAdvantage plan;

''(ii) whose income is less than 160 percent of the poverty line; and

''(iii) who is not—

''(I) a qualified medicare beneficiary;

''(II) a specified low-income medicare beneficiary;

''(III) a qualifying individual; or

''(IV) a dual eligible individual.

''(E) DUAL ELIGIBLE INDIVIDUAL.—

''(i) IN GENERAL.—The term 'dual eligible individual' means an individual who is—

''(I) enrolled under title XIX or under a waiver under section 1115 of the requirements of such title for medical assistance that is not less than the medical assistance provided to an individual described in section 1902(a)(10)(A)(i) and includes covered outpatient drugs (as such term is defined for purposes of section 1927); and

''(II) entitled to benefits under part A and enrolled under part B.

''(ii) INCLUSION OF MEDICALLY NEEDY.—Such term includes an individual described in section 1902(a)(10)(C).

''(F) POVERTY LINE.—The term 'poverty line' has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

''(G) ELIGIBILITY DETERMINATIONS.—Beginning on November 1, 2005, the determination of whether an individual residing in a State is an individual described in subparagraph (A), (B), (C), (D), or (E) and, for purposes of paragraph (3), the amount of an individual's income, shall be determined under the State medicaid plan for the State under section 1935(a). In the case of a State that does not operate such a medicaid plan (either under title XIX or under a statewide waiver granted under section 1115), such determination shall be made under arrangements made by the Administrator.

''(H) NONAPPLICATION TO DUAL ELIGIBLE INDIVIDUALS AND TERRITORIAL RESIDENTS.—In the case of an individual who is a dual eligible individual or an individual who is not a resident of the 50 States or the District of Columbia—

''(i) the subsidies provided under this section shall not apply; and

''(ii) such individuals may be provided with medical assistance for covered outpatient drugs (as such term is defined for purposes of section 1927) in accordance with section 1935 under the State medicaid program under title XIX.

''(b) RULES IN APPLYING COST-SHARING SUBSIDIES.—Nothing in this section shall be construed as preventing an eligible entity offering a Medicare Prescription Drug plan or a MedicareAdvantage organization offering a MedicareAdvantage plan from waiving or reducing the amount of the deductible or other cost-sharing otherwise applicable pursuant to section 1860D–6(a)(2).

''(c) ADMINISTRATION OF SUBSIDY PROGRAM.—The Administrator shall establish a process whereby, in the case of an individual eligible for a cost-sharing subsidy under subsection (a) who is enrolled in a Medicare Prescription Drug plan or a MedicareAdvantage plan—

''(1) the Administrator provides for a notification of the eligible entity or MedicareAdvantage organization involved that the individual is eligible for a cost-sharing subsidy and the amount of the subsidy under such subsection;

''(2) the entity or organization involved reduces the cost-sharing otherwise imposed by the amount of the applicable subsidy and submits to the Administrator information on the amount of such reduction; and

''(3) the Administrator periodically and on a timely basis reimburses the entity or organization for the amount of such reductions.

The reimbursement under paragraph (3) may be computed on a capitated basis, taking into account the actuarial value of the subsidies and with appropriate adjustments to reflect differences in the risks actually involved.

''(d) RELATION TO MEDICAID PROGRAM.—For provisions providing for eligibility determinations and additional Federal payments for expenditures related to providing prescription drug coverage for dual eligible individuals and territorial residents under the medicaid program, see section 1935.

''REINSURANCE PAYMENTS FOR EXPENSES INCURRED IN PROVIDING PRESCRIPTION DRUG COVERAGE ABOVE THE ANNUAL OUT-OF-POCKET THRESHOLD

''SEC. 1860D–20. (a) REINSURANCE PAYMENTS.—

''(1) IN GENERAL.—Subject to section 1860D–21(b), the Administrator shall provide in accordance with this section for payment to a qualifying entity of the reinsurance payment amount (as specified in subsection (c)(1)) for costs incurred by the entity in providing prescription drug coverage for a qualifying covered individual after the individual has reached the annual out-of-pocket threshold specified in section 1860D–6(c)(4)(B) for the year.

''(2) BUDGET AUTHORITY.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Administrator to provide for the payment of amounts provided under this section.

''(b) NOTIFICATION OF SPENDING UNDER THE PLAN FOR COSTS INCURRED IN PROVIDING PRESCRIPTION DRUG COVERAGE ABOVE THE ANNUAL OUT-OF-POCKET THRESHOLD.—

''(1) IN GENERAL.—Each qualifying entity shall notify the Administrator of the following with respect to a qualifying covered individual for a coverage year:

''(A) TOTAL ACTUAL COSTS.—The total amount (if any) of costs that the qualifying entity incurred in providing prescription drug coverage for the individual in the year after the individual had reached the annual out-of-pocket threshold specified in section 1860D–6(c)(4)(B) for the year.

''(B) ACTUAL COSTS FOR SPECIFIC DRUGS.—With respect to the total amount under subparagraph (A) for the year, a breakdown of—

''(i) each covered drug that constitutes a portion of such amount;

''(ii) the negotiated price for the qualifying entity for each such drug;

''(iii) the number of prescriptions; and

''(iv) the average beneficiary coinsurance rate for a each covered drug that constitutes a portion of such amount.

''(2) CERTAIN EXPENSES NOT INCLUDED.—The amounts under subparagraphs (A) and (B)(ii) of paragraph (1) may not include—

''(A) administrative expenses incurred in providing the coverage described in paragraph (1)(A); or

''(B) amounts expended on providing additional prescription drug coverage pursuant to section 1860D–6(a)(2).

''(3) RESTRICTION ON USE OF INFORMATION.—The restriction specified in section 1860D–16(b)(7)(B) shall apply to information disclosed or obtained pursuant to the provisions of this section.

''(c) REINSURANCE PAYMENT AMOUNT.—

''(1) IN GENERAL.—The reinsurance payment amount under this subsection for a qualifying covered individual for a coverage year is an amount equal to 80 percent of the allowable costs (as specified in paragraph (2)) incurred by the qualifying entity with respect to the individual and year.

''(2) ALLOWABLE COSTS.—

''(A) IN GENERAL.—In the case of a qualifying entity that has incurred costs described in subsection (b)(1)(A) with respect to a qualifying covered individual for a coverage year, the Administrator shall establish the allowable costs for the individual and year. Such allowable costs shall be equal to the amount described in such subsection for the individual and year, adjusted under subparagraph (B).

''(B) REPRICING OF COSTS IF ACTUAL COSTS EXCEED AVERAGE COSTS.—The Administrator shall reduce the amount described in subsection (b)(1)(A) with respect to a qualifying covered individual for a coverage year to the extent such amount is based on costs of specific covered drugs furnished under the plan in the year (as specified under subsection (b)(1)(B)) that are greater than the average cost for the covered drug for the year (as determined under section 1860D–16(b)(3)(A)).

''(d) PAYMENT METHODS.—

''(1) IN GENERAL.—Payments under this section shall be based on such a method as the Administrator determines. The Administrator may establish a payment method by which interim payments of amounts under this section are made during a year based on the Administrator's best estimate of amounts that will be payable after obtaining all of the information.

''(2) SOURCE OF PAYMENTS.—Payments under this section shall be made from the Prescription Drug Account.

''(e) DEFINITIONS.—In this section:

''(1) COVERAGE YEAR.—The term 'coverage year' means a calendar year in which covered drugs are dispensed if a claim for payment is made under the plan for such drugs, regardless of when the claim is paid.

''(2) QUALIFYING COVERED INDIVIDUAL.—The term 'qualifying covered individual' means an individual who—

''(A) is enrolled in this part and in a Medicare Prescription Drug plan;

''(B) is enrolled in this part and in a MedicareAdvantage plan (except for an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage); or

''(C) is eligible for, but not enrolled in, the program under this part, and is covered under a qualified retiree prescription drug plan.

''(3) QUALIFYING ENTITY.—The term 'qualifying entity' means any of the following that has entered into an agreement with the Administrator to provide the Administrator with such information as may be required to carry out this section:

''(A) An eligible entity offering a Medicare Prescription Drug plan under this part.

''(B) A MedicareAdvantage organization offering a MedicareAdvantage plan under part C (except for an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage).

''(C) The sponsor of a qualified retiree prescription drug plan.

''(4) QUALIFIED RETIREE PRESCRIPTION DRUG PLAN.—

''(A) IN GENERAL.—The term 'qualified retiree prescription drug plan' means employment-based retiree health coverage if, with respect to a qualifying covered individual

who is covered under the plan, the following requirements are met:

''(i) ASSURANCE.—The sponsor of the plan shall annually attest, and provide such assurances as the Administrator may require, that the coverage meets or exceeds the requirements for qualified prescription drug coverage.

''(ii) DISCLOSURE OF INFORMATION.—The sponsor complies with the requirements described in clauses (i) and (ii) of section 1860D–16(b)(7)(A).

''(B) EMPLOYMENT-BASED RETIREE HEALTH COVERAGE.—The term 'employment-based retiree health coverage' means health insurance or other coverage, whether provided by voluntary insurance coverage or pursuant to statutory or contractual obligation, of health care costs for retired individuals (or for such individuals and their spouses and dependents) based on their status as former employees or labor union members.

''(5) SPONSOR.—The term 'sponsor' means a plan sponsor, as defined in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

''DIRECT SUBSIDY FOR SPONSOR OF A QUALIFIED RETIREE PRESCRIPTION DRUG PLAN FOR PLAN ENROLLEES ELIGIBLE FOR, BUT NOT ENROLLED IN, THIS PART

''SEC. 1860D–21. (a) DIRECT SUBSIDY.—

''(1) IN GENERAL.—The Administrator shall provide for the payment to a sponsor of a qualified retiree prescription drug plan (as defined in section 1860D–20(e)(4)) for each qualifying covered individual (described in subparagraph (C) of section 1860D–20(e)(2)) enrolled in the plan for each month for which such individual is so enrolled.

''(2) AMOUNT OF PAYMENT.—

''(A) IN GENERAL.—The amount of the payment under paragraph (1) shall be an amount equal to the direct subsidy percent determined for the year of the monthly national average premium for the area for the year (determined under section 1860D–15), as adjusted using the risk adjusters that apply to the standard prescription drug coverage published under section 1860D–11.

''(B) DIRECT SUBSIDY PERCENT.—For purposes of subparagraph (A), the term 'direct subsidy percent' means the percentage equal to—

''(i) 100 percent; minus

''(ii) the applicable percent for the year (as determined under section 1860D–17(c).

''(b) PAYMENT METHODS.—

''(1) IN GENERAL.—Payments under this section shall be based on such a method as the Administrator determines. The Administrator may establish a payment method by which interim payments of amounts under this section are made during a year based on the Administrator's best estimate of amounts that will be payable after obtaining all of the information.

''(2) SOURCE OF PAYMENTS.—Payments under this section shall be made from the Prescription Drug Account.

''Subpart 3—Miscellaneous Provisions

''PRESCRIPTION DRUG ACCOUNT IN THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

''SEC. 1860D–25. (a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1841 an account to be known as the 'Prescription Drug Account' (in this section referred to as the 'Account').

''(2) FUNDS.—The Account shall consist of such gifts and bequests as may be made as provided in section 201(i)(1), and such amounts as may be deposited in, or appropriated to, the Account as provided in this part.

''(3) SEPARATE FROM REST OF TRUST FUND.—Funds provided under this part to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund.

''(b) PAYMENTS FROM ACCOUNT.—

''(1) IN GENERAL.—The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments to operate the program under this part, including—

''(A) payments to eligible entities under section 1860D–16;

''(B) payments under 1860D–19 for low-income subsidy payments for cost-sharing;

''(C) reinsurance payments under section 1860D–20;

''(D) payments to sponsors of qualified retiree prescription drug plans under section 1860D–21;

''(E) payments to MedicareAdvantage organizations for the provision of qualified prescription drug coverage under section 1858A(c); and

''(F) payments with respect to administrative expenses under this part in accordance with section 201(g).

''(2) TREATMENT IN RELATION TO PART B PREMIUM.—Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1839.

''(c) APPROPRIATIONS TO COVER BENEFITS AND ADMINISTRATIVE COSTS.—There are appropriated to the Account in a fiscal year, out of any moneys in the Treasury not otherwise appropriated, an amount equal to the payments and transfers made from the Account in the year.

''OTHER RELATED PROVISIONS

''SEC. 1860D–26. (a) RESTRICTION ON ENROLLMENT IN A MEDICARE PRESCRIPTION DRUG PLAN OFFERED BY A SPONSOR OF EMPLOYMENT-BASED RETIREE HEALTH COVERAGE.—

''(1) IN GENERAL.—In the case of a Medicare Prescription Drug plan offered by an eligible entity that is a sponsor (as defined in paragraph (5) of section 1860D–20(e)) of employment-based retiree health coverage (as defined in paragraph (4)(B) of such section), notwithstanding any other provision of this part and in accordance with regulations of the Administrator, the entity offering the plan may restrict the enrollment of eligible beneficiaries enrolled under this part to eligible beneficiaries who are enrolled in such coverage.

''(2) LIMITATION.—The sponsor of the employment-based retiree health coverage described in paragraph (1) may not offer enrollment in the Medicare Prescription Drug plan described in such paragraph based on the health status of eligible beneficiaries enrolled for such coverage.

''(b) COORDINATION WITH STATE PHARMACEUTICAL ASSISTANCE PROGRAMS.—

''(1) IN GENERAL.—An eligible entity offering a Medicare Prescription Drug plan, or a MedicareAdvantage organization offering a MedicareAdvantage plan (other than an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage), may enter into an agreement with a State pharmaceutical assistance program described in paragraph (2) to coordinate the coverage provided under the plan with the assistance provided under the State pharmaceutical assistance program.

''(2) STATE PHARMACEUTICAL ASSISTANCE PROGRAM DESCRIBED.—For purposes of paragraph (1), a State pharmaceutical assistance program described in this paragraph is a program that has been established pursuant to a waiver under section 1115 or otherwise.

''(c) REGULATIONS TO CARRY OUT THIS PART.—

''(1) AUTHORITY FOR INTERIM FINAL REGULATIONS.—The Secretary may promulgate initial regulations implementing this part in interim final form without prior opportunity for public comment.

''(2) FINAL REGULATIONS.—A final regulation reflecting public comments must be published within 1 year of the interim final regulation promulgated under paragraph (1).''.

(b) CONFORMING AMENDMENTS TO FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND.—Section 1841 (42 U.S.C. 1395t) is amended—

(1) in the last sentence of subsection (a)—

(A) by striking ''and'' before ''such amounts''; and

(B) by inserting before the period the following: '', and such amounts as may be deposited in, or appropriated to, the Prescription Drug Account established by section 1860D–25'';

(2) in subsection (g), by inserting after ''by this part,'' the following: ''the payments provided for under part D (in which case the payments shall be made from the Prescription Drug Account in the Trust Fund),'';

(3) in subsection (h), by inserting after ''1840(d)'' the following: ''and sections 1860D–18 and 1858A(e) (in which case the payments shall be made from the Prescription Drug Account in the Trust Fund)''; and

(4) in subsection (i), by inserting after ''section 1840(b)(1)'' the following: '', sections 1860D–18 and 1858A(e) (in which case the payments shall be made from the Prescription Drug Account in the Trust Fund),''.

(c) CONFORMING REFERENCES TO PREVIOUS PART D.—Any reference in law (in effect before the date of enactment of this Act) to part D of title XVIII of the Social Security Act is deemed a reference to part F of such title (as in effect after such date).

(d) SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this Act.

SEC. 102. STUDY AND REPORT ON PERMITTING PART B ONLY INDIVIDUALS TO ENROLL IN MEDICARE VOLUNTARY PRESCRIPTION DRUG DELIVERY PROGRAM.

(a) STUDY.—The Administrator of the Center for Medicare Choices (as established under section 1808 of the Social Security Act, as added by section 301(a)) shall conduct a study on the need for rules relating to permitting individuals who are enrolled under part B of title XVIII of the Social Security Act but are not entitled to benefits under part A of such title to buy into the medicare voluntary prescription drug delivery program under part D of such title (as so added).

(b) REPORT.—Not later than January 1, 2005, the Administrator of the Center for Medicare Choices shall submit a report to Congress on the study conducted under subsection (a), together with any recommendations for legislation that the Administrator determines to be appropriate as a result of such study.

SEC. 103. RULES RELATING TO MEDIGAP POLICIES THAT PROVIDE PRESCRIPTION DRUG COVERAGE.

(a) RULES RELATING TO MEDIGAP POLICIES THAT PROVIDE PRESCRIPTION DRUG COVERAGE.—Section 1882 (42 U.S.C. 1395ss) is amended by adding at the end the following new subsection:

''(v) RULES RELATING TO MEDIGAP POLICIES THAT PROVIDE PRESCRIPTION DRUG COVERAGE.—

''(1) PROHIBITION ON SALE, ISSUANCE, AND RENEWAL OF POLICIES THAT PROVIDE PRESCRIPTION DRUG COVERAGE TO PART D ENROLLEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, on or after January 1, 2006, no medicare supplemental policy that provides coverage of expenses for prescription drugs may be sold, issued, or renewed under this section to an individual who is enrolled under part D.

''(B) PENALTIES.—The penalties described in subsection (d)(3)(A)(ii) shall apply with respect to a violation of subparagraph (A).

''(2) ISSUANCE OF SUBSTITUTE POLICIES IF THE POLICYHOLDER OBTAINS PRESCRIPTION DRUG COVERAGE UNDER PART D.—

''(A) IN GENERAL.—The issuer of a medicare supplemental policy—

''(i) may not deny or condition the issuance or effectiveness of a medicare supplemental policy that has a benefit package classified as 'A', 'B', 'C', 'D', 'E', 'F' (including the benefit package classified as 'F' with a high deductible feature, as described in subsection (p)(11)), or 'G' (under the standards established under subsection (p)(2)) and that is offered and is available for issuance to new enrollees by such issuer;

''(ii) may not discriminate in the pricing of such policy, because of health status, claims experience, receipt of health care, or medical condition; and

''(iii) may not impose an exclusion of benefits based on a pre-existing condition under such policy,

in the case of an individual described in subparagraph (B) who seeks to enroll under the policy during the open enrollment period established under section 1860D–2(b)(2) and who submits evidence that they meet the requirements under subparagraph (B) along with the application for such medicare supplemental policy.

''(B) INDIVIDUAL DESCRIBED.—An individual described in this subparagraph is an individual who—

''(i) enrolls in the medicare prescription drug delivery program under part D; and

''(ii) at the time of such enrollment was enrolled and terminates enrollment in a medicare supplemental policy which has a benefit package classified as 'H', 'I', or 'J' (including the benefit package classified as 'J' with a high deductible feature, as described in section 1882(p)(11)) under the standards referred to in subparagraph (A)(i) or terminates enrollment in a policy to which such standards do not apply but which provides benefits for prescription drugs.

''(C) ENFORCEMENT.—The provisions of subparagraph (A) shall be enforced as though they were included in subsection (s).

''(3) NOTICE REQUIRED TO BE PROVIDED TO CURRENT POLICYHOLDERS WITH PRESCRIPTION DRUG COVERAGE.—No medicare supplemental policy of an issuer shall be deemed to meet the standards in subsection (c) unless the issuer provides written notice during the 60-day period immediately preceding the period established for the open enrollment period established under section 1860D–2(b)(2), to each individual who is a policyholder or certificate holder of a medicare supplemental policy issued by that issuer that provides some coverage of expenses for prescription drugs (at the most recent available address of that individual) of—

''(A) the ability to enroll in a new medicare supplemental policy pursuant to paragraph (2); and

''(B) the fact that, so long as such individual retains coverage under such policy, the individual shall be ineligible for coverage of prescription drugs under part D.''.

(b) RULE OF CONSTRUCTION.—

(1) IN GENERAL.—Nothing in this Act shall be construed to require an issuer of a medicare supplemental policy under section 1882 of the Social Security Act (42 U.S.C. 1395rr) to participate as an eligible entity under part D of such Act, as added by section 101, as a condition for issuing such policy.

(2) PROHIBITION ON STATE REQUIREMENT.—A State may not require an issuer of a medicare supplemental policy under section 1882 of the Social Security Act (42 U.S.C. 1395rr) to participate as an eligible entity under part D of such Act, as added by section 101, as a condition for issuing such policy.

SEC. 104. MEDICAID AND OTHER AMENDMENTS RELATED TO LOW-INCOME BENEFICIARIES.

(a) DETERMINATIONS OF ELIGIBILITY FOR LOW-INCOME SUBSIDIES.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) by striking ''and'' at the end of paragraph (64);

(2) by striking the period at the end of paragraph (65) and inserting ''; and''; and

(3) by inserting after paragraph (65) the following new paragraph:

''(66) provide for making eligibility determinations under section 1935(a).''.

(b) NEW SECTION.—

(1) IN GENERAL.—Title XIX (42 U.S.C. 1396 et seq.) is amended—

(A) by redesignating section 1935 as section 1936; and

(B) by inserting after section 1934 the following new section:

''SPECIAL PROVISIONS RELATING TO MEDICARE PRESCRIPTION DRUG BENEFIT

''SEC. 1935. (a) REQUIREMENT FOR MAKING ELIGIBILITY DETERMINATIONS FOR LOW-INCOME SUBSIDIES.—As a condition of its State plan under this title under section 1902(a)(66) and receipt of any Federal financial assistance under section 1903(a), a State shall satisfy the following:

''(1) DETERMINATION OF ELIGIBILITY FOR TRANSITIONAL PRESCRIPTION DRUG ASSISTANCE CARD PROGRAM FOR ELIGIBLE LOW-INCOME BENEFICIARIES.—For purposes of section 1807A, submit to the Secretary an eligibility plan under which the State—

''(A) establishes eligibility standards consistent with the provisions of that section;

''(B) establishes procedures for providing presumptive eligibility for eligible low-income beneficiaries (as defined in section 1807A(i)(2)) under that section in a manner that is similar to the manner in which presumptive eligibility is provided to children and pregnant women under this title;

''(C) makes determinations of eligibility and income for purposes of identifying eligible low-income beneficiaries (as so defined) under that section; and

''(D) communicates to the Secretary determinations of eligibility or discontinuation of eligibility under that section for purposes of notifying prescription drug card sponsors under that section of the identity of eligible medicare low-income beneficiaries.

''(2) DETERMINATION OF ELIGIBILITY FOR PREMIUM AND COST-SHARING SUBSIDIES UNDER PART D OF TITLE XVIII FOR LOW-INCOME INDIVIDUALS.—Beginning November 1, 2005, for purposes of section 1860D–19—

''(A) make determinations of eligibility for premium and cost-sharing subsidies under and in accordance with such section;

''(B) establish procedures for providing presumptive eligibility for individuals eligible for subsidies under that section in a manner that is similar to the manner in which presumptive eligibility is provided to children and pregnant women under this title;

''(C) inform the Administrator of the Center for Medicare Choices of such determinations in cases in which such eligibility is established; and

''(D) otherwise provide such Administrator with such information as may be required to carry out part D of title XVIII (including section 1860D–19).

''(3) AGREEMENT TO ESTABLISH INFORMATION AND ENROLLMENT SITES AT SOCIAL SECURITY FIELD OFFICES.—Enter into an agreement with the Commissioner of Social Security to use all Social Security field offices located in the State as information and enrollment sites for making the eligibility determinations required under paragraphs (1) and (2).

''(b) FEDERAL SUBSIDY OF ADMINISTRATIVE COSTS.—

''(1) ENHANCED MATCH FOR ELIGIBILITY DETERMINATIONS.—Subject to paragraphs (2) and (4), with respect to calendar quarters beginning on or after January 1, 2004, the amounts expended by a State in carrying out subsection (a) are expenditures reimbursable under section 1903(a)(7) except that, in applying such section with respect to such expenditures incurred for—

''(A) such calendar quarters occurring in fiscal year 2004 or 2005, '75 percent' shall be substituted for '50 per centum';

''(B) calendar quarters occurring in fiscal year 2006, '70 percent' shall be substituted for '50 per centum';

''(C) calendar quarters occurring in fiscal year 2007, '65 percent' shall be substituted for '50 per centum'; and

''(D) calendar quarters occurring in fiscal year 2008 or any fiscal year thereafter, '60 percent' shall be substituted for '50 per centum'.

''(2) 100 PERCENT MATCH FOR ELIGIBILITY DETERMINATIONS FOR SUBSIDY-ELIGIBLE INDIVIDUALS.—In the case of amounts expended by a State on or after November 1, 2005, to determine whether an individual is a subsidy-eligible individual for purposes of section 1860D–19, such expenditures shall be reimbursed under section 1903(a)(7) by substituting '100 percent' for '50 per centum'.

''(3) ENHANCED MATCH FOR UPDATES OR IMPROVEMENTS TO ELIGIBILITY DETERMINATION SYSTEMS.—With respect to calendar quarters occurring in fiscal year 2004, 2005, or 2006, the Secretary, in addition to amounts otherwise paid under section 1903(a), shall pay to each State which has a plan approved under this title, for each such quarter an amount equal to 90 percent of so much of the sums expended during such quarter as are attributable to the design, development, acquisition, or installation of improved eligibility determination systems (including hardware and software for such systems) in order to carry out the requirements of subsection (a) and section 1807A(h)(1). No payment shall be made to a State under the preceding sentence unless the State's improved eligibility determination system—

''(A) satisfies such standards for improvement as the Secretary may establish; and

''(B) complies, and is compatible, with the standards established under part C of title XI and any regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

''(4) COORDINATION.—The State shall provide the Secretary with such information as may be necessary to properly allocate expenditures described in paragraph (1), (2), or (3) that may otherwise be made for similar eligibility determinations or expenditures.

''(c) FEDERAL PAYMENT OF MEDICARE PART B PREMIUM FOR STATES PROVIDING PRESCRIPTION DRUG COVERAGE FOR DUAL ELIGIBLE INDIVIDUALS.—

''(1) IN GENERAL.—Subject to paragraph (4), in the case of a State that provides medical assistance for covered drugs (as such term is defined in section 1860D(a)(2)) to dual eligible individuals under this title that satisfies the minimum standards described in paragraph (2), the Secretary shall be responsible in accordance with section 1841(f)(2) for paying 100 percent of the medicare cost-sharing described in section 1905(p)(3)(A)(ii) (relating to premiums under section 1839) for individuals—

''(A) who are dual eligible individuals or qualified medicare beneficiaries; and

''(B) whose family income is at least 74 percent, but not more than 100 percent, of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved.

''(2) MINIMUM STANDARDS DESCRIBED.—For purposes of paragraph (1), the minimum standards described in this paragraph are the following:

''(A) In providing medical assistance for dual eligible individuals for such covered drugs, the State satisfies the requirements of this title (including limitations on cost-sharing imposed under section 1916) applicable to the provision of medical assistance for prescribed drugs to dual eligible individuals.

''(B) In providing medical assistance for dual eligible individuals for such covered drugs, the State provides such individuals with beneficiary protections that the Secretary determines are equivalent to the beneficiary protections applicable under section 1860D–5 to eligible entities offering a Medicare Prescription Drug plan under part D of title XVIII.

''(C) In providing medical assistance for dual eligible individuals for such covered drugs, the State does not impose a limitation on the number of prescriptions an individual may have filled.

''(3) NONAPPLICATION.—Section 1927(d)(2)(E) shall not apply to a State for purposes of providing medical assistance for covered drugs (as such term is defined in section 1860D(a)(2)) to dual eligible individuals that satisfies the minimum standards described in paragraph (2).

''(4) LIMITATION.—Paragraph (1) shall not apply to any State before January 1, 2006.

''(d) FEDERAL PAYMENT OF MEDICARE PART A COST-SHARING FOR CERTAIN STATES.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of a State that, as of the date of enactment of the Prescription Drug and Medicare Improvement Act of 2003, provides medical assistance for individuals described in section 1902(a)(10)(A)(ii))(X), the Secretary shall be responsible in accordance with section 1817(g)(2), for paying 100 percent of the medicare cost-sharing described in subparagraphs (B) and (C) of section 1905(p)(3) (relating to coinsurance and deductibles established under title XVIII) for the individuals provided medical assistance under section 1902(a)(10)(A)(ii)(X), but only—

''(A) with respect to such medicare cost-sharing that is incurred under part A of title XVIII; and

''(B) for so long as the State elects to provide medical assistance under section 1902(a)(10)(A)(ii)(X).

''(2) LIMITATION.—Paragraph (1) shall not apply to any State before January 1, 2006.

''(e) TREATMENT OF TERRITORIES.—

''(1) IN GENERAL.—In the case of a State, other than the 50 States and the District of Columbia—

''(A) the previous provisions of this section shall not apply to residents of such State; and

''(B) if the State establishes a plan described in paragraph (2), the amount otherwise determined under section 1108(f) (as increased under section 1108(g)) for the State shall be further increased by the amount specified in paragraph (3).

''(2) PLAN.—The plan described in this paragraph is a plan that—

''(A) provides medical assistance with respect to the provision of covered drugs (as defined in section 1860D(a)(2)) to individuals described in subparagraph (A), (B), (C), or (D) of section 1860D–19(a)(3); and

''(B) ensures that additional amounts received by the State that are attributable to the operation of this subsection are used only for such assistance.

''(3) INCREASED AMOUNT.—

''(A) IN GENERAL.—The amount specified in this paragraph for a State for a fiscal year is equal to the product of—

''(i) the aggregate amount specified in subparagraph (B); and

''(ii) the amount specified in section 1108(g)(1) for that State, divided by the sum of the amounts specified in such section for all such States.

''(B) AGGREGATE AMOUNT.—The aggregate amount specified in this subparagraph for—

''(i) the last 3 quarters of fiscal year 2006, is equal to $22,500,000;

''(ii) fiscal year 2007, is equal to $30,000,000; and

''(iii) any subsequent fiscal year, is equal to the aggregate amount specified in this subparagraph for the previous fiscal year increased by the annual percentage increase specified in section 1860D–6(c)(5) for the calendar year beginning in such fiscal year.

''(4) NONAPPLICATION.—Section 1927(d)(2)(E) shall not apply to a State described in paragraph (1) for purposes of providing medical assistance described in paragraph (2)(A).

''(5) REPORT.—The Secretary shall submit to Congress a report on the application of this subsection and may include in the report such recommendations as the Secretary deems appropriate.

''(f) DEFINITIONS.—For purposes of this section, the terms 'qualified medicare beneficiary', 'subsidy-eligible individual', and 'dual eligible individual' have the meanings given such terms in subparagraphs (A), (D), and (E), respectively, of section 1860D–19(a)(4).''.

(2) CONFORMING AMENDMENT.—Section 1108(f) (42 U.S.C. 1308(f)) is amended by inserting ''and section 1935(e)(1)(B)'' after ''Subject to subsection (g)''.

(3) TRANSFER OF FEDERALLY ASSUMED PORTIONS OF MEDICARE COST-SHARING.—

(A) TRANSFER OF ASSUMPTION OF PART B PREMIUM FOR STATES PROVIDING PRESCRIPTION DRUG COVERAGE FOR DUAL ELIGIBLE INDIVIDUALS TO THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND.—Section 1841(f) (42 U.S.C. 1395t(f)) is amended—

(i) by inserting ''(1)'' after ''(f)''; and

(ii) by adding at the end the following new paragraph:

''(2) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Treasury amounts which the Secretary of Health and Human Services shall have certified are equivalent to the amounts determined under section 1935(c)(1) with respect to all States for a fiscal year.''.

(B) TRANSFER OF ASSUMPTION OF PART A COST-SHARING FOR CERTAIN STATES.—Section 1817(g) (42 U.S.C. 1395i(g)) is amended—

(i) by inserting ''(1)'' after ''(g)''; and

(ii) by adding at the end the following new paragraph:

''(2) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Treasury amounts which the Secretary of Health and Human Services shall have certified are equivalent to the amounts determined under section 1935(d)(1) with respect to certain States for a fiscal year.''.

(4) AMENDMENT TO BEST PRICE.—Section 1927(c)(1)(C)(i) (42 U.S.C. 1396r–8(c)(1)(C)(i)), as amended by section 111(b), is amended—

(A) by striking ''and'' at the end of subclause (IV);

(B) by striking the period at the end of subclause (V) and inserting ''; and''; and

(C) by adding at the end the following new subclause:

''(VI) any prices charged which are negotiated under a Medicare Prescription Drug plan under part D of title XVIII with respect to covered drugs, under a MedicareAdvantage plan under part C of such title with respect to such drugs, or under a qualified retiree prescription drug plan (as defined in section 1860D–20(f)(1)) with respect to such drugs, on behalf of eligible beneficiaries (as defined in section 1860D(a)(3).''.

(c) EXTENSION OF MEDICARE COST-SHARING FOR PART B PREMIUM FOR QUALIFYING INDIVIDUALS THROUGH 2008.—

(1) IN GENERAL.—Section 1902(a)(10)(E)(iv) (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended to read as follows:

''(iv) subject to sections 1933 and 1905(p)(4), for making medical assistance available (but only for premiums payable with respect to months during the period beginning with January 1998, and ending with December 2008) for medicare cost-sharing described in section 1905(p)(3)(A)(ii) for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) and is at least 120 percent, but less than 135 percent, of the official poverty line (referred to in such section) for a family of the size involved and who are not otherwise eligible for medical assistance under the State plan;''.

(2) TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(c) (42 U.S.C. 1396u–3(c)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (D), by striking ''and'' at the end;

(ii) in subparagraph (E)—

(I) by striking ''fiscal year 2002'' and inserting ''each of fiscal years 2002 through 2008''; and

(II) by striking the period and inserting ''; and''; and

(iii) by adding at the end the following new subparagraph:

''(F) the first quarter of fiscal year 2009, $100,000,000.''; and

(B) in paragraph (2)(A), by striking ''the sum of'' and all that follows through ''1902(a)(10)(E)(iv)(II) in the State; to'' and inserting ''twice the total number of individuals described in section 1902(a)(10)(E)(iv) in the State; to''.

(d) OUTREACH BY THE COMMISSIONER OF SOCIAL SECURITY.—Section 1144 (42 U.S.C. 1320b–14) is amended—

(1) in the section heading, by inserting ''AND SUBSIDIES FOR LOW-INCOME INDIVIDUALS UNDER TITLE XVIII'' after ''COST-SHARING'';

(2) in subsection (a)—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting ''for the transitional prescription drug assistance card program under section 1807A, or for premium and cost-sharing subsidies under section 1860D–19'' before the semicolon; and

(ii) in subparagraph (B), by inserting '', program, and subsidies'' after ''medical assistance''; and

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by inserting '', the transitional prescription drug assistance card program under section 1807A, or premium and cost-sharing subsidies under section 1860D–19'' after ''assistance''; and

(ii) in subparagraph (A), by striking ''such eligibility'' and inserting ''eligibility for medicare cost-sharing under the medicaid program''; and

(3) in subsection (b)—

(A) in paragraph (1)(A), by inserting '', for the transitional prescription drug assistance card program under section 1807A, or for premium and cost-sharing subsidies for low-income individuals under section 1860D–19'' after ''1933''; and

(B) in paragraph (2), by inserting '', program, and subsidies'' after ''medical assistance''.

(e) REPORT REGARDING VOLUNTARY ENROLLMENT OF DUAL ELIGIBLE INDIVIDUALS IN PART D.—Not later than January 1, 2005, the Secretary shall submit a report to Congress that contains such recommendations for legislation as the Secretary determines are necessary in order to establish a voluntary option for dual eligible individuals (as defined in 1860D–19(a)(4)(E) of the Social Security Act (as added by section 101)) to enroll under part D of title XVIII of such Act for prescription drug coverage.

SEC. 105. EXPANSION OF MEMBERSHIP AND DUTIES OF MEDICARE PAYMENT ADVISORY COMMISSION (MEDPAC).

(a) EXPANSION OF MEMBERSHIP.—

(1) IN GENERAL.—Section 1805(c) (42 U.S.C. 1395b–6(c)) is amended—

(A) in paragraph (1), by striking ''17'' and inserting ''19''; and

(B) in paragraph (2)(B), by inserting ''experts in the area of pharmacology and prescription drug benefit programs,'' after ''other health professionals,''.

(2) INITIAL TERMS OF ADDITIONAL MEMBERS.—

(A) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission under section 1805(c)(3) of the Social Security Act (42 U.S.C. 1395b–6(c)(3)), the initial terms of the 2 additional members of the Commission provided for by the amendment under paragraph (1)(A) are as follows:

(i) One member shall be appointed for 1 year.

(ii) One member shall be appointed for 2 years.

(B) COMMENCEMENT OF TERMS.—Such terms shall begin on January 1, 2005.

(b) EXPANSION OF DUTIES.—Section 1805(b)(2) (42 U.S.C. 1395b–6(b)(2)) is amended by adding at the end the following new subparagraph:

''(D) VOLUNTARY PRESCRIPTION DRUG DELIVERY PROGRAM.—Specifically, the Commission shall review, with respect to the voluntary prescription drug delivery program under part D, competition among eligible entities offering Medicare Prescription Drug plans and beneficiary access to such plans and covered drugs, particularly in rural areas.''.

SEC. 106. STUDY REGARDING VARIATIONS IN SPENDING AND DRUG UTILIZATION.

(a) STUDY.—The Secretary shall study on an ongoing basis variations in spending and drug utilization under part D of title XVIII of the Social Security Act for covered drugs to determine the impact of such variations on premiums imposed by eligible entities offering Medicare Prescription Drug plans under that part. In conducting such study, the Secretary shall examine the impact of geographic adjustments of the monthly national average premium under section 1860D–15 of such Act on—

(1) maximization of competition under part D of title XVIII of such Act; and

(2) the ability of eligible entities offering Medicare Prescription Drug plans to contain costs for covered drugs.

(b) REPORT.—Beginning with 2007, the Secretary shall submit annual reports to Congress on the study required under subsection (a).

Subtitle B—Medicare Prescription Drug Discount Card and Transitional Assistance for Low-Income Beneficiaries

SEC. 111. MEDICARE PRESCRIPTION DRUG DISCOUNT CARD AND TRANSITIONAL ASSISTANCE FOR LOW-INCOME BENEFICIARIES.

(a) IN GENERAL.—Title XVIII is amended by inserting after section 1806 the following new sections:

''MEDICARE PRESCRIPTION DRUG DISCOUNT CARD ENDORSEMENT PROGRAM

''SEC. 1807. (a) ESTABLISHMENT.—There is established a medicare prescription drug discount card endorsement program under which the Secretary shall—

''(1) endorse prescription drug discount card programs offered by prescription drug card sponsors that meet the requirements of this section; and

''(2) make available to eligible beneficiaries information regarding such endorsed programs.

''(b) ELIGIBILITY, ELECTION OF PROGRAM, AND ENROLLMENT FEES.—

''(1) ELIGIBILITY AND ELECTION OF PROGRAM.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall establish procedures—

''(i) for identifying eligible beneficiaries; and

''(ii) under which such beneficiaries may make an election to enroll in any prescription drug discount card program endorsed under this section and disenroll from such a program.

''(B) LIMITATION.—An eligible beneficiary may not be enrolled in more than 1 prescription drug discount card program at any time.

''(2) ENROLLMENT FEES.—

''(A) IN GENERAL.—A prescription drug card sponsor may charge an annual enrollment fee to each eligible beneficiary enrolled in a prescription drug discount card program offered by such sponsor.

''(B) AMOUNT.—No enrollment fee charged under subparagraph (A) may exceed $25.

''(C) UNIFORM ENROLLMENT FEE.—A prescription drug card sponsor shall ensure that the enrollment fee for a prescription drug discount card program endorsed under this section is the same for all eligible medicare beneficiaries enrolled in the program.

''(D) COLLECTION.—Any enrollment fee shall be collected by the prescription drug card sponsor.

''(c) PROVIDING INFORMATION TO ELIGIBLE BENEFICIARIES.—

''(1) PROMOTION OF INFORMED CHOICE.—

''(A) BY THE SECRETARY.—In order to promote informed choice among endorsed prescription drug discount card programs, the Secretary shall provide for the dissemination of information which compares the costs and benefits of such programs. Such dissemination shall be coordinated with the dissemination of educational information on other medicare options.

''(B) BY PRESCRIPTION DRUG CARD SPONSORS.—Each prescription drug card sponsor shall make available to each eligible beneficiary (through the Internet and otherwise) information—

''(i) that the Secretary identifies as being necessary to promote informed choice among endorsed prescription drug discount card programs by eligible beneficiaries, including information on enrollment fees, negotiated prices for prescription drugs charged to beneficiaries, and services relating to prescription drugs offered under the program;

''(ii) on how any formulary used by such sponsor functions.

''(2) USE OF MEDICARE TOLL-FREE NUMBER.—The Secretary shall provide through the 1–800–MEDICARE toll free telephone number for the receipt and response to inquiries and complaints concerning the medicare prescription drug discount card endorsement program established under this section and prescription drug discount card programs endorsed under such program.

''(d) BENEFICIARY PROTECTIONS.—

''(1) IN GENERAL.—Each prescription drug discount card program endorsed under this section shall meet such requirements as the Secretary identifies to protect and promote the interest of eligible beneficiaries, including requirements that—

''(A) relate to appeals by eligible beneficiaries and marketing practices; and

''(B) ensure that beneficiaries are not charged more than the lower of the negotiated retail price or the usual and customary price.

''(2) ENSURING PHARMACY ACCESS.—Each prescription drug card sponsor offering a prescription drug discount card program endorsed under this section shall secure the participation in its network of a sufficient number of pharmacies that dispense (other than by mail order) drugs directly to patients to ensure convenient access (as determined by the Secretary and including adequate emergency access) for enrolled beneficiaries. Such standards shall take into account reasonable distances to pharmacy services in both urban and rural areas.

''(3) QUALITY ASSURANCE.—Each prescription drug card sponsor offering a prescription drug discount card program endorsed under this section shall have in place adequate procedures for assuring that quality service is provided to eligible beneficiaries enrolled in a prescription drug discount card program offered by such sponsor.

''(4) CONFIDENTIALITY OF ENROLLEE RECORDS.—Insofar as a prescription drug card sponsor maintains individually identifiable medical records or other health information regarding eligible beneficiaries enrolled in a prescription drug discount card program endorsed under this section, the prescription drug card sponsor shall have in place procedures to safeguard the privacy of any individually identifiable beneficiary information in a manner that the Secretary determines is consistent with the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

''(5) NO OTHER FEES.—A prescription drug card sponsor may not charge any fee to an eligible beneficiary under a prescription drug discount card program endorsed under this section other than an enrollment fee charged under subsection (b)(2)(A).

''(6) PRICES.—

''(A) AVOIDANCE OF HIGH PRICED DRUGS.—A prescription drug card sponsor may not recommend switching an eligible beneficiary to a drug with a higher negotiated price absent a recommendation by a licensed health professional that there is a clinical indication with respect to the patient for such a switch.

''(B) PRICE STABILITY.—Negotiated prices charged for prescription drugs covered under a prescription drug discount card program endorsed under this section may not change more frequently than once every 60 days.

''(e) PRESCRIPTION DRUG BENEFITS.—

''(1) IN GENERAL.—Each prescription drug card sponsor may only provide benefits that relate to prescription drugs (as defined in subsection (i)(2)) under a prescription drug discount card program endorsed under this section.

''(2) SAVINGS TO ELIGIBLE BENEFICIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (D), each prescription drug card sponsor shall provide eligible beneficiaries who enroll in a prescription drug discount card program offered by such sponsor that is endorsed under this section with access to negotiated prices used by the sponsor with respect to prescription drugs dispensed to eligible beneficiaries.

''(B) INAPPLICABILITY OF MEDICAID BEST PRICE RULES.—The requirements of section 1927 relating to manufacturer best price shall

not apply to the negotiated prices for prescription drugs made available under a prescription drug discount card program endorsed under this section.

''(C) GUARANTEED ACCESS TO NEGOTIATED PRICES.—The Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall establish procedures to ensure that eligible beneficiaries have access to the negotiated prices for prescription drugs provided under subparagraph (A).

''(D) APPLICATION OF FORMULARY RESTRICTIONS.—A drug prescribed for an eligible beneficiary that would otherwise be a covered drug under this section shall not be so considered under a prescription drug discount card program if the program excludes the drug under a formulary.

''(3) BENEFICIARY SERVICES.—Each prescription drug discount card program endorsed under this section shall provide pharmaceutical support services, such as education, counseling, and services to prevent adverse drug interactions.

''(4) DISCOUNT CARDS.—Each prescription drug card sponsor shall issue a card to eligible beneficiaries enrolled in a prescription drug discount card program offered by such sponsor that the beneficiary may use to obtain benefits under the program.

''(f) SUBMISSION OF APPLICATIONS FOR ENDORSEMENT AND APPROVAL.—

''(1) SUBMISSION OF APPLICATIONS FOR ENDORSEMENT.—Each prescription drug card sponsor that seeks endorsement of a prescription drug discount card program under this section shall submit to the Secretary, at such time and in such manner as the Secretary may specify, such information as the Secretary may require.

''(2) APPROVAL.—The Secretary shall review the information submitted under paragraph (1) and shall determine whether to endorse the prescription drug discount card program to which such information relates. The Secretary may not approve a program unless the program and prescription drug card sponsor offering the program comply with the requirements under this section.

''(g) REQUIREMENTS ON DEVELOPMENT AND APPLICATION OF FORMULARIES.—If a prescription drug card sponsor offering a prescription drug discount card program uses a formulary, the following requirements must be met:

''(1) PHARMACY AND THERAPEUTIC (P&T) COMMITTEE.—

''(A) IN GENERAL.—The eligible entity must establish a pharmacy and therapeutic committee that develops and reviews the formulary.

''(B) COMPOSITION.—A pharmacy and therapeutic committee shall include at least 1 academic expert, at least 1 practicing physician, and at least 1 practicing pharmacist, all of whom have expertise in the care of elderly or disabled persons, and a majority of the members of such committee shall consist of individuals who are a practicing physician or a practicing pharmacist (or both).

''(2) FORMULARY DEVELOPMENT.—In developing and reviewing the formulary, the committee shall base clinical decisions on the strength of scientific evidence and standards of practice, including assessing peer-reviewed medical literature, such as randomized clinical trials, pharmacoeconomic studies, outcomes research data, and such other information as the committee determines to be appropriate.

''(3) INCLUSION OF DRUGS IN ALL THERAPEUTIC CATEGORIES AND CLASSES.—

''(A) IN GENERAL.—The formulary must include drugs within each therapeutic category and class of covered outpatient drugs (as defined by the Secretary), although not necessarily for all drugs within such categories and classes.

''(B) REQUIREMENT.—In defining therapeutic categories and classes of covered outpatient drugs pursuant to subparagraph (A), the Secretary shall use the compendia referred to section 1927(g)(1)(B)(i) or other recognized sources for categorizing drug therapeutic categories and classes.

''(4) PROVIDER EDUCATION.—The committee shall establish policies and procedures to educate and inform health care providers concerning the formulary.

''(5) NOTICE BEFORE REMOVING DRUGS FROM FORMULARY.—Any removal of a drug from a formulary shall take effect only after appropriate notice is made available to beneficiaries and pharmacies.

''(h) FRAUD AND ABUSE PREVENTION.—

''(1) IN GENERAL.—The Secretary shall provide appropriate oversight to ensure compliance of endorsed programs with the requirements of this section, including verification of the negotiated prices and services provided.

''(2) DISQUALIFICATION FOR ABUSIVE PRACTICES.—The Secretary may implement intermediate sanctions and may revoke the endorsement of a program that the Secretary determines no longer meets the requirements of this section or that has engaged in false or misleading marketing practices.

''(3) AUTHORITY WITH RESPECT TO CIVIL MONEY PENALTIES.—The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for any violation of this section. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

''(4) REPORTING TO SECRETARY.—Each prescription drug card sponsor offering a prescription drug discount card program endorsed under this section shall report information relating to program performance, use of prescription drugs by eligible beneficiaries enrolled in the program, financial information of the sponsor, and such other information as the Secretary may specify. The Secretary may not disclose any proprietary data reported under this paragraph.

''(5) DRUG UTILIZATION REVIEW.—The Secretary may use claims data from parts A and B for purposes of conducting a drug utilization review program.

''(i) DEFINITIONS.—In this section:

''(1) ELIGIBLE BENEFICIARY.—

''(A) IN GENERAL.—The term 'eligible beneficiary' means an individual who—

''(i) is entitled to, or enrolled for, benefits under part A and enrolled under part B; and

''(ii) is not a dual eligible individual (as defined in subparagraph (B)).

''(B) DUAL ELIGIBLE INDIVIDUAL.—

''(i) IN GENERAL.—The term 'dual eligible individual' means an individual who is—

''(I) enrolled under title XIX or under a waiver under section 1115 of the requirements of such title for medical assistance that is not less than the medical assistance provided to an individual described in section 1902(a)(10)(A)(i) and includes covered outpatient drugs (as such term is defined for purposes of section 1927); and

''(II) entitled to benefits under part A and enrolled under part B.

''(ii) INCLUSION OF MEDICALLY NEEDY.—Such term includes an individual described in section 1902(a)(10)(C).

''(2) PRESCRIPTION DRUG.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'prescription drug' means—

''(i) a drug that may be dispensed only upon a prescription and that is described in clause (i) or (ii) of subparagraph (A) of section 1927(k)(2); or

''(ii) a biological product or insulin described in subparagraph (B) or (C) of such section,

and such term includes a vaccine licensed under section 351 of the Public Health Service Act and any use of a covered outpatient drug for a medically accepted indication (as defined in section 1927(k)(6)).

''(B) EXCLUSIONS.—The term 'prescription drug' does not include drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under section 1927(d)(2), other than subparagraph (E) thereof (relating to smoking cessation agents), or under section 1927(d)(3).

''(3) NEGOTIATED PRICE.—The term 'negotiated price' includes all discounts, direct or indirect subsidies, rebates, price concessions, and direct or indirect remunerations.

''(4) PRESCRIPTION DRUG CARD SPONSOR.—The term 'prescription drug card sponsor' means any entity with demonstrated experience and expertise in operating a prescription drug discount card program, an insurance program that provides coverage for prescription drugs, or a similar program that the Secretary determines to be appropriate to provide eligible beneficiaries with the benefits under a prescription drug discount card program endorsed by the Secretary under this section, including—

''(A) a pharmaceutical benefit management company;

''(B) a wholesale or retail pharmacist delivery system;

''(C) an insurer (including an insurer that offers medicare supplemental policies under section 1882);

''(D) any other entity; or

''(E) any combination of the entities described in subparagraphs (A) through (D).

''TRANSITIONAL PRESCRIPTION DRUG ASSISTANCE CARD PROGRAM FOR ELIGIBLE LOW-INCOME BENEFICIARIES

''SEC. 1807A. (a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established a program under which the Secretary shall award contracts to prescription drug card sponsors offering a prescription drug discount card that has been endorsed by the Secretary under section 1807 under which such sponsors shall offer a prescription drug assistance card program to eligible low-income beneficiaries in accordance with the requirements of this section.

''(2) APPLICATION OF DISCOUNT CARD PROVISIONS.—Except as otherwise provided in this section, the provisions of section 1807 shall apply to the program established under this section.

''(b) ELIGIBILITY, ELECTION OF PROGRAM, AND ENROLLMENT FEES.—

''(1) ELIGIBILITY AND ELECTION OF PROGRAM.—

''(A) IN GENERAL.—Subject to the succeeding provisions of this paragraph, the enrollment procedures established under section 1807(b)(1)(A)(ii) shall apply for purposes of this section.

''(B) ENROLLMENT OF ANY ELIGIBLE LOW-INCOME BENEFICIARY.—Each prescription drug card sponsor offering a prescription drug assistance card program under this section shall permit any eligible low-income beneficiary to enroll in such program if it serves the geographic area in which the beneficiary resides.

''(C) SIMULTANEOUS ENROLLMENT IN PRESCRIPTION DRUG DISCOUNT CARD PROGRAM.—An eligible low-income beneficiary who enrolls in a prescription drug assistance card program offered by a prescription drug card

sponsor under this section shall be simultaneously enrolled in a prescription drug discount card program offered by such sponsor.

''(2) WAIVER OF ENROLLMENT FEES.—

''(A) IN GENERAL.—A prescription drug card sponsor may not charge an enrollment fee to any eligible low-income beneficiary enrolled in a prescription drug discount card program offered by such sponsor.

''(B) PAYMENT BY SECRETARY.—Under a contract awarded under subsection (f)(2), the Secretary shall pay to each prescription drug card sponsor an amount equal to any enrollment fee charged under section 1807(b)(2)(A) on behalf of each eligible low-income beneficiary enrolled in a prescription drug discount card program under paragraph (1)(C) offered by such sponsor.

''(c) ADDITIONAL BENEFICIARY PROTECTIONS.—

''(1) PROVIDING INFORMATION TO ELIGIBLE LOW-INCOME BENEFICIARIES.—In addition to the information provided to eligible beneficiaries under section 1807(c), the prescription drug card sponsor shall—

''(A) periodically notify each eligible low-income beneficiary enrolled in a prescription drug assistance card program offered by such sponsor of the amount of coverage for prescription drugs remaining under subsection (d)(2)(A); and

''(B) notify each eligible low-income beneficiary enrolled in a prescription drug assistance card program offered by such sponsor of the grievance and appeals processes under the program.

''(2) CONVENIENT ACCESS IN LONG-TERM CARE FACILITIES.—For purposes of determining whether convenient access has been provided under section 1807(d)(2) with respect to eligible low-income beneficiaries enrolled in a prescription drug assistance card program, the Secretary may only make a determination that such access has been provided if an appropriate arrangement is in place for eligible low-income beneficiaries who are in a long-term care facility (as defined by the Secretary) to receive prescription drug benefits under the program.

''(3) COORDINATION OF BENEFITS.—

''(A) IN GENERAL.—The Secretary shall establish procedures under which eligible low-income beneficiaries who are enrolled for coverage described in subparagraph (B) and enrolled in a prescription drug assistance card program have access to the prescription drug benefits available under such program.

''(B) COVERAGE DESCRIBED.—Coverage described in this subparagraph is as follows:

''(i) Coverage of prescription drugs under a State pharmaceutical assistance program.

''(ii) Enrollment in a Medicare+Choice plan under part C.

''(4) GRIEVANCE MECHANISM.—Each prescription drug card sponsor with a contract under this section shall provide in accordance with section 1852(f) meaningful procedures for hearing and resolving grievances between the prescription drug card sponsor (including any entity or individual through which the prescription drug card sponsor provides covered benefits) and enrollees in a prescription drug assistance card program offered by such sponsor.

''(5) APPLICATION OF COVERAGE DETERMINATION AND RECONSIDERATION PROVISIONS.—

''(A) IN GENERAL.—The requirements of paragraphs (1) through (3) of section 1852(g) shall apply with respect to covered benefits under a prescription drug assistance card program under this section in the same manner as such requirements apply to a Medicare+Choice organization with respect to benefits it offers under a Medicare+Choice plan under part C.

''(B) REQUEST FOR REVIEW OF TIERED FORMULARY DETERMINATIONS.—In the case of a prescription drug assistance card program offered by a prescription drug card sponsor that provides for tiered pricing for drugs included within a formulary and provides lower prices for preferred drugs included within the formulary, an eligible low-income beneficiary who is enrolled in the program may request coverage of a nonpreferred drug under the terms applicable for preferred drugs if the prescribing physician determines that the preferred drug for treatment of the same condition is not as effective for the eligible low-income beneficiary or has adverse effects for the eligible low-income beneficiary.

''(C) FORMULARY DETERMINATIONS.—An eligible low-income beneficiary who is enrolled in a prescription drug assistance card program offered by a prescription drug card sponsor may appeal to obtain coverage for a covered drug that is not on a formulary of the entity if the prescribing physician determines that the formulary drug for treatment of the same condition is not as effective for the eligible low-income beneficiary or has adverse effects for the eligible low-income beneficiary.

''(6) APPEALS.—

''(A) IN GENERAL.—Subject to subparagraph (B), a prescription drug card sponsor shall meet the requirements of paragraphs (4) and (5) of section 1852(g) with respect to drugs not included on any formulary in a similar manner (as determined by the Secretary) as such requirements apply to a Medicare+Choice organization with respect to benefits it offers under a Medicare+Choice plan under part C.

''(B) FORMULARY DETERMINATIONS.—An eligible low-income beneficiary who is enrolled in a prescription drug assistance card program offered by a prescription drug card sponsor may appeal to obtain coverage for a covered drug that is not on a formulary of the entity if the prescribing physician determines that the formulary drug for treatment of the same condition is not as effective for the eligible low-income beneficiary or has adverse effects for the eligible low-income beneficiary.

''(C) APPEALS AND EXCEPTIONS TO APPLICATION.—The prescription drug card sponsor must have, as part of the appeals process under this paragraph, a process for timely appeals for denials of coverage based on the application of the formulary.

''(d) PRESCRIPTION DRUG BENEFITS.—

''(1) IN GENERAL.—Subject to paragraph (5), all the benefits available under a prescription drug discount card program offered by a prescription drug card sponsor and endorsed under section 1807 shall be available to eligible low-income beneficiaries enrolled in a prescription drug assistance card program offered by such sponsor.

''(2) ASSISTANCE FOR ELIGIBLE LOW-INCOME BENEFICIARIES.—

''(A) $600 ANNUAL ASSISTANCE.—Subject to subparagraphs (B) and (C) and paragraph (5), each prescription drug card sponsor with a contract under this section shall provide coverage for the first $600 of expenses for prescription drugs incurred during each calendar year by an eligible low-income beneficiary enrolled in a prescription drug assistance card program offered by such sponsor.

''(B) COINSURANCE.—

''(i) IN GENERAL.—The prescription drug card sponsor shall determine an amount of coinsurance to collect from each eligible low-income beneficiary enrolled in a prescription drug assistance card program offered by such sponsor for which coverage is available under subparagraph (A).

''(ii) AMOUNT.—The amount of coinsurance collected under clause (i) shall be at least 10 percent of the negotiated price of each prescription drug dispensed to an eligible low-income beneficiary.

''(iii) CONSTRUCTION.—Amounts collected under clause (i) shall not be counted against the total amount of coverage available under subparagraph (A).

''(C) REDUCTION FOR LATE ENROLLMENT.—For each month during a calendar quarter in which an eligible low-income beneficiary is not enrolled in a prescription drug assistance card program offered by a prescription drug card sponsor with a contract under this section, the amount of assistance available under subparagraph (A) shall be reduced by $50.

''(D) CREDITING OF UNUSED BENEFITS TOWARD FUTURE YEARS.—The dollar amount of coverage described in subparagraph (A) shall be increased by any amount of coverage described in such subparagraph that was not used during the previous calendar year.

''(E) WAIVER TO ENSURE PROVISION OF BENEFIT.—The Secretary may waive such requirements of this section and section 1807 as may be necessary to ensure that each eligible low-income beneficiaries has access to the assistance described in subparagraph (A).

''(3) ADDITIONAL DISCOUNTS.—A prescription drug card sponsor with a contract under this section shall provide each eligible low-income beneficiary enrolled in a prescription drug assistance program offered by the sponsor with access to negotiated prices that reflect a minimum average discount of at least 20 percent of the average wholesale price for prescription drugs covered under that program.

''(4) ASSISTANCE CARDS.—Each prescription drug card sponsor shall permit eligible low-income beneficiaries enrolled in a prescription drug assistance card program offered by such sponsor to use the discount card issued under section 1807(e)(4) to obtain benefits under the program.

''(5) APPLICATION OF FORMULARY RESTRICTIONS.—A drug prescribed for an eligible low-income beneficiary that would otherwise be a covered drug under this section shall not be so considered under a prescription drug assistance card program if the program excludes the drug under a formulary and such exclusion is not successfully resolved under paragraph (4), (5), or (6) of subsection (c).

''(e) REQUIREMENTS FOR PRESCRIPTION DRUG CARD SPONSORS THAT OFFER PRESCRIPTION DRUG ASSISTANCE CARD PROGRAMS.—

''(1) IN GENERAL.—Each prescription drug card sponsor shall—

''(A) process claims made by eligible low-income beneficiaries;

''(B) negotiate with brand name and generic prescription drug manufacturers and others for low prices on prescription drugs;

''(C) track individual beneficiary expenditures in a format and periodicity specified by the Secretary; and

''(D) perform such other functions as the Secretary may assign.

''(2) DATA EXCHANGES.—Each prescription drug card sponsor shall receive data exchanges in a format specified by the Secretary and shall maintain real-time beneficiary files.

''(3) PUBLIC DISCLOSURE OF PHARMACEUTICAL PRICES FOR EQUIVALENT DRUGS.—The prescription drug card sponsor offering the prescription drug assistance card program shall provide that each pharmacy or other dispenser that arranges for the dispensing of a covered drug shall inform the eligible low-income beneficiary at the time of purchase of the drug of any differential between the price of the prescribed drug to the enrollee and the price of the lowest priced generic drug covered under the plan that is therapeutically equivalent and bioequivalent and available at such pharmacy or other dispenser.

''(f) SUBMISSION OF BIDS AND AWARDING OF CONTRACTS.—

''(1) SUBMISSION OF BIDS.—Each prescription drug card sponsor that seeks to offer a prescription drug assistance card program under this section shall submit to the Secretary, at such time and in such manner as the Secretary may specify, such information as the Secretary may require.

''(2) AWARDING OF CONTRACTS.—The Secretary shall review the information submitted under paragraph (1) and shall determine whether to award a contract to the prescription drug card sponsor offering the program to which such information relates. The Secretary may not approve a program unless the program and prescription drug card sponsor offering the program comply with the requirements under this section.

''(3) NUMBER OF CONTRACTS.—There shall be no limit on the number of prescription drug card sponsors that may be awarded contracts under paragraph (2).

''(4) CONTRACT PROVISIONS.—

''(A) DURATION.—A contract awarded under paragraph (2) shall be for the lifetime of the program under this section.

''(B) WITHDRAWAL.—A prescription drug card sponsor that desires to terminate the contract awarded under paragraph (2) may terminate such contract without penalty if such sponsor gives notice—

''(i) to the Secretary 90 days prior to the termination of such contract; and

''(ii) to each eligible low-income beneficiary that is enrolled in a prescription drug assistance card program offered by such sponsor 60 days prior to such termination.

''(C) SERVICE AREA.—The service area under the contract shall be the same as the area served by the prescription drug card sponsor under section 1807.

''(5) SIMULTANEOUS APPROVAL OF DISCOUNT CARD AND ASSISTANCE PROGRAMS.—A prescription drug card sponsor may submit an application for endorsement under section 1807 as part of the bid submitted under paragraph (1) and the Secretary may approve such application at the same time as the Secretary awards a contract under this section.

''(g) PAYMENTS TO PRESCRIPTION DRUG CARD SPONSORS.—

''(1) IN GENERAL.—The Secretary shall pay to each prescription drug card sponsor offering a prescription drug assistance card program in which an eligible low-income beneficiary is enrolled an amount equal to the amount agreed to by the Secretary and the sponsor in the contract awarded under subsection (f)(2).

''(2) PAYMENT FROM PART B TRUST FUND.—The costs of providing benefits under this section shall be payable from the Federal Supplementary Medical Insurance Trust Fund established under section 1841.

''(h) ELIGIBILITY DETERMINATIONS MADE BY STATES; PRESUMPTIVE ELIGIBILITY.—States shall perform the functions described in section 1935(a)(1).

''(i) APPROPRIATIONS.—There are appropriated from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 such sums as may be necessary to carry out the program under this section.

''(j) DEFINITIONS.—In this section:

''(1) ELIGIBLE BENEFICIARY; NEGOTIATED PRICE; PRESCRIPTION DRUG.—The terms 'eligible beneficiary', 'negotiated price', and 'prescription drug' have the meanings given those terms in section 1807(i).

''(2) ELIGIBLE LOW-INCOME BENEFICIARY.—The term 'eligible low-income beneficiary' means an individual who—

''(A) is an eligible beneficiary (as defined in section 1807(i)); and

''(B) is described in clause (iii) or (iv) of section 1902(a)(10)(E) or in section 1905(p)(1).

''(3) PRESCRIPTION DRUG CARD SPONSOR.—The term 'prescription drug card sponsor' has the meaning given that term in section 1807(i), except that such sponsor shall also be an entity that the Secretary determines is—

''(A) is appropriate to provide eligible low-income beneficiaries with the benefits under a prescription drug assistance card program under this section; and

''(B) is able to manage the monetary assistance made available under subsection (d)(2);

''(C) agrees to submit to audits by the Secretary; and

''(D) provides such other assurances as the Secretary may require.

''(4) STATE.—The term 'State' has the meaning given such term for purposes of title XIX.''.

(b) EXCLUSION OF PRICES FROM DETERMINATION OF BEST PRICE.—Section 1927(c)(1)(C)(i) (42 U.S.C. 1396r–8(c)(1)(C)(i)) is amended—

(1) by striking ''and'' at the end of subclause (III);

(2) by striking the period at the end of subclause (IV) and inserting ''; and''; and

(3) by adding at the end the following new subclause:

''(V) any negotiated prices charged under the medicare prescription drug discount card endorsement program under section 1807 or under the transitional prescription drug assistance card program for eligible low-income beneficiaries under section 1807A.''.

(c) EXCLUSION OF PRESCRIPTION DRUG ASSISTANCE CARD COSTS FROM DETERMINATION OF PART B MONTHLY PREMIUM.—Section 1839(g) of the Social Security Act (42 U.S.C. 1395r(g)) is amended—

(1) by striking ''attributable to the application of section'' and inserting ''attributable to—

''(1) the application of section'';

(2) by striking the period and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(2) the prescription drug assistance card program under section 1807A.''.

(d) REGULATIONS.—

(1) AUTHORITY FOR INTERIM FINAL REGULATIONS.—The Secretary may promulgate initial regulations implementing sections 1807 and 1807A of the Social Security Act (as added by this section) in interim final form without prior opportunity for public comment.

(2) FINAL REGULATIONS.—A final regulation reflecting public comments must be published within 1 year of the interim final regulation promulgated under paragraph (1).

(3) EXEMPTION FROM THE PAPERWORK REDUCTION ACT.—The promulgation of the regulations under this subsection and the administration the programs established by sections 1807 and 1807A of the Social Security Act (as added by this section) shall be made without regard to chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(e) IMPLEMENTATION; TRANSITION.—

(1) IMPLEMENTATION.—The Secretary shall implement the amendments made by this section in a manner that discounts are available to eligible beneficiaries under section 1807 of the Social Security Act and assistance is available to eligible low-income beneficiaries under section 1807A of such Act not later than January 1, 2004.

(2) TRANSITION.—The Secretary shall provide for an appropriate transition and discontinuation of the programs under section 1807 and 1807A of the Social Security Act. Such transition and discontinuation shall ensure that such programs continue to operate until the date on which the first enrollment period under part D ends.

Subtitle C—Standards for Electronic Prescribing

SEC. 121. STANDARDS FOR ELECTRONIC PRESCRIBING.

Title XI (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new part:

''PART D—ELECTRONIC PRESCRIBING

''STANDARDS FOR ELECTRONIC PRESCRIBING

''SEC. 1180. (a) STANDARDS.—

''(1) DEVELOPMENT AND ADOPTION.—

''(A) IN GENERAL.—The Secretary shall develop or adopt standards for transactions and data elements for such transactions (in this section referred to as 'standards') to enable the electronic transmission of medication history, eligibility, benefit, and other prescription information.

''(B) CONSULTATION.—In developing and adopting the standards under subparagraph (A), the Secretary shall consult with representatives of physicians, hospitals, pharmacists, standard setting organizations, pharmacy benefit managers, beneficiary information exchange networks, technology experts, and representatives of the Departments of Veterans Affairs and Defense and other interested parties.

''(2) OBJECTIVE.—Any standards developed or adopted under this part shall be consistent with the objectives of improving—

''(A) patient safety; and

''(B) the quality of care provided to patients.

''(3) REQUIREMENTS.—Any standards developed or adopted under this part shall comply with the following:

''(A) ELECTRONIC TRANSMITTAL OF PRESCRIPTIONS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the standards require that prescriptions be written and transmitted electronically.

''(ii) EXCEPTIONS.—The standards shall not require a prescription to be written and transmitted electronically—

''(I) in emergency cases and other exceptional circumstances recognized by the Administrator; or

''(II) if the patient requests that the prescription not be transmitted electronically.

If a patient makes a request under subclause (II), no additional charges may be imposed on the patient for making such request.

''(B) PATIENT-SPECIFIC MEDICATION HISTORY, ELIGIBILITY, BENEFIT, AND OTHER PRESCRIPTION INFORMATION.—

''(i) IN GENERAL.—The standards shall accommodate electronic transmittal of patient-specific medication history, eligibility, benefit, and other prescription information among prescribing and dispensing professionals at the point of care.

''(ii) REQUIRED INFORMATION.—The information described in clause (i) shall include the following:

''(I) Information (to the extent available and feasible) on the drugs being prescribed for that patient and other information relating to the medication history of the patient that may be relevant to the appropriate prescription for that patient.

''(II) Cost-effective alternatives (if any) to the drug prescribed.

''(III) Information on eligibility and benefits, including the drugs included in the applicable formulary and any requirements for prior authorization.

''(IV) Information on potential interactions with drugs listed on the medication history, graded by severity of the potential interaction.

''(V) Other information to improve the quality of patient care and to reduce medical errors.

''(C) UNDUE BURDEN.—The standards shall be designed so that, to the extent practicable, the standards do not impose an

undue administrative burden on the practice of medicine, pharmacy, or other health professions.

''(D) COMPATIBILITY WITH ADMINISTRATIVE SIMPLIFICATION AND PRIVACY LAWS.—The standards shall be—

''(i) consistent with the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996; and

''(ii) compatible with the standards adopted under part C.

''(4) TRANSFER OF INFORMATION.—The Secretary shall develop and adopt standards for transferring among prescribing and insurance entities and other necessary entities appropriate standard data elements needed for the electronic exchange of medication history, eligibility, benefit, and other prescription drug information and other health information determined appropriate in compliance with the standards adopted or modified under this part.

''(b) TIMETABLE FOR ADOPTION OF STANDARDS.—

''(1) IN GENERAL.—The Secretary shall adopt the standards under this part by January 1, 2006.

''(2) ADDITIONS AND MODIFICATIONS TO STANDARDS.—The Secretary shall, in consultation with appropriate representatives of interested parties, review the standards developed or adopted under this part and adopt modifications to the standards (including additions to the standards), as determined appropriate. Any addition or modification to such standards shall be completed in a manner which minimizes the disruption and cost of compliance.

''(c) COMPLIANCE WITH STANDARDS.—

''(1) REQUIREMENT FOR ALL INDIVIDUALS AND ENTITIES THAT TRANSMIT OR RECEIVE PRESCRIPTIONS ELECTRONICALLY.—

''(A) IN GENERAL.—Individuals or entities that transmit or receive electronic medication history, eligibility, benefit and prescription information, shall comply with the standards adopted or modified under this part.

''(B) RELATION TO STATE LAWS.—The standards adopted or modified under this part shall supersede any State law or regulations pertaining to the electronic transmission of medication history, eligibility, benefit and prescription information.

''(2) TIMETABLE FOR COMPLIANCE.—

''(A) INITIAL COMPLIANCE.—

''(i) IN GENERAL.—Not later than 24 months after the date on which an initial standard is adopted under this part, each individual or entity to whom the standard applies shall comply with the standard.

''(ii) SPECIAL RULE FOR SMALL HEALTH PLANS.—In the case of a small health plan, as defined by the Secretary for purposes of section 1175(b)(1)(B), clause (i) shall be applied by substituting '36 months' for '24 months'.

''(d) CONSULTATION WITH ATTORNEY GENERAL.—The Secretary shall consult with the Attorney General before developing, adopting, or modifying a standard under this part to ensure that the standard accommodates secure electronic transmission of prescriptions for controlled substances in a manner that minimizes the possibility of violations under the Comprehensive Drug Abuse Prevention and Control Act of 1970 and related Federal laws.

''GRANTS TO HEALTH CARE PROVIDERS TO IMPLEMENT ELECTRONIC PRESCRIPTION PROGRAMS

''SEC. 1180A. (a) IN GENERAL.—The Secretary is authorized to make grants to health care providers for the purpose of assisting such entities to implement electronic prescription programs that comply with the standards adopted or modified under this part.

''(b) APPLICATION.—No grant may be made under this section except pursuant to a grant application that is submitted in a time, manner, and form approved by the Secretary.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 2006, 2007, and 2008, such sums as may be necessary to carry out this section.''.

Subtitle D—Other Provisions

SEC. 131. ADDITIONAL REQUIREMENTS FOR ANNUAL FINANCIAL REPORT AND OVERSIGHT ON MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1817 (42 U.S.C. 1395i) is amended by adding at the end the following new subsection:

''(l) COMBINED REPORT ON OPERATION AND STATUS OF THE TRUST FUND AND THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND (INCLUDING THE PRESCRIPTION DRUG ACCOUNT).—In addition to the duty of the Board of Trustees to report to Congress under subsection (b), on the date the Board submits the report required under subsection (b)(2), the Board shall submit to Congress a report on the operation and status of the Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 (including the Prescription Drug Account within such Trust Fund), in this subsection referred to as the 'Trust Funds'. Such report shall include the following information:

''(1) OVERALL SPENDING FROM THE GENERAL FUND OF THE TREASURY.—A statement of total amounts obligated during the preceding fiscal year from the General Revenues of the Treasury to the Trust Funds, separately stated in terms of the total amount and in terms of the percentage such amount bears to all other amounts obligated from such General Revenues during such fiscal year, for each of the following amounts:

''(A) MEDICARE BENEFITS.—The amount expended for payment of benefits covered under this title.

''(B) ADMINISTRATIVE AND OTHER EXPENSES.—The amount expended for payments not related to the benefits described in subparagraph (A).

''(2) HISTORICAL OVERVIEW OF SPENDING.—From the date of the inception of the program of insurance under this title through the fiscal year involved, a statement of the total amounts referred to in paragraph (1), separately stated for the amounts described in subparagraphs (A) and (B) of such paragraph.

''(3) 10-YEAR AND 50-YEAR PROJECTIONS.—An estimate of total amounts referred to in paragraph (1), separately stated for the amounts described in subparagraphs (A) and (B) of such paragraph, required to be obligated for payment for benefits covered under this title for each of the 10 fiscal years succeeding the fiscal year involved and for the 50-year period beginning with the succeeding fiscal year.

''(4) RELATION TO OTHER MEASURES OF GROWTH.—A comparison of the rate of growth of the total amounts referred to in paragraph (1), separately stated for the amounts described in subparagraphs (A) and (B) of such paragraph, to the rate of growth for the same period in—

''(A) the gross domestic product;

''(B) health insurance costs in the private sector;

''(C) employment-based health insurance costs in the public and private sectors; and

''(D) other areas as determined appropriate by the Board of Trustees.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to fiscal years beginning on or after the date of enactment of this Act.

(c) CONGRESSIONAL HEARINGS.—It is the sense of Congress that the committees of jurisdiction of Congress shall hold hearings on the reports submitted under section 1817(l) of the Social Security Act (as added by subsection (a)).

SEC. 132. TRUSTEES' REPORT ON MEDICARE'S UNFUNDED OBLIGATIONS.

(a) REPORT.—The report submitted under sections 1817(b)(2) and 1841(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2) and 1395t(b)(2)) during 2004 shall include an analysis of the total amount of the unfunded obligations of the Medicare program under title XVIII of the Social Security Act.

(b) MATTERS ANALYZED.—The analysis described in subsection (A) shall compare the long-term obligations of the Medicare program to the dedicated funding sources for that program (other than general revenue transfers), including the combined obligations of the Federal Hospital Insurance Trust Fund established under section 1817 of such Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t).

TITLE II—MEDICAREADVANTAGE

Subtitle A—MedicareAdvantage Competition

SEC. 201. ELIGIBILITY, ELECTION, AND ENROLLMENT.

Section 1851 (42 U.S.C. 1395w–21) is amended to read as follows:

''ELIGIBILITY, ELECTION, AND ENROLLMENT

''SEC. 1851. (a) CHOICE OF MEDICARE BENEFITS THROUGH MEDICAREADVANTAGE PLANS.—

''(1) IN GENERAL.—Subject to the provisions of this section, each MedicareAdvantage eligible individual (as defined in paragraph (3)) is entitled to elect to receive benefits under this title—

''(A) through—

''(i) the original Medicare fee-for-service program under parts A and B; and

''(ii) the voluntary prescription drug delivery program under part D; or

''(B) through enrollment in a MedicareAdvantage plan under this part.

''(2) TYPES OF MEDICAREADVANTAGE PLANS THAT MAY BE AVAILABLE.—A MedicareAdvantage plan may be any of the following types of plans of health insurance:

''(A) COORDINATED CARE PLANS.—Coordinated care plans which provide health care services, including health maintenance organization plans (with or without point of service options) and plans offered by provider-sponsored organizations (as defined in section 1855(d)).

''(B) COMBINATION OF MSA PLAN AND CONTRIBUTIONS TO MEDICAREADVANTAGE MSA.—An MSA plan, as defined in section 1859(b)(3), and a contribution into a MedicareAdvantage medical savings account (MSA).

''(C) PRIVATE FEE-FOR-SERVICE PLANS.—A MedicareAdvantage private fee-for-service plan, as defined in section 1859(b)(2).

''(3) MEDICAREADVANTAGE ELIGIBLE INDIVIDUAL.—

''(A) IN GENERAL.—Subject to subparagraph (B), in this title, the term 'MedicareAdvantage eligible individual' means an individual who is entitled to (or enrolled for) benefits under part A, enrolled under part B, and enrolled under part D.

''(B) SPECIAL RULE FOR END-STAGE RENAL DISEASE.—Such term shall not include an individual medically determined to have end-stage renal disease, except that—

''(i) an individual who develops end-stage renal disease while enrolled in a Medicare+Choice or a MedicareAdvantage plan may continue to be enrolled in that plan; and

''(ii) in the case of such an individual who is enrolled in a Medicare+Choice plan or a MedicareAdvantage plan under clause (i) (or subsequently under this clause), if the enrollment is discontinued under circumstances described in section 1851(e)(4)(A), then the individual will be treated as a 'MedicareAdvantage eligible individual' for purposes of electing to continue enrollment in another MedicareAdvantage plan.

''(b) SPECIAL RULES.—

''(1) RESIDENCE REQUIREMENT.—

''(A) IN GENERAL.—Except as the Secretary may otherwise provide and except as provided in subparagraph (C), an individual is eligible to elect a MedicareAdvantage plan offered by a MedicareAdvantage organization only if the plan serves the geographic area in which the individual resides.

''(B) CONTINUATION OF ENROLLMENT PERMITTED.—Pursuant to rules specified by the Secretary, the Secretary shall provide that a plan may offer to all individuals residing in a geographic area the option to continue enrollment in the plan, notwithstanding that the individual no longer resides in the service area of the plan, so long as the plan provides that individuals exercising this option have, as part of the basic benefits described in section 1852(a)(1)(A), reasonable access within that geographic area to the full range of basic benefits, subject to reasonable cost-sharing liability in obtaining such benefits.

''(C) CONTINUATION OF ENROLLMENT PERMITTED WHERE SERVICE CHANGED.—Notwithstanding subparagraph (A) and in addition to subparagraph (B), if a MedicareAdvantage organization eliminates from its service area a MedicareAdvantage payment area that was previously within its service area, the organization may elect to offer individuals residing in all or portions of the affected area who would otherwise be ineligible to continue enrollment the option to continue enrollment in a MedicareAdvantage plan it offers so long as—

''(i) the enrollee agrees to receive the full range of basic benefits (excluding emergency and urgently needed care) exclusively at facilities designated by the organization within the plan service area; and

''(ii) there is no other MedicareAdvantage plan offered in the area in which the enrollee resides at the time of the organization's election.

''(2) SPECIAL RULE FOR CERTAIN INDIVIDUALS COVERED UNDER FEHBP OR ELIGIBLE FOR VETERANS OR MILITARY HEALTH BENEFITS.—

''(A) FEHBP.—An individual who is enrolled in a health benefit plan under chapter 89 of title 5, United States Code, is not eligible to enroll in an MSA plan until such time as the Director of the Office of Management and Budget certifies to the Secretary that the Office of Personnel Management has adopted policies which will ensure that the enrollment of such individuals in such plans will not result in increased expenditures for the Federal Government for health benefit plans under such chapter.

''(B) VA AND DOD.—The Secretary may apply rules similar to the rules described in subparagraph (A) in the case of individuals who are eligible for health care benefits under chapter 55 of title 10, United States Code, or under chapter 17 of title 38 of such Code.

''(3) LIMITATION ON ELIGIBILITY OF QUALIFIED MEDICARE BENEFICIARIES AND OTHER MEDICAID BENEFICIARIES TO ENROLL IN AN MSA PLAN.—An individual who is a qualified medicare beneficiary (as defined in section 1905(p)(1)), a qualified disabled and working individual (described in section 1905(s)), an individual described in section 1902(a)(10)(E)(iii), or otherwise entitled to medicare cost-sharing under a State plan under title XIX is not eligible to enroll in an MSA plan.

''(4) COVERAGE UNDER MSA PLANS ON A DEMONSTRATION BASIS.—

''(A) IN GENERAL.—An individual is not eligible to enroll in an MSA plan under this part—

''(i) on or after January 1, 2004, unless the enrollment is the continuation of such an enrollment in effect as of such date; or

''(ii) as of any date if the number of such individuals so enrolled as of such date has reached 390,000.

Under rules established by the Secretary, an individual is not eligible to enroll (or continue enrollment) in an MSA plan for a year unless the individual provides assurances satisfactory to the Secretary that the individual will reside in the United States for at least 183 days during the year.

''(B) EVALUATION.—The Secretary shall regularly evaluate the impact of permitting enrollment in MSA plans under this part on selection (including adverse selection), use of preventive care, access to care, and the financial status of the Trust Funds under this title.

''(C) REPORTS.—The Secretary shall submit to Congress periodic reports on the numbers of individuals enrolled in such plans and on the evaluation being conducted under subparagraph (B).

''(c) PROCESS FOR EXERCISING CHOICE.—

''(1) IN GENERAL.—The Secretary shall establish a process through which elections described in subsection (a) are made and changed, including the form and manner in which such elections are made and changed. Such elections shall be made or changed only during coverage election periods specified under subsection (e) and shall become effective as provided in subsection (f).

''(2) COORDINATION THROUGH MEDICAREADVANTAGE ORGANIZATIONS.—

''(A) ENROLLMENT.—Such process shall permit an individual who wishes to elect a MedicareAdvantage plan offered by a MedicareAdvantage organization to make such election through the filing of an appropriate election form with the organization.

''(B) DISENROLLMENT.—Such process shall permit an individual, who has elected a MedicareAdvantage plan offered by a MedicareAdvantage organization and who wishes to terminate such election, to terminate such election through the filing of an appropriate election form with the organization.

''(3) DEFAULT.—

''(A) INITIAL ELECTION.—

''(i) IN GENERAL.—Subject to clause (ii), an individual who fails to make an election during an initial election period under subsection (e)(1) is deemed to have chosen the original medicare fee-for-service program option.

''(ii) SEAMLESS CONTINUATION OF COVERAGE.—The Secretary may establish procedures under which an individual who is enrolled in a Medicare+Choice plan or another health plan (other than a MedicareAdvantage plan) offered by a MedicareAdvantage organization at the time of the initial election period and who fails to elect to receive coverage other than through the organization is deemed to have elected the MedicareAdvantage plan offered by the organization (or, if the organization offers more than 1 such plan, such plan or plans as the Secretary identifies under such procedures).

''(B) CONTINUING PERIODS.—An individual who has made (or is deemed to have made) an election under this section is considered to have continued to make such election until such time as—

''(i) the individual changes the election under this section; or

''(ii) the MedicareAdvantage plan with respect to which such election is in effect is discontinued or, subject to subsection (b)(1)(B), no longer serves the area in which the individual resides.

''(d) PROVIDING INFORMATION TO PROMOTE INFORMED CHOICE.—

''(1) IN GENERAL.—The Secretary shall provide for activities under this subsection to broadly disseminate information to medicare beneficiaries (and prospective medicare beneficiaries) on the coverage options provided under this section in order to promote an active, informed selection among such options.

''(2) PROVISION OF NOTICE.—

''(A) OPEN SEASON NOTIFICATION.—At least 15 days before the beginning of each annual, coordinated election period (as defined in subsection (e)(3)(B)), the Secretary shall mail to each MedicareAdvantage eligible individual residing in an area the following:

''(i) GENERAL INFORMATION.—The general information described in paragraph (3).

''(ii) LIST OF PLANS AND COMPARISON OF PLAN OPTIONS.—A list identifying the MedicareAdvantage plans that are (or will be) available to residents of the area and information described in paragraph (4) concerning such plans. Such information shall be presented in a comparative form.

''(iii) ADDITIONAL INFORMATION.—Any other information that the Secretary determines will assist the individual in making the election under this section.

The mailing of such information shall be coordinated, to the extent practicable, with the mailing of any annual notice under section 1804.

''(B) NOTIFICATION TO NEWLY ELIGIBLE MEDICAREADVANTAGE ELIGIBLE INDIVIDUALS.—To the extent practicable, the Secretary shall, not later than 30 days before the beginning of the initial MedicareAdvantage enrollment period for an individual described in subsection (e)(1), mail to the individual the information described in subparagraph (A).

''(C) FORM.—The information disseminated under this paragraph shall be written and formatted using language that is easily understandable by medicare beneficiaries.

''(D) PERIODIC UPDATING.—The information described in subparagraph (A) shall be updated on at least an annual basis to reflect changes in the availability of MedicareAdvantage plans, the benefits under such plans, and the MedicareAdvantage monthly basic beneficiary premium, MedicareAdvantage monthly beneficiary premium for enhanced medical benefits, and MedicareAdvantage monthly beneficiary obligation for qualified prescription drug coverage for such plans.

''(3) GENERAL INFORMATION.—General information under this paragraph, with respect to coverage under this part during a year, shall include the following:

''(A) BENEFITS UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM OPTION.—A general description of the benefits covered under parts A and B of the original medicare fee-for-service program, including—

''(i) covered items and services;

''(ii) beneficiary cost-sharing, such as deductibles, coinsurance, and copayment amounts; and

''(iii) any beneficiary liability for balance billing.

''(B) CATASTROPHIC COVERAGE AND COMBINED DEDUCTIBLE.—A description of the catastrophic coverage and unified deductible applicable under the plan.

''(C) OUTPATIENT PRESCRIPTION DRUG COVERAGE BENEFITS.—The information required under section 1860D–4 with respect to coverage for prescription drugs under the plan.

''(D) ELECTION PROCEDURES.—Information and instructions on how to exercise election options under this section.

''(E) RIGHTS.—A general description of procedural rights (including grievance and appeals procedures) of beneficiaries under the original medicare fee-for-service program (including such rights under part D) and the MedicareAdvantage program and the right to be protected against discrimination based on health status-related factors under section 1852(b).

''(F) INFORMATION ON MEDIGAP AND MEDICARE SELECT.—A general description of the benefits, enrollment rights, and other requirements applicable to medicare supplemental policies under section 1882 and provisions relating to medicare select policies described in section 1882(t).

''(G) POTENTIAL FOR CONTRACT TERMINATION.—The fact that a MedicareAdvantage organization may terminate its contract, refuse to renew its contract, or reduce the service area included in its contract, under this part, and the effect of such a termination, nonrenewal, or service area reduction may have on individuals enrolled with the MedicareAdvantage plan under this part.

''(4) INFORMATION COMPARING PLAN OPTIONS.—Information under this paragraph, with respect to a MedicareAdvantage plan for a year, shall include the following:

''(A) BENEFITS.—The benefits covered under the plan, including the following:

''(i) Covered items and services beyond those provided under the original medicare fee-for-service program option.

''(ii) Beneficiary cost-sharing for any items and services described in clause (i) and paragraph (3)(A)(i), including information on the unified deductible under section 1852(a)(1)(C).

''(iii) The maximum limitations on out-of-pocket expenses under section 1852(a)(1)(C).

''(iv) In the case of an MSA plan, differences in cost-sharing, premiums, and balance billing under such a plan compared to under other MedicareAdvantage plans.

''(v) In the case of a MedicareAdvantage private fee-for-service plan, differences in cost-sharing, premiums, and balance billing under such a plan compared to under other MedicareAdvantage plans.

''(vi) The extent to which an enrollee may obtain benefits through out-of-network health care providers.

''(vii) The extent to which an enrollee may select among in-network providers and the types of providers participating in the plan's network.

''(viii) The organization's coverage of emergency and urgently needed care.

''(ix) The comparative information described in section 1860D–4(b)(2) relating to prescription drug coverage under the plan.

''(B) PREMIUMS.—

''(i) IN GENERAL.—The MedicareAdvantage monthly basic beneficiary premium and MedicareAdvantage monthly beneficiary premium for enhanced medical benefits, if any, for the plan or, in the case of an MSA plan, the MedicareAdvantage monthly MSA premium.

''(ii) REDUCTIONS.—The reduction in part B premiums, if any.

''(iii) NATURE OF THE PREMIUM FOR ENHANCED MEDICAL BENEFITS.—Whether the MedicareAdvantage monthly premium for enhanced benefits is optional or mandatory.

''(C) SERVICE AREA.—The service area of the plan.

''(D) QUALITY AND PERFORMANCE.—Plan quality and performance indicators for the benefits under the plan (and how such indicators compare to quality and performance indicators under the original medicare fee-for-service program under parts A and B and under the voluntary prescription drug delivery program under part D in the area involved), including—

''(i) disenrollment rates for medicare enrollees electing to receive benefits through the plan for the previous 2 years (excluding disenrollment due to death or moving outside the plan's service area);

''(ii) information on medicare enrollee satisfaction;

''(iii) information on health outcomes; and

''(iv) the recent record regarding compliance of the plan with requirements of this part (as determined by the Secretary).

''(5) MAINTAINING A TOLL-FREE NUMBER AND INTERNET SITE.—The Secretary shall maintain a toll-free number for inquiries regarding MedicareAdvantage options and the operation of this part in all areas in which MedicareAdvantage plans are offered and an Internet site through which individuals may electronically obtain information on such options and MedicareAdvantage plans.

''(6) USE OF NON-FEDERAL ENTITIES.—The Secretary may enter into contracts with non-Federal entities to carry out activities under this subsection.

''(7) PROVISION OF INFORMATION.—A MedicareAdvantage organization shall provide the Secretary with such information on the organization and each MedicareAdvantage plan it offers as may be required for the preparation of the information referred to in paragraph (2)(A).

''(e) COVERAGE ELECTION PERIODS.—

''(1) INITIAL CHOICE UPON ELIGIBILITY TO MAKE ELECTION IF MEDICAREADVANTAGE PLANS AVAILABLE TO INDIVIDUAL.—If, at the time an individual first becomes eligible to elect to receive benefits under part B or D (whichever is later), there is 1 or more MedicareAdvantage plans offered in the area in which the individual resides, the individual shall make the election under this section during a period specified by the Secretary such that if the individual elects a MedicareAdvantage plan during the period, coverage under the plan becomes effective as of the first date on which the individual may receive such coverage.

''(2) OPEN ENROLLMENT AND DISENROLLMENT OPPORTUNITIES.—Subject to paragraph (5), the following rules shall apply:

''(A) CONTINUOUS OPEN ENROLLMENT AND DISENROLLMENT THROUGH 2005.—At any time during the period beginning January 1, 1998, and ending on December 31, 2005, a Medicare+Choice eligible individual may change the election under subsection (a)(1).

''(B) CONTINUOUS OPEN ENROLLMENT AND DISENROLLMENT FOR FIRST 6 MONTHS DURING 2006.—

''(i) IN GENERAL.—Subject to clause (ii) and subparagraph (D), at any time during the first 6 months of 2006, or, if the individual first becomes a MedicareAdvantage eligible individual during 2006, during the first 6 months during 2006 in which the individual is a MedicareAdvantage eligible individual, a MedicareAdvantage eligible individual may change the election under subsection (a)(1).

''(ii) LIMITATION OF 1 CHANGE.—An individual may exercise the right under clause (i) only once. The limitation under this clause shall not apply to changes in elections effected during an annual, coordinated election period under paragraph (3) or during a special enrollment period under the first sentence of paragraph (4).

''(C) CONTINUOUS OPEN ENROLLMENT AND DISENROLLMENT FOR FIRST 3 MONTHS IN SUBSEQUENT YEARS.—

''(i) IN GENERAL.—Subject to clause (ii) and subparagraph (D), at any time during the first 3 months of 2007 and each subsequent year, or, if the individual first becomes a MedicareAdvantage eligible individual during 2007 or any subsequent year, during the first 3 months of such year in which the individual is a MedicareAdvantage eligible individual, a MedicareAdvantage eligible individual may change the election under subsection (a)(1).

''(ii) LIMITATION OF 1 CHANGE DURING OPEN ENROLLMENT PERIOD EACH YEAR.—An individual may exercise the right under clause (i) only once during the applicable 3-month period described in such clause in each year. The limitation under this clause shall not apply to changes in elections effected during an annual, coordinated election period under paragraph (3) or during a special enrollment period under paragraph (4).

''(D) CONTINUOUS OPEN ENROLLMENT FOR INSTITUTIONALIZED INDIVIDUALS.—At any time during 2006 or any subsequent year, in the case of a MedicareAdvantage eligible individual who is institutionalized (as defined by the Secretary), the individual may elect under subsection (a)(1)—

''(i) to enroll in a MedicareAdvantage plan; or

''(ii) to change the MedicareAdvantage plan in which the individual is enrolled.

''(3) ANNUAL, COORDINATED ELECTION PERIOD.—

''(A) IN GENERAL.—Subject to paragraph (5), each individual who is eligible to make an election under this section may change such election during an annual, coordinated election period.

''(B) ANNUAL, COORDINATED ELECTION PERIOD.—For purposes of this section, the term 'annual, coordinated election period' means, with respect to a year before 2003 and after 2006, the month of November before such year and with respect to 2003, 2004, 2005, and 2006, the period beginning on November 15 and ending on December 31 of the year before such year.

''(C) MEDICAREADVANTAGE HEALTH INFORMATION FAIRS.—During the fall season of each year (beginning with 2006), in conjunction with the annual coordinated election period defined in subparagraph (B), the Secretary shall provide for a nationally coordinated educational and publicity campaign to inform MedicareAdvantage eligible individuals about MedicareAdvantage plans and the election process provided under this section.

''(D) SPECIAL INFORMATION CAMPAIGN IN 2005.—During the period beginning on November 15, 2005, and ending on December 31, 2005, the Secretary shall provide for an educational and publicity campaign to inform MedicareAdvantage eligible individuals about the availability of MedicareAdvantage plans, and eligible organizations with risk-sharing contracts under section 1876, offered in different areas and the election process provided under this section.

''(4) SPECIAL ELECTION PERIODS.—Effective on and after January 1, 2006, an individual may discontinue an election of a MedicareAdvantage plan offered by a MedicareAdvantage organization other than during an annual, coordinated election period and make a new election under this section if—

''(A)(i) the certification of the organization or plan under this part has been terminated, or the organization or plan has notified the individual of an impending termination of such certification; or

''(ii) the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides, or has notified the individual of an impending termination or discontinuation of such plan;

''(B) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances (specified by the Secretary, but not including termination of the individual's enrollment on the basis described in clause (i) or (ii) of subsection (g)(3)(B));

''(C) the individual demonstrates (in accordance with guidelines established by the Secretary) that—

''(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual (including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards); or

''(ii) the organization (or an agent or other entity acting on the organization's behalf) materially misrepresented the plan's provisions in marketing the plan to the individual; or

''(D) the individual meets such other exceptional conditions as the Secretary may provide.

Effective on and after January 1, 2006, an individual who, upon first becoming eligible for benefits under part A at age 65, enrolls in a MedicareAdvantage plan under this part, the individual may discontinue the election of such plan, and elect coverage under the original fee-for-service plan, at any time during the 12-month period beginning on the effective date of such enrollment.

''(5) SPECIAL RULES FOR MSA PLANS.—Notwithstanding the preceding provisions of this subsection, an individual—

''(A) may elect an MSA plan only during—

''(i) an initial open enrollment period described in paragraph (1);

''(ii) an annual, coordinated election period described in paragraph (3)(B); or

''(iii) the month of November 1998;

''(B) subject to subparagraph (C), may not discontinue an election of an MSA plan except during the periods described in clause (ii) or (iii) of subparagraph (A) and under the first sentence of paragraph (4); and

''(C) who elects an MSA plan during an annual, coordinated election period, and who never previously had elected such a plan, may revoke such election, in a manner determined by the Secretary, by not later than December 15 following the date of the election.

''(6) OPEN ENROLLMENT PERIODS.—Subject to paragraph (5), a MedicareAdvantage organization—

''(A) shall accept elections or changes to elections during the initial enrollment periods described in paragraph (1), during the period beginning on November 15, 2005, and ending on December 31, 2005, and during the annual, coordinated election period under paragraph (3) for each subsequent year, and during special election periods described in the first sentence of paragraph (4); and

''(B) may accept other changes to elections at such other times as the organization provides.

''(f) EFFECTIVENESS OF ELECTIONS AND CHANGES OF ELECTIONS.—

''(1) DURING INITIAL COVERAGE ELECTION PERIOD.—An election of coverage made during the initial coverage election period under subsection (e)(1)(A) shall take effect upon the date the individual becomes entitled to (or enrolled for) benefits under part A, enrolled under part B, and enrolled under part D, except as the Secretary may provide (consistent with sections 1838 and 1860D–2)) in order to prevent retroactive coverage.

''(2) DURING CONTINUOUS OPEN ENROLLMENT PERIODS.—An election or change of coverage made under subsection (e)(2) shall take effect with the first day of the first calendar month following the date on which the election or change is made.

''(3) ANNUAL, COORDINATED ELECTION PERIOD.—An election or change of coverage made during an annual, coordinated election period (as defined in subsection (e)(3)(B)) in a year shall take effect as of the first day of the following year.

''(4) OTHER PERIODS.—An election or change of coverage made during any other period under subsection (e)(4) shall take effect in such manner as the Secretary provides in a manner consistent (to the extent practicable) with protecting continuity of health benefit coverage.

''(g) GUARANTEED ISSUE AND RENEWAL.—

''(1) IN GENERAL.—Except as provided in this subsection, a MedicareAdvantage organization shall provide that at any time during which elections are accepted under this section with respect to a MedicareAdvantage plan offered by the organization, the organization will accept without restrictions individuals who are eligible to make such election.

''(2) PRIORITY.—If the Secretary determines that a MedicareAdvantage organization, in relation to a MedicareAdvantage plan it offers, has a capacity limit and the number of MedicareAdvantage eligible individuals who elect the plan under this section exceeds the capacity limit, the organization may limit the election of individuals of the plan under this section but only if priority in election is provided—

''(A) first to such individuals as have elected the plan at the time of the determination; and

''(B) then to other such individuals in such a manner that does not discriminate, on a basis described in section 1852(b), among the individuals (who seek to elect the plan).

The preceding sentence shall not apply if it would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the medicare population in the service area of the plan.

''(3) LIMITATION ON TERMINATION OF ELECTION.—

''(A) IN GENERAL.—Subject to subparagraph (B), a MedicareAdvantage organization may not for any reason terminate the election of any individual under this section for a MedicareAdvantage plan it offers.

''(B) BASIS FOR TERMINATION OF ELECTION.—A MedicareAdvantage organization may terminate an individual's election under this section with respect to a MedicareAdvantage plan it offers if—

''(i) any MedicareAdvantage monthly basic beneficiary premium, MedicareAdvantage monthly beneficiary obligation for qualified prescription drug coverage, or MedicareAdvantage monthly beneficiary premium for required or optional enhanced medical benefits required with respect to such plan are not paid on a timely basis (consistent with standards under section 1856 that provide for a grace period for late payment of such premiums);

''(ii) the individual has engaged in disruptive behavior (as specified in such standards); or

''(iii) the plan is terminated with respect to all individuals under this part in the area in which the individual resides.

''(C) CONSEQUENCE OF TERMINATION.—

''(i) TERMINATIONS FOR CAUSE.—Any individual whose election is terminated under clause (i) or (ii) of subparagraph (B) is deemed to have elected to receive benefits under the original medicare fee-for-service program option.

''(ii) TERMINATION BASED ON PLAN TERMINATION OR SERVICE AREA REDUCTION.—Any individual whose election is terminated under subparagraph (B)(iii) shall have a special election period under subsection (e)(4)(A) in which to change coverage to coverage under another MedicareAdvantage plan. Such an individual who fails to make an election during such period is deemed to have chosen to change coverage to the original medicare fee-for-service program option.

''(D) ORGANIZATION OBLIGATION WITH RESPECT TO ELECTION FORMS.—Pursuant to a contract under section 1857858., each MedicareAdvantage organization receiving an election form under subsection (c)(2) shall transmit to the Secretary (at such time and in such manner as the Secretary may specify) a copy of such form or such other information respecting the election as the Secretary may specify.

''(h) APPROVAL OF MARKETING MATERIAL AND APPLICATION FORMS.—

''(1) SUBMISSION.—No marketing material or application form may be distributed by a MedicareAdvantage organization to (or for the use of) MedicareAdvantage eligible individuals unless—

''(A) at least 45 days (or 10 days in the case described in paragraph (5)) before the date of distribution the organization has submitted the material or form to the Secretary for review; and

''(B) the Secretary has not disapproved the distribution of such material or form.

''(2) REVIEW.—The standards established under section 1856 shall include guidelines for the review of any material or form submitted and under such guidelines the Secretary shall disapprove (or later require the correction of) such material or form if the material or form is materially inaccurate or misleading or otherwise makes a material misrepresentation.

''(3) DEEMED APPROVAL (1-STOP SHOPPING).—In the case of material or form that is submitted under paragraph (1)(A) to the Secretary or a regional office of the Department of Health and Human Services and the Secretary or the office has not disapproved the distribution of marketing material or form under paragraph (1)(B) with respect to a MedicareAdvantage plan in an area, the Secretary is deemed not to have disapproved such distribution in all other areas covered by the plan and organization except with regard to that portion of such material or form that is specific only to an area involved.

''(4) PROHIBITION OF CERTAIN MARKETING PRACTICES.—Each MedicareAdvantage organization shall conform to fair marketing standards, in relation to MedicareAdvantage plans offered under this part, included in the standards established under section 1856. Such standards—

''(A) shall not permit a MedicareAdvantage organization to provide for cash or other monetary rebates as an inducement for enrollment or otherwise (other than as an additional benefit described in section 1854(g)(1)(C)(i)); and

''(B) may include a prohibition against a MedicareAdvantage organization (or agent of such an organization) completing any portion of any election form used to carry out elections under this section on behalf of any individual.

''(5) SPECIAL TREATMENT OF MARKETING MATERIAL FOLLOWING MODEL MARKETING LANGUAGE.—In the case of marketing material of an organization that uses, without modification, proposed model language specified by the Secretary, the period specified in paragraph (1)(A) shall be reduced from 45 days to 10 days.

''(i) EFFECT OF ELECTION OF MEDICAREADVANTAGE PLAN OPTION.—

''(1) PAYMENTS TO ORGANIZATIONS.—Subject to sections 1852(a)(5), 1853(h), 1853(i), 1886(d)(11), and 1886(h)(3)(D), payments under a contract with a MedicareAdvantage organization under section 1853(a) with respect to an individual electing a MedicareAdvantage plan offered by the organization shall be instead of the amounts which (in the absence of the contract) would otherwise be payable

under parts A, B, and D for items and services furnished to the individual.

''(2) ONLY ORGANIZATION ENTITLED TO PAYMENT.—Subject to sections 1853(f), 1853(h), 1853(i), 1857(f)(2), 1886(d)(11), and 1886(h)(3)(D), only the MedicareAdvantage organization shall be entitled to receive payments from the Secretary under this title for services furnished to the individual.''.

SEC. 202. BENEFITS AND BENEFICIARY PROTECTIONS.

Section 1852 (42 U.S.C. 1395w–22) is amended to read as follows:

''BENEFITS AND BENEFICIARY PROTECTIONS

''SEC. 1852. (a) BASIC BENEFITS.—

''(1) IN GENERAL.—Except as provided in section 1859(b)(3) for MSA plans, each MedicareAdvantage plan shall provide to members enrolled under this part, through providers and other persons that meet the applicable requirements of this title and part A of title XI—

''(A) those items and services (other than hospice care) for which benefits are available under parts A and B to individuals residing in the area served by the plan;

''(B) except as provided in paragraph (2)(D), qualified prescription drug coverage under part D to individuals residing in the area served by the plan;

''(C) a maximum limitation on out-of-pocket expenses and a unified deductible; and

''(D) additional benefits required under section 1854(d)(1).

''(2) SATISFACTION OF REQUIREMENT.—

''(A) IN GENERAL.—A MedicareAdvantage plan (other than an MSA plan) offered by a MedicareAdvantage organization satisfies paragraph (1)(A), with respect to benefits for items and services furnished other than through a provider or other person that has a contract with the organization offering the plan, if the plan provides payment in an amount so that—

''(i) the sum of such payment amount and any cost-sharing provided for under the plan; is equal to at least

''(ii) the total dollar amount of payment for such items and services as would otherwise be authorized under parts A and B (including any balance billing permitted under such parts).

''(B) REFERENCE TO RELATED PROVISIONS.—For provisions relating to—

''(i) limitations on balance billing against MedicareAdvantage organizations for non-contract providers, see sections 1852(k) and 1866(a)(1)(O); and

''(ii) limiting actuarial value of enrollee liability for covered benefits, see section 1854(f).

''(C) ELECTION OF UNIFORM COVERAGE POLICY.—In the case of a MedicareAdvantage organization that offers a MedicareAdvantage plan in an area in which more than 1 local coverage policy is applied with respect to different parts of the area, the organization may elect to have the local coverage policy for the part of the area that is most beneficial to MedicareAdvantage enrollees (as identified by the Secretary) apply with respect to all MedicareAdvantage enrollees enrolled in the plan.

''(D) SPECIAL RULE FOR PRIVATE FEE-FOR-SERVICE PLANS.—

''(i) IN GENERAL.—A private fee-for-service plan may elect not to provide qualified prescription drug coverage under part D to individuals residing in the area served by the plan.

''(ii) AVAILABILITY OF DRUG COVERAGE FOR ENROLLEES.—If a beneficiary enrolls in a plan making the election described in clause (i), the beneficiary may enroll for drug coverage under part D with an eligible entity under such part.

''(3) ENHANCED MEDICAL BENEFITS.—

''(A) BENEFITS INCLUDED SUBJECT TO SECRETARY'S APPROVAL.—Each MedicareAdvantage organization may provide to individuals enrolled under this part, other than under an MSA plan (without affording those individuals an option to decline the coverage), enhanced medical benefits that the Secretary may approve. The Secretary shall approve any such enhanced medical benefits unless the Secretary determines that including such enhanced medical benefits would substantially discourage enrollment by MedicareAdvantage eligible individuals with the organization.

''(B) AT ENROLLEES' OPTION.—A MedicareAdvantage organization may not provide, under an MSA plan, enhanced medical benefits that cover the deductible described in section 1859(b)(2)(B). In applying the previous sentence, health benefits described in section 1882(u)(2)(B) shall not be treated as covering such deductible.

''(C) APPLICATION TO MEDICAREADVANTAGE PRIVATE FEE-FOR-SERVICE PLANS.—Nothing in this paragraph shall be construed as preventing a MedicareAdvantage private fee-for-service plan from offering enhanced medical benefits that include payment for some or all of the balance billing amounts permitted consistent with section 1852(k) and coverage of additional services that the plan finds to be medically necessary.

''(D) RULE FOR APPROVAL OF MEDICAL AND PRESCRIPTION DRUG BENEFITS.—Notwithstanding the preceding provisions of this paragraph, the Secretary may not approve any enhanced medical benefit that provides for the coverage of any prescription drug (other than that relating to prescription drugs covered under the original medicare fee-for-service program option).

''(4) ORGANIZATION AS SECONDARY PAYER.—Notwithstanding any other provision of law, a MedicareAdvantage organization may (in the case of the provision of items and services to an individual under a MedicareAdvantage plan under circumstances in which payment under this title is made secondary pursuant to section 1862(b)(2)) charge or authorize the provider of such services to charge, in accordance with the charges allowed under a law, plan, or policy described in such section—

''(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services; or

''(B) such individual to the extent that the individual has been paid under such law, plan, or policy for such services.

''(5) NATIONAL COVERAGE DETERMINATIONS AND LEGISLATIVE CHANGES IN BENEFITS.—If there is a national coverage determination or legislative change in benefits required to be provided under this part made in the period beginning on the date of an announcement under section 1853(b) and ending on the date of the next announcement under such section and the Secretary projects that the determination will result in a significant change in the costs to a MedicareAdvantage organization of providing the benefits that are the subject of such national coverage determination and that such change in costs was not incorporated in the determination of the benchmark amount announced under section 1853(b)(1)(A) at the beginning of such period, then, unless otherwise required by law—

''(A) such determination or legislative change in benefits shall not apply to contracts under this part until the first contract year that begins after the end of such period; and

''(B) if such coverage determination or legislative change provides for coverage of additional benefits or coverage under additional circumstances, section 1851(i)(1) shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period.

The projection under the previous sentence shall be based on an analysis by the Secretary of the actuarial costs associated with the coverage determination or legislative change in benefits.

''(6) AUTHORITY TO PROHIBIT RISK SELECTION.—The Secretary shall have the authority to disapprove any MedicareAdvantage plan that the Secretary determines is designed to attract a population that is healthier than the average population residing in the service area of the plan.

''(7) UNIFIED DEDUCTIBLE DEFINED.—In this part, the term 'unified deductible' means an annual deductible amount that is applied in lieu of the inpatient hospital deductible under section 1813(b)(1) and the deductible under section 1833(b). Nothing in this part shall be construed as preventing a MedicareAdvantage organization from requiring coinsurance or a copayment for inpatient hospital services after the unified deductible is satisfied, subject to the limitation on enrollee liability under section 1854(f).

''(b) ANTIDISCRIMINATION.—

''(1) BENEFICIARIES.—

''(A) IN GENERAL.—A MedicareAdvantage organization may not deny, limit, or condition the coverage or provision of benefits under this part, for individuals permitted to be enrolled with the organization under this part, based on any health status-related factor described in section 2702(a)(1) of the Public Health Service Act.

''(B) CONSTRUCTION.—Except as provided under section 1851(a)(3)(B), subparagraph (A) shall not be construed as requiring a MedicareAdvantage organization to enroll individuals who are determined to have end-stage renal disease.

''(2) PROVIDERS.—A MedicareAdvantage organization shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan.

''(c) DISCLOSURE REQUIREMENTS.—

''(1) DETAILED DESCRIPTION OF PLAN PROVISIONS.—A MedicareAdvantage organization shall disclose, in clear, accurate, and standardized form to each enrollee with a MedicareAdvantage plan offered by the organization under this part at the time of enrollment and at least annually thereafter, the following information regarding such plan:

''(A) SERVICE AREA.—The plan's service area.

''(B) BENEFITS.—Benefits offered under the plan, including information described section 1852(a)(1) (relating to benefits under the original Medicare fee-for-service program option, the maximum limitation in out-of-pocket expenses and the unified deductible, and qualified prescription drug coverage under part D, respectively) and exclusions from coverage and, if it is an MSA plan, a comparison of benefits under such a plan with benefits under other MedicareAdvantage plans.

''(C) ACCESS.—The number, mix, and distribution of plan providers, out-of-network coverage (if any) provided by the plan, and

any point-of-service option (including the MedicareAdvantage monthly beneficiary premium for enhanced medical benefits for such option).

''(D) OUT-OF-AREA COVERAGE.—Out-of-area coverage provided by the plan.

''(E) EMERGENCY COVERAGE.—Coverage of emergency services, including—

''(i) the appropriate use of emergency services, including use of the 911 telephone system or its local equivalent in emergency situations and an explanation of what constitutes an emergency situation;

''(ii) the process and procedures of the plan for obtaining emergency services; and

''(iii) the locations of—

''(I) emergency departments; and

''(II) other settings, in which plan physicians and hospitals provide emergency services and post-stabilization care.

''(F) ENHANCED MEDICAL BENEFITS.—Enhanced medical benefits available from the organization offering the plan, including—

''(i) whether the enhanced medical benefits are optional;

''(ii) the enhanced medical benefits covered; and

''(iii) the MedicareAdvantage monthly beneficiary premium for enhanced medical benefits.

''(G) PRIOR AUTHORIZATION RULES.—Rules regarding prior authorization or other review requirements that could result in nonpayment.

''(H) PLAN GRIEVANCE AND APPEALS PROCEDURES.—All plan appeal or grievance rights and procedures.

''(I) QUALITY ASSURANCE PROGRAM.—A description of the organization's quality assurance program under subsection (e).

''(2) DISCLOSURE UPON REQUEST.—Upon request of a MedicareAdvantage eligible individual, a MedicareAdvantage organization must provide the following information to such individual:

''(A) The general coverage information and general comparative plan information made available under clauses (i) and (ii) of section 1851(d)(2)(A).

''(B) Information on procedures used by the organization to control utilization of services and expenditures.

''(C) Information on the number of grievances, reconsiderations, and appeals and on the disposition in the aggregate of such matters.

''(D) An overall summary description as to the method of compensation of participating physicians.

''(E) The information described in subparagraphs (A) through (C) in relation to the qualified prescription drug coverage provided by the organization.

''(d) ACCESS TO SERVICES.—

''(1) IN GENERAL.—A MedicareAdvantage organization offering a MedicareAdvantage plan may select the providers from whom the benefits under the plan are provided so long as—

''(A) the organization makes such benefits available and accessible to each individual electing the plan within the plan service area with reasonable promptness and in a manner which assures continuity in the provision of benefits;

''(B) when medically necessary the organization makes such benefits available and accessible 24 hours a day and 7 days a week;

''(C) the plan provides for reimbursement with respect to services which are covered under subparagraphs (A) and (B) and which are provided to such an individual other than through the organization, if—

''(i) the services were not emergency services (as defined in paragraph (3)), but—

''(I) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition; and

''(II) it was not reasonable given the circumstances to obtain the services through the organization;

''(ii) the services were renal dialysis services and were provided other than through the organization because the individual was temporarily out of the plan's service area; or

''(iii) the services are maintenance care or post-stabilization care covered under the guidelines established under paragraph (2);

''(D) the organization provides access to appropriate providers, including credentialed specialists, for medically necessary treatment and services; and

''(E) coverage is provided for emergency services (as defined in paragraph (3)) without regard to prior authorization or the emergency care provider's contractual relationship with the organization.

''(2) GUIDELINES RESPECTING COORDINATION OF POST-STABILIZATION CARE.—A MedicareAdvantage plan shall comply with such guidelines as the Secretary may prescribe relating to promoting efficient and timely coordination of appropriate maintenance and post-stabilization care of an enrollee after the enrollee has been determined to be stable under section 1867.

''(3) DEFINITION OF EMERGENCY SERVICES.—In this subsection—

''(A) IN GENERAL.—The term 'emergency services' means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that—

''(i) are furnished by a provider that is qualified to furnish such services under this title; and

''(ii) are needed to evaluate or stabilize an emergency medical condition (as defined in subparagraph (B)).

''(B) EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON.—The term 'emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

''(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

''(ii) serious impairment to bodily functions; or

''(iii) serious dysfunction of any bodily organ or part.

''(4) ASSURING ACCESS TO SERVICES IN MEDICAREADVANTAGE PRIVATE FEE-FOR-SERVICE PLANS.—In addition to any other requirements under this part, in the case of a MedicareAdvantage private fee-for-service plan, the organization offering the plan must demonstrate to the Secretary that the organization has sufficient number and range of health care professionals and providers willing to provide services under the terms of the plan. The Secretary shall find that an organization has met such requirement with respect to any category of health care professional or provider if, with respect to that category of provider—

''(A) the plan has established payment rates for covered services furnished by that category of provider that are not less than the payment rates provided for under part A, B, or D for such services; or

''(B) the plan has contracts or agreements with a sufficient number and range of providers within such category to provide covered services under the terms of the plan,

or a combination of both. The previous sentence shall not be construed as restricting the persons from whom enrollees under such a plan may obtain covered benefits.

''(e) QUALITY ASSURANCE PROGRAM.—

''(1) IN GENERAL.—Each MedicareAdvantage organization must have arrangements, consistent with any regulation, for an ongoing quality assurance program for health care services it provides to individuals enrolled with MedicareAdvantage plans of the organization.

''(2) ELEMENTS OF PROGRAM.—

''(A) IN GENERAL.—The quality assurance program of an organization with respect to a MedicareAdvantage plan (other than a MedicareAdvantage private fee-for-service plan or a nonnetwork MSA plan) it offers shall—

''(i) stress health outcomes and provide for the collection, analysis, and reporting of data (in accordance with a quality measurement system that the Secretary recognizes) that will permit measurement of outcomes and other indices of the quality of MedicareAdvantage plans and organizations;

''(ii) monitor and evaluate high volume and high risk services and the care of acute and chronic conditions;

''(iii) provide access to disease management and chronic care services;

''(iv) provide access to preventive benefits and information for enrollees on such benefits;

''(v) evaluate the continuity and coordination of care that enrollees receive;

''(vi) be evaluated on an ongoing basis as to its effectiveness;

''(vii) include measures of consumer satisfaction;

''(viii) provide the Secretary with such access to information collected as may be appropriate to monitor and ensure the quality of care provided under this part;

''(ix) provide review by physicians and other health care professionals of the process followed in the provision of such health care services;

''(x) provide for the establishment of written protocols for utilization review, based on current standards of medical practice;

''(xi) have mechanisms to detect both underutilization and overutilization of services;

''(xii) after identifying areas for improvement, establish or alter practice parameters;

''(xiii) take action to improve quality and assesses the effectiveness of such action through systematic followup; and

''(xiv) make available information on quality and outcomes measures to facilitate beneficiary comparison and choice of health coverage options (in such form and on such quality and outcomes measures as the Secretary determines to be appropriate).

Such program shall include a separate focus (with respect to all the elements described in this subparagraph) on racial and ethnic minorities.

''(B) ELEMENTS OF PROGRAM FOR ORGANIZATIONS OFFERING MEDICAREADVANTAGE PRIVATE FEE-FOR-SERVICE PLANS, AND NONNETWORK MSA PLANS.—The quality assurance program of an organization with respect to a MedicareAdvantage private fee-for-service plan or a nonnetwork MSA plan it offers shall—

''(i) meet the requirements of clauses (i) through (viii) of subparagraph (A);

''(ii) insofar as it provides for the establishment of written protocols for utilization review, base such protocols on current standards of medical practice; and

''(iii) have mechanisms to evaluate utilization of services and inform providers and enrollees of the results of such evaluation.

Such program shall include a separate focus (with respect to all the elements described in this subparagraph) on racial and ethnic minorities.

''(C) DEFINITION OF NONNETWORK MSA PLAN.—In this subsection, the term 'nonnetwork MSA plan' means an MSA plan offered by a MedicareAdvantage organization that does not provide benefits required to be provided by this part, in whole or in part, through a defined set of providers under contract, or under another arrangement, with the organization.

''(3) EXTERNAL REVIEW.—

''(A) IN GENERAL.—Each MedicareAdvantage organization shall, for each MedicareAdvantage plan it operates, have an agreement with an independent quality review and improvement organization approved by the Secretary to perform functions of the type described in paragraphs (4)(B) and (14) of section 1154(a) with respect to services furnished by MedicareAdvantage plans for which payment is made under this title. The previous sentence shall not apply to a MedicareAdvantage private fee-for-service plan or a nonnetwork MSA plan that does not employ utilization review.

''(B) NONDUPLICATION OF ACCREDITATION.—Except in the case of the review of quality complaints, and consistent with subparagraph (C), the Secretary shall ensure that the external review activities conducted under subparagraph (A) are not duplicative of review activities conducted as part of the accreditation process.

''(C) WAIVER AUTHORITY.—The Secretary may waive the requirement described in subparagraph (A) in the case of an organization if the Secretary determines that the organization has consistently maintained an excellent record of quality assurance and compliance with other requirements under this part.

''(4) TREATMENT OF ACCREDITATION.—

''(A) IN GENERAL.—The Secretary shall provide that a MedicareAdvantage organization is deemed to meet all the requirements described in any specific clause of subparagraph (B) if the organization is accredited (and periodically reaccredited) by a private accrediting organization under a process that the Secretary has determined assures that the accrediting organization applies and enforces standards that meet or exceed the standards established under section 1856 to carry out the requirements in such clause.

''(B) REQUIREMENTS DESCRIBED.—The provisions described in this subparagraph are the following:

''(i) Paragraphs (1) and (2) of this subsection (relating to quality assurance programs).

''(ii) Subsection (b) (relating to antidiscrimination).

''(iii) Subsection (d) (relating to access to services).

''(iv) Subsection (h) (relating to confidentiality and accuracy of enrollee records).

''(v) Subsection (i) (relating to information on advance directives).

''(vi) Subsection (j) (relating to provider participation rules).

''(C) TIMELY ACTION ON APPLICATIONS.—The Secretary shall determine, within 210 days after the date the Secretary receives an application by a private accrediting organization and using the criteria specified in section 1865(b)(2), whether the process of the private accrediting organization meets the requirements with respect to any specific clause in subparagraph (B) with respect to which the application is made. The Secretary may not deny such an application on the basis that it seeks to meet the requirements with respect to only one, or more than one, such specific clause.

''(D) CONSTRUCTION.—Nothing in this paragraph shall be construed as limiting the authority of the Secretary under section 1857, including the authority to terminate contracts with MedicareAdvantage organizations under subsection (c)(2) of such section.

''(5) REPORT TO CONGRESS.—

''(A) IN GENERAL.—The Secretary shall submit to Congress a biennial report regarding how quality assurance programs conducted under this subsection focus on racial and ethnic minorities.

''(B) CONTENTS OF REPORT.—Each such report shall include the following:

''(i) A description of the means by which such programs focus on such racial and ethnic minorities.

''(ii) An evaluation of the impact of such programs on eliminating health disparities and on improving health outcomes, continuity and coordination of care, management of chronic conditions, and consumer satisfaction.

''(iii) Recommendations on ways to reduce clinical outcome disparities among racial and ethnic minorities.

''(f) GRIEVANCE MECHANISM.—Each MedicareAdvantage organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and enrollees with MedicareAdvantage plans of the organization under this part.

''(g) COVERAGE DETERMINATIONS, RECONSIDERATIONS, AND APPEALS.—

''(1) DETERMINATIONS BY ORGANIZATION.—

''(A) IN GENERAL.—A MedicareAdvantage organization shall have a procedure for making determinations regarding whether an individual enrolled with the plan of the organization under this part is entitled to receive a health service under this section and the amount (if any) that the individual is required to pay with respect to such service. Subject to paragraph (3), such procedures shall provide for such determination to be made on a timely basis.

''(B) EXPLANATION OF DETERMINATION.—Such a determination that denies coverage, in whole or in part, shall be in writing and shall include a statement in understandable language of the reasons for the denial and a description of the reconsideration and appeals processes.

''(2) RECONSIDERATIONS.—

''(A) IN GENERAL.—The organization shall provide for reconsideration of a determination described in paragraph (1)(B) upon request by the enrollee involved. The reconsideration shall be within a time period specified by the Secretary, but shall be made, subject to paragraph (3), not later than 60 days after the date of the receipt of the request for reconsideration.

''(B) PHYSICIAN DECISION ON CERTAIN RECONSIDERATIONS.—A reconsideration relating to a determination to deny coverage based on a lack of medical necessity shall be made only by a physician with appropriate expertise in the field of medicine which necessitates treatment who is other than a physician involved in the initial determination.

''(3) EXPEDITED DETERMINATIONS AND RECONSIDERATIONS.—

''(A) RECEIPT OF REQUESTS.—

''(i) ENROLLEE REQUESTS.—An enrollee in a MedicareAdvantage plan may request, either in writing or orally, an expedited determination under paragraph (1) or an expedited reconsideration under paragraph (2) by the MedicareAdvantage organization.

''(ii) PHYSICIAN REQUESTS.—A physician, regardless whether the physician is affiliated with the organization or not, may request, either in writing or orally, such an expedited determination or reconsideration.

''(B) ORGANIZATION PROCEDURES.—

''(i) IN GENERAL.—The MedicareAdvantage organization shall maintain procedures for expediting organization determinations and reconsiderations when, upon request of an enrollee, the organization determines that the application of the normal timeframe for making a determination (or a reconsideration involving a determination) could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

''(ii) EXPEDITION REQUIRED FOR PHYSICIAN REQUESTS.—In the case of a request for an expedited determination or reconsideration made under subparagraph (A)(ii), the organization shall expedite the determination or reconsideration if the request indicates that the application of the normal timeframe for making a determination (or a reconsideration involving a determination) could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

''(iii) TIMELY RESPONSE.—In cases described in clauses (i) and (ii), the organization shall notify the enrollee (and the physician involved, as appropriate) of the determination or reconsideration under time limitations established by the Secretary, but not later than 72 hours of the time of receipt of the request for the determination or reconsideration (or receipt of the information necessary to make the determination or reconsideration), or such longer period as the Secretary may permit in specified cases.

''(4) INDEPENDENT REVIEW OF CERTAIN COVERAGE DENIALS.—The Secretary shall contract with an independent, outside entity to review and resolve in a timely manner reconsiderations that affirm denial of coverage, in whole or in part. The provisions of section 1869(c)(5) shall apply to independent outside entities under contract with the Secretary under this paragraph.

''(5) APPEALS.—An enrollee with a MedicareAdvantage plan of a MedicareAdvantage organization under this part who is dissatisfied by reason of the enrollee's failure to receive any health service to which the enrollee believes the enrollee is entitled and at no greater charge than the enrollee believes the enrollee is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 205(b), and in any such hearing the Secretary shall make the organization a party. If the amount in controversy is $1,000 or more, the individual or organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 205(g), and both the individual and the organization shall be entitled to be parties to that judicial review. In applying subsections (b) and (g) of section 205 as provided in this paragraph, and in applying section 205(l) thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

''(h) CONFIDENTIALITY AND ACCURACY OF ENROLLEE RECORDS.—Insofar as a MedicareAdvantage organization maintains medical records or other health information regarding enrollees under this part, the MedicareAdvantage organization shall establish procedures—

''(1) to safeguard the privacy of any individually identifiable enrollee information;

''(2) to maintain such records and information in a manner that is accurate and timely; and

''(3) to assure timely access of enrollees to such records and information.

''(i) INFORMATION ON ADVANCE DIRECTIVES.—Each MedicareAdvantage organization shall meet the requirement of section

1866(f) (relating to maintaining written policies and procedures respecting advance directives).

''(j) RULES REGARDING PROVIDER PARTICIPATION.—

''(1) PROCEDURES.—Insofar as a MedicareAdvantage organization offers benefits under a MedicareAdvantage plan through agreements with physicians, the organization shall establish reasonable procedures relating to the participation (under an agreement between a physician and the organization) of physicians under such a plan. Such procedures shall include—

''(A) providing notice of the rules regarding participation;

''(B) providing written notice of participation decisions that are adverse to physicians; and

''(C) providing a process within the organization for appealing such adverse decisions, including the presentation of information and views of the physician regarding such decision.

''(2) CONSULTATION IN MEDICAL POLICIES.—A MedicareAdvantage organization shall consult with physicians who have entered into participation agreements with the organization regarding the organization's medical policy, quality, and medical management procedures.

''(3) PROHIBITING INTERFERENCE WITH PROVIDER ADVICE TO ENROLLEES.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a MedicareAdvantage organization (in relation to an individual enrolled under a MedicareAdvantage plan offered by the organization under this part) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (D)) from advising such an individual who is a patient of the professional about the health status of the individual or medical care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the plan, if the professional is acting within the lawful scope of practice.

''(B) CONSCIENCE PROTECTION.—Subparagraph (A) shall not be construed as requiring a MedicareAdvantage plan to provide, reimburse for, or provide coverage of a counseling or referral service if the MedicareAdvantage organization offering the plan—

''(i) objects to the provision of such service on moral or religious grounds; and

''(ii) in the manner and through the written instrumentalities such MedicareAdvantage organization deems appropriate, makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to enrollees within 90 days after the date that the organization or plan adopts a change in policy regarding such a counseling or referral service.

''(C) CONSTRUCTION.—Nothing in subparagraph (B) shall be construed to affect disclosure requirements under State law or under the Employee Retirement Income Security Act of 1974.

''(D) HEALTH CARE PROFESSIONAL DEFINED.—For purposes of this paragraph, the term 'health care professional' means a physician (as defined in section 1861(r)) or other health care professional if coverage for the professional's services is provided under the MedicareAdvantage plan for the services of the professional. Such term includes a podiatrist, optometrist, chiropractor, psychologist, dentist, licensed pharmacist, physician assistant, physical or occupational therapist and therapy assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, and certified nurse-midwife), licensed certified social worker, registered respiratory therapist, and certified respiratory therapy technician.

''(4) LIMITATIONS ON PHYSICIAN INCENTIVE PLANS.—

''(A) IN GENERAL.—No MedicareAdvantage organization may operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

''(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

''(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

''(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or group; and

''(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

''(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

''(B) PHYSICIAN INCENTIVE PLAN DEFINED.—In this paragraph, the term 'physician incentive plan' means any compensation arrangement between a MedicareAdvantage organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization under this part.

''(5) LIMITATION ON PROVIDER INDEMNIFICATION.—A MedicareAdvantage organization may not provide (directly or indirectly) for a health care professional, provider of services, or other entity providing health care services (or group of such professionals, providers, or entities) to indemnify the organization against any liability resulting from a civil action brought for any damage caused to an enrollee with a MedicareAdvantage plan of the organization under this part by the organization's denial of medically necessary care.

''(6) SPECIAL RULES FOR MEDICAREADVANTAGE PRIVATE FEE-FOR-SERVICE PLANS.—For purposes of applying this part (including subsection (k)(1)) and section 1866(a)(1)(O), a hospital (or other provider of services), a physician or other health care professional, or other entity furnishing health care services is treated as having an agreement or contract in effect with a MedicareAdvantage organization (with respect to an individual enrolled in a MedicareAdvantage private fee-for-service plan it offers), if—

''(A) the provider, professional, or other entity furnishes services that are covered under the plan to such an enrollee; and

''(B) before providing such services, the provider, professional, or other entity —

''(i) has been informed of the individual's enrollment under the plan; and

''(ii) either—

''(I) has been informed of the terms and conditions of payment for such services under the plan; or

''(II) is given a reasonable opportunity to obtain information concerning such terms and conditions,

in a manner reasonably designed to effect informed agreement by a provider.

The previous sentence shall only apply in the absence of an explicit agreement between such a provider, professional, or other entity and the MedicareAdvantage organization.

''(k) TREATMENT OF SERVICES FURNISHED BY CERTAIN PROVIDERS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a physician or other entity (other than a provider of services) that does not have a contract establishing payment amounts for services furnished to an individual enrolled under this part with a MedicareAdvantage organization described in section 1851(a)(2)(A) shall accept as payment in full for covered services under this title that are furnished to such an individual the amounts that the physician or other entity could collect if the individual were not so enrolled. Any penalty or other provision of law that applies to such a payment with respect to an individual entitled to benefits under this title (but not enrolled with a MedicareAdvantage organization under this part) also applies with respect to an individual so enrolled.

''(2) APPLICATION TO MEDICAREADVANTAGE PRIVATE FEE-FOR-SERVICE PLANS.—

''(A) BALANCE BILLING LIMITS UNDER MEDICAREADVANTAGE PRIVATE FEE-FOR-SERVICE PLANS IN CASE OF CONTRACT PROVIDERS.—

''(i) IN GENERAL.—In the case of an individual enrolled in a MedicareAdvantage private fee-for-service plan under this part, a physician, provider of services, or other entity that has a contract (including through the operation of subsection (j)(6)) establishing a payment rate for services furnished to the enrollee shall accept as payment in full for covered services under this title that are furnished to such an individual an amount not to exceed (including any deductibles, coinsurance, copayments, or balance billing otherwise permitted under the plan) an amount equal to 115 percent of such payment rate.

''(ii) PROCEDURES TO ENFORCE LIMITS.—The MedicareAdvantage organization that offers such a plan shall establish procedures, similar to the procedures described in section 1848(g)(1)(A), in order to carry out clause (i).

''(iii) ASSURING ENFORCEMENT.—If the MedicareAdvantage organization fails to establish and enforce procedures required under clause (ii), the organization is subject to intermediate sanctions under section 1857(g).

''(B) ENROLLEE LIABILITY FOR NONCONTRACT PROVIDERS.—For provisions—

''(i) establishing a minimum payment rate in the case of noncontract providers under a MedicareAdvantage private fee-for-service plan, see section 1852(a)(2); or

''(ii) limiting enrollee liability in the case of covered services furnished by such providers, see paragraph (1) and section 1866(a)(1)(O).

''(C) INFORMATION ON BENEFICIARY LIABILITY.—

''(i) IN GENERAL.—Each MedicareAdvantage organization that offers a MedicareAdvantage private fee-for-service plan shall provide that enrollees under the plan who are furnished services for which payment is sought under the plan are provided an appropriate explanation of benefits (consistent with that provided under parts A, B, and D, and, if applicable, under medicare supplemental policies) that includes a clear statement of the amount of the enrollee's liability (including any liability for balance billing consistent with this subsection) with respect to payments for such services.

''(ii) ADVANCE NOTICE BEFORE RECEIPT OF INPATIENT HOSPITAL SERVICES AND CERTAIN OTHER SERVICES.—In addition, such organization shall, in its terms and conditions of payments to hospitals for inpatient hospital services and for other services identified by the Secretary for which the amount of the balance billing under subparagraph (A) could be substantial, require the hospital to provide to the enrollee, before furnishing such services and if the hospital imposes balance billing under subparagraph (A)—

''(I) notice of the fact that balance billing is permitted under such subparagraph for such services; and

''(II) a good faith estimate of the likely amount of such balance billing (if any), with respect to such services, based upon the presenting condition of the enrollee.

''(l) RETURN TO HOME SKILLED NURSING FACILITIES FOR COVERED POST-HOSPITAL EXTENDED CARE SERVICES.—

''(1) ENSURING RETURN TO HOME SNF.—

''(A) IN GENERAL.—In providing coverage of post-hospital extended care services, a MedicareAdvantage plan shall provide for such coverage through a home skilled nursing facility if the following conditions are met:

''(i) ENROLLEE ELECTION.—The enrollee elects to receive such coverage through such facility.

''(ii) SNF AGREEMENT.—The facility has a contract with the MedicareAdvantage organization for the provision of such services, or the facility agrees to accept substantially similar payment under the same terms and conditions that apply to similarly situated skilled nursing facilities that are under contract with the MedicareAdvantage organization for the provision of such services and through which the enrollee would otherwise receive such services.

''(B) MANNER OF PAYMENT TO HOME SNF.—The organization shall provide payment to the home skilled nursing facility consistent with the contract or the agreement described in subparagraph (A)(ii), as the case may be.

''(2) NO LESS FAVORABLE COVERAGE.—The coverage provided under paragraph (1) (including scope of services, cost-sharing, and other criteria of coverage) shall be no less favorable to the enrollee than the coverage that would be provided to the enrollee with respect to a skilled nursing facility the post-hospital extended care services of which are otherwise covered under the MedicareAdvantage plan.

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to do the following:

''(A) To require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under part A for medicare beneficiaries not enrolled in a MedicareAdvantage plan.

''(B) To prevent a skilled nursing facility from refusing to accept, or imposing conditions upon the acceptance of, an enrollee for the receipt of post-hospital extended care services.

''(4) DEFINITIONS.—In this subsection:

''(A) HOME SKILLED NURSING FACILITY.—The term 'home skilled nursing facility' means, with respect to an enrollee who is entitled to receive post-hospital extended care services under a MedicareAdvantage plan, any of the following skilled nursing facilities:

''(i) SNF RESIDENCE AT TIME OF ADMISSION.—The skilled nursing facility in which the enrollee resided at the time of admission to the hospital preceding the receipt of such post-hospital extended care services.

''(ii) SNF IN CONTINUING CARE RETIREMENT COMMUNITY.—A skilled nursing facility that is providing such services through a continuing care retirement community (as defined in subparagraph (B)) which provided residence to the enrollee at the time of such admission.

''(iii) SNF RESIDENCE OF SPOUSE AT TIME OF DISCHARGE.—The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from such hospital.

''(B) CONTINUING CARE RETIREMENT COMMUNITY.—The term 'continuing care retirement community' means, with respect to an enrollee in a MedicareAdvantage plan, an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or for a specified period.''.

SEC. 203. PAYMENTS TO MEDICAREADVANTAGE ORGANIZATIONS.

Section 1853 (42 U.S.C. 1395w–23) is amended to read as follows:

''PAYMENTS TO MEDICAREADVANTAGE ORGANIZATIONS

''SEC. 1853. (a) PAYMENTS TO ORGANIZATIONS.—

''(1) MONTHLY PAYMENTS.—

''(A) IN GENERAL.—Under a contract under section 1857 and subject to subsections (f), (h), and (j) and section 1859(e)(4), the Secretary shall make, to each MedicareAdvantage organization, with respect to coverage of an individual for a month under this part in a MedicareAdvantage payment area, separate monthly payments with respect to—

''(i) benefits under the original medicare fee-for-service program under parts A and B in accordance with subsection (d); and

''(ii) benefits under the voluntary prescription drug program under part D in accordance with section 1858A and the other provisions of this part.

''(B) SPECIAL RULE FOR END-STAGE RENAL DISEASE.—The Secretary shall establish separate rates of payment to a MedicareAdvantage organization with respect to classes of individuals determined to have end-stage renal disease and enrolled in a MedicareAdvantage plan of the organization. Such rates of payment shall be actuarially equivalent to rates paid to other enrollees in the MedicareAdvantage payment area (or such other area as specified by the Secretary). In accordance with regulations, the Secretary shall provide for the application of the seventh sentence of section 1881(b)(7) to payments under this section covering the provision of renal dialysis treatment in the same manner as such sentence applies to composite rate payments described in such sentence. In establishing such rates, the Secretary shall provide for appropriate adjustments to increase each rate to reflect the demonstration rate (including the risk adjustment methodology associated with such rate) of the social health maintenance organization end-stage renal disease capitation demonstrations (established by section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993), and shall compute such rates by taking into account such factors as renal treatment modality, age, and the underlying cause of the end-stage renal disease.

''(2) ADJUSTMENT TO REFLECT NUMBER OF ENROLLEES.—

''(A) IN GENERAL.—The amount of payment under this subsection may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled with an organization under this part and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

''(B) SPECIAL RULE FOR CERTAIN ENROLLEES.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary may make retroactive adjustments under subparagraph (A) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with a MedicareAdvantage organization under a plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the organization under this part, except that for purposes of making such retroactive adjustments under this subparagraph, such period may not exceed 90 days.

''(ii) EXCEPTION.—No adjustment may be made under clause (i) with respect to any individual who does not certify that the organization provided the individual with the disclosure statement described in section 1852(c) at the time the individual enrolled with the organization.

''(C) EQUALIZATION OF FEDERAL CONTRIBUTION.—In applying subparagraph (A), the Secretary shall ensure that the payment to the MedicareAdvantage organization for each individual enrolled with the organization shall equal the MedicareAdvantage benchmark amount for the payment area in which that individual resides (as determined under paragraph (4)), as adjusted—

''(i) by multiplying the benchmark amount for that payment area by the ratio of—

''(I) the payment amount determined under subsection (d)(4); to

''(II) the weighted service area benchmark amount determined under subsection (d)(2); and

''(ii) using such risk adjustment factor as specified by the Secretary under subsection (b)(1)(B).

''(3) COMPREHENSIVE RISK ADJUSTMENT METHODOLOGY.—

''(A) APPLICATION OF METHODOLOGY.—The Secretary shall apply the comprehensive risk adjustment methodology described in subparagraph (B) to 100 percent of the amount of payments to plans under subsection (d)(4)(B).

''(B) COMPREHENSIVE RISK ADJUSTMENT METHODOLOGY DESCRIBED.—The comprehensive risk adjustment methodology described in this subparagraph is the risk adjustment methodology that would apply with respect to MedicareAdvantage plans offered by MedicareAdvantage organizations in 2005, except that if such methodology does not apply to groups of beneficiaries who are aged or disabled and groups of beneficiaries who have end-stage renal disease, the Secretary shall revise such methodology to apply to such groups.

''(C) UNIFORM APPLICATION TO ALL TYPES OF PLANS.—Subject to section 1859(e)(4), the comprehensive risk adjustment methodology established under this paragraph shall be applied uniformly without regard to the type of plan.

''(D) DATA COLLECTION.—In order to carry out this paragraph, the Secretary shall require MedicareAdvantage organizations to submit such data and other information as the Secretary deems necessary.

''(E) IMPROVEMENT OF PAYMENT ACCURACY.—Notwithstanding any other provision of this paragraph, the Secretary may revise the comprehensive risk adjustment methodology described in subparagraph (B) from time to time to improve payment accuracy.

''(4) ANNUAL CALCULATION OF BENCHMARK AMOUNTS.—For each year, the Secretary shall calculate a benchmark amount for each MedicareAdvantage payment area for each month for such year with respect to coverage of the benefits available under the original medicare fee-for-service program option equal to the greater of the following amounts (adjusted as appropriate for the application of the risk adjustment methodology under paragraph (3)):

''(A) MINIMUM AMOUNT.—1/12 of the annual Medicare+Choice capitation rate determined under subsection (c)(1)(B) for the payment area for the year.

''(B) LOCAL FEE-FOR-SERVICE RATE.—The local fee-for-service rate for such area for the year (as calculated under paragraph (5)).

''(5) ANNUAL CALCULATION OF LOCAL FEE-FOR-SERVICE RATES.—

''(A) IN GENERAL.—Subject to subparagraph (B), the term 'local fee-for-service rate' means the amount of payment for a month in a MedicareAdvantage payment area for benefits under this title and associated claims processing costs for an individual who has elected to receive benefits under the original medicare fee-for-service program option and not enrolled in a MedicareAdvantage plan under this part. The Secretary shall annually calculate such amount in a manner similar to the manner in which the Secretary calculated the adjusted average per capita cost under section 1876.

''(B) REMOVAL OF MEDICAL EDUCATION COSTS FROM CALCULATION OF LOCAL FEE-FOR-SERVICE RATE.—

''(i) IN GENERAL.—In calculating the local fee-for-service rate under subparagraph (A) for a year, the amount of payment described in such subparagraph shall be adjusted to exclude from such payment the payment adjustments described in clause (ii).

''(ii) PAYMENT ADJUSTMENTS DESCRIBED.—

''(I) IN GENERAL.—Subject to subclause (II), the payment adjustments described in this subparagraph are payment adjustments which the Secretary estimates are payable during the year—

''(aa) for the indirect costs of medical education under section 1886(d)(5)(B); and

''(bb) for direct graduate medical education costs under section 1886(h).

''(II) TREATMENT OF PAYMENTS COVERED UNDER STATE HOSPITAL REIMBURSEMENT SYSTEM.—To the extent that the Secretary estimates that the amount of the local fee-for-service rates reflects payments to hospitals reimbursed under section 1814(b)(3), the Secretary shall estimate a payment adjustment that is comparable to the payment adjustment that would have been made under clause (i) if the hospitals had not been reimbursed under such section.

''(b) ANNUAL ANNOUNCEMENT OF PAYMENT FACTORS.—

''(1) ANNUAL ANNOUNCEMENT.—Beginning in 2005, at the same time as the Secretary publishes the risk adjusters under section 1860D–11, the Secretary shall annually announce (in a manner intended to provide notice to interested parties) the following payment factors:

''(A) The benchmark amount for each MedicareAdvantage payment area (as calculated under subsection (a)(4)) for the year.

''(B) The factors to be used for adjusting payments under the comprehensive risk adjustment methodology described in subsection (a)(3)(B) with respect to each MedicareAdvantage payment area for the year.

''(2) ADVANCE NOTICE OF METHODOLOGICAL CHANGES.—At least 45 days before making the announcement under paragraph (1) for a year, the Secretary shall—

''(A) provide for notice to MedicareAdvantage organizations of proposed changes to be made in the methodology from the methodology and assumptions used in the previous announcement; and

''(B) provide such organizations with an opportunity to comment on such proposed changes.

''(3) EXPLANATION OF ASSUMPTIONS.—In each announcement made under paragraph (1), the Secretary shall include an explanation of the assumptions and changes in methodology used in the announcement in sufficient detail so that MedicareAdvantage organizations can compute each payment factor described in paragraph (1).

''(c) CALCULATION OF ANNUAL MEDICARE+CHOICE CAPITATION RATES.—

''(1) IN GENERAL.—For purposes of making payments under this part for years before 2006 and for purposes of calculating the annual Medicare+Choice capitation rates under paragraph (7) beginning with such year, subject to paragraph (6)(C), each annual Medicare+Choice capitation rate, for a Medicare+Choice payment area before 2006 or a MedicareAdvantage payment area beginning with such year for a contract year consisting of a calendar year, is equal to the largest of the amounts specified in the following subparagraph (A), (B), or (C):

''(A) BLENDED CAPITATION RATE.—The sum of—

''(i) the area-specific percentage (as specified under paragraph (2) for the year) of the annual area-specific Medicare+Choice capitation rate for the MedicareAdvantage payment area, as determined under paragraph (3) for the year; and

''(ii) the national percentage (as specified under paragraph (2) for the year) of the input-price-adjusted annual national Medicare+Choice capitation rate, as determined under paragraph (4) for the year,

multiplied by the budget neutrality adjustment factor determined under paragraph (5).

''(B) MINIMUM AMOUNT.—12 multiplied by the following amount:

''(i) For 1998, $367 (but not to exceed, in the case of an area outside the 50 States and the District of Columbia, 150 percent of the annual per capita rate of payment for 1997 determined under section 1876(a)(1)(C) for the area).

''(ii) For 1999 and 2000, the minimum amount determined under clause (i) or this clause, respectively, for the preceding year, increased by the national per capita Medicare+Choice growth percentage described in paragraph (6)(A) applicable to 1999 or 2000, respectively.

''(iii)(I) Subject to subclause (II), for 2001, for any area in a Metropolitan Statistical Area with a population of more than 250,000, $525, and for any other area $475.

''(II) In the case of an area outside the 50 States and the District of Columbia, the amount specified in this clause shall not exceed 120 percent of the amount determined under clause (ii) for such area for 2000.

''(iv) For 2002 through 2013, the minimum amount specified in this clause (or clause (iii)) for the preceding year increased by the national per capita Medicare+Choice growth percentage, described in paragraph (6)(A) for that succeeding year.

''(v) For 2014 and each succeeding year, the minimum amount specified in this clause (or clause (iv)) for the preceding year increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year.

''(C) MINIMUM PERCENTAGE INCREASE.—

''(i) For 1998, 102 percent of the annual per capita rate of payment for 1997 determined under section 1876(a)(1)(C) for the Medicare+Choice payment area.

''(ii) For 1999 and 2000, 102 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for the previous year.

''(iii) For 2001, 103 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for 2000.

''(iv) For 2002 and each succeeding year, 102 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for the previous year.

''(2) AREA-SPECIFIC AND NATIONAL PERCENTAGES.—For purposes of paragraph (1)(A)—

''(A) for 1998, the 'area-specific percentage' is 90 percent and the 'national percentage' is 10 percent;

''(B) for 1999, the 'area-specific percentage' is 82 percent and the 'national percentage' is 18 percent;

''(C) for 2000, the 'area-specific percentage' is 74 percent and the 'national percentage' is 26 percent;

''(D) for 2001, the 'area-specific percentage' is 66 percent and the 'national percentage' is 34 percent;

''(E) for 2002, the 'area-specific percentage' is 58 percent and the 'national percentage' is 42 percent; and

''(F) for a year after 2002, the 'area-specific percentage' is 50 percent and the 'national percentage' is 50 percent.

''(3) ANNUAL AREA-SPECIFIC MEDICARE+CHOICE CAPITATION RATE.—

''(A) IN GENERAL.—For purposes of paragraph (1)(A), subject to subparagraph (B), the annual area-specific Medicare+Choice capitation rate for a Medicare+Choice payment area—

''(i) for 1998 is, subject to subparagraph (D), the annual per capita rate of payment for 1997 determined under section 1876(a)(1)(C) for the area, increased by the national per capita Medicare+Choice growth percentage for 1998 (described in paragraph (6)(A)); or

''(ii) for a subsequent year is the annual area-specific Medicare+Choice capitation rate for the previous year determined under this paragraph for the area, increased by the national per capita Medicare+Choice growth percentage for such subsequent year.

''(B) REMOVAL OF MEDICAL EDUCATION FROM CALCULATION OF ADJUSTED AVERAGE PER CAPITA COST.—

''(i) IN GENERAL.—In determining the area-specific Medicare+Choice capitation rate under subparagraph (A) for a year (beginning with 1998), the annual per capita rate of payment for 1997 determined under section 1876(a)(1)(C) shall be adjusted to exclude from the rate the applicable percent (specified in clause (ii)) of the payment adjustments described in subparagraph (C).

''(ii) APPLICABLE PERCENT.—For purposes of clause (i), the applicable percent for—

''(I) 1998 is 20 percent;

''(II) 1999 is 40 percent;

''(III) 2000 is 60 percent;

''(IV) 2001 is 80 percent; and

''(V) a succeeding year is 100 percent.

''(C) PAYMENT ADJUSTMENT.—

''(i) IN GENERAL.—Subject to clause (ii), the payment adjustments described in this subparagraph are payment adjustments which the Secretary estimates were payable during 1997—

''(I) for the indirect costs of medical education under section 1886(d)(5)(B); and

''(II) for direct graduate medical education costs under section 1886(h).

''(ii) TREATMENT OF PAYMENTS COVERED UNDER STATE HOSPITAL REIMBURSEMENT SYSTEM.—To the extent that the Secretary estimates that an annual per capita rate of payment for 1997 described in clause (i) reflects payments to hospitals reimbursed under section 1814(b)(3), the Secretary shall estimate a payment adjustment that is comparable to the payment adjustment that would have been made under clause (i) if the hospitals had not been reimbursed under such section.

''(D) TREATMENT OF AREAS WITH HIGHLY VARIABLE PAYMENT RATES.—In the case of a Medicare+Choice payment area for which the annual per capita rate of payment determined under section 1876(a)(1)(C) for 1997 varies by more than 20 percent from such rate for 1996, for purposes of this subsection the Secretary may substitute for such rate for

1997 a rate that is more representative of the costs of the enrollees in the area.

''(4) INPUT-PRICE-ADJUSTED ANNUAL NATIONAL MEDICARE+CHOICE CAPITATION RATE.—

''(A) IN GENERAL.—For purposes of paragraph (1)(A), the input-price-adjusted annual national Medicare+Choice capitation rate for a Medicare+Choice payment area for a year is equal to the sum, for all the types of medicare services (as classified by the Secretary), of the product (for each such type of service) of—

''(i) the national standardized annual Medicare+Choice capitation rate (determined under subparagraph (B)) for the year;

''(ii) the proportion of such rate for the year which is attributable to such type of services; and

''(iii) an index that reflects (for that year and that type of services) the relative input price of such services in the area compared to the national average input price of such services.

In applying clause (iii), the Secretary may, subject to subparagraph (C), apply those indices under this title that are used in applying (or updating) national payment rates for specific areas and localities.

''(B) NATIONAL STANDARDIZED ANNUAL MEDICARE+CHOICE CAPITATION RATE.—In subparagraph (A)(i), the 'national standardized annual Medicare+Choice capitation rate' for a year is equal to—

''(i) the sum (for all Medicare+Choice payment areas) of the product of—

''(I) the annual area-specific Medicare+Choice capitation rate for that year for the area under paragraph (3); and

''(II) the average number of medicare beneficiaries residing in that area in the year, multiplied by the average of the risk factor weights used to adjust payments under subsection (a)(1)(A) for such beneficiaries in such area; divided by

''(ii) the sum of the products described in clause (i)(II) for all areas for that year.

''(5) PAYMENT ADJUSTMENT BUDGET NEUTRALITY FACTOR.—For purposes of paragraph (1)(A), for each year, the Secretary shall determine a budget neutrality adjustment factor so that the aggregate of the payments under this part (other than those attributable to subsections (a)(3)(C)(iii) and (i)) shall equal the aggregate payments that would have been made under this part if payment were based entirely on area-specific capitation rates.

''(6) NATIONAL PER CAPITA MEDICARE+CHOICE GROWTH PERCENTAGE DEFINED.—

''(A) IN GENERAL.—In this part, the 'national per capita Medicare+Choice growth percentage' for a year is the percentage determined by the Secretary, by March 1st before the beginning of the year involved, to reflect the Secretary's estimate of the projected per capita rate of growth in expenditures under this title for an individual entitled to (or enrolled for) benefits under part A and enrolled under part B, reduced by the number of percentage points specified in subparagraph (B) for the year. Separate determinations may be made for aged enrollees, disabled enrollees, and enrollees with end-stage renal disease.

''(B) ADJUSTMENT.—The number of percentage points specified in this subparagraph is—

''(i) for 1998, 0.8 percentage points;

''(ii) for 1999, 0.5 percentage points;

''(iii) for 2000, 0.5 percentage points;

''(iv) for 2001, 0.5 percentage points;

''(v) for 2002, 0.3 percentage points; and

''(vi) for a year after 2002, 0 percentage points.

''(C) ADJUSTMENT FOR OVER OR UNDER PROJECTION OF NATIONAL PER CAPITA MEDICARE+CHOICE GROWTH PERCENTAGE.—Beginning with rates calculated for 1999, before computing rates for a year as described in paragraph (1), the Secretary shall adjust all area-specific and national Medicare+Choice capitation rates (and beginning in 2000, the minimum amount) for the previous year for the differences between the projections of the national per capita Medicare+Choice growth percentage for that year and previous years and the current estimate of such percentage for such years.

''(7) TRANSITION TO MEDICAREADVANTAGE COMPETITION.—

''(A) IN GENERAL.—For each year (beginning with 2006) payments to MedicareAdvantage plans shall not be computed under this subsection, but instead shall be based on the payment amount determined under subsection (d).

''(B) CONTINUED CALCULATION OF CAPITATION RATES.—For each year (beginning with 2006) the Secretary shall calculate and publish the annual Medicare+Choice capitation rates under this subsection and shall use the annual Medicare+Choice capitation rate determined under subsection (c)(1) for purposes of determining the benchmark amount under subsection (a)(4).

''(d) SECRETARY'S DETERMINATION OF PAYMENT AMOUNT.—

''(1) REVIEW OF PLAN BIDS.—The Secretary shall review each plan bid submitted under section 1854(a) for the coverage of benefits under the original medicare fee-for-service program option to ensure that such bids are consistent with the requirements under this part an are based on the assumptions described in section 1854(a)(2)(A)(iii).

''(2) DETERMINATION OF WEIGHTED SERVICE AREA BENCHMARK AMOUNTS.—The Secretary shall calculate a weighted service area benchmark amount for the benefits under the original medicare fee-for-service program option for each plan equal to the weighted average of the benchmark amounts for benefits under such original medicare fee-for-service program option for the payment areas included in the service area of the plan using the assumptions described in section 1854(a)(2)(A)(iii).

''(3) COMPARISON TO BENCHMARK.—The Secretary shall determine the difference between each plan bid (as adjusted under paragraph (1)) and the weighted service area benchmark amount (as determined under paragraph (2)) for purposes of determining—

''(A) the payment amount under paragraph (4); and

''(B) the additional benefits required and MedicareAdvantage monthly basic beneficiary premiums.

''(4) DETERMINATION OF PAYMENT AMOUNT FOR ORIGINAL MEDICARE FEE-FOR-SERVICE BENEFITS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall determine the payment amount for MedicareAdvantage plans for the benefits under the original medicare fee-for-service program option as follows:

''(i) BIDS THAT EQUAL OR EXCEED THE BENCHMARK.—In the case of a plan bid that equals or exceeds the weighted service area benchmark amount, the amount of each monthly payment to a MedicareAdvantage organization with respect to each individual enrolled in a plan shall be the weighted service area benchmark amount.

''(ii) BIDS BELOW THE BENCHMARK.—In the case of a plan bid that is less than the weighted service area benchmark amount, the amount of each monthly payment to a MedicareAdvantage organization with respect to each individual enrolled in a plan shall be the weighted service area benchmark amount reduced by the amount of any premium reduction elected by the plan under section 1854(d)(1)(A)(i).

''(B) APPLICATION OF COMPREHENSIVE RISK ADJUSTMENT METHODOLOGY.—The Secretary shall adjust the amounts determined under subparagraph (A) using the comprehensive risk adjustment methodology applicable under subsection (a)(3).

''(6) ADJUSTMENT FOR NATIONAL COVERAGE DETERMINATIONS AND LEGISLATIVE CHANGES IN BENEFITS.—If the Secretary makes a determination with respect to coverage under this title or there is a change in benefits required to be provided under this part that the Secretary projects will result in a significant increase in the costs to MedicareAdvantage organizations of providing benefits under contracts under this part (for periods after any period described in section 1852(a)(5)), the Secretary shall appropriately adjust the benchmark amounts or payment amounts (as determined by the Secretary). Such projection and adjustment shall be based on an analysis by the Secretary of the actuarial costs associated with the new benefits.

''(7) BENEFITS UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM OPTION DEFINED.—For purposes of this part, the term 'benefits under the original medicare fee-for-service program option' means those items and services (other than hospice care) for which benefits are available under parts A and B to individuals entitled to, or enrolled for, benefits under part A and enrolled under part B, with cost-sharing for those services as required under parts A and B or an actuarially equivalent level of cost-sharing as determined in this part.

''(e) MEDICAREADVANTAGE PAYMENT AREA DEFINED.—

''(1) IN GENERAL.—In this part, except as provided in paragraph (3), the term 'MedicareAdvantage payment area' means a county, or equivalent area specified by the Secretary.

''(2) RULE FOR ESRD BENEFICIARIES.—In the case of individuals who are determined to have end stage renal disease, the MedicareAdvantage payment area shall be a State or such other payment area as the Secretary specifies.

''(3) GEOGRAPHIC ADJUSTMENT.—

''(A) IN GENERAL.—Upon written request of the chief executive officer of a State for a contract year (beginning after 2005) made by not later than February 1 of the previous year, the Secretary shall make a geographic adjustment to a MedicareAdvantage payment area in the State otherwise determined under paragraph (1)—

''(i) to a single statewide MedicareAdvantage payment area;

''(ii) to the metropolitan based system described in subparagraph (C); or

''(iii) to consolidating into a single MedicareAdvantage payment area noncontiguous counties (or equivalent areas described in paragraph (1)) within a State.

Such adjustment shall be effective for payments for months beginning with January of the year following the year in which the request is received.

''(B) BUDGET NEUTRALITY ADJUSTMENT.—In the case of a State requesting an adjustment under this paragraph, the Secretary shall initially (and annually thereafter) adjust the payment rates otherwise established under this section for MedicareAdvantage payment areas in the State in a manner so that the aggregate of the payments under this section in the State shall not exceed the aggregate payments that would have been made under this section for MedicareAdvantage payment areas in the State in the absence of the adjustment under this paragraph.

''(C) METROPOLITAN BASED SYSTEM.—The metropolitan based system described in this subparagraph is one in which—

''(i) all the portions of each metropolitan statistical area in the State or in the case of a consolidated metropolitan statistical area,

all of the portions of each primary metropolitan statistical area within the consolidated area within the State, are treated as a single MedicareAdvantage payment area; and

''(ii) all areas in the State that do not fall within a metropolitan statistical area are treated as a single MedicareAdvantage payment area.

''(D) AREAS.—In subparagraph (C), the terms 'metropolitan statistical area', 'consolidated metropolitan statistical area', and 'primary metropolitan statistical area' mean any area designated as such by the Secretary of Commerce.

''(f) SPECIAL RULES FOR INDIVIDUALS ELECTING MSA PLANS.—

''(1) IN GENERAL.—If the amount of the MedicareAdvantage monthly MSA premium (as defined in section 1854(b)(2)(D)) for an MSA plan for a year is less than 1/12 of the annual Medicare+Choice capitation rate applied under this section for the area and year involved, the Secretary shall deposit an amount equal to 100 percent of such difference in a MedicareAdvantage MSA established (and, if applicable, designated) by the individual under paragraph (2).

''(2) ESTABLISHMENT AND DESIGNATION OF MEDICAREADVANTAGE MEDICAL SAVINGS ACCOUNT AS REQUIREMENT FOR PAYMENT OF CONTRIBUTION.—In the case of an individual who has elected coverage under an MSA plan, no payment shall be made under paragraph (1) on behalf of an individual for a month unless the individual—

''(A) has established before the beginning of the month (or by such other deadline as the Secretary may specify) a MedicareAdvantage MSA (as defined in section 138(b)(2) of the Internal Revenue Code of 1986); and

''(B) if the individual has established more than 1 such MedicareAdvantage MSA, has designated 1 of such accounts as the individual's MedicareAdvantage MSA for purposes of this part.

Under rules under this section, such an individual may change the designation of such account under subparagraph (B) for purposes of this part.

''(3) LUMP-SUM DEPOSIT OF MEDICAL SAVINGS ACCOUNT CONTRIBUTION.—In the case of an individual electing an MSA plan effective beginning with a month in a year, the amount of the contribution to the MedicareAdvantage MSA on behalf of the individual for that month and all successive months in the year shall be deposited during that first month. In the case of a termination of such an election as of a month before the end of a year, the Secretary shall provide for a procedure for the recovery of deposits attributable to the remaining months in the year.

''(g) PAYMENTS FROM TRUST FUNDS.—Except as provided in section 1858A(c) (relating to payments for qualified prescription drug coverage), the payment to a MedicareAdvantage organization under this section for individuals enrolled under this part with the organization and payments to a MedicareAdvantage MSA under subsection (e)(1) shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportion as the Secretary determines reflects the relative weight that benefits under part A and under part B represents of the actuarial value of the total benefits under this title. Monthly payments otherwise payable under this section for October 2000 shall be paid on the first business day of such month. Monthly payments otherwise payable under this section for October 2001 shall be paid on the last business day of September 2001. Monthly payments otherwise payable under this section for October 2006 shall be paid on the first business day of October 2006.

''(h) SPECIAL RULE FOR CERTAIN INPATIENT HOSPITAL STAYS.—In the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1886(d)(1)(B)) as of the effective date of the individual's—

''(1) election under this part of a MedicareAdvantage plan offered by a MedicareAdvantage organization—

''(A) payment for such services until the date of the individual's discharge shall be made under this title through the MedicareAdvantage plan or the original medicare fee-for-service program option (as the case may be) elected before the election with such organization,

''(B) the elected organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge; and

''(C) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this part; or

''(2) termination of election with respect to a MedicareAdvantage organization under this part—

''(A) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge;

''(B) payment for such services during the stay shall not be made under section 1886(d) or by any succeeding MedicareAdvantage organization; and

''(C) the terminated organization shall not receive any payment with respect to the individual under this part during the period the individual is not enrolled.

''(i) SPECIAL RULE FOR HOSPICE CARE.—

''(1) INFORMATION.—A contract under this part shall require the MedicareAdvantage organization to inform each individual enrolled under this part with a MedicareAdvantage plan offered by the organization about the availability of hospice care if—

''(A) a hospice program participating under this title is located within the organization's service area; or

''(B) it is common practice to refer patients to hospice programs outside such service area.

''(2) PAYMENT.—If an individual who is enrolled with a MedicareAdvantage organization under this part makes an election under section 1812(d)(1) to receive hospice care from a particular hospice program—

''(A) payment for the hospice care furnished to the individual shall be made to the hospice program elected by the individual by the Secretary;

''(B) payment for other services for which the individual is eligible notwithstanding the individual's election of hospice care under section 1812(d)(1), including services not related to the individual's terminal illness, shall be made by the Secretary to the MedicareAdvantage organization or the provider or supplier of the service instead of payments calculated under subsection (a); and

''(C) the Secretary shall continue to make monthly payments to the MedicareAdvantage organization in an amount equal to the value of the additional benefits required under section 1854(f)(1)(A).''.

SEC. 204. SUBMISSION OF BIDS; PREMIUMS.

Section 1854 (42 U.S.C. 1395w–24) is amended to read as follows:

''SUBMISSION OF BIDS; PREMIUMS

''SEC. 1854. (a) SUBMISSION OF BIDS BY MEDICAREADVANTAGE ORGANIZATIONS.—

''(1) IN GENERAL.—Not later than the second Monday in September and except as provided in paragraph (3), each MedicareAdvantage organization shall submit to the Secretary, in such form and manner as the Secretary may specify, for each MedicareAdvantage plan that the organization intends to offer in a service area in the following year—

''(A) notice of such intent and information on the service area of the plan;

''(B) the plan type for each plan;

''(C) if the MedicareAdvantage plan is a coordinated care plan (as described in section 1851(a)(2)(A)) or a private fee-for-service plan (as described in section 1851(a)(2)(C)), the information described in paragraph (2) with respect to each payment area;

''(D) the enrollment capacity (if any) in relation to the plan and each payment area;

''(E) the expected mix, by health status, of enrolled individuals; and

''(F) such other information as the Secretary may specify.

''(2) INFORMATION REQUIRED FOR COORDINATED CARE PLANS AND PRIVATE FEE-FOR-SERVICE PLANS.—For a MedicareAdvantage plan that is a coordinated care plan (as described in section 1851(a)(2)(A)) or a private fee-for-service plan (as described in section 1851(a)(2)(C)), the information described in this paragraph is as follows:

''(A) INFORMATION REQUIRED WITH RESPECT TO BENEFITS UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM OPTION.—Information relating to the coverage of benefits under the original medicare fee-for-service program option as follows:

''(i) The plan bid, which shall consist of a dollar amount that represents the total amount that the plan is willing to accept (not taking into account the application of the comprehensive risk adjustment methodology under section 1853(a)(3)) for providing coverage of the benefits under the original medicare fee-for-service program option to an individual enrolled in the plan that resides in the service area of the plan for a month.

''(ii) For the enhanced medical benefits package offered—

''(I) the adjusted community rate (as defined in subsection (g)(3)) of the package;

''(II) the portion of the actuarial value of such benefits package (if any) that will be applied toward satisfying the requirement for additional benefits under subsection (g);

''(III) the MedicareAdvantage monthly beneficiary premium for enhanced medical benefits (as defined in subsection (b)(2)(C));

''(IV) a description of any cost-sharing;

''(V) a description of whether the amount of the unified deductible has been lowered or the maximum limitations on out-of-pocket expenses have been decreased (relative to the levels used in calculating the plan bid);

''(VI) such other information as the Secretary considers necessary.

''(iii) The assumptions that the MedicareAdvantage organization used in preparing the plan bid with respect to numbers, in each payment area, of enrolled individuals and the mix, by health status, of such individuals.

''(B) INFORMATION REQUIRED WITH RESPECT TO PART D.—The information required to be submitted by an eligible entity under section 1860D–12, including the monthly premiums for standard coverage and any other qualified prescription drug coverage available to individuals enrolled under part D.

''(C) DETERMINING PLAN COSTS INCLUDED IN PLAN BID.—For purposes of submitting its plan bid under subparagraph (A)(i) a MedicareAdvantage plan offered by a MedicareAdvantage organization satisfies subparagraphs (A) and (C) of section 1852(a)(1) if the actuarial value of the deductibles, coinsurance, and copayments applicable on average to individuals enrolled

in such plan under this part with respect to benefits under the original medicare fee-for-service program option on which that bid is based (ignoring any reduction in cost-sharing offered by such plan as enhanced medical benefits under paragraph (2)(A)(ii) or required under clause (ii) or (iii) of subsection (g)(1)(C)) equals the amount specified in subsection (f)(1)(B).

''(3) REQUIREMENTS FOR MSA PLANS.—For an MSA plan described in section 1851(a)(2)(B), the information described in this paragraph is the information that such a plan would have been required to submit under this part if the Prescription Drug and Medicare Improvements Act of 2003 had not been enacted.

''(4) REVIEW.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall review the adjusted community rates (as defined in section 1854(g)(3)), the amounts of the MedicareAdvantage monthly basic premium and the MedicareAdvantage monthly beneficiary premium for enhanced medical benefits filed under this subsection and shall approve or disapprove such rates and amounts so submitted. The Secretary shall review the actuarial assumptions and data used by the MedicareAdvantage organization with respect to such rates and amounts so submitted to determine the appropriateness of such assumptions and data.

''(B) MSA EXCEPTION.—The Secretary shall not review, approve, or disapprove the amounts submitted under paragraph (3).

''(C) CLARIFICATION OF AUTHORITY REGARDING DISAPPROVAL OF UNREASONABLE BENEFICIARY COST-SHARING.—Under the authority under subparagraph (A), the Secretary may disapprove the bid if the Secretary determines that the deductibles, coinsurance, or copayments applicable under the plan discourage access to covered services or are likely to result in favorable selection of MedicareAdvantage eligible individuals.

''(5) APPLICATION OF FEHBP STANDARD; PROHIBITION ON PRICE GOUGING.—Each bid amount submitted under paragraph (1) for a MedicareAdvantage plan must reasonably and equitably reflect the cost of benefits provided under that plan.

''(b) MONTHLY PREMIUMS CHARGED.—

''(1) IN GENERAL.—

''(A) COORDINATED CARE AND PRIVATE FEE-FOR-SERVICE PLANS.—The monthly amount of the premium charged to an individual enrolled in a MedicareAdvantage plan (other than an MSA plan) offered by a MedicareAdvantage organization shall be equal to the sum of the following:

''(i) The MedicareAdvantage monthly basic beneficiary premium (if any).

''(ii) The MedicareAdvantage monthly beneficiary premium for enhanced medical benefits (if any).

''(iii) The MedicareAdvantage monthly obligation for qualified prescription drug coverage (if any).

''(B) MSA PLANS.—The rules under this section that would have applied with respect to an MSA plan if the Prescription Drug and Medicare Improvements Act of 2003 had not been enacted shall continue to apply to MSA plans after the date of enactment of such Act.

''(2) PREMIUM TERMINOLOGY.—For purposes of this part:

''(A) MEDICAREADVANTAGE MONTHLY BASIC BENEFICIARY PREMIUM.—The term 'MedicareAdvantage monthly basic beneficiary premium' means, with respect to a MedicareAdvantage plan, the amount required to be charged under subsection (d)(2) for the plan.

''(B) MEDICAREADVANTAGE MONTHLY BENEFICIARY OBLIGATION FOR QUALIFIED PRESCRIPTION DRUG COVERAGE.—The term 'MedicareAdvantage monthly beneficiary obligation for qualified prescription drug coverage' means, with respect to a MedicareAdvantage plan, the amount determined under section 1858A(d).

''(C) MEDICAREADVANTAGE MONTHLY BENEFICIARY PREMIUM FOR ENHANCED MEDICAL BENEFITS.—The term 'MedicareAdvantage monthly beneficiary premium for enhanced medical benefits' means, with respect to a MedicareAdvantage plan, the amount required to be charged under subsection (f)(2) for the plan, or, in the case of an MSA plan, the amount filed under subsection (a)(3).

''(D) MEDICAREADVANTAGE MONTHLY MSA PREMIUM.—The term 'MedicareAdvantage monthly MSA premium' means, with respect to a MedicareAdvantage plan, the amount of such premium filed under subsection (a)(3) for the plan.

''(c) UNIFORM PREMIUM.—The MedicareAdvantage monthly basic beneficiary premium, the MedicareAdvantage monthly beneficiary obligation for qualified prescription drug coverage, the MedicareAdvantage monthly beneficiary premium for enhanced medical benefits, and the MedicareAdvantage monthly MSA premium charged under subsection (b) of a MedicareAdvantage organization under this part may not vary among individuals enrolled in the plan.

''(d) DETERMINATION OF PREMIUM REDUCTIONS, REDUCED COST-SHARING, ADDITIONAL BENEFITS, AND BENEFICIARY PREMIUMS.—

''(1) BIDS BELOW THE BENCHMARK.—If the Secretary determines under section 1853(d)(3) that the weighted service area benchmark amount exceeds the plan bid, the Secretary shall require the plan to provide additional benefits in accordance with subsection (g).

''(2) BIDS ABOVE THE BENCHMARK.—If the Secretary determines under section 1853(d)(3) that the plan bid exceeds the weighted service area benchmark amount (determined under section 1853(d)(2)), the amount of such excess shall be the MedicareAdvantage monthly basic beneficiary premium (as defined in section 1854(b)(2)(A)).

''(e) TERMS AND CONDITIONS OF IMPOSING PREMIUMS.—Each MedicareAdvantage organization shall permit the payment of any MedicareAdvantage monthly basic premium, the MedicareAdvantage monthly beneficiary obligation for qualified prescription drug coverage, and the MedicareAdvantage monthly beneficiary premium for enhanced medical benefits on a monthly basis, may terminate election of individuals for a MedicareAdvantage plan for failure to make premium payments only in accordance with section 1851(g)(3)(B)(i), and may not provide for cash or other monetary rebates as an inducement for enrollment or otherwise (other than as an additional benefit described in subsection (g)(1)(C)(i)).

''(f) LIMITATION ON ENROLLEE LIABILITY.—

''(1) FOR BENEFITS UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM OPTION.—The sum of—

''(A) the MedicareAdvantage monthly basic beneficiary premium (multiplied by 12) and the actuarial value of the deductibles, coinsurance, and copayments (determined on the same basis as used in determining the plan's bid under paragraph (2)(C)) applicable on average to individuals enrolled under this part with a MedicareAdvantage plan described in subparagraph (A) or (C) of section 1851(a)(2) of an organization with respect to required benefits described in section 1852(a)(1)(A); must equal

''(B) the actuarial value of the deductibles, coinsurance, and copayments that would be applicable on average to individuals who have elected to receive benefits under the original medicare fee-for-service program option if such individuals were not members of a MedicareAdvantage organization for the year (adjusted as determined appropriate by the Secretary to account for geographic differences and for plan cost and utilization differences).

''(2) FOR ENHANCED MEDICAL BENEFITS.—If the MedicareAdvantage organization provides to its members enrolled under this part in a MedicareAdvantage plan described in subparagraph (A) or (C) of section 1851(a)(2) with respect to enhanced medical benefits relating to benefits under the original medicare fee-for-service program option, the sum of the MedicareAdvantage monthly beneficiary premium for enhanced medical benefits (multiplied by 12) charged and the actuarial value of its deductibles, coinsurance, and copayments charged with respect to such benefits for a year must equal the adjusted community rate (as defined in subsection (g)(3)) for such benefits for the year minus the actuarial value of any additional benefits pursuant to clause (ii), (iii), or (iv) of subsection (g)(2)(C) that the plan specified under subsection (a)(2)(i)(II).

''(3) DETERMINATION ON OTHER BASIS.—If the Secretary determines that adequate data are not available to determine the actuarial value under paragraph (1)(A) or (2), the Secretary may determine such amount with respect to all individuals in the same geographic area, the State, or in the United States, eligible to enroll in the MedicareAdvantage plan involved under this part or on the basis of other appropriate data.

''(4) SPECIAL RULE FOR PRIVATE FEE-FOR-SERVICE PLANS.—With respect to a MedicareAdvantage private fee-for-service plan (other than a plan that is an MSA plan), in no event may—

''(A) the actuarial value of the deductibles, coinsurance, and copayments applicable on average to individuals enrolled under this part with such a plan of an organization with respect to required benefits described in subparagraphs (A), (C), and (D) of section 1852(a)(1); exceed

''(B) the actuarial value of the deductibles, coinsurance, and copayments that would be applicable on average to individuals entitled to (or enrolled for) benefits under part A and enrolled under part B if they were not members of a MedicareAdvantage organization for the year.

''(g) REQUIREMENT FOR ADDITIONAL BENEFITS.—

''(1) REQUIREMENT.—

''(A) IN GENERAL.—Each MedicareAdvantage organization (in relation to a MedicareAdvantage plan, other than an MSA plan, it offers) shall provide that if there is an excess amount (as defined in subparagraph (B)) for the plan for a contract year, subject to the succeeding provisions of this subsection, the organization shall provide to individuals such additional benefits described in subparagraph (C) as the organization may specify in a value which the Secretary determines is at least equal to the adjusted excess amount (as defined in subparagraph (D)).

''(B) EXCESS AMOUNT.—For purposes of this paragraph, the term 'excess amount' means, for an organization for a plan, is 100 percent of the amount (if any) by which the weighted service area benchmark amount (determined under section 1853(d)(2)) exceeds the plan bid (as adjusted under section 1853(d)(1)).

''(C) ADDITIONAL BENEFITS DESCRIBED.—The additional benefits described in this subparagraph are as follows:

''(i) Subject to subparagraph (F), a monthly part B premium reduction for individuals enrolled in the plan.

''(ii) Lowering the amount of the unified deductible and decreasing the maximum limitations on out-of-pocket expenses for individuals enrolled in the plan.

''(iii) A reduction in the actuarial value of plan cost-sharing for plan enrollees.

''(iv) Subject to subparagraph (E), such additional benefits as the organization may specify.

''(v) Contributing to the stabilization fund under paragraph (2).

''(vi) Any combination of the reductions and benefits described in clauses (i) through (v).

''(D) ADJUSTED EXCESS AMOUNT.—For purposes of this paragraph, the term 'adjusted excess amount' means, for an organization for a plan, is the excess amount reduced to reflect any amount withheld and reserved for the organization for the year under paragraph (2).

''(E) RULE FOR APPROVAL OF MEDICAL AND PRESCRIPTION DRUG BENEFITS.—An organization may not specify any additional benefit that provides for the coverage of any prescription drug (other than that relating to prescription drugs covered under the original medicare fee-for-service program option).

''(F) PREMIUM REDUCTIONS.—

''(i) IN GENERAL.—Subject to clause (ii), as part of providing any additional benefits required under subparagraph (A), a MedicareAdvantage organization may elect a reduction in its payments under section 1853(a)(1)(A)(i) with respect to a MedicareAdvantage plan and the Secretary shall apply such reduction to reduce the premium under section 1839 of each enrollee in such plan as provided in section 1840(i).

''(ii) AMOUNT OF REDUCTION.—The amount of the reduction under clause (i) with respect to any enrollee in a MedicareAdvantage plan—

''(I) may not exceed 125 percent of the premium described under section 1839(a)(3); and

''(II) shall apply uniformly to each enrollee of the MedicareAdvantage plan to which such reduction applies.

''(G) UNIFORM APPLICATION.—This paragraph shall be applied uniformly for all enrollees for a plan.

''(H) CONSTRUCTION.—Nothing in this subsection shall be construed as preventing a MedicareAdvantage organization from providing enhanced medical benefits (described in section 1852(a)(3)) that are in addition to the health care benefits otherwise required to be provided under this paragraph and from imposing a premium for such enhanced medical benefits.

''(2) STABILIZATION FUND.—A MedicareAdvantage organization may provide that a part of the value of an excess amount described in paragraph (1) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with such paragraph. Any of such value of the amount reserved which is not provided as additional benefits described in paragraph (1)(A) to individuals electing the MedicareAdvantage plan of the organization in accordance with such paragraph prior to the end of such periods, shall revert for the use of such Trust Funds.

''(3) ADJUSTED COMMUNITY RATE.—For purposes of this subsection, subject to paragraph (4), the term 'adjusted community rate' for a service or services means, at the election of a MedicareAdvantage organization, either—

''(A) the rate of payment for that service or services which the Secretary annually determines would apply to an individual electing a MedicareAdvantage plan under this part if the rate of payment were determined under a 'community rating system' (as defined in section 1302(8) of the Public Health Service Act, other than subparagraph (C)); or

''(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to such an individual, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the individuals electing coverage under this part and the utilization characteristics of the other enrollees with the plan (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of individuals selecting other MedicareAdvantage coverage, or MedicareAdvantage eligible individuals in the area, in the State, or in the United States, eligible to elect MedicareAdvantage coverage under this part and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

''(4) DETERMINATION BASED ON INSUFFICIENT DATA.—For purposes of this subsection, if the Secretary finds that there is insufficient enrollment experience to determine the average amount of payments to be made under this part at the beginning of a contract period or to determine (in the case of a newly operated provider-sponsored organization or other new organization) the adjusted community rate for the organization, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this part and may determine such a rate using data in the general commercial marketplace.

''(h) PROHIBITION OF STATE IMPOSITION OF PREMIUM TAXES.—No State may impose a premium tax or similar tax with respect to payments to MedicareAdvantage organizations under section 1853.

''(i) PERMITTING USE OF SEGMENTS OF SERVICE AREAS.—The Secretary shall permit a MedicareAdvantage organization to elect to apply the provisions of this section uniformly to separate segments of a service area (rather than uniformly to an entire service area) as long as such segments are composed of 1 or more MedicareAdvantage payment areas.''.

(b) STUDY AND REPORT ON CLARIFICATION OF AUTHORITY REGARDING DISAPPROVAL OF UNREASONABLE BENEFICIARY COST-SHARING.—

(1) STUDY.—The Secretary, in consultation with beneficiaries, consumer groups, employers, and Medicare+Choice organizations, shall conduct a study to determine the extent to which the cost-sharing structures under Medicare+Choice plans under part C of title XVIII of the Social Security Act discourage access to covered services or discriminate based on the health status of Medicare+Choice eligible individuals (as defined in section 1851(a)(3) of the Social Security Act (42 U.S.C. 1395w–21(a)(3))).

(2) REPORT.—Not later than December 31, 2004, the Secretary shall submit a report to Congress on the study conducted under paragraph (1) together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

SEC. 205. SPECIAL RULES FOR PRESCRIPTION DRUG BENEFITS.

Part C of title XVIII (42 U.S.C. 1395w–21 et seq.) is amended by inserting after section 1857 the following new section:

''SPECIAL RULES FOR PRESCRIPTION DRUG BENEFITS

''SEC. 1858A. (a) AVAILABILITY.—

''(1) PLANS REQUIRED TO PROVIDE QUALIFIED PRESCRIPTION DRUG COVERAGE TO ENROLLEES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on and after January 1, 2006, a MedicareAdvantage organization offering a MedicareAdvantage plan (except for an MSA plan) shall make available qualified prescription drug coverage that meets the requirements for such coverage under this part and part D to each enrollee of the plan.

''(B) PRIVATE FEE-FOR-SERVICE PLANS MAY, BUT ARE NOT REQUIRED TO, PROVIDE QUALIFIED PRESCRIPTION DRUG COVERAGE.—Pursuant to section 1852(a)(2)(D), a private fee-for-service plan may elect not to provide qualified prescription drug coverage under part D to individuals residing in the area served by the plan.

''(2) REFERENCE TO PROVISION PERMITTING ADDITIONAL PRESCRIPTION DRUG COVERAGE.—For the provisions of part D, made applicable to this part pursuant to paragraph (1), that permit a plan to make available qualified prescription drug coverage that includes coverage of covered drugs that exceeds the coverage required under paragraph (1) of section 1860D–6 in an area, but only if the MedicareAdvantage organization offering the plan also offers a MedicareAdvantage plan in the area that only provides the coverage that is required under such paragraph (1), see paragraph (2) of such section.

''(3) RULE FOR APPROVAL OF MEDICAL AND PRESCRIPTION DRUG BENEFITS.—Pursuant to sections 1854(g)(1)(F) and 1852(a)(3)(D), a MedicareAdvantage organization offering a MedicareAdvantage plan that provides qualified prescription drug coverage may not make available coverage of any prescription drugs (other than that relating to prescription drugs covered under the original medicare fee-for-service program option) to an enrollee as an additional benefit or as an enhanced medical benefit.

''(b) COMPLIANCE WITH ADDITIONAL BENEFICIARY PROTECTIONS.—With respect to the offering of qualified prescription drug coverage by a MedicareAdvantage organization under a MedicareAdvantage plan, the organization and plan shall meet the requirements of section 1860D–5, including requirements relating to information dissemination and grievance and appeals, and such other requirements under part D that the Secretary determines appropriate in the same manner as such requirements apply to an eligible entity and a Medicare Prescription Drug plan under part D. The Secretary shall waive such requirements to the extent the Secretary determines that such requirements duplicate requirements otherwise applicable to the organization or the plan under this part.

''(c) PAYMENTS FOR PRESCRIPTION DRUGS.—

''(1) PAYMENT OF FULL AMOUNT OF PREMIUM TO ORGANIZATIONS FOR QUALIFIED PRESCRIPTION DRUG COVERAGE.—

''(A) IN GENERAL.—For each year (beginning with 2006), the Secretary shall pay to each MedicareAdvantage organization offering a MedicareAdvantage plan that provides qualified prescription drug coverage, an amount equal to the full amount of the monthly premium submitted under section 1854(a)(2)(B) for the year, as adjusted using the risk adjusters that apply to the standard prescription drug coverage published under section 1860D–11.

''(B) APPLICATION OF PART D RISK CORRIDOR, STABILIZATION RESERVE FUND, AND ADMINISTRATIVE EXPENSES PROVISIONS.—The provisions of subsections (b), (c), and (d) of section 1860D–16 shall apply to a MedicareAdvantage organization offering a MedicareAdvantage plan that provides qualified prescription drug coverage and payments made to such organization under subparagraph (A) in the same manner as such provisions apply to an eligible entity offering a Medicare Prescription Drug plan and payments made to such entity under subsection (a) of section 1860D–16.

''(2) PAYMENT FROM PRESCRIPTION DRUG ACCOUNT.—Payment made to MedicareAdvantage organizations under this subsection shall be made from the Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund under section 1841.

''(d) COMPUTATION OF MEDICAREADVANTAGE MONTHLY BENEFICIARY OBLIGATION FOR QUALIFIED PRESCRIPTION DRUG COVERAGE.—In the case of a MedicareAdvantage eligible individual receiving qualified prescription drug coverage under a MedicareAdvantage plan during a year after 2005, the MedicareAdvantage monthly beneficiary obligation for qualified prescription drug coverage of such individual in the year shall be determined in the same manner as the monthly beneficiary obligation is determined under section 1860D–17 for eligible beneficiaries enrolled in a Medicare Prescription Drug plan, except that, for purposes of this subparagraph, any reference to the monthly plan premium approved by the Secretary under section 1860D–13 shall be treated as a reference to the monthly premium for qualified prescription drug coverage submitted by the MedicareAdvantage organization offering the plan under section 1854(a)(2)(A) and approved by the Secretary.

''(e) COLLECTION OF MEDICAREADVANTAGE MONTHLY BENEFICIARY OBLIGATION FOR QUALIFIED PRESCRIPTION DRUG COVERAGE.—The provisions of section 1860D–18, including subsection (b) of such section, shall apply to the amount of the MedicareAdvantage monthly beneficiary obligation for qualified prescription drug coverage (as determined under subsection (d)) required to be paid by a MedicareAdvantage eligible individual enrolled in a MedicareAdvantage plan in the same manner as such provisions apply to the amount of the monthly beneficiary obligation required to be paid by an eligible beneficiary enrolled in a Medicare Prescription Drug plan under part D.

''(f) AVAILABILITY OF PREMIUM SUBSIDY AND COST-SHARING REDUCTIONS FOR LOW-INCOME ENROLLEES AND REINSURANCE PAYMENTS.—For provisions—

''(1) providing premium subsidies and cost-sharing reductions for low-income individuals receiving qualified prescription drug coverage through a MedicareAdvantage plan, see section 1860D–19; and

''(2) providing a MedicareAdvantage organization with reinsurance payments for certain expenses incurred in providing qualified prescription drug coverage through a MedicareAdvantage plan, see section 1860D–20.''.

(b) TREATMENT OF REDUCTION FOR PURPOSES OF DETERMINING GOVERNMENT CONTRIBUTION UNDER PART B.—Section 1844(c) (42 U.S.C. 1395w) is amended by striking ''section 1854(f)(1)(E)'' and inserting ''section 1854(d)(1)(A)(i)''.

SEC. 206. FACILITATING EMPLOYER PARTICIPATION.

Section 1858(h) (as added by section 211) is amended by inserting ''(including subsection (i) of such section)'' after ''section 1857''.

SEC. 207. ADMINISTRATION BY THE CENTER FOR MEDICARE CHOICES.

On and after January 1, 2006, the MedicareAdvantage program under part C of title XVIII of the Social Security Act shall be administered by the Center for Medicare Choices established under section 1808 such title (as added by section 301), and each reference to the Secretary made in such part shall be deemed to be a reference to the Administrator of the Center for Medicare Choices.

SEC. 208. CONFORMING AMENDMENTS.

(a) ORGANIZATIONAL AND FINANCIAL REQUIREMENTS FOR MEDICAREADVANTAGE ORGANIZATIONS; PROVIDER-SPONSORED ORGANIZATIONS.—Section 1855 (42 U.S.C. 1395w–25) is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''subparagraphs (A), (B), and (D) of'' before ''section 1852(A)(1)''; and

(2) by striking ''Medicare+Choice'' and inserting ''MedicareAdvantage'' each place it appears.

(b) ESTABLISHMENT OF PSO STANDARDS.—Section 1856 (42 U.S.C. 1395w–26) is amended by striking ''Medicare+Choice'' and inserting ''MedicareAdvantage'' each place it appears.

(c) CONTRACTS WITH MEDICAREADVANTAGE ORGANIZATIONS.—Section 1857 (42 U.S.C. 1395w–27) is amended—

(1) in subsection (g)(1)—

(A) in subparagraph (B), by striking ''amount of the Medicare+Choice monthly basic and supplemental beneficiary premiums'' and inserting ''amounts of the MedicareAdvantage monthly basic premium and MedicareAdvantage monthly beneficiary premium for enhanced medical benefits'';

(B) in subparagraph (F), by striking ''or'' after the semicolon at the end;

(C) in subparagraph (G), by adding ''or'' after the semicolon at the end; and

(D) by inserting after subparagraph (G) the following new subparagraph:

''(H)(i) charges any individual an amount in excess of the MedicareAdvantage monthly beneficiary obligation for qualified prescription drug coverage under section 1858A(d);

''(ii) provides coverage for prescription drugs that is not qualified prescription drug coverage;

''(iii) offers prescription drug coverage, but does not make standard prescription drug coverage available; or

''(iv) provides coverage for prescription drugs (other than that relating to prescription drugs covered under the original medicare fee-for-service program option described in section 1851(a)(1)(A)(i)) as an enhanced medical benefit under section 1852(a)(3)(D) or as an additional benefit under section 1854(g)(1)(F),''; and

(2) by striking ''Medicare+Choice'' and inserting ''MedicareAdvantage'' each place it appears.

(d) DEFINITIONS; MISCELLANEOUS PROVISIONS.—Section 1859 (42 U.S.C. 1395w–28) is amended—

(1) by striking subsection (c) and inserting the following new subsection:

''(c) OTHER REFERENCES TO OTHER TERMS.—

''(1) ENHANCED MEDICAL BENEFITS.—The term 'enhanced medical benefits' is defined in section 1852(a)(3)(E).

''(2) MEDICAREADVANTAGE ELIGIBLE INDIVIDUAL.—The term 'MedicareAdvantage eligible individual' is defined in section 1851(a)(3).

''(3) MEDICAREADVANTAGE PAYMENT AREA.—The term 'MedicareAdvantage payment area' is defined in section 1853(d).

''(4) NATIONAL PER CAPITA MEDICARE+CHOICE GROWTH PERCENTAGE.—The 'national per capita Medicare+Choice growth percentage' is defined in section 1853(c)(6).

''(5) MEDICAREADVANTAGE MONTHLY BASIC BENEFICIARY PREMIUM; MEDICAREADVANTAGE MONTHLY BENEFICIARY OBLIGATION FOR QUALIFIED PRESCRIPTION DRUG COVERAGE; MEDICAREADVANTAGE MONTHLY BENEFICIARY PREMIUM FOR ENHANCED MEDICAL BENEFITS.—The terms 'MedicareAdvantage monthly basic beneficiary premium', 'MedicareAdvantage monthly beneficiary obligation for qualified prescription drug coverage', and 'MedicareAdvantage monthly beneficiary premium for enhanced medical benefits' are defined in section 1854(b)(2).

''(6) QUALIFIED PRESCRIPTION DRUG COVERAGE.—The term 'qualified prescription drug coverage' has the meaning given such term in section 1860D(9).

''(7) STANDARD PRESCRIPTION DRUG COVERAGE.—The term 'standard prescription drug coverage' has the meaning given such term in section 1860D(10).''; and

(2) by striking ''Medicare+Choice'' and inserting ''MedicareAdvantage'' each place it appears.

(e) CONFORMING AMENDMENTS EFFECTIVE BEFORE 2006.—

(1) EXTENSION OF MSAS.—Section 1851(b)(4) (42 U.S.C. 1395w–21(b)(4)) is amended by striking ''January 1, 2003'' and inserting ''January 1, 2004''.

(2) CONTINUOUS OPEN ENROLLMENT AND DISENROLLMENT THROUGH 2005.—Section 1851(e) of the Social Security Act (42 U.S.C. 1395w–21(e)) is amended—

(A) in paragraph (2)(A), by striking ''THROUGH 2004'' and ''December 31,2004'' and inserting ''THROUGH 2005'' and ''December 31, 2005'', respectively;

(B) in the heading of paragraph (2)(B), by striking ''DURING 2005'' and inserting ''DURING 2006'';

(C) in paragraphs (2)(B)(i) and (2)(C)(i), by striking ''2005'' and inserting ''2006'' each place it appears;

(D) in paragraph (2)(D), by striking ''2004'' and inserting ''2005''; and

(E) in paragraph (4), by striking ''2005'' and inserting ''2006'' each place it appears.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of enactment of this Act.

(e) OTHER CONFORMING AMENDMENTS.—

(1) CONFORMING MEDICARE CROSS-REFERENCES.—

(A) Section 1839(a)(2) (42 U.S.C. 1395r(a)(2)) is amended by striking ''section 1854(f)(1)(E)'' and inserting ''section 1854(g)(1)(C)(i)''.

(B) Section 1840(i) (42 U.S.C. 1395s(i)) is amended by striking ''section 1854(f)(1)(E)'' and inserting ''section 1854(g)(1)(C)(i)''.

(C) Section 1844(c) (42 U.S.C. 1395w(c)) is amended by striking ''section 1854(f)(1)(E)'' and inserting ''section 1854(g)(1)(C)(i)''.

(D) Section 1876(k)(3)(A) (42 U.S.C. 1395mm(k)(3)(A)) is amended by inserting ''(as in effect immediately before the enactment of the Prescription Drug and Medicare Improvements Act of 2003)'' after section 1853(a).

(F) Section 1876(k)(4) (42 U.S.C. 1395mm(k)(4)(A)) is amended—

(i) in subparagraph (A), by striking ''section 1853(a)(3)(B)'' and inserting ''section 1853(a)(3)(D)''; and

(ii) in subparagraph (B), by striking ''section 1854(g)'' and inserting ''section 1854(h)''.

(G) Section 1876(k)(4)(C) (42 U.S.C. 1395mm(k)(4)(C)) in amended by inserting ''(as in effect immediately before the enactment of the Prescription Drug and Medicare Improvements Act of 2003)'' after ''section 1851(e)(6)''.

(H) Section 1894(d) (42 U.S.C. 1395eee(d)) is amended by adding at the end the following new paragraph:

''(3) APPLICATION OF PROVISIONS.—For purposes of paragraphs (1) and (2), the references to section 1853 and subsection (a)(2) of such section in such paragraphs shall be deemed to be references to those provisions as in effect immediately before the enactment of the Prescription Drug and Medicare Improvements Act of 2003.''.

(2) CONFORMING MEDICARE TERMINOLOGY.—Title XVIII (42 U.S.C. 1395 et seq.), except for part C of such title (42 U.S.C. 1395w–21 et seq.), and title XIX (42 U.S.C. 1396 et seq.) are each amended by striking ''Medicare+Choice'' and inserting ''MedicareAdvantage'' each place it appears.

SEC. 209. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in section 208(d)(3) and subsection (b), the amendments made by this title shall apply with respect to plan years beginning on and after January 1, 2006.

(b) MEDICAREADVANTAGE MSA PLANS.—Notwithstanding any provision of this title, the Secretary shall apply the payment and other rules that apply with respect to an MSA plan described in section 1851(a)(2)(B) of the Social Security Act (42 U.S.C. 1395w–21(a)(2)(B)) as if this title had not been enacted.

Subtitle B—Preferred Provider Organizations

SEC. 211. ESTABLISHMENT OF MEDICARE ADVANTAGE PREFERRED PROVIDER PROGRAM OPTION.

(a) ESTABLISHMENT OF PREFERRED PROVIDER PROGRAM OPTION.—Section 1851(a)(2) is amended by adding at the end the following new subparagraph:

''(D) PREFERRED PROVIDER ORGANIZATION PLANS.—A MedicareAdvantage preferred provider organization plan under the program established under section 1858.''.

(b) PROGRAM SPECIFICATIONS.—Part C of title XVIII (42 U.S.C. 1395w–21 et seq.) is amended by inserting after section 1857 the following new section:

''PREFERRED PROVIDER ORGANIZATIONS

''SEC. 1858. (a) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—Beginning on January 1, 2006, there is established a preferred provider program under which preferred provider organization plans offered by preferred provider organizations are offered to MedicareAdvantage eligible individuals in preferred provider regions.

''(2) DEFINITIONS.—

''(A) PREFERRED PROVIDER ORGANIZATION.—The term 'preferred provider organization' means an entity with a contract under section 1857 that meets the requirements of this section applicable with respect to preferred provider organizations.

''(B) PREFERRED PROVIDER ORGANIZATION PLAN.—The term 'preferred provider organization plan' means a MedicareAdvantage plan that—

''(i) has a network of providers that have agreed to a contractually specified reimbursement for covered benefits with the organization offering the plan;

''(ii) provides for reimbursement for all covered benefits regardless of whether such benefits are provided within such network of providers; and

''(iii) is offered by a preferred provider organization.

''(C) PREFERRED PROVIDER REGION.—The term 'preferred provider region' means—

''(i) a region established under paragraph (3); and

''(ii) a region that consists of the entire United States.

''(3) PREFERRED PROVIDER REGIONS.—For purposes of this part the Secretary shall establish preferred provider regions as follows:

''(A) There shall be at least 10 regions.

''(B) Each region must include at least 1 State.

''(C) The Secretary may not divide States so that portions of the State are in different regions.

''(D) To the extent possible, the Secretary shall include multistate metropolitan statistical areas in a single region. The Secretary may divide metropolitan statistical areas where it is necessary to establish regions of such size and geography as to maximize the participation of preferred provider organization plans.

''(E) The Secretary may conform the preferred provider regions to the service areas established under section 1860D–10.

''(b) ELIGIBILITY, ELECTION, AND ENROLLMENT; BENEFITS AND BENEFICIARY PROTECTIONS.—

''(1) IN GENERAL.—Except as provided in the succeeding provisions of this subsection, the provisions of sections 1851 and 1852 that apply with respect to coordinated care plans shall apply to preferred provider organization plans offered by a preferred provider organization.

''(2) SERVICE AREA.—The service area of a preferred provider organization plan shall be a preferred provider region.

''(3) AVAILABILITY.—Each preferred provider organization plan must be offered to each MedicareAdvantage eligible individual who resides in the service area of the plan.

''(4) AUTHORITY TO PROHIBIT RISK SELECTION.—The provisions of section 1852(a)(6) shall apply to preferred provider organization plans.

''(5) ASSURING ACCESS TO SERVICES IN PREFERRED PROVIDER ORGANIZATION PLANS.—

''(A) IN GENERAL.—In addition to any other requirements under this section, in the case of a preferred provider organization plan, the organization offering the plan must demonstrate to the Secretary that the organization has sufficient number and range of health care professionals and providers willing to provide services under the terms of the plan.

''(B) DETERMINATION OF SUFFICIENT ACCESS.—The Secretary shall find that an organization has met the requirement under subparagraph (A) with respect to any category of health care professional or provider if, with respect to that category of provider the plan has contracts or agreements with a sufficient number and range of providers within such category to provide covered services under the terms of the plan.

''(C) CONSTRUCTION.—Subparagraph (B) shall not be construed as restricting the persons from whom enrollees under such a plan may obtain covered benefits.

''(c) PAYMENTS TO PREFERRED PROVIDER ORGANIZATIONS.—

''(1) PAYMENTS TO ORGANIZATIONS.—

''(A) MONTHLY PAYMENTS.—

''(i) IN GENERAL.—Under a contract under section 1857 and subject to paragraph (5), subsection (e), and section 1859(e)(4), the Secretary shall make, to each preferred provider organization, with respect to coverage of an individual for a month under this part in a preferred provider region, separate monthly payments with respect to—

''(I) benefits under the original medicare fee-for-service program under parts A and B in accordance with paragraph (4); and

''(II) benefits under the voluntary prescription drug program under part D in accordance with section 1858A and the other provisions of this part.

''(ii) SPECIAL RULE FOR END-STAGE RENAL DISEASE.—The Secretary shall establish separate rates of payment applicable with respect to classes of individuals determined to have end-stage renal disease and enrolled in a preferred provider organization plan under this clause that are similar to the separate rates of payment described in section 1853(a)(1)(B).

''(B) ADJUSTMENT TO REFLECT NUMBER OF ENROLLEES.—The Secretary may retroactively adjust the amount of payment under this paragraph in a manner that is similar to the manner in which payment amounts may be retroactively adjusted under section 1853(a)(2).

''(C) COMPREHENSIVE RISK ADJUSTMENT METHODOLOGY.—The Secretary shall apply the comprehensive risk adjustment methodology described in section 1853(a)(3)(B) to 100 percent of the amount of payments to plans under paragraph (4)(D)(ii).

''(D) ADJUSTMENT FOR SPENDING VARIATIONS WITHIN A REGION.—The Secretary shall establish a methodology for adjusting the amount of payments to plans under paragraph (4)(D)(ii) that achieves the same objective as the adjustment described in paragraph 1853(a)(2)(C).

''(2) ANNUAL CALCULATION OF BENCHMARK AMOUNTS FOR PREFERRED PROVIDER REGIONS.—For each year (beginning in 2006), the Secretary shall calculate a benchmark amount for each preferred provider region for each month for such year with respect to coverage of the benefits available under the original medicare fee-for-service program option equal to the average of each benchmark amount calculated under section 1853(a)(4) for each MedicareAdvantage payment area for the year within such region, weighted by the number of MedicareAdvantage eligible individuals residing in each such payment area for the year.

''(3) ANNUAL ANNOUNCEMENT OF PAYMENT FACTORS.—

''(A) ANNUAL ANNOUNCEMENT.—Beginning in 2005, at the same time as the Secretary publishes the risk adjusters under section 1860D–11, the Secretary shall annually announce (in a manner intended to provide notice to interested parties) the following payment factors:

''(i) The benchmark amount for each preferred provider region (as calculated under paragraph (2)(A)) for the year.

''(ii) The factors to be used for adjusting payments described under—

''(I) the comprehensive risk adjustment methodology described in paragraph (1)(C) with respect to each preferred provider region for the year; and

''(II) the methodology used for adjustment for geographic variations within such region established under paragraph (1)(D).

''(B) ADVANCE NOTICE OF METHODOLOGICAL CHANGES.—At least 45 days before making the announcement under subparagraph (A) for a year, the Secretary shall—

''(i) provide for notice to preferred provider organizations of proposed changes to be made in the methodology from the methodology and assumptions used in the previous announcement; and

''(ii) provide such organizations with an opportunity to comment on such proposed changes.

''(C) EXPLANATION OF ASSUMPTIONS.—In each announcement made under subparagraph (A), the Secretary shall include an explanation of the assumptions and changes in methodology used in the announcement in sufficient detail so that preferred provider organizations can compute each payment factor described in such subparagraph.

''(4) SECRETARY'S DETERMINATION OF PAYMENT AMOUNT FOR BENEFITS UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM.—The Secretary shall determine the payment amount for plans as follows:

''(A) REVIEW OF PLAN BIDS.—The Secretary shall review each plan bid submitted under subsection (d)(1) for the coverage of benefits under the original medicare fee-for-service program option to ensure that such bids are consistent with the requirements under this part and are based on the assumptions described in section 1854(a)(2)(A)(iii) that the plan used with respect to numbers of enrolled individuals.

''(B) DETERMINATION OF PREFERRED PROVIDER REGIONAL BENCHMARK AMOUNTS.—The Secretary shall calculate a preferred provider regional benchmark amount for that plan for the benefits under the original medicare fee-for-service program option for each plan equal to the regional benchmark adjusted by using the assumptions described in section 1854(a)(2)(A)(iii) that the plan used

with respect to numbers of enrolled individuals.

''(C) COMPARISON TO BENCHMARK.—The Secretary shall determine the difference between each plan bid (as adjusted under subparagraph (A)) and the preferred provider regional benchmark amount (as determined under subparagraph (B)) for purposes of determining—

''(i) the payment amount under subparagraph (D); and

''(ii) the additional benefits required and MedicareAdvantage monthly basic beneficiary premiums.

''(D) DETERMINATION OF PAYMENT AMOUNT.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary shall determine the payment amount to a preferred provider organization for a preferred provider organization plan as follows:

''(I) BIDS THAT EQUAL OR EXCEED THE BENCHMARK.—In the case of a plan bid that equals or exceeds the preferred provider regional benchmark amount, the amount of each monthly payment to the organization with respect to each individual enrolled in a plan shall be the preferred provider regional benchmark amount.

''(II) BIDS BELOW THE BENCHMARK.—In the case of a plan bid that is less than the preferred provider regional benchmark amount, the amount of each monthly payment to the organization with respect to each individual enrolled in a plan shall be the preferred provider regional benchmark amount reduced by the amount of any premium reduction elected by the plan under section 1854(d)(1)(A)(i).

''(ii) APPLICATION OF ADJUSTMENT METHODOLOGIES.—The Secretary shall adjust the amounts determined under subparagraph (A) using the factors described in paragraph (3)(A)(ii).

''(E) FACTORS USED IN ADJUSTING BIDS AND BENCHMARKS FOR PREFERRED PROVIDER ORGANIZATIONS AND IN DETERMINING ENROLLEE PREMIUMS.—Subject to subparagraph (F), in addition to the factors used to adjust payments to plans described in section 1853(d)(6), the Secretary shall use the adjustment for geographic variation within the region established under paragraph (1)(D).

''(F) ADJUSTMENT FOR NATIONAL COVERAGE DETERMINATIONS AND LEGISLATIVE CHANGES IN BENEFITS.—The Secretary shall provide for adjustments for national coverage determinations and legislative changes in benefits applicable with respect to preferred provider organizations in the same manner as the Secretary provides for adjustments under section 1853(d)(7).

''(5) PAYMENTS FROM TRUST FUND.—The payment to a preferred provider organization under this section shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in a manner similar to the manner described in section 1853(g).

''(6) SPECIAL RULE FOR CERTAIN INPATIENT HOSPITAL STAYS.—Rules similar to the rules applicable under section 1853(h) shall apply with respect preferred provider organizations.

''(7) SPECIAL RULE FOR HOSPICE CARE.—Rules similar to the rules applicable under section 1853(i) shall apply with respect to preferred provider organizations.

''(d) SUBMISSION OF BIDS BY PPOS; PREMIUMS.—

''(1) SUBMISSION OF BIDS BY PREFERRED PROVIDER ORGANIZATIONS.—

''(A) IN GENERAL.—For the requirements on submissions by MedicareAdvantage preferred provider organization plans, see section 1854(a)(1).

''(B) UNIFORM PREMIUMS.—Each bid amount submitted under subparagraph (A) for a preferred provider organization plan in a preferred provider region may not vary among MedicareAdvantage eligible individuals residing in such preferred provider region.

''(C) APPLICATION OF FEHBP STANDARD; PROHIBITION ON PRICE GOUGING.—Each bid amount submitted under subparagraph (A) for a preferred provider organization plan must reasonably and equitably reflect the cost of benefits provided under that plan.

''(D) REVIEW.—The Secretary shall review the adjusted community rates (as defined in section 1854(g)(3)), the amounts of the MedicareAdvantage monthly basic premium and the MedicareAdvantage monthly beneficiary premium for enhanced medical benefits filed under this paragraph and shall approve or disapprove such rates and amounts so submitted. The Secretary shall review the actuarial assumptions and data used by the preferred provider organization with respect to such rates and amounts so submitted to determine the appropriateness of such assumptions and data.

''(E) AUTHORITY TO LIMIT NUMBER OF PLANS IN A REGION.—If there are bids for more than 3 preferred provider organization plans in a preferred provider region, the Secretary shall accept only the 3 lowest-cost credible bids for that region that meet or exceed the quality and minimum standards applicable under this section.

''(2) MONTHLY PREMIUMS CHARGED.—The amount of the monthly premium charged to an individual enrolled in a preferred provider organization plan offered by a preferred provider organization shall be equal to the sum of the following:

''(A) The MedicareAdvantage monthly basic beneficiary premium, as defined in section 1854(b)(2)(A) (if any).

''(B) The MedicareAdvantage monthly beneficiary premium for enhanced medical benefits, as defined in section 1854(b)(2)(C) (if any).

''(C) The MedicareAdvantage monthly obligation for qualified prescription drug coverage, as defined in section 1854(b)(2)(B) (if any).

''(3) DETERMINATION OF PREMIUM REDUCTIONS, REDUCED COST-SHARING, ADDITIONAL BENEFITS, AND BENEFICIARY PREMIUMS.—The rules for determining premium reductions, reduced cost-sharing, additional benefits, and beneficiary premiums under section 1854(d) shall apply with respect to preferred provider organizations.

''(4) PROHIBITION OF SEGMENTING PREFERRED PROVIDER REGIONS.—The Secretary may not permit a preferred provider organization to elect to apply the provisions of this section uniformly to separate segments of a preferred provider region (rather than uniformly to an entire preferred provider region).

''(e) PORTION OF TOTAL PAYMENTS TO AN ORGANIZATION SUBJECT TO RISK FOR 2 YEARS.—

''(1) NOTIFICATION OF SPENDING UNDER THE PLAN.—

''(A) IN GENERAL.—For 2007 and 2008, the preferred provider organization offering a preferred provider organization plan shall notify the Secretary of the total amount of costs that the organization incurred in providing benefits covered under parts A and B of the original medicare fee-for-service program for all enrollees under the plan in the previous year.

''(B) CERTAIN EXPENSES NOT INCLUDED.—The total amount of costs specified in subparagraph (A) may not include—

''(i) subject to subparagraph (C), administrative expenses incurred in providing the benefits described in such subparagraph; or

''(ii) amounts expended on providing enhanced medical benefits under section 1852(a)(3)(D).

''(C) ESTABLISHMENT OF ALLOWABLE ADMINISTRATIVE EXPENSES.—For purposes of applying subparagraph (B)(i), the administrative expenses incurred in providing benefits described in subparagraph (A) under a preferred provider organization plan may not exceed an amount determined appropriate by the Administrator.

''(2) ADJUSTMENT OF PAYMENT.—

''(A) NO ADJUSTMENT IF COSTS WITHIN RISK CORRIDOR.—If the total amount of costs specified in paragraph (1)(A) for the plan for the year are not more than the first threshold upper limit of the risk corridor (specified in paragraph (3)(A)(iii)) and are not less than the first threshold lower limit of the risk corridor (specified in paragraph (3)(A)(i)) for the plan for the year, then no additional payments shall be made by the Secretary and no reduced payments shall be made to the preferred provider organization offering the plan.

''(B) INCREASE IN PAYMENT IF COSTS ABOVE UPPER LIMIT OF RISK CORRIDOR.—

''(i) IN GENERAL.—If the total amount of costs specified in paragraph (1)(A) for the plan for the year are more than the first threshold upper limit of the risk corridor for the plan for the year, then the Secretary shall increase the total of the monthly payments made to the preferred provider organization offering the plan for the year under subsection (c)(1)(A) by an amount equal to the sum of—

''(I) 50 percent of the amount of such total costs which are more than such first threshold upper limit of the risk corridor and not more than the second threshold upper limit of the risk corridor for the plan for the year (as specified under paragraph (3)(A)(iv)); and

''(II) 90 percent of the amount of such total costs which are more than such second threshold upper limit of the risk corridor.

''(C) REDUCTION IN PAYMENT IF COSTS BELOW LOWER LIMIT OF RISK CORRIDOR.—If the total amount of costs specified in paragraph (1)(A) for the plan for the year are less than the first threshold lower limit of the risk corridor for the plan for the year, then the Secretary shall reduce the total of the monthly payments made to the preferred provider organization offering the plan for the year under subsection (c)(1)(A) by an amount (or otherwise recover from the plan an amount) equal to—

''(i) 50 percent of the amount of such total costs which are less than such first threshold lower limit of the risk corridor and not less than the second threshold lower limit of the risk corridor for the plan for the year (as specified under paragraph (3)(A)(ii)); and

''(ii) 90 percent of the amount of such total costs which are less than such second threshold lower limit of the risk corridor.

''(3) ESTABLISHMENT OF RISK CORRIDORS.—

''(A) IN GENERAL.—For 2006 and 2007, the Secretary shall establish a risk corridor for each preferred provider organization plan. The risk corridor for a plan for a year shall be equal to a range as follows:

''(i) FIRST THRESHOLD LOWER LIMIT.—The first threshold lower limit of such corridor shall be equal to—

''(I) the target amount described in subparagraph (B) for the plan; minus

''(II) an amount equal to 5 percent of such target amount.

''(ii) SECOND THRESHOLD LOWER LIMIT.—The second threshold lower limit of such corridor shall be equal to—

''(I) the target amount described in subparagraph (B) for the plan; minus

''(II) an amount equal to 10 percent of such target amount.

''(iii) FIRST THRESHOLD UPPER LIMIT.—The first threshold upper limit of such corridor shall be equal to the sum of—

''(I) such target amount; and

''(II) the amount described in clause (i)(II).

''(iv) SECOND THRESHOLD UPPER LIMIT.—The second threshold upper limit of such corridor shall be equal to the sum of—

''(I) such target amount; and

''(II) the amount described in clause (ii)(II).

''(B) TARGET AMOUNT DESCRIBED.—The target amount described in this paragraph is, with respect to a preferred provider organization plan offered by a preferred provider organization in a year, an amount equal to the sum of—

''(i) the total monthly payments made to the organization for enrollees in the plan for the year under subsection (c)(1)(A); and

''(ii) the total MedicareAdvantage basic beneficiary premiums collected for such enrollees for the year under subsection (d)(2)(A).

''(4) PLANS AT RISK FOR ENTIRE AMOUNT OF ENHANCED MEDICAL BENEFITS.—A preferred provider organization that offers a preferred provider organization plan that provides enhanced medial benefits under section 1852(a)(3)(D) shall be at full financial risk for the provision of such benefits.

''(5) NO EFFECT ON ELIGIBLE BENEFICIARIES.—No change in payments made by reason of this subsection shall affect the amount of the MedicareAdvantage basic beneficiary premium that a beneficiary is otherwise required to pay under the plan for the year under subsection (d)(2)(A).

''(6) DISCLOSURE OF INFORMATION.—The provisions of section 1860D–16(b)(7), including subparagraph (B) of such section, shall apply to a preferred provider organization and a preferred provider organization plan in the same manner as such provisions apply to an eligible entity and a Medicare Prescription Drug plan under part D.

''(f) ORGANIZATIONAL AND FINANCIAL REQUIREMENTS FOR PREFERRED PROVIDER ORGANIZATIONS.—A preferred provider organization shall be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State within the preferred provider region in which it offers a preferred provider organization plan.

''(g) INAPPLICABILITY OF PROVIDER-SPONSORED ORGANIZATION SOLVENCY STANDARDS.—The requirements of section 1856 shall not apply with respect to preferred provider organizations.

''(h) CONTRACTS WITH PREFERRED PROVIDER ORGANIZATIONS.—The provisions of section 1857 shall apply to a preferred provider organization plan offered by a preferred provider organization under this section.''.

(c) PREFERRED PROVIDER TERMINOLOGY DEFINED.—Section 1859(a) is amended by adding at the end the following new paragraph:

''(3) PREFERRED PROVIDER ORGANIZATION; PREFERRED PROVIDER ORGANIZATION PLAN; PREFERRED PROVIDER REGION.—The terms 'preferred provider organization', 'preferred provider organization plan', and 'preferred provider region' have the meaning given such terms in section 1858(a)(2).''.

Subtitle C—Other Managed Care Reforms

SEC. 221. EXTENSION OF REASONABLE COST CONTRACTS.

(a) FIVE-YEAR EXTENSION.—Section 1876(h)(5)(C) (42 U.S.C. 1395mm(h)(5)(C)) is amended by striking ''2004'' and inserting ''2009''.

(b) APPLICATION OF CERTAIN MEDICARE+CHOICE REQUIREMENTS TO COST CONTRACTS EXTENDED OR RENEWED AFTER 2003.—Section 1876(h) (42 U.S.C. 1395mm(h)(5)), as amended by subsection (a), is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph:

''(5) Any reasonable cost reimbursement contract with an eligible organization under this subsection that is extended or renewed on or after the date of enactment of the Prescription Drug and Medicare Improvements Act of 2003 for plan years beginning on or after January 1, 2004, shall provide that the following provisions of the Medicare+Choice program under part C (and, on and after January 1, 2006, the provisions of the MedicareAdvantage program under such part) shall apply to such organization and such contract in a substantially similar manner as such provisions apply to Medicare+Choice organizations and Medicare+Choice plans (or, on and after January 1, 2006, MedicareAdvantage organizations and MedicareAdvantage plans, respectively) under such part:

''(A) Paragraph (1) of section 1852(e) (relating to the requirement of having an ongoing quality assurance program) and paragraph (2)(B) of such section (relating to the required elements for such a program).

''(B) Section 1852(j)(4) (relating to limitations on physician incentive plans).

''(C) Section 1854(c) (relating to the requirement of uniform premiums among individuals enrolled in the plan).

''(D) Section 1854(g), or, on and after January 1, 2006, section 1854(h) (relating to restrictions on imposition of premium taxes with respect to payments to organizations).

''(E) Section 1856(b) (regarding compliance with the standards established by regulation pursuant to such section, including the provisions of paragraph (3) of such section relating to relation to State laws).

''(F) Section 1852(a)(3)(A) (regarding the authority of organizations to include supplemental health care benefits and, on and after January 1, 2006, enhanced medical benefits under the plan subject to the approval of the Secretary).

''(G) The provisions of part C relating to timelines for benefit filings, contract renewal, and beneficiary notification.

''(H) Section 1854(e), or, on and after January 1, 2006, section 1854(f) (relating to proposed cost-sharing under the contract being subject to review by the Secretary).''.

(c) PERMITTING DEDICATED GROUP PRACTICE HEALTH MAINTENANCE ORGANIZATIONS TO PARTICIPATE IN THE MEDICARE COST CONTRACT PROGRAM.—Section 1876(h)(6) of the Social Security Act (42 U.S.C. 1395mm(h)(6)), as redesignated and amended by subsections (a) and (b), is amended—

(1) in subparagraph (A), by striking ''After the date of the enactment'' and inserting ''Except as provided in subparagraph (C), after the date of the enactment'';

(2) in subparagraph (B), by striking ''subparagraph (C)'' and inserting ''subparagraph (D)'';

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

(4) by inserting after subparagraph (B), the following new subparagraph:

''(C) Subject to paragraph (5) and subparagraph (D), the Secretary shall approve an application to enter into a reasonable cost contract under this section if—

''(i) the application is submitted to the Secretary by a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act) that, as of January 1, 2004, and except as provided in section 1301(b)(3)(B) of such Act, provides at least 85 percent of the services of a physician which are provided as basic health services through a medical group (or groups), as defined in section 1302(4) of such Act; and

''(ii) the Secretary determines that the organization meets the requirements applicable to such organizations and contracts under this section.''.

SEC. 222. SPECIALIZED MEDICARE+CHOICE PLANS FOR SPECIAL NEEDS BENEFICIARIES.

(a) TREATMENT AS COORDINATED CARE PLAN.—Section 1851(a)(2)(A) (42 U.S.C. 1395w–21(a)(2)(A)) is amended by adding at the end the following new sentence: ''Specialized Medicare+Choice plans for special needs beneficiaries (as defined in section 1859(b)(4)) may be any type of coordinated care plan.''.

(b) SPECIALIZED MEDICARE+CHOICE PLAN FOR SPECIAL NEEDS BENEFICIARIES DEFINED.—Section 1859(b) (42 U.S.C. 1395w–28(b)) is amended by adding at the end the following new paragraph:

''(4) SPECIALIZED MEDICARE+CHOICE PLANS FOR SPECIAL NEEDS BENEFICIARIES.—

''(A) IN GENERAL.—The term 'specialized Medicare+Choice plan for special needs beneficiaries' means a Medicare+Choice plan that exclusively serves special needs beneficiaries (as defined in subparagraph (B)).

''(B) SPECIAL NEEDS BENEFICIARY.—The term 'special needs beneficiary' means a Medicare+Choice eligible individual who—

''(i) is institutionalized (as defined by the Secretary);

''(ii) is entitled to medical assistance under a State plan under title XIX; or

''(iii) meets such requirements as the Secretary may determine would benefit from enrollment in such a specialized Medicare+Choice plan described in subparagraph (A) for individuals with severe or disabling chronic conditions.''.

(c) RESTRICTION ON ENROLLMENT PERMITTED.—Section 1859 (42 U.S.C. 1395w–28) is amended by adding at the end the following new subsection:

''(f) RESTRICTION ON ENROLLMENT FOR SPECIALIZED MEDICARE+CHOICE PLANS FOR SPECIAL NEEDS BENEFICIARIES.—In the case of a specialized Medicare+Choice plan (as defined in subsection (b)(4)), notwithstanding any other provision of this part and in accordance with regulations of the Secretary and for periods before January 1, 2008, the plan may restrict the enrollment of individuals under the plan to individuals who are within 1 or more classes of special needs beneficiaries.''.

(d) REPORT TO CONGRESS.—Not later than December 31, 2006, the Secretary shall submit to Congress a report that assesses the impact of specialized Medicare+Choice plans for special needs beneficiaries on the cost and quality of services provided to enrollees. Such report shall include an assessment of the costs and savings to the medicare program as a result of amendments made by subsections (a), (b), and (c).

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall take effect on the date of enactment of this Act.

(2) DEADLINE FOR ISSUANCE OF REQUIREMENTS FOR SPECIAL NEEDS BENEFICIARIES; TRANSITION.—No later than 1 year after the date of enactment of this Act, the Secretary shall issue final regulations to establish requirements for special needs beneficiaries under section 1859(b)(4)(B)(iii) of the Social Security Act, as added by subsection (b).

SEC. 223. PAYMENT BY PACE PROVIDERS FOR MEDICARE AND MEDICAID SERVICES FURNISHED BY NONCONTRACT PROVIDERS.

(a) MEDICARE SERVICES.—

(1) MEDICARE SERVICES FURNISHED BY PROVIDERS OF SERVICES.—Section 1866(a)(1)(O) (42 U.S.C. 1395cc(a)(1)(O)) is amended—

(A) by striking ''part C or'' and inserting ''part C, with a PACE provider under section 1894 or 1934, or'';

(B) by striking ''(i)'';

(C) by striking ''and (ii)''; and

(D) by striking ''members of the organization'' and inserting ''members of the organization or PACE program eligible individuals enrolled with the PACE provider,''.

(2) MEDICARE SERVICES FURNISHED BY PHYSICIANS AND OTHER ENTITIES.—Section 1894(b) (42 U.S.C. 1395eee(b)) is amended by adding at the end the following new paragraphs:

''(3) TREATMENT OF MEDICARE SERVICES FURNISHED BY NONCONTRACT PHYSICIANS AND OTHER ENTITIES.—

''(A) APPLICATION OF MEDICARE+CHOICE REQUIREMENT WITH RESPECT TO MEDICARE SERVICES FURNISHED BY NONCONTRACT PHYSICIANS AND OTHER ENTITIES.—Section 1852(k)(1) (relating to limitations on balance billing against Medicare+Choice organizations for noncontract physicians and other entities with respect to services covered under this title) shall apply to PACE providers, PACE program eligible individuals enrolled with such PACE providers, and physicians and other entities that do not have a contract establishing payment amounts for services furnished to such an individual in the same manner as such section applies to Medicare+Choice organizations, individuals enrolled with such organizations, and physicians and other entities referred to in such section.

''(B) REFERENCE TO RELATED PROVISION FOR NONCONTRACT PROVIDERS OF SERVICES.—For the provision relating to limitations on balance billing against PACE providers for services covered under this title furnished by noncontract providers of services, see section 1866(a)(1)(O).

''(4) REFERENCE TO RELATED PROVISION FOR SERVICES COVERED UNDER TITLE XIX BUT NOT UNDER THIS TITLE.—For provisions relating to limitations on payments to providers participating under the State plan under title XIX that do not have a contract with a PACE provider establishing payment amounts for services covered under such plan (but not under this title) when such services are furnished to enrollees of that PACE provider, see section 1902(a)(66).''.

(b) MEDICAID SERVICES.—

(1) REQUIREMENT UNDER STATE PLAN.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (64), by striking ''and'' at the end;

(B) in paragraph (65), by striking the period at the end and inserting ''; and''; and

(C) by inserting after paragraph (65) the following new paragraph:

''(66) provide, with respect to services covered under the State plan (but not under title XVIII) that are furnished to a PACE program eligible individual enrolled with a PACE provider by a provider participating under the State plan that does not have a contract with the PACE provider that establishes payment amounts for such services, that such participating provider may not require the PACE provider to pay the participating provider an amount greater than the amount that would otherwise be payable for the service to the participating provider under the State plan for the State where the PACE provider is located (in accordance with regulations issued by the Secretary).''.

(2) REFERENCE IN MEDICAID STATUTE.—Section 1934(b) (42 U.S.C. 1396u–4(b)) is amended by adding at the end the following new paragraphs:

''(3) TREATMENT OF MEDICARE SERVICES FURNISHED BY NONCONTRACT PHYSICIANS AND OTHER ENTITIES.—

''(A) APPLICATION OF MEDICARE+CHOICE REQUIREMENT WITH RESPECT TO MEDICARE SERVICES FURNISHED BY NONCONTRACT PHYSICIANS AND OTHER ENTITIES.—Section 1852(k)(1) (relating to limitations on balance billing against Medicare+Choice organizations for noncontract physicians and other entities with respect to services covered under title XVIII) shall apply to PACE providers, PACE program eligible individuals enrolled with such PACE providers, and physicians and other entities that do not have a contract establishing payment amounts for services furnished to such an individual in the same manner as such section applies to Medicare+Choice organizations, individuals enrolled with such organizations, and physicians and other entities referred to in such section.

''(B) REFERENCE TO RELATED PROVISION FOR NONCONTRACT PROVIDERS OF SERVICES.—For the provision relating to limitations on balance billing against PACE providers for services covered under title XVIII furnished by noncontract providers of services, see section 1866(a)(1)(O).

''(4) REFERENCE TO RELATED PROVISION FOR SERVICES COVERED UNDER THIS TITLE BUT NOT UNDER TITLE XVIII.—For provisions relating to limitations on payments to providers participating under the State plan under this title that do not have a contract with a PACE provider establishing payment amounts for services covered under such plan (but not under title XVIII) when such services are furnished to enrollees of that PACE provider, see section 1902(a)(66).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2004.

SEC. 224. INSTITUTE OF MEDICINE EVALUATION AND REPORT ON HEALTH CARE PERFORMANCE MEASURES.

(a) EVALUATION.—

(1) IN GENERAL.—Not later than the date that is 2 months after the date of enactment of this Act, the Secretary of Health and Human Services shall enter into an arrangement under which the Institute of Medicine of the National Academy of Sciences (in this section referred to as the ''Institute'') shall conduct an evaluation of leading health care performance measures and options to implement policies that align performance with payment under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(2) SPECIFIC MATTERS EVALUATED.—In conducting the evaluation under paragraph (1), the Institute shall—

(A) catalogue, review, and evaluate the validity of leading health care performance measures;

(B) catalogue and evaluate the success and utility of alternative performance incentive programs in public or private sector settings; and

(C) identify and prioritize options to implement policies that align performance with payment under the medicare program that indicate—

(i) the performance measurement set to be used and how that measurement set will be updated;

(ii) the payment policy that will reward performance; and

(iii) the key implementation issues (such as data and information technology requirements) that must be addressed.

(3) SCOPE OF HEALTH CARE PERFORMANCE MEASURES.—The health care performance measures described in paragraph (2)(A) shall encompass a variety of perspectives, including physicians, hospitals, health plans, purchasers, and consumers.

(4) CONSULTATION WITH MEDPAC.—In evaluating the matters described in paragraph (2)(C), the Institute shall consult with the Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6).

(b) REPORT.—Not later than the date that is 18 months after the date of enactment of this Act, the Institute shall submit to the Secretary of Health and Human Services, the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate a report on the evaluation conducted under subsection (a)(1) describing the findings of such evaluation and recommendations for an overall strategy and approach for aligning payment with performance in the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act, the Medicare+Choice program under part C of such title, and any other programs under such title XVIII.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for purposes of conducting the evaluation and preparing the report required by this section.

SEC. 225. EXPANDING THE WORK OF MEDICARE QUALITY IMPROVEMENT ORGANIZATIONS TO INCLUDE PARTS C AND D.

(a) APPLICATION TO MEDICARE MANAGED CARE AND PRESCRIPTION DRUG COVERAGE.—Section 1154(a)(1) (42 U.S.C. 1320c–3(a)(1)) is amended by inserting '', Medicare+Choice organizations and MedicareAdvantage organizations under part C, and prescription drug card sponsors and eligible entities under part D'' after ''under section 1876''.

(b) PRESCRIPTION DRUG THERAPY QUALITY IMPROVEMENT.—Section 1154(a) (42 U.S.C. 1320c–3(a)) is amended by adding at the end the following new paragraph:

''(17) The organization shall execute its responsibilities under subparagraphs (A) and (B) of paragraph (1) by offering to providers, practitioners, prescription drug card sponsors and eligible entities under part D, and Medicare+Choice and MedicareAdvantage plans under part C quality improvement assistance pertaining to prescription drug therapy. For purposes of this part and title XVIII, the functions described in this paragraph shall be treated as a review function.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply on and after January 1, 2004.

TITLE III—CENTER FOR MEDICARE CHOICES

SEC. 301. ESTABLISHMENT OF THE CENTER FOR MEDICARE CHOICES.

(a) IN GENERAL.—Title XVIII (42 U.S.C. 1395 et seq.), as amended by section 111, is amended by inserting after 1806 the following new section:

''ESTABLISHMENT OF THE CENTER FOR MEDICARE CHOICES

''SEC. 1808. (a) ESTABLISHMENT.—By not later than March 1, 2004, the Secretary shall establish within the Department of Health and Human Services the Center for Medicare Choices, which shall be separate from the Centers for Medicare & Medicaid Services.

''(b) ADMINISTRATOR AND DEPUTY ADMINISTRATOR.—

''(1) ADMINISTRATOR.—

''(A) IN GENERAL.—The Center for Medicare Choices shall be headed by an Administrator (in this section referred to as the 'Administrator') who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall report directly to the Secretary.

''(B) COMPENSATION.—The Administrator shall be paid at the rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(C) TERM OF OFFICE.—The Administrator shall be appointed for a term of 5 years. In any case in which a successor does not take office at the end of an Administrator's term of office, that Administrator may continue in office until the entry upon office of such a successor. An Administrator appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term.

''(D) GENERAL AUTHORITY.—The Administrator shall be responsible for the exercise of all powers and the discharge of all duties of the Center for Medicare Choices, and shall have authority and control over all personnel and activities thereof.

''(E) RULEMAKING AUTHORITY.—The Administrator may prescribe such rules and regulations as the Administrator determines necessary or appropriate to carry out the functions of the Center for Medicare Choices. The regulations prescribed by the Administrator shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.

''(F) AUTHORITY TO ESTABLISH ORGANIZATIONAL UNITS.—The Administrator may establish, alter, consolidate, or discontinue such organizational units or components within the Center for Medicare Choices as the Administrator considers necessary or appropriate, except that this subparagraph shall not apply with respect to any unit, component, or provision provided for by this section.

''(G) AUTHORITY TO DELEGATE.—The Administrator may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees of the Center for Medicare Choices as the Administrator may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Administrator.

''(2) DEPUTY ADMINISTRATOR.—

''(A) IN GENERAL.—There shall be a Deputy Administrator of the Center for Medicare Choices who shall be appointed by the Administrator.

''(B) COMPENSATION.—The Deputy Administrator shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(C) TERM OF OFFICE.—The Deputy Administrator shall be appointed for a term of 5 years. In any case in which a successor does not take office at the end of a Deputy Administrator's term of office, such Deputy Administrator may continue in office until the entry upon office of such a successor. A Deputy Administrator appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term.

''(D) DUTIES.—The Deputy Administrator shall perform such duties and exercise such powers as the Administrator shall from time to time assign or delegate. The Deputy Administrator shall be the Acting Administrator of the Center for Medicare Choices during the absence or disability of the Administrator and, unless the President designates another officer of the Government as Acting Administrator, in the event of a vacancy in the office of the Administrator.

''(3) SECRETARIAL COORDINATION OF PROGRAM ADMINISTRATION.—The Secretary shall ensure appropriate coordination between the Administrator and the Administrator of the Centers for Medicare & Medicaid Services in carrying out the programs under this title.

''(c) DUTIES; ADMINISTRATIVE PROVISIONS.—

''(1) DUTIES.—

''(A) GENERAL DUTIES.—The Administrator shall carry out parts C and D, including—

''(i) negotiating, entering into, and enforcing, contracts with plans for the offering of MedicareAdvantage plans under part C, including the offering of qualified prescription drug coverage under such plans; and

''(ii) negotiating, entering into, and enforcing, contracts with eligible entities for the offering of Medicare Prescription Drug plans under part D.

''(B) OTHER DUTIES.—The Administrator shall carry out any duty provided for under part C or D, including duties relating to—

''(i) reasonable cost contracts with eligible organizations under section 1876(h); and

''(ii) demonstration projects carried out in part or in whole under such parts, including the demonstration project carried out through a MedicareAdvantage (formerly Medicare+Choice) project that demonstrates the application of capitation payment rates for frail elderly medicare beneficiaries through the use of an interdisciplinary team and through the provision of primary care services to such beneficiaries by means of such a team at the nursing facility involved.

''(C) NONINTERFERENCE.—In order to promote competition under parts C and D, the Administrator, in carrying out the duties required under this section, may not, to the extent possible, interfere in any way with negotiations between eligible entities, MedicareAdvantage organizations, hospitals, physicians, other entities or individuals furnishing items and services under this title (including contractors for such items and services), and drug manufacturers, wholesalers, or other suppliers of covered drugs

''(D) ANNUAL REPORTS.—Not later than March 31 of each year, the Administrator shall submit to Congress and the President a report on the administration of the voluntary prescription drug delivery program under this part during the previous fiscal year.

''(2) MANAGEMENT STAFF.—

''(A) IN GENERAL.—The Administrator, with the approval of the Secretary, may employ, such management staff as determined appropriate. Any such manager shall be required to have demonstrated, by their education and experience (either in the public or private sector), superior expertise in the following areas:

''(i) The review, negotiation, and administration of health care contracts.

''(ii) The design of health care benefit plans.

''(iii) Actuarial sciences.

''(iv) Compliance with health plan contracts.

''(v) Consumer education and decision making.

''(B) COMPENSATION.—

''(i) IN GENERAL.—Subject to clause (ii), the Administrator shall establish the rate of pay for an individual employed under subparagraph (A).

''(ii) MAXIMUM RATE.—In no case may the rate of compensation determined under clause (i) exceed the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.

''(3) REDELEGATION OF CERTAIN FUNCTIONS OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES.—

''(A) IN GENERAL.—The Secretary, the Administrator of the Center for Medicare Choices, and the Administrator of the Centers for Medicare & Medicaid Services shall establish an appropriate transition of responsibility in order to redelegate the administration of part C from the Secretary and the Administrator of the Centers for Medicare & Medicaid Services to the Administrator of the Center for Medicare Choices as is appropriate to carry out the purposes of this section.

''(B) TRANSFER OF DATA AND INFORMATION.—The Secretary shall ensure that the Administrator of the Centers for Medicare & Medicaid Services transfers to the Administrator such information and data in the possession of the Administrator of the Centers for Medicare & Medicaid Services as the Administrator requires to carry out the duties described in paragraph (1).

''(C) CONSTRUCTION.—Insofar as a responsibility of the Secretary or the Administrator of the Centers for Medicare & Medicaid Services is redelegated to the Administrator under this section, any reference to the Secretary or the Administrator of the Centers for Medicare & Medicaid Services in this title or title XI with respect to such responsibility is deemed to be a reference to the Administrator.

''(d) OFFICE OF BENEFICIARY ASSISTANCE.—

''(1) ESTABLISHMENT.—The Secretary shall establish within the Center for Medicare Choices an Office of Beneficiary Assistance to carry out functions relating to medicare beneficiaries under this title, including making determinations of eligibility of individuals for benefits under this title, providing for enrollment of medicare beneficiaries under this title, and the functions described in paragraph (2). The Office shall be a separate operating division within the Center for Medicare Choices.

''(2) DISSEMINATION OF INFORMATION ON BENEFITS AND APPEALS RIGHTS.—

''(A) DISSEMINATION OF BENEFITS INFORMATION.—The Office of Beneficiary Assistance shall disseminate to medicare beneficiaries, by mail, by posting on the Internet site of the Center for Medicare Choices, and through the toll-free telephone number provided for under section 1804(b), information with respect to the following:

''(i) Benefits, and limitations on payment (including cost-sharing, stop-loss provisions, and formulary restrictions) under parts C and D.

''(ii) Benefits, and limitations on payment under parts A, and B, including information on medicare supplemental policies under section 1882.

''(iii) Other areas determined to be appropriate by the Administrator.

Such information shall be presented in a manner so that medicare beneficiaries may compare benefits under parts A, B, and D, and medicare supplemental policies with benefits under MedicareAdvantage plans under part C.

''(B) DISSEMINATION OF APPEALS RIGHTS INFORMATION.—The Office of Beneficiary Assistance shall disseminate to medicare beneficiaries in the manner provided under subparagraph (A) a description of procedural rights (including grievance and appeals procedures) of beneficiaries under the original medicare fee-for-service program under parts A and B, the MedicareAdvantage program under part C, and the voluntary prescription drug delivery program under part D.

''(3) MEDICARE OMBUDSMAN.—

''(A) IN GENERAL.—Within the Office of Beneficiary Assistance, there shall be a Medicare Ombudsman, appointed by the Secretary from among individuals with expertise and experience in the fields of health care and advocacy, to carry out the duties described in subparagraph (B).

''(B) DUTIES.—The Medicare Ombudsman shall—

''(i) receive complaints, grievances, and requests for information submitted by a medicare beneficiary, with respect to any aspect of the medicare program;

''(ii) provide assistance with respect to complaints, grievances, and requests referred to in clause (i), including—

''(I) assistance in collecting relevant information for such beneficiaries, to seek an appeal of a decision or determination made by a fiscal intermediary, carrier, MedicareAdvantage organization, an eligible entity under part D, or the Secretary; and

''(II) assistance to such beneficiaries with any problems arising from disenrollment from a MedicareAdvantage plan under part C or a prescription drug plan under part D; and

''(iii) submit annual reports to Congress, the Secretary, and the Medicare Competitive Policy Advisory Board describing the activities of the Office, and including such recommendations for improvement in the administration of this title as the Ombudsman determines appropriate.

''(C) COORDINATION WITH STATE OMBUDSMAN PROGRAMS AND CONSUMER ORGANIZATIONS.—The Medicare Ombudsman shall, to the extent appropriate, coordinate with State medical Ombudsman programs, and with State- and community-based consumer organizations, to—

''(i) provide information about the medicare program; and

''(ii) conduct outreach to educate medicare beneficiaries with respect to manners in which problems under the medicare program may be resolved or avoided.

''(e) MEDICARE COMPETITIVE POLICY ADVISORY BOARD.—

''(1) ESTABLISHMENT.—There is established within the Center for Medicare Choices the Medicare Competitive Policy Advisory Board (in this section referred to as the 'Board'). The Board shall advise, consult with, and make recommendations to the Administrator with respect to the administration of parts C and D, including the review of payment policies under such parts.

''(2) REPORTS.—

''(A) IN GENERAL.—With respect to matters of the administration of parts C and D, the Board shall submit to Congress and to the Administrator such reports as the Board determines appropriate. Each such report may contain such recommendations as the Board determines appropriate for legislative or administrative changes to improve the administration of such parts, including the stability and solvency of the programs under such parts and the topics described in subparagraph (B). Each such report shall be published in the Federal Register.

''(B) TOPICS DESCRIBED.—Reports required under subparagraph (A) may include the following topics:

''(i) FOSTERING COMPETITION.—Recommendations or proposals to increase competition under parts C and D for services furnished to medicare beneficiaries.

''(ii) EDUCATION AND ENROLLMENT.—Recommendations for the improvement of efforts to provide medicare beneficiaries information and education on the program under this title, and specifically parts C and D, and the program for enrollment under the title.

''(iii) QUALITY.—Recommendations on ways to improve the quality of benefits provided under plans under parts C and D.

''(iv) DISEASE MANAGEMENT PROGRAMS.—Recommendations on the incorporation of disease management programs under parts C and D.

''(v) RURAL ACCESS.—Recommendations to improve competition and access to plans under parts C and D in rural areas.

''(C) MAINTAINING INDEPENDENCE OF BOARD.—The Board shall directly submit to Congress reports required under subparagraph (A). No officer or agency of the United States may require the Board to submit to any officer or agency of the United States for approval, comments, or review, prior to the submission to Congress of such reports.

''(3) DUTY OF ADMINISTRATOR.—With respect to any report submitted by the Board under paragraph (2)(A), not later than 90 days after the report is submitted, the Administrator shall submit to Congress and the President an analysis of recommendations made by the Board in such report. Each such analysis shall be published in the Federal Register.

''(4) MEMBERSHIP.—

''(A) APPOINTMENT.—Subject to the succeeding provisions of this paragraph, the Board shall consist of 7 members to be appointed as follows:

''(i) Three members shall be appointed by the President.

''(ii) Two members shall be appointed by the Speaker of the House of Representatives, with the advice of the chairman and the ranking minority member of the Committees on Ways and Means and on Energy and Commerce of the House of Representatives.

''(iii) Two members shall be appointed by the President pro tempore of the Senate with the advice of the chairman and the ranking minority member of the Committee on Finance of the Senate.

''(B) QUALIFICATIONS.—The members shall be chosen on the basis of their integrity, impartiality, and good judgment, and shall be individuals who are, by reason of their education and experience in health care benefits management, exceptionally qualified to perform the duties of members of the Board.

''(C) PROHIBITION ON INCLUSION OF FEDERAL EMPLOYEES.—No officer or employee of the United States may serve as a member of the Board.

''(5) COMPENSATION.—Members of the Board shall receive, for each day (including travel time) they are engaged in the performance of the functions of the Board, compensation at rates not to exceed the daily equivalent to the annual rate in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(6) TERMS OF OFFICE.—

''(A) IN GENERAL.—The term of office of members of the Board shall be 3 years.

''(B) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed—

''(i) one shall be appointed for a term of 1 year;

''(ii) three shall be appointed for terms of 2 years; and

''(iii) three shall be appointed for terms of 3 years.

''(C) REAPPOINTMENTS.—Any person appointed as a member of the Board may not serve for more than 8 years.

''(D) VACANCY.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Board shall be filled in the manner in which the original appointment was made.

''(7) CHAIR.—The Chair of the Board shall be elected by the members. The term of office of the Chair shall be 3 years.

''(8) MEETINGS.—The Board shall meet at the call of the Chair, but in no event less than 3 times during each fiscal year.

''(9) DIRECTOR AND STAFF.—

''(A) APPOINTMENT OF DIRECTOR.—The Board shall have a Director who shall be appointed by the Chair.

''(B) IN GENERAL.—With the approval of the Board, the Director may appoint such additional personnel as the Director considers appropriate.

''(C) ASSISTANCE FROM THE ADMINISTRATOR.—The Administrator shall make available to the Board such information and other assistance as it may require to carry out its functions.

''(10) CONTRACT AUTHORITY.—The Board may contract with and compensate government and private agencies or persons to carry out its duties under this subsection, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

''(f) FUNDING.—There is authorized to be appropriated, in appropriate part from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund (including the Prescription Drug Account), such sums as are necessary to carry out this section.''.

(b) USE OF CENTRAL, TOLL-FREE NUMBER (1–800–MEDICARE).—Section 1804(b) (42 U.S.C. 1395b–2(b)) is amended by adding at the end the following: ''By not later than 1 year after the date of the enactment of the Prescription Drug and Medicare Improvement Act of 2003, the Secretary shall provide, through the toll-free number 1–800–MEDICARE, for a means by which individuals seeking information about, or assistance with, such programs who phone such toll-free number are transferred (without charge) to appropriate entities for the provision of such information or assistance. Such toll-free number shall be the toll-free number listed for general information and assistance in the annual notice under subsection (a) instead of the listing of numbers of individual contractors.''.

SEC. 302. MISCELLANEOUS ADMINISTRATIVE PROVISIONS.

(a) ADMINISTRATOR AS MEMBER AND CO-SECRETARY OF THE BOARD OF TRUSTEES OF THE MEDICARE TRUST FUNDS.—The fifth sentence of sections 1817(b) and 1841(b) (42 U.S.C. 1395i(b), 1395t(b)) are each amended by striking ''shall serve as the Secretary'' and inserting ''and the Administrator of the Center for Medicare Choices shall serve as the Co-Secretaries''.

(b) INCREASE IN GRADE TO EXECUTIVE LEVEL III FOR THE ADMINISTRATOR OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES.—

(1) IN GENERAL.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Administrator of the Centers for Medicare & Medicaid Services.''.

(2) CONFORMING AMENDMENT.—Section 5315 of such title is amended by striking ''Administrator of the Health Care Financing Administration.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection take effect on March 1, 2004.

TITLE IV—MEDICARE FEE-FOR-SERVICE IMPROVEMENTS

Subtitle A—Provisions Relating to Part A

SEC. 401. EQUALIZING URBAN AND RURAL STANDARDIZED PAYMENT AMOUNTS UNDER THE MEDICARE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1886(d)(3)(A)(iv) (42 U.S.C. 1395ww(d)(3)(A)(iv)) is amended—

(1) by striking ''(iv) For discharges'' and inserting ''(iv)(I) Subject to the succeeding provisions of this clause, for discharges''; and

(2) by adding at the end the following new subclauses:

''(II) For discharges occurring during the last 3 quarters of fiscal year 2004, the operating standardized amount for hospitals located other than in a large urban area shall be increased by ½ of the difference between the operating standardized amount determined under subclause (I) for hospitals located in large urban areas for such fiscal year and such amount determined (without regard to this subclause) for other hospitals for such fiscal year.

''(III) For discharges occurring in a fiscal year beginning with fiscal year 2005, the Secretary shall compute an operating standardized amount for hospitals located in any area within the United States and within each region equal to the operating standardized amount computed for the previous fiscal year under this subparagraph for hospitals located in a large urban area (or, beginning with fiscal year 2006, applicable for all hospitals in the previous fiscal year) increased by the applicable percentage increase under

subsection (b)(3)(B)(i) for the fiscal year involved.''.

(b) CONFORMING AMENDMENTS.—

(1) COMPUTING DRG-SPECIFIC RATES.—Section 1886(d)(3)(D) (42 U.S.C. 1395ww(d)(3)(D)) is amended—

(A) in the heading, by striking ''IN DIFFERENT AREAS'';

(B) in the matter preceding clause (i), by striking ''each of which is'';

(C) in clause (i)—

(i) in the matter preceding subclause (I), by inserting ''for fiscal years before fiscal year 2005,'' before ''for hospitals''; and

(ii) in subclause (II), by striking ''and'' after the semicolon at the end;

(D) in clause (ii)—

(i) in the matter preceding subclause (I), by inserting ''for fiscal years before fiscal year 2005,'' before ''for hospitals''; and

(ii) in subclause (II), by striking the period at the end and inserting ''; and''; and

(E) by adding at the end the following new clause:

''(iii) for a fiscal year beginning after fiscal year 2004, for hospitals located in all areas, to the product of—

''(I) the applicable operating standardized amount (computed under subparagraph (A)), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C) for the fiscal year; and

''(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.''.

(2) TECHNICAL CONFORMING SUNSET.—Section 1886(d)(3) (42 U.S.C. 1395ww(d)(3)) is amended—

(A) in the matter preceding subparagraph (A), by inserting '', for fiscal years before fiscal year 1997,'' before ''a regional adjusted DRG prospective payment rate''; and

(B) in subparagraph (D), in the matter preceding clause (i), by inserting '', for fiscal years before fiscal year 1997,'' before ''a regional DRG prospective payment rate for each region,''.

SEC. 402. ADJUSTMENT TO THE MEDICARE INPATIENT HOSPITAL PPS WAGE INDEX TO REVISE THE LABOR-RELATED SHARE OF SUCH INDEX.

(a) IN GENERAL.—Section 1886(d)(3)(E) (42 U.S.C. 1395ww(d)(3)(E)) is amended—

(1) by striking ''WAGE LEVELS.—The Secretary'' and inserting ''WAGE LEVELS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the Secretary''; and

(2) by adding at the end the following new clause:

''(ii) ALTERNATIVE PROPORTION TO BE ADJUSTED BEGINNING IN FISCAL YEAR 2005.—

''(I) IN GENERAL.—Except as provided in subclause (II), for discharges occurring on or after October 1, 2004, the Secretary shall substitute '62 percent' for the proportion described in the first sentence of clause (i).

''(II) HOLD HARMLESS FOR CERTAIN HOSPITALS.—If the application of subclause (I) would result in lower payments to a hospital than would otherwise be made, then this subparagraph shall be applied as if this clause had not been enacted.''.

(b) WAIVING BUDGET NEUTRALITY.—Section 1886(d)(3)(E) (42 U.S.C. 1395ww(d)(3)(E)), as amended by subsection (a), is amended by adding at the end of clause (i) the following new sentence: ''The Secretary shall apply the previous sentence for any period as if the amendments made by section 402(a) of the Prescription Drug and Medicare Improvement Act of 2003 had not been enacted.''.

SEC. 403. MEDICARE INPATIENT HOSPITAL PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.

Section 1886(d) (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

''(12) PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.—

''(A) PAYMENT ADJUSTMENT.—

''(i) IN GENERAL.—Notwithstanding any other provision of this section, for each cost reporting period (beginning with the cost reporting period that begins in fiscal year 2005), the Secretary shall provide for an additional payment amount to each low-volume hospital (as defined in clause (iii)) for discharges occurring during that cost reporting period which is equal to the applicable percentage increase (determined under clause (ii)) in the amount paid to such hospital under this section for such discharges.

''(ii) APPLICABLE PERCENTAGE INCREASE.—The Secretary shall determine a percentage increase applicable under this paragraph that ensures that—

''(I) no percentage increase in payments under this paragraph exceeds 25 percent of the amount of payment that would (but for this paragraph) otherwise be made to a low-volume hospital under this section for each discharge;

''(II) low-volume hospitals that have the lowest number of discharges during a cost reporting period receive the highest percentage increases in payments due to the application of this paragraph; and

''(III) the percentage increase in payments to any low-volume hospital due to the application of this paragraph is reduced as the number of discharges per cost reporting period increases.

''(iii) LOW-VOLUME HOSPITAL DEFINED.—For purposes of this paragraph, the term 'low-volume hospital' means, for a cost reporting period, a subsection (d) hospital (as defined in paragraph (1)(B)) other than a critical access hospital (as defined in section 1861(mm)(1)) that—

''(I) the Secretary determines had an average of less than 2,000 discharges (determined with respect to all patients and not just individuals receiving benefits under this title) during the 3 most recent cost reporting periods for which data are available that precede the cost reporting period to which this paragraph applies; and

''(II) is located at least 15 miles from a like hospital (or is deemed by the Secretary to be so located by reason of such factors as the Secretary determines appropriate, including the time required for an individual to travel to the nearest alternative source of appropriate inpatient care (after taking into account the location of such alternative source of inpatient care and any weather or travel conditions that may affect such travel time).

''(B) PROHIBITING CERTAIN REDUCTIONS.—Notwithstanding subsection (e), the Secretary shall not reduce the payment amounts under this section to offset the increase in payments resulting from the application of subparagraph (A).''.

SEC. 404. FAIRNESS IN THE MEDICARE DISPROPORTIONATE SHARE HOSPITAL (DSH) ADJUSTMENT FOR RURAL HOSPITALS.

(a) EQUALIZING DSH PAYMENT AMOUNTS.—

(1) IN GENERAL.—Section 1886(d)(5)(F)(vii) (42 U.S.C. 1395ww(d)(5)(F)(vii)) is amended by inserting '', and, after October 1, 2004, for any other hospital described in clause (iv),'' after ''clause (iv)(I)'' in the matter preceding subclause (I).

(2) CONFORMING AMENDMENTS.—Section 1886(d)(5)(F) (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(A) in clause (iv)—

(i) in subclause (II)—

(I) by inserting ''and before October 1, 2004,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2004, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (xiii)'';

(ii) in subclause (III)—

(I) by inserting ''and before October 1, 2004,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2004, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (xii)'';

(iii) in subclause (IV)—

(I) by inserting ''and before October 1, 2004,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2004, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (x) or (xi)'';

(iv) in subclause (V)—

(I) by inserting ''and before October 1, 2004,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2004, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (xi)''; and

(v) in subclause (VI)—

(I) by inserting ''and before October 1, 2004,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2004, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (x)'';

(B) in clause (viii), by striking ''The formula'' and inserting ''For discharges occurring before October 1, 2004, the formula''; and

(C) in each of clauses (x), (xi), (xii), and (xiii), by striking ''For purposes'' and inserting ''With respect to discharges occurring before October 1, 2004, for purposes''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after October 1, 2004.

SEC. 405. CRITICAL ACCESS HOSPITAL (CAH) IMPROVEMENTS.

(a) PERMITTING CAHS TO ALLOCATE SWING BEDS AND ACUTE CARE INPATIENT BEDS SUBJECT TO A TOTAL LIMIT OF 25 BEDS.—

(1) IN GENERAL.—Section 1820(c)(2)(B)(iii) (42 U.S.C. 1395i–4(c)(2)(B)(iii)) is amended to read as follows:

''(iii) provides not more than a total of 25 extended care service beds (pursuant to an agreement under subsection (f)) and acute care inpatient beds (meeting such standards as the Secretary may establish) for providing inpatient care for a period that does not exceed, as determined on an annual, average basis, 96 hours per patient;''.

(2) CONFORMING AMENDMENT.—Section 1820(f) (42 U.S.C. 1395i–4(f)) is amended by striking ''and the number of beds used at any time for acute care inpatient services does not exceed 15 beds''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall with respect to designations made on or after October 1, 2004.

(b) ELIMINATION OF THE ISOLATION TEST FOR COST-BASED CAH AMBULANCE SERVICES.—

(1) ELIMINATION.—

(A) IN GENERAL.—Section 1834(l)(8) (42 U.S.C. 1395m(l)(8)), as added by section 205(a) of BIPA (114 Stat. 2763A–482), is amended by striking the comma at the end of subparagraph (B) and all that follows and inserting a period.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to services furnished on or after January 1, 2005.

(2) TECHNICAL CORRECTION.—Section 1834(l) (42 U.S.C. 1395m(l)) is amended by redesignating paragraph (8), as added by section 221(a) of BIPA (114 Stat. 2763A–486), as paragraph (9).

(c) COVERAGE OF COSTS FOR CERTAIN EMERGENCY ROOM ON-CALL PROVIDERS.—

(1) IN GENERAL.—Section 1834(g)(5) (42 U.S.C. 1395m(g)(5)) is amended—

(A) in the heading—

(i) by inserting ''CERTAIN'' before ''EMERGENCY''; and

(ii) by striking ''PHYSICIANS'' and inserting ''PROVIDERS'';

(B) by striking ''emergency room physicians who are on-call (as defined by the Secretary)'' and inserting ''physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) to provide emergency services''; and

(C) by striking ''physicians' services'' and inserting ''services covered under this title''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to costs incurred for services provided on or after January 1, 2005.

(d) AUTHORIZATION OF PERIODIC INTERIM PAYMENT (PIP).—

(1) IN GENERAL.—Section 1815(e)(2) (42 U.S.C. 1395g(e)(2)) is amended—

(A) in subparagraph (C), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (D), by adding ''and'' after the semicolon at the end; and

(C) by inserting after subparagraph (D) the following new subparagraph:

''(E) inpatient critical access hospital services;''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to payments for inpatient critical access facility services furnished on or after January 1, 2005.

(e) EXCLUSION OF NEW CAHS FROM PPS HOSPITAL WAGE INDEX CALCULATION.—Section 1886(d)(3)(E)(i) (42 U.S.C. 1395ww(d)(3)(E)(i)), as amended by section 402, is amended by inserting after the first sentence the following new sentence: ''In calculating the hospital wage levels under the preceding sentence applicable with respect to cost reporting periods beginning on or after January 1, 2004, the Secretary shall exclude the wage levels of any facility that became a critical access hospital prior to the cost reporting period for which such hospital wage levels are calculated.''.

(f) PROVISIONS RELATED TO CERTAIN RURAL GRANTS.—

(1) SMALL RURAL HOSPITAL IMPROVEMENT PROGRAM.—Section 1820(g) (42 U.S.C. 1395i–4(g)) is amended—

(A) by redesignating paragraph (3)(F) as paragraph (5) and redesignating and indenting appropriately; and

(B) by inserting after paragraph (3) the following new paragraph:

''(4) SMALL RURAL HOSPITAL IMPROVEMENT PROGRAM.—

''(A) GRANTS TO HOSPITALS.—The Secretary may award grants to hospitals that have submitted applications in accordance with subparagraph (B) to assist eligible small rural hospitals (as defined in paragraph (3)(B)) in meeting the costs of reducing medical errors, increasing patient safety, protecting patient privacy, and improving hospital quality and performance.

''(B) APPLICATION.—A hospital seeking a grant under this paragraph shall submit an application to the Secretary on or before such date and in such form and manner as the Secretary specifies.

''(C) AMOUNT OF GRANT.—A grant to a hospital under this paragraph may not exceed $50,000.

''(D) USE OF FUNDS.—A hospital receiving a grant under this paragraph may use the funds for the purchase of computer software and hardware, the education and training of hospital staff, and obtaining technical assistance.''.

(2) AUTHORIZATION FOR APPROPRIATIONS.—Section 1820(j) (42 U.S.C. 1395i–4(j)) is amended to read as follows:

''(j) AUTHORIZATION OF APPROPRIATIONS.—

''(1) HI TRUST FUND.—There are authorized to be appropriated from the Federal Hospital Insurance Trust Fund for making grants to all States under—

''(A) subsection (g), $25,000,000 in each of the fiscal years 1998 through 2002; and

''(B) paragraphs (1) and (2) of subsection (g), $40,000,000 in each of the fiscal years 2004 through 2008.

''(2) GENERAL REVENUES.—There are authorized to be appropriated from amounts in the Treasury not otherwise appropriated for making grants to all States under subsection (g)(4), $25,000,000 in each of the fiscal years 2004 through 2008.''.

(3) REQUIREMENT THAT STATES AWARDED GRANTS CONSULT WITH THE STATE HOSPITAL ASSOCIATION AND RURAL HOSPITALS ON THE MOST APPROPRIATE WAYS TO USE SUCH GRANTS.—

(A) IN GENERAL.—Section 1820(g) (42 U.S.C. 1395i–4(g)), as amended by paragraph (1), is amended by adding at the end the following new paragraph:

''(6) REQUIRED CONSULTATION FOR STATES AWARDED GRANTS.—A State awarded a grant under paragraph (1) or (2) shall consult with the hospital association of such State and rural hospitals located in such State on the most appropriate ways to use the funds under such grant.''.

(B) EFFECTIVE DATE AND APPLICATION.—The amendment made by subparagraph (A) shall take effect on the date of enactment of this Act and shall apply to grants awarded on or after such date and to grants awarded prior to such date to the extent that funds under such grants have not been obligated as of such date.

SEC. 406. AUTHORIZING USE OF ARRANGEMENTS TO PROVIDE CORE HOSPICE SERVICES IN CERTAIN CIRCUMSTANCES.

(a) IN GENERAL.—Section 1861(dd)(5) (42 U.S.C. 1395x(dd)(5)) is amended by adding at the end the following:

''(D) In extraordinary, exigent, or other non-routine circumstances, such as unanticipated periods of high patient loads, staffing shortages due to illness or other events, or temporary travel of a patient outside a hospice program's service area, a hospice program may enter into arrangements with another hospice program for the provision by that other program of services described in paragraph (2)(A)(ii)(I). The provisions of paragraph (2)(A)(ii)(II) shall apply with respect to the services provided under such arrangements.

''(E) A hospice program may provide services described in paragraph (1)(A) other than directly by the program if the services are highly specialized services of a registered professional nurse and are provided non-routinely and so infrequently so that the provision of such services directly would be impracticable and prohibitively expensive.''.

(b) CONFORMING PAYMENT PROVISION.—Section 1814(i) (42 U.S.C. 1395f(i)) is amended by adding at the end the following new paragraph:

''(4) In the case of hospice care provided by a hospice program under arrangements under section 1861(dd)(5)(D) made by another hospice program, the hospice program that made the arrangements shall bill and be paid for the hospice care.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to hospice care provided on or after October 1, 2004.

SEC. 407. SERVICES PROVIDED TO HOSPICE PATIENTS BY NURSE PRACTITIONERS, CLINICAL NURSE SPECIALISTS, AND PHYSICIAN ASSISTANTS.

(a) IN GENERAL.—Section 1812(d)(2)(A) (42 U.S.C. 1395d(d)(2)(A) in the matter following clause (i)(II), is amended—

(1) by inserting ''or services described in section 1861(s)(2)(K)'' after ''except that clause (i) shall not apply to physicians' services''; and

(2) by inserting '', or by a physician assistant, nurse practitioner, or clinical nurse specialist whom is not an employee of the hospice program, and who the individual identifies as the health care provider having the most significant role in the determination and delivery of medical care to the individual at the time the individual makes an election to receive hospice care,'' after the ''(if not an employee of the hospice program)''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to hospice care furnished on or after October 1, 2004.

SEC. 408. AUTHORITY TO INCLUDE COSTS OF TRAINING OF PSYCHOLOGISTS IN PAYMENTS TO HOSPITALS UNDER MEDICARE.

Effective for cost reporting periods beginning on or after October 1, 2004, for purposes of payments to hospitals under the medicare program under title XVIII of the Social Security Act for costs of approved educational activities (as defined in section 413.85 of title 42 of the Code of Federal Regulations), such approved educational activities shall include professional educational training programs, recognized by the Secretary, for psychologists.

SEC. 409. REVISION OF FEDERAL RATE FOR HOSPITALS IN PUERTO RICO.

Section 1886(d)(9) (42 U.S.C. 1395ww(d)(9)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking ''for discharges beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 75 percent)'' and inserting ''the applicable Puerto Rico percentage (specified in subparagraph (E))''; and

(B) in clause (ii), by striking ''for discharges beginning in a fiscal year beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 25 percent)'' and inserting ''the applicable Federal percentage (specified in subparagraph (E))''; and

(2) by adding at the end the following new subparagraph:

''(E) For purposes of subparagraph (A), for discharges occurring—

''(i) between October 1, 1987, and September 30, 1997, the applicable Puerto Rico percentage is 75 percent and the applicable Federal percentage is 25 percent;

''(ii) on or after October 1, 1997, and before October 1, 2004, the applicable Puerto Rico percentage is 50 percent and the applicable Federal percentage is 50 percent;

''(iii) on or after October 1, 2004, and before October 1, 2009, the applicable Puerto Rico percentage is 0 percent and the applicable Federal percentage is 100 percent; and

''(iv) on or after October 1, 2009, the applicable Puerto Rico percentage is 50 percent and the applicable Federal percentage is 50 percent.''.

SEC. 410. AUTHORITY REGARDING GERIATRIC FELLOWSHIPS.

The Secretary shall have the authority to clarify that geriatric training programs are eligible for 2 years of fellowship support for purposes of making payments for direct graduate medical education under subsection (h) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) and indirect medical education under subsection (d)(5)(B) of such section on or after October 1, 2004.

SEC. 411. CLARIFICATION OF CONGRESSIONAL INTENT REGARDING THE COUNTING OF RESIDENTS IN A NONPROVIDER SETTING AND A TECHNICAL AMENDMENT REGARDING THE 3-YEAR ROLLING AVERAGE AND THE IME RATIO.

(a) CLARIFICATION OF REQUIREMENTS FOR COUNTING RESIDENTS TRAINING IN NONPROVIDER SETTING.—

(1) D-GME.—Section 1886(h)(4)(E) (42 U.S.C. 1395ww(h)(4)(E)) is amended by adding at the end the following new sentence: For purposes of the preceding sentence time shall only be counted from the effective date of a written agreement between the hospital and the entity owning or operating a nonprovider setting. The effective date of such written agreement shall be determined in accordance with generally accepted accounting principles. All, or substantially all, of the costs for the training program in that setting shall be defined as the residents' stipends and benefits and other costs, if any, as determined by the parties.''.

(2) IME.—Section 1886(d)(5)(B)(iv) (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amended by adding at the end the following new sentence: For purposes of the preceding sentence time shall only be counted from the effective date of a written agreement between the hospital and the entity owning or operating a nonprovider setting. The effective date of such written agreement shall be determined in accordance with generally accepted accounting principles. All, or substantially all, of the costs for the training program in that setting shall be defined as the residents' stipends and benefits and other costs, if any, as determined by the parties.''.

(b) LIMITING ONE-YEAR LAG IN THE INDIRECT MEDICAL EDUCATION (IME) RATIO AND THREE-YEAR ROLLING AVERAGE IN RESIDENT COUNT FOR IME AND FOR DIRECT GRADUATE MEDICAL EDUCATION (D-GME) TO MEDICAL RESIDENCY PROGRAMS.—

(1) IME RATIO AND IME ROLLING AVERAGE.—Section 1886(d)(5)(B)(vi) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(vi)) is amended by adding at the end the following new sentence: ''For cost reporting periods beginning during fiscal years beginning on or after October 1, 2004, subclauses (I) and (II) shall be applied only with respect to a hospital's approved medical residency training programs in the fields of allopathic and osteopathic medicine.''.

(2) D-GME ROLLING AVERAGE.—Section 1886(h)(4)(G) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(G)) is amended by adding at the end the following new clause:

''(iv) APPLICATION FOR FISCAL YEAR 2004 AND SUBSEQUENT YEARS.—For cost reporting periods beginning during fiscal years beginning on or after October 1, 2004, clauses (i) through (iii) shall be applied only with respect to a hospital's approved medical residency training program in the fields of allopathic and osteopathic medicine.''.

SEC. 412. LIMITATION ON CHARGES FOR INPATIENT HOSPITAL CONTRACT HEALTH SERVICES PROVIDED TO INDIANS BY MEDICARE PARTICIPATING HOSPITALS.

(a) IN GENERAL.—Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subparagraph (R), by striking ''and'' at the end;

(2) in subparagraph (S), by striking the period and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(T) in the case of hospitals which furnish inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care—

''(i) under the contract health services program funded by the Indian Health Service and operated by the Indian Health Service, an Indian tribe, or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act), with respect to items and services that are covered under such program and furnished to an individual eligible for such items and services under such program; and

''(ii) under a program funded by the Indian Health Service and operated by an urban Indian organization with respect to the purchase of items and services for an eligible urban Indian (as those terms are defined in such section 4),

in accordance with regulations promulgated by the Secretary regarding admission practices, payment methodology, and rates of payment (including the acceptance of no more than such payment rate as payment in full for such items and services).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply as of a date specified by the Secretary of Health and Human Services (but in no case later than 6 months after the date of enactment of this Act) to medicare participation agreements in effect (or entered into) on or after such date.

SEC. 413. GAO STUDY AND REPORT ON APPROPRIATENESS OF PAYMENTS UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES.

(a) STUDY.—The Comptroller General of the United States, using the most current data available, shall conduct a study to determine—

(1) the appropriate level and distribution of payments in relation to costs under the prospective payment system under section 1886 of the Social Security Act (42 U.S.C. 1395ww) for inpatient hospital services furnished by subsection (d) hospitals (as defined in subsection (d)(1)(B) of such section); and

(2) whether there is a need to adjust such payments under such system to reflect legitimate differences in costs across different geographic areas, kinds of hospitals, and types of cases.

(b) REPORT.—Not later than 24 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a) together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.

Subtitle B—Provisions Relating to Part B

SEC. 421. ESTABLISHMENT OF FLOOR ON GEOGRAPHIC ADJUSTMENTS OF PAYMENTS FOR PHYSICIANS' SERVICES.

Section 1848(e)(1) (42 U.S.C. 1395w–4(e)(1)) is amended—

(1) in subparagraph (A), by striking ''subparagraphs (B) and (C)'' and inserting ''subparagraphs (B), (C), (E), and (F)''; and

(2) by adding at the end the following new subparagraphs:

''(E) FLOOR FOR WORK GEOGRAPHIC INDICES.—

''(i) IN GENERAL.—For purposes of payment for services furnished on or after January 1, 2004, and before January 1, 2008, after calculating the work geographic indices in subparagraph (A)(iii), the Secretary shall increase the work geographic index to the work floor index for any locality for which such geographic index is less than the work floor index.

''(ii) WORK FLOOR INDEX.—For purposes of clause (i), the term 'applicable floor index' means—

''(I) 0.980 with respect to services furnished during 2004; and

''(II) 1.000 for services furnished during 2005, 2006, and 2007.

''(F) FLOOR FOR PRACTICE EXPENSE AND MALPRACTICE GEOGRAPHIC INDICES.—For purposes of payment for services furnished on or after January 1, 2005, and before January 1, 2008, after calculating the practice expense and malpractice indices in clauses (i) and (ii) of subparagraph (A) and in subparagraph (B), the Secretary shall increase any such index to 1.00 for any locality for which such index is less than 1.00.

SEC. 422. MEDICARE INCENTIVE PAYMENT PROGRAM IMPROVEMENTS.

(a) PROCEDURES FOR SECRETARY, AND NOT PHYSICIANS, TO DETERMINE WHEN BONUS PAYMENTS UNDER MEDICARE INCENTIVE PAYMENT PROGRAM SHOULD BE MADE.—Section 1833(m) (42 U.S.C. 1395*l*(m)) is amended—

(1) by inserting ''(1)'' after ''(m)''; and

(2) by adding at the end the following new paragraph:

''(2) The Secretary shall establish procedures under which the Secretary, and not the physician furnishing the service, is responsible for determining when a payment is required to be made under paragraph (1).''.

(b) EDUCATIONAL PROGRAM REGARDING THE MEDICARE INCENTIVE PAYMENT PROGRAM.—The Secretary shall establish and implement an ongoing educational program to provide education to physicians under the medicare program on the medicare incentive payment program under section 1833(m) of the Social Security Act (42 U.S.C. 1395*l*(m)).

(c) ONGOING GAO STUDY AND ANNUAL REPORT ON THE MEDICARE INCENTIVE PAYMENT PROGRAM.—

(1) ONGOING STUDY.—The Comptroller General of the United States shall conduct an ongoing study on the medicare incentive payment program under section 1833(m) of the Social Security Act (42 U.S.C. 1395*l*(m)). Such study shall focus on whether such program increases the access of medicare beneficiaries who reside in an area that is designated (under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A))) as a health professional shortage area to physicians' services under the medicare program.

(2) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations as the Comptroller General considers appropriate.

SEC. 423. INCREASE IN RENAL DIALYSIS COMPOSITE RATE.

Notwithstanding any other provision of law, with respect to payment under part B of title XVIII of the Social Security Act for renal dialysis services furnished in 2005 and 2006, the composite rate for such services shall be increased by 1.6 percent under section 1881(b)(12) of such Act (42 U.S.C. 1395rr(b)(7)), as added by section 433(b)(5).

SEC. 424. EXTENSION OF HOLD HARMLESS PROVISIONS FOR SMALL RURAL HOSPITALS AND TREATMENT OF CERTAIN SOLE COMMUNITY HOSPITALS TO LIMIT DECLINE IN PAYMENT UNDER THE OPD PPS.

(a) SMALL RURAL HOSPITALS.—Section 1833(t)(7)(D)(i) (42 U.S.C. 1395l(t)(7)(D)(i)) is amended by inserting ''and during 2006'' after ''2004,''.

(b) SOLE COMMUNITY HOSPITALS.—Section 1833(t)(7)(D) (42 U.S.C. 1395l(t)(7)(D)) is amended by adding at the end the following:

''(iii) TEMPORARY TREATMENT FOR SOLE COMMUNITY HOSPITALS .—In the case of a sole community hospital (as defined in section 1886(d)(5)(D)(iii)) located in a rural area, for covered OPD services furnished in 2006, for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount of such difference.''.

SEC. 425. INCREASE IN PAYMENTS FOR CERTAIN SERVICES FURNISHED BY SMALL RURAL AND SOLE COMMUNITY HOSPITALS UNDER MEDICARE PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES.

(a) INCREASE.—

(1) IN GENERAL.—In the case of an applicable covered OPD service (as defined in paragraph (2)) that is furnished by a hospital described in clause (i) or (iii) of paragraph (7)(D) of section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)), as amended by section 424, on or after January 1, 2005, and before January 1, 2008, the Secretary shall increase the medicare OPD fee schedule amount (as determined under paragraph (4)(A) of such section) that is applicable for such service in that year (determined without regard to any increase under this section in a previous year) by 5 percent.

(2) APPLICABLE COVERED OPD SERVICES DEFINED.—For purposes of this section, the term ''applicable covered OPD service'' means a covered clinic or emergency room visit that is classified within the groups of covered OPD services (as defined in paragraph (1)(B) of section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t))) established under paragraph (2)(B) of such section.

(b) NO EFFECT ON COPAYMENT AMOUNT.—The Secretary shall compute the copayment amount for applicable covered OPD services under section 1833(t)(8)(A) of the Social Security Act (42 U.S.C. 1395*l*(t)(8)(A)) as if this section had not been enacted.

(c) NO EFFECT ON INCREASE UNDER HOLD HARMLESS OR OUTLIER PROVISIONS.—The Secretary shall apply the temporary hold harmless provision under clause (i) and (iii) of paragraph (7)(D) of section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)) and the outlier provision under paragraph (5) of such section as if this section had not been enacted.

(d) WAIVING BUDGET NEUTRALITY AND NO REVISION OR ADJUSTMENTS.—The Secretary shall not make any revision or adjustment under subparagraph (A), (B), or (C) of section 1833(t)(9) of the Social Security Act (42 U.S.C. 1395*l*(t)(9)) because of the application of subsection (a)(1).

(e) NO EFFECT ON PAYMENTS AFTER INCREASE PERIOD ENDS.—The Secretary shall not take into account any payment increase provided under subsection (a)(1) in determining payments for covered OPD services (as defined in paragraph (1)(B) of section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t))) under such section that are furnished after January 1, 2008.

(f) TECHNICAL AMENDMENT.—Section 1833(t)(2)(B) (42 U.S.C. 1395*l*(t)(2)(B)) is amended by inserting ''(and periodically revise such groups pursuant to paragraph (9)(A))'' after ''establish groups''.

SEC. 426. INCREASE FOR GROUND AMBULANCE SERVICES FURNISHED IN A RURAL AREA.

Section 1834(l) (42 U.S.C. 1395m(l)), as amended by section 405(b)(2), is amended by adding at the end the following new paragraph:

''(10) TEMPORARY INCREASE FOR GROUND AMBULANCE SERVICES FURNISHED IN A RURAL AREA.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, in the case of ground ambulance services furnished on or after January 1, 2005, and before January 1, 2008, for which the transportation originates in a rural area described in paragraph (9) or in a rural census tract described in such paragraph, the fee schedule established under this section, with respect to both the payment rate for service and the payment rate for mileage, shall provide that such rates otherwise established, after application of any increase under such paragraph, shall be increased by 5 percent.

''(B) APPLICATION OF INCREASED PAYMENTS AFTER 2007.—The increased payments under subparagraph (A) shall not be taken into account in calculating payments for services furnished on or after the period specified in such subparagraph.''.

SEC. 427. ENSURING APPROPRIATE COVERAGE OF AIR AMBULANCE SERVICES UNDER AMBULANCE FEE SCHEDULE.

(a) COVERAGE.—Section 1834(l) (42 U.S.C. 1395m(l)), as amended by section 426, is amended by adding at the end the following new paragraph:

''(11) ENSURING APPROPRIATE COVERAGE OF AIR AMBULANCE SERVICES.—

''(A) IN GENERAL.—The regulations described in section 1861(s)(7) shall ensure that air ambulance services (as defined in subparagraph (C)) are reimbursed under this subsection at the air ambulance rate if the air ambulance service—

''(i) is medically necessary based on the health condition of the individual being transported at or immediately prior to the time of the transport; and

''(ii) complies with equipment and crew requirements established by the Secretary.

''(B) MEDICALLY NECESSARY.—An air ambulance service shall be considered to be medically necessary for purposes of subparagraph (A)(i) if such service is requested—

''(i) by a physician or a hospital in accordance with the physician's or hospital's responsibilities under section 1867 (commonly known as the Emergency Medical Treatment and Active Labor Act);

''(ii) as a result of a protocol established by a State or regional emergency medical service (EMS) agency;

''(iii) by a physician, nurse practitioner, physician assistant, registered nurse, or emergency medical responder who reasonably determines or certifies that the patient's condition is such that the time needed to transport the individual by land or the lack of an appropriate ground ambulance, significantly increases the medical risks for the individual; or

''(iv) by a Federal or State agency to relocate patients following a natural disaster, an act of war, or a terrorist attack.

''(C) AIR AMBULANCE SERVICES DEFINED.—For purposes of this paragraph, the term 'air ambulance service' means fixed wing and rotary wing air ambulance services.''.

(b) CONFORMING AMENDMENT.—Section 1861(s)(7) (42 U.S.C. 1395x(s)(7)) is amended by inserting '', subject to section 1834(l)(11),'' after ''but''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2005.

SEC. 428. TREATMENT OF CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED BY A SOLE COMMUNITY HOSPITAL.

Notwithstanding subsections (a), (b), and (h) of section 1833 of the Social Security Act (42 U.S.C. 1395*l*) and section 1834(d)(1) of such Act (42 U.S.C. 1395m(d)(1)), in the case of a clinical diagnostic laboratory test covered under part B of title XVIII of such Act that is furnished in 2005 or 2006 by a sole community hospital (as defined in section 1886(d)(5)(D)(iii) of such Act (42 U.S.C. 1395ww(d)(5)(D)(iii))) as part of services furnished to patients of the hospital, the following rules shall apply:

(1) PAYMENT BASED ON REASONABLE COSTS.—The amount of payment for such test shall be 100 percent of the reasonable costs of the hospital in furnishing such test.

(2) NO BENEFICIARY COST-SHARING.—Notwithstanding section 432, no coinsurance, deductible, copayment, or other cost-sharing otherwise applicable under such part B shall apply with respect to such test.

SEC. 429. IMPROVEMENT IN RURAL HEALTH CLINIC REIMBURSEMENT.

Section 1833(f) (42 U.S.C. 1395*l*(f)) is amended—

(1) in paragraph (1), by striking '', and'' at the end and inserting a semicolon;

(2) in paragraph (2)—

(A) by striking ''in a subsequent year'' and inserting ''in 1989 through 2004''; and

(B) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

''(3) in 2005, at $80 per visit; and

''(4) in a subsequent year, at the limit established under this subsection for the previous year increased by the percentage increase in the MEI (as so defined) applicable to primary care services (as so defined) furnished as of the first day of that year.''.

SEC. 430. ELIMINATION OF CONSOLIDATED BILLING FOR CERTAIN SERVICES UNDER THE MEDICARE PPS FOR SKILLED NURSING FACILITY SERVICES.

(a) CERTAIN RURAL HEALTH CLINIC AND FEDERALLY QUALIFIED HEALTH CENTER SERVICES.—Section 1888(e) (42 U.S.C. 1395yy(e)) is amended—

(1) in paragraph (2)(A)(i)(II), by striking ''clauses (ii) and (iii)'' and inserting ''clauses (ii), (iii), and (iv)''; and

(2) by adding at the end of paragraph (2)(A) the following new clause:

''(iv) EXCLUSION OF CERTAIN RURAL HEALTH CLINIC AND FEDERALLY QUALIFIED HEALTH CENTER SERVICES.—Services described in this clause are—

''(I) rural health clinic services (as defined in paragraph (1) of section 1861(aa)); and

''(II) Federally qualified health center services (as defined in paragraph (3) of such section);

that would be described in clause (ii) if such services were furnished by a physician or practitioner not affiliated with a rural health clinic or a Federally qualified health center.''.

(b) CERTAIN SERVICES FURNISHED BY AN ENTITY JOINTLY OWNED BY HOSPITALS AND CRITICAL ACCESS HOSPITALS.—For purposes of applying section 411.15(p)–(3)(iii) of title 42 of the Code of Federal Regulations, the Secretary shall treat an entity that is 100 percent owned as a joint venture by 2 Medicare-participating hospitals or critical access hospitals as a Medicare-participating hospital or a critical access hospital.

(c) TECHNICAL AMENDMENTS.—Sections 1842(b)(6)(E) and 1866(a)(1)(H)(ii) (42 U.S.C. 1395u(b)(6)(E); 1395cc(a)(1)(H)(ii)) are each amended by striking ''section 1888(e)(2)(A)(ii)'' and inserting ''clauses (ii), (iii), and (iv) of section 1888(e)(2)(A)''.

(d) EFFECTIVE DATE.—The amendments made by this section and the provision of subsection (b) shall apply to services furnished on or after January 1, 2005.

SEC. 431. FREEZE IN PAYMENTS FOR CERTAIN ITEMS OF DURABLE MEDICAL EQUIPMENT AND CERTAIN ORTHOTICS; ESTABLISHMENT OF QUALITY STANDARDS AND ACCREDITATION REQUIREMENTS FOR DME PROVIDERS.

(a) FREEZE FOR DME.—Section 1834(a)(14) (42 U.S.C. 1395m(a)(14)) is amended—

(1) in subparagraph (E), by striking ''and'' at the end;

(2) in subparagraph (F)—

(A) by striking ''a subsequent year'' and inserting ''2003''; and

(B) by striking ''the previous year.'' and inserting ''2002;''; and

(3) by adding at the end the following new subparagraphs:

''(G) for each of the years 2004 through 2010—

''(i) in the case of class III medical devices described in section 513(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)(1)(C)), the percentage increase described in subparagraph (B) for the year involved; and

''(ii) in the case of covered items not described in clause (i), 0 percentage points; and

''(H) for a subsequent year, the percentage increase described in subparagraph (B) for the year involved.''.

(b) FREEZE FOR OFF-THE-SHELF ORTHOTICS.—Section 1834(h)(4)(A) of the Social Security Act (42 U.S.C. 1395m(h)(4)(A)) is amended—

(1) in clause (vii), by striking ''and'' at the end;

(2) in clause (viii), by striking ''a subsequent year'' and inserting ''2003''; and

(3) by adding at the end the following new clauses:

''(ix) for each of the years 2004 through 2010—

''(I) in the case of orthotics that have not been custom-fabricated, 0 percent; and

''(II) in the case of prosthetics, prosthetic devices, and custom-fabricated orthotics, the percentage increase described in clause (viii) for the year involved; and

''(x) for 2011 and each subsequent year, the percentage increase described in clause (viii) for the year involved;''.

(c) ESTABLISHMENT OF QUALITY STANDARDS AND ACCREDITATION REQUIREMENTS FOR DURABLE MEDICAL EQUIPMENT PROVIDERS.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended—

(1) by redesignating paragraph (17), as added by section 4551(c)(1) of the Balanced Budget Act of 1997 (111 Stat. 458), as paragraph (19); and

(2) by adding at the end the following new paragraph:

''(20) IDENTIFICATION OF QUALITY STANDARDS.—

''(A) IN GENERAL.—Subject to subparagraph (C), the Secretary shall establish and implement quality standards for providers of durable medical equipment throughout the United States that are developed by recognized independent accreditation organizations (as designated under subparagraph (B)(i)) and with which such providers shall be required to comply in order to—

''(i) participate in the program under this title;

''(ii) furnish any item or service described in subparagraph (D) for which payment is made under this part; and

''(iii) receive or retain a provider or supplier number used to submit claims for reimbursement for any item or service described in subparagraph (D) for which payment may be made under this title.

''(B) DESIGNATION OF INDEPENDENT ACCREDITATION ORGANIZATIONS.—

''(i) IN GENERAL.—Not later that the date that is 6 months after the date of enactment of the Prescription Drug and Medicare Improvement Act of 2003, the Secretary shall designate independent accreditation organizations for purposes of subparagraph (A).

''(ii) CONSULTATION.—In determining which independent accreditation organizations to designate under clause (i), the Secretary shall consult with an expert outside advisory panel composed of an appropriate selection of representatives of physicians, practitioners, suppliers, and manufacturers to review (and advise the Secretary concerning) selection of accrediting organizations and the quality standards of such organizations.

''(C) QUALITY STANDARDS.—The quality standards described in subparagraph (A) may not be less stringent than the quality standards that would otherwise apply if this paragraph did not apply and shall include consumer services standards.

''(D) ITEMS AND SERVICES DESCRIBED.—The items and services described in this subparagraph are covered items (as defined in paragraph (13)) for which payment may otherwise be made under this subsection, other than items used in infusion, and inhalation drugs used in conjunction with durable medical equipment.

''(E) PHASED-IN IMPLEMENTATION.—The application of the quality standards described in subparagraph (A) shall be phased-in over a period that does not exceed 3 years.''.

SEC. 432. APPLICATION OF COINSURANCE AND DEDUCTIBLE FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) COINSURANCE.—

(1) IN GENERAL.—Section 1833(a) (42 U.S.C. 1395*l*(a)) is amended—

(A) in paragraph (1)(D)(i), by striking ''(or 100 percent, in the case of such tests for which payment is made on an assignment-related basis)''; and

(B) in paragraph (2)(D)(i), by striking ''(or 100 percent, in the case of such tests for which payment is made on an assignment-related basis or to a provider having an agreement under section 1866)''.

(2) CONFORMING AMENDMENT.—The third sentence of section 1866(a)(2)(A) of the Social Security Act (42 U.S.C. 1395cc(a)(2)(A) is amended by striking ''and with respect to clinical diagnostic laboratory tests for which payment is made under part B''.

(b) DEDUCTIBLE.—Section 1833(b) of the Social Security Act (42 U.S.C. 1395*l*(b)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to tests furnished on or after January 1, 2004.

SEC. 433. BASING MEDICARE PAYMENTS FOR COVERED OUTPATIENT DRUGS ON MARKET PRICES.

(a) MEDICARE MARKET BASED PAYMENT AMOUNT.—Section 1842(o) (42 U.S.C. 1395u(o)) is amended—

(1) in paragraph (1), by striking ''equal to 95 percent of the average wholesale price.'' and inserting ''equal to—

''(A) in the case of a drug or biological furnished prior to January 1, 2004, 95 percent of the average wholesale price; and

''(B) in the case of a drug or biological furnished on or after January 1, 2004, the payment amount specified in—

''(i) in the case of such a drug or biological that is first available for payment under this part on or before April 1, 2003, paragraph (4); and

''(ii) in the case of such a drug or biological that is first available for payment under this part after such date, paragraph (5).''; and

(2) by adding at the end the following new paragraphs:

''(4)(A) Subject to subparagraph (C), the payment amount specified in this paragraph for a year for a drug or biological is an amount equal to the lesser of—

''(i) the average wholesale price for the drug or biological; or

''(ii) the amount determined under subparagraph (B)

''(B)(i) Subject to clause (ii), the amount determined under this subparagraph is an amount equal to—

''(I) in the case of a drug or biological furnished in 2004, 85 percent of the average wholesale price for the drug or biological (determined as of April 1, 2003); and

''(II) in the case of a drug or biological furnished in 2005 or a subsequent year, the amount determined under this subparagraph for the previous year increased by the percentage increase in the consumer price index for medical care for the 12-month period ending with June of the previous year.

''(ii) In the case of a vaccine described in subparagraph (A) or (B) of section 1861(s)(10), the amount determined under this subparagraph is an amount equal to the average wholesale price for the drug or biological.

''(C)(i) The Secretary shall establish a process under which the Secretary determines, for such drugs or biologicals as the Secretary determines appropriate, whether the widely available market price to physicians or suppliers for the drug or biological furnished in a year is different from the payment amount established under subparagraph (B) for the year. Such determination shall be based on the information described in clause (ii) as the Secretary determines appropriate.

''(ii) The information described in this clause is the following information:

''(I) Any report on drug or biological market prices by the Inspector General of the Department of Health and Human Services or the Comptroller General of the United States that is made available after December 31, 1999.

''(II) A review of drug or biological market prices by the Secretary, which may include information on such market prices from insurers, private health plans, manufacturers, wholesalers, distributors, physician supply houses, specialty pharmacies, group purchasing arrangements, physicians, suppliers, or any other source the Secretary determines appropriate.

''(III) Data and information submitted by the manufacturer of the drug or biological or by another entity.

''(IV) Other data and information as determined appropriate by the Secretary.

''(iii) If the Secretary makes a determination under clause (i) with respect to the widely available market price for a drug or biological for a year, the following provisions shall apply:

''(I) Subject to clause (iv), the amount determined under this subparagraph shall be substituted for the amount determined under subparagraph (B) for purposes of applying subparagraph (A)(ii)(I) for the year and all subsequent years.

''(II) The Secretary may make subsequent determinations under clause (i) with respect to the widely available market price for the drug or biological.

''(III) If the Secretary does not make a subsequent determination under clause (i) with respect to the widely available market price for the drug or biological for a year, the amount determined under this subparagraph shall be an amount equal to the amount determined under this subparagraph for the previous year increased by the percentage increase described in subparagraph (B)(i)(II) for the year involved.

''(iv) If the first determination made under clause (i) with respect to the widely available market price for a drug or biological would result in a payment amount in a year that is more than 15 percent less than the amount determined under subparagraph (B) for the drug or biological for the previous year (or, for 2004, the payment amount determined under paragraph (1)(A), determined as of April 1, 2003), the Secretary shall provide for a transition to the amount determined under clause (i) so that the payment amount is reduced in annual increments equal to 15 percent of the payment amount in such previous year until the payment amount is equal to the amount determined under clause (i), as increased each year by the percentage increase described in subparagraph (B)(i)(II) for the year. The preceding sentence shall not apply to a drug or biological where a generic version of the drug or biological first enters the market on or after January 1, 2004 (even if the generic version of the drug or biological is not marketed under the chemical name of such drug or biological).

''(5) In the case of a drug or biological that is first available for payment under this part after April 1, 2003, the following rules shall apply:

''(A) As a condition of obtaining a code to report such new drug or biological and to receive payment under this part, a manufacturer shall provide the Secretary (in a time, manner, and form approved by the Secretary) with data and information on prices at which the manufacturer estimates physicians and suppliers will be able to routinely obtain the drug or biological in the market during the first year that the drug or biological is available for payment under this part and such additional information that the manufacturer determines appropriate.

''(B) During the year that the drug or biological is first available for payment under this part, the manufacturer of the drug or biological shall provide the Secretary (in a time, manner, and form approved by the Secretary) with updated information on the actual market prices paid by such physicians or suppliers for the drug or biological in the year.

''(C) The amount specified in this paragraph for a drug or biological for the year described in subparagraph (B) is equal to an amount determined by the Secretary based on the information provided under subparagraph (A) and other information that the Secretary determines appropriate.

''(D) The amount specified in this paragraph for a drug or biological for the year after the year described in subparagraph (B) is equal to an amount determined by the Secretary based on the information provided under subparagraph (B) and other information that the Secretary determines appropriate.

''(E) The amount specified in this paragraph for a drug or biological for the year beginning after the year described in subparagraph (D) and each subsequent year is equal to the lesser of—

''(i) the average wholesale price for the drug or biological; or

''(ii) the amount determined—

''(I) by the Secretary under paragraph (4)(C)(i) with respect to the widely available market price for the drug or biological for the year, if such paragraph was applied by substituting 'the payment determined under paragraph (5)(E)(ii)(II) for the year' for 'established under subparagraph (B) for the year'; and

''(II) if no determination described in subclause (I) is made for the drug or biological for the year, under this subparagraph with respect to the drug or biological for the previous year increased by the percentage increase described in paragraph (4)(B)(i)(II) for the year involved.''.

(b) ADJUSTMENTS TO PAYMENT AMOUNTS FOR ADMINISTRATION OF DRUGS AND BIOLOGICALS.—

(1) ADJUSTMENT IN PHYSICIAN PRACTICE EXPENSE RELATIVE VALUE UNITS.—Section 1848(c)(2) (42 U.S.C. 1395w–4(c)(2)) is amended—

(A) in subparagraph (B)—

(i) in clause (ii)(II), by striking ''The adjustments'' and inserting ''Subject to clause (iv), the adjustments''; and

(ii) by adding at the end the following new clause:

''(iv) EXEMPTION FROM BUDGET NEUTRALITY IN 2004.—Any additional expenditures under this part that are attributable to subparagraph (H) shall not be taken into account in applying clause (ii)(II) for 2004.''; and

(B) by adding at the end the following new subparagraph:

''(H) ADJUSTMENTS IN PRACTICE EXPENSE RELATIVE VALUE UNITS FOR DRUG ADMINISTRATION SERVICES FOR 2004.—In establishing the physician fee schedule under subsection (b) with respect to payments for services furnished in 2004, the Secretary shall, in determining practice expense relative value units under this subsection, utilize a survey submitted to the Secretary as of January 1, 2003, by a physician specialty organization pursuant to section 212 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 if the survey—

''(i) covers practice expenses for oncology administration services; and

''(ii) meets criteria established by the Secretary for acceptance of such surveys.''.

(2) PAYMENT FOR MULTIPLE CHEMOTHERAPY AGENTS FURNISHED ON A SINGLE DAY THROUGH THE PUSH TECHNIQUE.—

(A) REVIEW OF POLICY.—The Secretary shall review the policy, as in effect on the date of enactment of this Act, with respect to payment under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for the administration of more than 1 anticancer chemotherapeutic agent to an individual on a single day through the push technique.

(B) MODIFICATION OF POLICY.—After conducting the review under subparagraph (A), the Secretary shall modify such payment policy if the Secretary determines such modification to be appropriate.

(C) EXEMPTION FROM BUDGET NEUTRALITY UNDER PHYSICIAN FEE SCHEDULE.—If the Secretary modifies such payment policy pursuant to subparagraph (B), any increased expenditures under title XVIII of the Social Security Act resulting from such modification shall be treated as additional expenditures attributable to subparagraph (H) of section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)), as added by paragraph (1)(B), for purposes of applying the exemption to budget neutrality under subparagraph (B)(iv) of such section, as added by paragraph (1)(A).

(3) TREATMENT OF OTHER SERVICES CURRENTLY IN THE NONPHYSICIAN WORK POOL.—The Secretary shall make adjustments to the nonphysician work pool methodology (as such term is used in the final rule promulgated by the Secretary in the Federal Register on December 31, 2002 (67 Fed. Reg. 251)), for the determination of practice expense relative value units under the physician fee schedule under section 1848(c)(2)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(C)(ii)), so that the practice expense relative value units for services determined under such methodology are not disproportionately reduced relative to the practice expense relative value units of services not determined under such methodology, as a result of the amendments to such Act made by paragraph (1).

(4) ADMINISTRATION OF BLOOD CLOTTING FACTORS.—Section 1842(o) (42 U.S.C. 1395u(o)), as amended by subsection (a)(2), is amended by adding at the end the following new paragraph:

''(6)(A) Subject to subparagraph (B), in the case of clotting factors furnished on or after January 1, 2004, the Secretary shall, after reviewing the January 2003 report to Congress by the Comptroller General of the United States entitled 'Payment for Blood Clotting Factor Exceeds Providers Acquisition Cost' (GAO–03–184), provide for a separate payment for the administration of such blood clotting factors in an amount that the Secretary determines to be appropriate.

''(B) In determining the separate payment amount under subparagraph (A) for blood clotting factors furnished in 2004, the Secretary shall ensure that the total amount of payments under this part (as estimated by the Secretary) for such factors under paragraphs (4) and (5) and such separate payments for such factors does not exceed the total amount of payments that would have been made for such factors under this part (as estimated by the Secretary) if the amendments made by section 433 of the Prescription Drug and Medicare Improvement Act of 2003 had not been enacted.

''(C) The separate payment amount under this subparagraph for blood clotting factors furnished in 2005 or a subsequent year shall be equal to the separate payment amount determined under this paragraph for the previous year increased by the percentage increase described in paragraph (4)(B)(i)(II) for the year involved.''.

(5) INCREASE IN COMPOSITE RATE FOR END STAGE RENAL DISEASE FACILITIES.—Section 1881(b) (42 U.S.C. 1395rr(b) is amended—

(A) in paragraph (7), by adding at the end the following new sentence: ''In the case of dialysis services furnished in 2004 or a subsequent year, the composite rate for such services shall be determined under paragraph (12).''; and

(B) by adding at the end the following new paragraph:

''(12)(A) In the case of dialysis services furnished during 2004, the composite rate for such services shall be the composite rate that would otherwise apply under paragraph (7) for the year increased by an amount to ensure (as estimated by the Secretary) that—

''(i) the sum of the total amount of—

''(I) the composite rate payments for such services for the year, as increased under this paragraph; and

''(II) the payments for drugs and biologicals (other than erythropoetin) furnished in connection with the furnishing of renal dialysis services and separately billed by renal dialysis facilities under paragraphs (4) and (5) of section 1842(o) for the year; is equal to

''(ii) the sum of the total amount of the composite rate payments under paragraph (7) for the year and the payments for the separately billed drugs and biologicals described in clause (i)(II) that would have been made if the amendments made by section 433 of the Prescription Drug and Medicare Improvement Act of 2003 had not been enacted.

''(B) Subject to subparagraph (E), in the case of dialysis services furnished in 2005, the composite rate for such services shall be an amount equal to the composite rate established under subparagraph (A), increased by 0.05 percent and further increased pursuant to section 423 of the Prescription Drug and Medicare Improvement Act of 2003.

''(C) Subject to subparagraph (E), in the case of dialysis services furnished in 2006, the composite rate for such services shall be an amount equal to the composite rate established under subparagraph (B), increased by 0.05 percent.

''(D) Subject to subparagraph (E), in the case of dialysis services furnished in 2007 or a subsequent year, the composite rate for such services shall be an amount equal to the composite rate established under this paragraph for the previous year (determined as if such section 423 had not been enacted), increased by 0.05 percent.

''(E) If the Secretary implements a reduction in the payment amount under paragraph (4)(C) or (5) for a drug or biological described in subparagraph (A)(i)(II) for a year after 2004, the Secretary shall, as estimated by the Secretary—

''(i) increase the composite rate for dialysis services furnished in such year in the same manner that the composite rate for such services for 2004 was increased under subparagraph (A); and

''(ii) increase the percentage increase under subparagraph (C) or (D) (as applicable) for years after the year described in clause (i) to ensure that such increased percentage would result in expenditures equal to the sum of the total composite rate payments for such services for such years and the total payments for drugs and biologicals described in subparagraph (A)(i)(II) is equal to the sum of the total amount of the composite rate

payments under this paragraph for such years and the payments for the drugs and biologicals described in subparagraph (A)(i)(II) that would have been made if the reduction in payment amount described in subparagraph had not been made.

''(F) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of determinations of payment amounts, methods, or adjustments under this paragraph.''.

(6) HOME INFUSION DRUGS.—Section 1842(o) (42 U.S.C. 1395u(o)), as amended by subsection (a)(2) and paragraph (4), is amended by adding at the end the following new paragraph:

''(7)(A) Subject to subparagraph (B), in the case of infusion drugs and biologicals furnished through an item of durable medical equipment covered under section 1861(n) on or after January 1, 2004, the Secretary may make separate payments for furnishing such drugs and biologicals in an amount determined by the Secretary if the Secretary determines such separate payment to be appropriate.

''(B) In determining the amount of any separate payment under subparagraph (A) for a year, the Secretary shall ensure that the total amount of payments under this part for such infusion drugs and biologicals for the year and such separate payments for the year does not exceed the total amount of payments that would have been made under this part for the year for such infusion drugs and biologicals if section 433 of the Prescription Drug and Medicare Improvement Act of 2003 had not been enacted.''.

(7) INHALATION DRUGS.—Section 1842(o) (42 U.S.C. 1395u(o)), as amended by subsection (a)(2) and paragraphs (4) and (6), is amended by adding at the end the following new paragraph:

''(8)(A) Subject to subparagraph (B), in the case of inhalation drugs and biologicals furnished through durable medical equipment covered under section 1861(n) on or after January 1, 2004, the Secretary may increase payments for such equipment under section 1834(a) and may make separate payments for furnishing such drugs and biologicals if the Secretary determines such increased or separate payments are necessary to appropriately furnish such equipment and drugs and biologicals to beneficiaries.

''(B) The total amount of any increased payments and separate payments under subparagraph (A) for a year may not exceed an amount equal to 10 percent of the amount (as estimated by the Secretary) by which—

''(i) the total amount of payments that would have been made for such drugs and biologicals for the year if section 433 of the Prescription Drug and Medicare Improvement Act of 2003 had not been enacted; exceeds

''(ii) the total amount of payments for such drugs and biologicals under paragraphs (4) and (5).''.

(8) PHARMACY DISPENSING FEE FOR CERTAIN DRUGS AND BIOLOGICALS.—Section 1842(o)(2) (42 U.S.C. 1395u(o)(2)) is amended to read as follows:

''(2) If payment for a drug or biological is made to a licensed pharmacy approved to dispense drugs or biologicals under this part, the Secretary—

''(A) in the case of an immunosuppressive drug described in subparagraph (J) of section 1861(s)(2) and an oral drug described in subparagraph (Q) or (T) of such section, shall pay a dispensing fee determined appropriate by the Secretary (less the applicable deductible and coinsurance amounts) to the pharmacy; and

''(B) in the case of a drug or biological not described in subparagraph (A), may pay a dispensing fee determined appropriate by the Secretary (less the applicable deductible and coinsurance amounts) to the pharmacy.''.

(9) PAYMENT FOR CHEMOTHERAPY DRUGS PURCHASED BUT NOT ADMINISTERED BY PHYSICIANS.—Section 1842(o) (42 U.S.C. 1395u(o)), as amended by subsection (a)(2) and paragraphs (4), (6) and (7), is amended by adding at the end the following new paragraph:

''(9)(A) Subject to subparagraph (B), the Secretary may increase (in an amount determined appropriate) the amount of payments to physicians for anticancer chemotherapeutic drugs or biologicals that would otherwise be made under this part in order to compensate such physicians for anticancer chemotherapeutic drugs or biologicals that are purchased by physicians with a reasonable intent to administer to an individual enrolled under this part but which cannot be administered to such individual despite the reasonable efforts of the physician.

''(B) The total amount of increased payments made under subparagraph (A) in a year (as estimated by the Secretary) may not exceed an amount equal to 1 percent of the total amount of payments made under paragraphs (4) and (5) for such anticancer chemotherapeutic drugs or biologicals furnished by physicians in such year (as estimated by the Secretary).''.

(c) LINKAGE OF REVISED DRUG PAYMENTS AND INCREASES FOR DRUG ADMINISTRATION.—The Secretary shall not implement the revisions in payment amounts for a category of drug or biological as a result of the amendments made by subsection (a) unless the Secretary concurrently implements the adjustments to payment amounts for administration of such category of drug or biological for which the Secretary is required to make an adjustment, as specified in the amendments made by, and provisions of, subsection (b).

(d) PROHIBITION OF ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) DRUGS.—Section 1842(o) (42 U.S.C. 1395u(o)), as amended by subsection (a)(2) and paragraphs (4), (6), (7), and (9) of subsection (b), is amended by adding at the end the following new paragraph:

''(10) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of determinations of payment amounts, methods, or adjustments under paragraph (2) or paragraphs (4) through (9).''.

(2) PHYSICIAN FEE SCHEDULE.—Section 1848(i)(1) (42 U.S.C. 1395w–4(i)(1)) is amended—

(A) in subparagraph (D), by striking ''and'' at the end;

(B) in subparagraph (E), by striking the period at the end and inserting '', and''; and

(C) by adding at the end the following new subparagraph:

''(F) adjustments in practice expense relative value units under subsection (c)(2)(H).''.

(3) MULTIPLE CHEMOTHERAPY AGENTS AND OTHER SERVICES CURRENTLY ON THE NON-PHYSICIAN WORK POOL.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of determinations of payment amounts, methods, or adjustments under paragraphs (2) and (3) of subsection (b).

(e) STUDIES AND REPORTS.—

(1) GAO STUDY AND REPORT ON BENEFICIARY ACCESS TO DRUGS AND BIOLOGICALS.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study that examines the impact the provisions of, and the amendments made by, this section have on access by medicare beneficiaries to drugs and biologicals covered under the medicare program.

(B) REPORT.—Not later than January 1, 2006, the Comptroller General shall submit a report to Congress on the study conducted under subparagraph (A) together with such recommendations as the Comptroller General determines to be appropriate.

(2) STUDY AND REPORT BY THE HHS INSPECTOR GENERAL ON MARKET PRICES OF DRUGS AND BIOLOGICALS.—

(A) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct 1 or more studies that—

(i) examine the market prices that drugs and biologicals covered under the medicare program are widely available to physicians and suppliers; and

(ii) compare such widely available market prices to the payment amount for such drugs and biologicals under section 1842(o) of the Social Security Act (42 U.S.C. 1395u(o).

(B) REQUIREMENT.—In conducting the study under subparagraph (A), the Inspector General shall focus on those drugs and biologicals that represent the largest portions of expenditures under the medicare program for drugs and biologicals.

(C) REPORT.—The Inspector General shall prepare a report on any study conducted under subparagraph (A).

SEC. 434. INDEXING PART B DEDUCTIBLE TO INFLATION.

The first sentence of section 1833(b) (42 U.S.C. 1395*l*(b)) is amended by striking ''and $100 for 1991 and subsequent years'' and inserting the following: '', $100 for 1991 through 2005, $125 for 2006, and for 2007 and thereafter, the amount in effect for the previous year, increase by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year, rounded to the nearest dollar''.

SEC. 435. REVISIONS TO REASSIGNMENT PROVISIONS.

(a) IN GENERAL.—Section 1842(b)(6)(A)(ii) (42 U.S.C. 1395u(b)(6)(A)(ii)) is amended to read as follows: ''(ii) where the service was provided under a contractual arrangement between such physician or other person and an entity (as defined by the Secretary), to the entity if under such arrangement such entity submits the bill for such service and such arrangement meets such program integrity and other safeguards as the Secretary may determine to be appropriate,''.

(b) CONFORMING AMENDMENT.—The second sentence of section 1842(b)(6) (42 U.S.C. 1395u(b)(6)) is amended by striking ''except to an employer or facility as described in clause (A)'' and inserting ''except to an employer or entity as described in subparagraph (A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made on or after the date of enactment of this Act.

SEC. 436. EXTENSION OF TREATMENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES UNDER MEDICARE.

Section 542(c) of BIPA (114 Stat. 2763A–551) is amended by inserting '', and for services furnished during 2005'' before the period at the end.

SEC. 437. ADEQUATE REIMBURSEMENT FOR OUTPATIENT PHARMACY THERAPY UNDER THE HOSPITAL OUTPATIENT PPS.

(a) SPECIAL RULES FOR DRUGS AND BIOLOGICALS.—Section 1833(t) (42 U.S.C. 1395(t)) is amended—

(1) by redesignating paragraph (13) as paragraph (14); and

(2) by inserting after paragraph (12) the following new paragraph:

''(13) SPECIAL RULES FOR CERTAIN DRUGS AND BIOLOGICALS.—

''(A) BEFORE 2007.—

''(i) IN GENERAL.—Notwithstanding paragraph (6), but subject to clause (ii), with respect to a separately payable drug or biological described in subparagraph (D) furnished on or after January 1, 2005, and before January 1, 2007, hospitals shall be reimbursed as follows:

''(I) DRUGS AND BIOLOGICALS FURNISHED AS PART OF A CURRENT OPD SERVICE.—The amount of payment for a drug or biological described in subparagraph (D) provided as a part of a service that was a covered OPD service on May 1, 2003, shall be the applicable percentage (as defined in subparagraph (C)) of the average wholesale price for the drug or biological that would have been determined under section 1842(o) on such date.

''(II) DRUGS AND BIOLOGICALS FURNISHED AS PART OF OTHER OPD SERVICES.—The amount of payment for a drug or biological described in subparagraph (D) provided as part of any other covered OPD service shall be the applicable percentage (as defined in subparagraph (C)) of the average wholesale price that would have been determined under section 1842(o) on May 1, 2003, if payment for such a drug or biological could have been made under this part on that date.

''(ii) UPDATE FOR 2006.—For 2006, the amounts determined under clauses (i) and (ii) shall be the amount established for 2005 increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year.

''(B) AFTER 2007.—

''(i) ONGOING STUDY AND REPORTS ON ADEQUATE REIMBURSEMENTS.—

''(I) STUDY.—The Secretary shall contract with an eligible organization (as defined in subclause (IV)) to conduct a study to determine the hospital acquisition and handling costs for each individual drug or biological described in subparagraph (D).

''(II) STUDY REQUIREMENTS.—The study conducted under subclause (I) shall—

''(aa) be accurate to within 3 percent of true mean hospital acquisition and handling costs for each drug and biological at the 95 percent confidence level;

''(bb) begin not later than January 1, 2005; and

''(cc) be updated annually for changes in hospital costs and the addition of newly marketed products.

''(III) REPORTS.—Not later than January 1 of each year (beginning with 2006), the Secretary shall submit to Congress a report on the study conducted under clause (i) together with recommendations for such legislative or administrative action as the Secretary determines to be appropriate.

''(IV) ELIGIBLE ORGANIZATION DEFINED.—In this clause, the term 'eligible organization' means a private, nonprofit organization within the meaning of section 501(c) of the Internal Revenue Code.

''(ii) ESTABLISHMENT OF PAYMENT METHODOLOGY.—Notwithstanding paragraph (6), the Secretary, in establishing a payment methodology on or after the date of enactment of the Prescription Drug and Medicare Improvement Act of 2003, shall take into consideration the findings of the study conducted under clause (i)(I) in determining payment amounts for each drug and biological provided as part of a covered OPD service furnished on or after January 1, 2007.

''(C) APPLICABLE PERCENTAGE DEFINED.—In this paragraph, the term 'applicable percentage' means—

''(i) with respect to a biological product (approved under a biologics license application under section 351 of the Public Health Service Act), a single source drug (as defined in section 1927(k)(7)(A)(iv)), or an orphan product designated under section 526 of the Food, Drug, and Cosmetic Act to which the prospective payment system established under this subsection did not apply under the final rule for 2003 payments under such system, 94 percent;

''(ii) with respect to an innovator multiple source drug (as defined in section 1927(k)(7)(A)(ii)), 91 percent; and

''(iii) with respect to a noninnovator multiple source drug (as defined in as defined in section 1927(k)(7)(A)(iii)), 71 percent.

''(D) DRUGS AND BIOLOGICALS DESCRIBED.—A drug or biological described in this paragraph is any drug or biological—

''(i) for which the amount of payment was determined under paragraph (6) prior to January 1, 2005;

''(ii) which is assigned to a drug specific ambulatory payment classification on or after the date of enactment of the Prescription Drug and Medicare Improvement Act of 2003; and

''(iii) that would have been reimbursed under paragraph (6) but for the application of this paragraph.''.

(b) EXCEPTIONS TO BUDGET NEUTRALITY REQUIREMENT.—Section 1833(t)(9)(B) (42 U.S.C. 1395l(t)(9)(B)) is amended by adding at the end the following: ''In determining the budget neutrality adjustment required by the preceding sentence for fiscal years 2005 and 2006, the Secretary shall not take into account any expenditures that would not have been made but for the application of paragraph (13).''.

SEC. 438. LIMITATION OF APPLICATION OF FUNCTIONAL EQUIVALENCE STANDARD.

Section 1833(t)(6) (42 U.S.C. 1395l(t)(6)) is amended by adding at the end the following new subparagraph:

''(F) LIMITATION OF APPLICATION OF FUNCTIONAL EQUIVALENCE STANDARD.—

''(i) IN GENERAL.—The Secretary may not publish regulations that apply a functional equivalence standard to a drug or biological under this paragraph.

''(ii) APPLICATION.—Paragraph (1) shall apply to the application of a functional equivalence standard to a drug or biological on or after the date of enactment of the Prescription Drug and Medicare Improvement Act of 2003 unless—

''(I) such application was being made to such drug or biological prior to such date of enactment; and

''(II) the Secretary applies such standard to such drug or biological only for the purpose of determining eligibility of such drug or biological for additional payments under this paragraph and not for the purpose of any other payments under this title.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to effect the Secretary's authority to deem a particular drug to be identical to another drug if the 2 products are pharmaceutically equivalent and bioequvalent, as determined by the Commissioner of Food and Drugs.

SEC. 439. MEDICARE COVERAGE OF ROUTINE COSTS ASSOCIATED WITH CERTAIN CLINICAL TRIALS.

(a) IN GENERAL.—With respect to the coverage of routine costs of care for beneficiaries participating in a qualifying clinical trial, as set forth on the date of the enactment of this Act in National Coverage Determination 30-1 of the Medicare Coverage Issues Manual, the Secretary shall deem clinical trials conducted in accordance with an investigational device exemption approved under section 520(g) of the Federal Food, Drug, and Cosmetic Act (42 U.S.C. 360j(g)) to be automatically qualified for such coverage.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing or requiring the Secretary to modify the regulations set forth on the date of the enactment of this Act at subpart B of part 405 of title 42, Code of Federal Regulations, or subpart A of part 411 of such title, relating to coverage of, and payment for, a medical device that is the subject of an investigational device exemption by the Food and Drug Administration (except as may be necessary to implement subsection (a)).

(c) EFFECTIVE DATE.—This section shall apply to clinical trials begun on or after January 1, 2005.

SEC. 440. WAIVER OF PART B LATE ENROLLMENT PENALTY FOR CERTAIN MILITARY RETIREES; SPECIAL ENROLLMENT PERIOD.

(a) WAIVER OF PENALTY.—

(1) IN GENERAL.—Section 1839(b) (42 U.S.C. 1395r(b)) is amended by adding at the end the following new sentence: ''No increase in the premium shall be effected for a month in the case of an individual who is 65 years of age or older, who enrolls under this part during 2002, 2003, 2004, or 2005 and who demonstrates to the Secretary before December 31, 2005, that the individual is a covered beneficiary (as defined in section 1072(5) of title 10, United States Code). The Secretary shall consult with the Secretary of Defense in identifying individuals described in the previous sentence.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to premiums for months beginning with January 2005. The Secretary shall establish a method for providing rebates of premium penalties paid for months on or after January 2005 for which a penalty does not apply under such amendment but for which a penalty was previously collected.

(b) MEDICARE PART B SPECIAL ENROLLMENT PERIOD.—

(1) IN GENERAL.—In the case of any individual who, as of the date of enactment of this Act, is 65 years of age or older, is eligible to enroll but is not enrolled under part B of title XVIII of the Social Security Act, and is a covered beneficiary (as defined in section 1072(5) of title 10, United States Code), the Secretary shall provide for a special enrollment period during which the individual may enroll under such part. Such period shall begin 1 year after the date of the enactment of this Act and shall end on December 31, 2005.

(2) COVERAGE PERIOD.—In the case of an individual who enrolls during the special enrollment period provided under paragraph (1), the coverage period under part B of title XVIII of the Social Security Act shall begin on the first day of the month following the month in which the individual enrolls.

SEC. 441. DEMONSTRATION OF COVERAGE OF CHIROPRACTIC SERVICES UNDER MEDICARE.

(a) DEFINITIONS.—In this section:

(1) CHIROPRACTIC SERVICES.—The term ''chiropractic services'' has the meaning given that term by the Secretary for purposes of the demonstration projects, but shall include, at a minimum—

(A) care for neuromusculoskeletal conditions typical among eligible beneficiaries; and

(B) diagnostic and other services that a chiropractor is legally authorized to perform by the State or jurisdiction in which such treatment is provided.

(2) DEMONSTRATION PROJECT.—The term ''demonstration project'' means a demonstration project established by the Secretary under subsection (b)(1).

(3) ELIGIBLE BENEFICIARY.—The term ''eligible beneficiary'' means an individual who is enrolled under part B of the medicare program.

(4) MEDICARE PROGRAM.—The term ''medicare program'' means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(b) DEMONSTRATION OF COVERAGE OF CHIROPRACTIC SERVICES UNDER MEDICARE.—

(1) ESTABLISHMENT.—The Secretary shall establish demonstration projects in accordance with the provisions of this section for the purpose of evaluating the feasibility and advisability of covering chiropractic services under the medicare program (in addition to the coverage provided for services consisting of treatment by means of manual manipulation of the spine to correct a subluxation described in section 1861(r)(5) of the Social Security Act (42 U.S.C. 1395x(r)(5))).

(2) NO PHYSICIAN APPROVAL REQUIRED.—In establishing the demonstration projects, the Secretary shall ensure that an eligible beneficiary who participates in a demonstration project, including an eligible beneficiary who is enrolled for coverage under a Medicare+Choice plan (or, on and after January 1, 2006, under a MedicareAdvantage plan), is not required to receive approval from a physician or other health care provider in order to receive a chiropractic service under a demonstration project.

(3) CONSULTATION.—In establishing the demonstration projects, the Secretary shall consult with chiropractors, organizations representing chiropractors, eligible beneficiaries, and organizations representing eligible beneficiaries.

(4) PARTICIPATION.—Any eligible beneficiary may participate in the demonstration projects on a voluntary basis.

(c) CONDUCT OF DEMONSTRATION PROJECTS.—

(1) DEMONSTRATION SITES.—

(A) SELECTION OF DEMONSTRATION SITES.—The Secretary shall conduct demonstration projects at 6 demonstration sites.

(B) GEOGRAPHIC DIVERSITY.—Of the sites described in subparagraph (A)—

(i) 3 shall be in rural areas; and

(ii) 3 shall be in urban areas.

(C) SITES LOCATED IN HPSAS.—At least 1 site described in clause (i) of subparagraph (B) and at least 1 site described in clause (ii) of such subparagraph shall be located in an area that is designated under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)) as a health professional shortage area.

(2) IMPLEMENTATION; DURATION.—

(A) IMPLEMENTATION.—The Secretary shall not implement the demonstration projects before October 1, 2004.

(B) DURATION.—The Secretary shall complete the demonstration projects by the date that is 3 years after the date on which the first demonstration project is implemented.

(d) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall conduct an evaluation of the demonstration projects—

(A) to determine whether eligible beneficiaries who use chiropractic services use a lesser overall amount of items and services for which payment is made under the medicare program than eligible beneficiaries who do not use such services;

(B) to determine the cost of providing payment for chiropractic services under the medicare program;

(C) to determine the satisfaction of eligible beneficiaries participating in the demonstration projects and the quality of care received by such beneficiaries; and

(D) to evaluate such other matters as the Secretary determines is appropriate.

(2) REPORT.—Not later than the date that is 1 year after the date on which the demonstration projects conclude, the Secretary shall submit to Congress a report on the evaluation conducted under paragraph (1) together with such recommendations for legislation or administrative action as the Secretary determines is appropriate.

(e) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of the medicare program to the extent and for the period the Secretary finds necessary to conduct the demonstration projects.

(f) FUNDING.—

(1) DEMONSTRATION PROJECTS.—

(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (2), the Secretary shall provide for the transfer from the Federal Supplementary Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t) of such funds as are necessary for the costs of carrying out the demonstration projects under this section.

(B) LIMITATION.—In conducting the demonstration projects under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under the medicare program do not exceed the amount which the Secretary would have paid under the medicare program if the demonstration projects under this section were not implemented.

(2) EVALUATION AND REPORT.—There are authorized to be appropriated such sums as are necessary for the purpose of developing and submitting the report to Congress under subsection (d).

SEC. 442. MEDICARE HEALTH CARE QUALITY DEMONSTRATION PROGRAMS.

Title XVIII (42 U.S.C. 1395 et seq.) is amended by inserting after section 1866B the following new section:

''HEALTH CARE QUALITY DEMONSTRATION PROGRAM

''SEC. 1866C. (a) DEFINITIONS.—In this section:

''(1) BENEFICIARY.—The term 'beneficiary' means a beneficiary who is enrolled in the original medicare fee-for-service program under parts A and B or a beneficiary in a staff model or dedicated group model health maintenance organization under the Medicare+Choice program (or, on and after January 1, 2006, under the MedicareAdvantage program) under part C.

''(2) HEALTH CARE GROUP.—

''(A) IN GENERAL.—The term 'health care group' means—

''(i) a group of physicians that is organized at least in part for the purpose of providing physician's services under this title;

''(ii) an integrated health care delivery system that delivers care through coordinated hospitals, clinics, home health agencies, ambulatory surgery centers, skilled nursing facilities, rehabilitation facilities and clinics, and employed, independent, or contracted physicians; or

''(iii) an organization representing regional coalitions of groups or systems described in clause (i) or (ii).

''(B) INCLUSION.—As the Secretary determines appropriate, a health care group may include a hospital or any other individual or entity furnishing items or services for which payment may be made under this title that is affiliated with the health care group under an arrangement structured so that such hospital, individual, or entity participates in a demonstration project under this section.

''(3) PHYSICIAN.—Except as otherwise provided for by the Secretary, the term 'physician' means any individual who furnishes services that may be paid for as physicians' services under this title.

''(b) DEMONSTRATION PROJECTS.—The Secretary shall establish a 5-year demonstration program under which the Secretary shall approve demonstration projects that examine health delivery factors that encourage the delivery of improved quality in patient care, including—

''(1) the provision of incentives to improve the safety of care provided to beneficiaries;

''(2) the appropriate use of best practice guidelines by providers and services by beneficiaries;

''(3) reduced scientific uncertainty in the delivery of care through the examination of variations in the utilization and allocation of services, and outcomes measurement and research;

''(4) encourage shared decision making between providers and patients;

''(5) the provision of incentives for improving the quality and safety of care and achieving the efficient allocation of resources;

''(6) the appropriate use of culturally and ethnically sensitive health care delivery; and

''(7) the financial effects on the health care marketplace of altering the incentives for care delivery and changing the allocation of resources.

''(c) ADMINISTRATION BY CONTRACT.—

''(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary may administer the demonstration program established under this section in a manner that is similar to the manner in which the demonstration program established under section 1866A is administered in accordance with section 1866B.

''(2) ALTERNATIVE PAYMENT SYSTEMS.—A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include proposals for the use of alternative payment systems for items and services provided to beneficiaries by the group that are designed to—

''(A) encourage the delivery of high quality care while accomplishing the objectives described in subsection (b); and

''(B) streamline documentation and reporting requirements otherwise required under this title.

''(3) BENEFITS.—A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include modifications to the package of benefits available under the traditional fee-for-service program under parts A and B or the package of benefits available through a staff model or a dedicated group model health maintenance organization under part C. The criteria employed under the demonstration program under this section to evaluate outcomes and determine best practice guidelines and incentives shall not be used as a basis for the denial of medicare benefits under the demonstration program to patients against their wishes (or if the patient is incompetent, against the wishes of the patient's surrogate) on the basis of the patient's age or expected length of life or of the patient's present or predicted disability, degree of medical dependency, or quality of life.

''(d) ELIGIBILITY CRITERIA.—To be eligible to receive assistance under this section, an entity shall—

''(1) be a health care group;

''(2) meet quality standards established by the Secretary, including—

''(A) the implementation of continuous quality improvement mechanisms that are aimed at integrating community-based support services, primary care, and referral care;

''(B) the implementation of activities to increase the delivery of effective care to beneficiaries;

''(C) encouraging patient participation in preference-based decisions;

''(D) the implementation of activities to encourage the coordination and integration of medical service delivery; and

''(E) the implementation of activities to measure and document the financial impact on the health care marketplace of altering

the incentives of health care delivery and changing the allocation of resources; and

''(3) meet such other requirements as the Secretary may establish.

''(e) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII as may be necessary to carry out the purposes of the demonstration program established under this section.

''(f) BUDGET NEUTRALITY.—With respect to the 5-year period of the demonstration program under subsection (b), the aggregate expenditures under this title for such period shall not exceed the aggregate expenditures that would have been expended under this title if the program established under this section had not been implemented.

''(g) NOTICE REQUIREMENTS.—In the case of an individual that receives health care items or services under a demonstration program carried out under this section, the Secretary shall ensure that such individual is notified of any waivers of coverage or payment rules that are applicable to such individual under this title as a result of the participation of the individual in such program.

''(h) PARTICIPATION AND SUPPORT BY FEDERAL AGENCIES.—In carrying out the demonstration program under this section, the Secretary may direct—

''(1) the Director of the National Institutes of Health to expand the efforts of the Institutes to evaluate current medical technologies and improve the foundation for evidence-based practice;

''(2) the Administrator of the Agency for Healthcare Research and Quality to, where possible and appropriate, use the program under this section as a laboratory for the study of quality improvement strategies and to evaluate, monitor, and disseminate information relevant to such program; and

''(3) the Administrator of the Centers for Medicare & Medicaid Services and the Administrator of the Center for Medicare Choices to support linkages of relevant medicare data to registry information from participating health care groups for the beneficiary populations served by the participating groups, for analysis supporting the purposes of the demonstration program, consistent with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996.

''(i) IMPLEMENTATION.—The Secretary shall not implement the demonstration program before October 1, 2004.''.

SEC. 443. MEDICARE COMPLEX CLINICAL CARE MANAGEMENT PAYMENT DEMONSTRATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a demonstration program to make the medicare program more responsive to needs of eligible beneficiaries by promoting continuity of care, helping stabilize medical conditions, preventing or minimizing acute exacerbations of chronic conditions, and reducing adverse health outcomes, such as adverse drug interactions related to polypharmacy.

(2) SITES.—The Secretary shall designate 6 sites at which to conduct the demonstration program under this section, of which at least 3 shall be in an urban area and at least 1 shall be in a rural area. One of the sites shall be located in the State of Arkansas.

(3) DURATION.—The Secretary shall conduct the demonstration program under this section for a 3-year period.

(4) IMPLEMENTATION.—The Secretary shall not implement the demonstration program before October 1, 2004.

(b) PARTICIPANTS.—Any eligible beneficiary who resides in an area designated by the Secretary as a demonstration site under subsection (a)(2) may participate in the demonstration program under this section if such beneficiary identifies a principal care physician who agrees to manage the complex clinical care of the eligible beneficiary under the demonstration program.

(c) PRINCIPAL CARE PHYSICIAN RESPONSIBILITIES.—The Secretary shall enter into an agreement with each principal care physician who agrees to manage the complex clinical care of an eligible beneficiary under subsection (b) under which the principal care physician shall—

(1) serve as the primary contact of the eligible beneficiary in accessing items and services for which payment may be made under the medicare program;

(2) maintain medical information related to care provided by other health care providers who provide health care items and services to the eligible beneficiary, including clinical reports, medication and treatments prescribed by other physicians, hospital and hospital outpatient services, skilled nursing home care, home health care, and medical equipment services;

(3) monitor and advocate for the continuity of care of the eligible beneficiary and the use of evidence-based guidelines;

(4) promote self-care and family caregiver involvement where appropriate;

(5) have appropriate staffing arrangements to conduct patient self-management and other care coordination activities as specified by the Secretary;

(6) refer the eligible beneficiary to community services organizations and coordinate the services of such organizations with the care provided by health care providers; and

(7) meet such other complex care management requirements as the Secretary may specify.

(d) COMPLEX CLINICAL CARE MANAGEMENT FEE.—

(1) PAYMENT.—Under an agreement entered into under subsection (c), the Secretary shall pay to each principal care physician, on behalf of each eligible beneficiary under the care of that physician, the complex clinical care management fee developed by the Secretary under paragraph (2).

(2) DEVELOPMENT OF FEE.—The Secretary shall develop a complex care management fee under this paragraph that is paid on a monthly basis and which shall be payment in full for all the functions performed by the principal care physician under the demonstration program, including any functions performed by other qualified practitioners acting on behalf of the physician, appropriate staff under the supervision of the physician, and any other person under a contract with the physician, including any person who conducts patient self-management and caregiver education under subsection (c)(4).

(e) FUNDING.—

(1) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Supplementary Insurance Trust Fund established under section 1841 of the Social Security Act (42 U.S.C. 1395t) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

(f) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq.; 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

(g) REPORT.—Not later than 6 months after the completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

(h) DEFINITIONS.—In this section:

(1) ACTIVITY OF DAILY LIVING.—The term ''activity of daily living'' means eating, toiling, transferring, bathing, dressing, and continence.

(2) CHRONIC CONDITION.—The term ''chronic condition'' means a biological, physical, or mental condition that is likely to last a year or more, for which there is no known cure, for which there is a need for ongoing medical care, and which may affect an individual's ability to carry out activities of daily living or instrumental activities of daily living, or both.

(3) ELIGIBLE BENEFICIARY.—The term ''eligible beneficiary'' means any individual who—

(A) is enrolled for benefits under part B of the medicare program;

(B) has at least 4 complex medical conditions (one of which may be cognitive impairment); and

(C) has—

(i) an inability to self-manage their care; or

(ii) a functional limitation defined as an impairment in 1 or more activity of daily living or instrumental activity of daily living.

(4) INSTRUMENTAL ACTIVITY OF DAILY LIVING.—The term ''instrumental activity of daily living'' means meal preparation, shopping, housekeeping, laundry, money management, telephone use, and transportation use.

(5) MEDICARE PROGRAM.—The term ''medicare program'' means the health care program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) PRINCIPAL CARE PHYSICIAN.—The term ''principal care physician'' means the physician with primary responsibility for overall coordination of the care of an eligible beneficiary (as specified in a written plan of care) who may be a primary care physician or a specialist.

SEC. 444. MEDICARE FEE-FOR-SERVICE CARE COORDINATION DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a demonstration program to contract with qualified care management organizations to provide health risk assessment and care management services to eligible beneficiaries who receive care under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act to eligible beneficiaries.

(2) SITES.—The Secretary shall designate 6 sites at which to conduct the demonstration program under this section. In selecting sites under this paragraph, the Secretary shall give preference to sites located in rural areas.

(3) DURATION.—The Secretary shall conduct the demonstration program under this section for a 5-year period.

(4) IMPLEMENTATION.—The Secretary shall not implement the demonstration program before October 1, 2004.

(b) PARTICIPANTS.—Any eligible beneficiary who resides in an area designated by the Secretary as a demonstration site under subsection (a)(2) may participate in the demonstration program under this section if such beneficiary identifies a care management organization who agrees to furnish care management services to the eligible beneficiary under the demonstration program.

(c) CONTRACTS WITH CMOS.—

(1) IN GENERAL.—The Secretary shall enter into a contract with care management organizations to provide care management services to eligible beneficiaries residing in the area served by the care management organization.

(2) CANCELLATION.—The Secretary may cancel a contract entered into under paragraph (1) if the care management organization does not meet negotiated savings or quality outcomes targets for the year.

(3) NUMBER OF CMOS.—The Secretary may contract with more than 1 care management organization in a geographic area.

(d) PAYMENT TO CMOs.—

(1) PAYMENT.—Under an contract entered into under subsection (c), the Secretary shall pay care management organizations a fee for which the care management organization is partially at risk based on bids submitted by care management organizations.

(2) PORTION OF PAYMENT AT RISK.—The Secretary shall establish a benchmark for quality and cost against which the results of the care management organization are to be measured. The Secretary may not pay a care management organization the portion of the fee described in paragraph (1) that is at risk unless the Secretary determines that the care management organization has met the agreed upon savings and outcomes targets for the year.

(e) FUNDING.—

(1) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t), in such proportion as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration program under this section.

(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

(f) WAIVER AUTHORITY.—

(1) IN GENERAL.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq.; 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

(2) WAIVER OF MEDIGAP PREEMPTIONS.—The Secretary shall waive any provision of section 1882 of the Social Security Act that would prevent an insurance carrier described in subsection (h)(3)(D) from participating in the demonstration program under this section.

(g) REPORT.—Not later than 6 months after the completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

(h) DEFINITIONS.—In this section:

(1) CARE MANAGEMENT SERVICES.—The term ''care management services'' means services that are furnished to an eligible beneficiary (as defined in paragraph (2)) by a care management organization (as defined in paragraph (3)) in accordance with guidelines established by the Secretary that are consistent with guidelines established by the American Geriatrics Society.

(2) ELIGIBLE BENEFICIARY.—The term ''eligible beneficiary'' means an individual who is—

(A) entitled to (or enrolled for) benefits under part A and enrolled for benefits under part B of the Social Security Act (42 U.S.C. 1395c et seq.; 1395j et seq.);

(B) not enrolled with a Medicare+Choice plan or a MedicareAdvantage plan under part C; and

(C) at high-risk (as defined by the Secretary, but including eligible beneficiaries with multiple sclerosis or another disabling chronic condition, eligible beneficiaries residing in a nursing home or at risk for nursing home placement, or eligible beneficiaries eligible for assistance under a State plan under title XIX).

(3) CARE MANAGEMENT ORGANIZATION.—The term ''care management organization'' means an organization that meets such qualifications as the Secretary may specify and includes any of the following:

(A) A physician group practice, hospital, home health agency, or hospice program.

(B) A disease management organization.

(C) A Medicare+Choice or MedicareAdvantage organization.

(D) Insurance carriers offering medicare supplemental policies under section 1882 of the Social Security Act (42 U.S.C. 1395ss).

(E) Such other entity as the Secretary determines to be appropriate.

SEC. 445. GAO STUDY OF GEOGRAPHIC DIFFERENCES IN PAYMENTS FOR PHYSICIANS' SERVICES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of differences in payment amounts under the physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for physicians' services in different geographic areas. Such study shall include—

(1) an assessment of the validity of the geographic adjustment factors used for each component of the fee schedule;

(2) an evaluation of the measures used for such adjustment, including the frequency of revisions;

(3) an evaluation of the methods used to determine professional liability insurance costs used in computing the malpractice component, including a review of increases in professional liability insurance premiums and variation in such increases by State and physician specialty and methods used to update the geographic cost of practice index and relative weights for the malpractice component;

(4) an evaluation of whether there is a sound economic basis for the implementation of the adjustment under subparagraphs (E) and (F) of section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)), as added by section 421, in those areas in which the adjustment applies;

(5) an evaluation of the effect of such adjustment on physician location and retention in areas affected by such adjustment, taking into account—

(A) differences in recruitment costs and retention rates for physicians, including specialists, between large urban areas and other areas; and

(B) the mobility of physicians, including specialists, over the last decade; and

(6) an evaluation of appropriateness of extending such adjustment or making such adjustment permanent.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a). The report shall include recommendations regarding the use of more current data in computing geographic cost of practice indices as well as the use of data directly representative of physicians' costs (rather than proxy measures of such costs).

Subtitle C—Provisions Relating to Parts A and B

SEC. 451. INCREASE FOR HOME HEALTH SERVICES FURNISHED IN A RURAL AREA.

(a) IN GENERAL.—In the case of home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D))) on or after October 1, 2004, and before October 1, 2006, the Secretary shall increase the payment amount otherwise made under section 1895 of such Act (42 U.S.C. 1395fff) for such services by 5 percent.

(b) WAIVING BUDGET NEUTRALITY.—The Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Social Security Act (42 U.S.C. 1395fff) applicable to home health services furnished during a period to offset the increase in payments resulting from the application of subsection (a).

(c) NO EFFECT ON SUBSEQUENT PERIODS.—The payment increase provided under subsection (a) for a period under such subsection—

(1) shall not apply to episodes and visits ending after such period; and

(2) shall not be taken into account in calculating the payment amounts applicable for episodes and visits occurring after such period.

SEC. 452. LIMITATION ON REDUCTION IN AREA WAGE ADJUSTMENT FACTORS UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR HOME HEALTH SERVICES.

Section 1895(b)(4)(C) (42 U.S.C. 1395fff(b)(4)(C)) is amended—

(1) by striking ''FACTORS.—The Secretary'' and inserting ''FACTORS.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary''; and

(2) by adding at the end the following new clause:

''(ii) LIMITATION ON REDUCTION IN FISCAL YEAR 2005 AND 2006.—For fiscal years 2005 and 2006, the area wage adjustment factor applicable to home health services furnished in an area in the fiscal year may not be more that 3 percent less than the area wage adjustment factor applicable to home health services for the area for the previous year.''.

SEC. 453. CLARIFICATIONS TO CERTAIN EXCEPTIONS TO MEDICARE LIMITS ON PHYSICIAN REFERRALS.

(a) LIMITS ON PHYSICIAN REFERRALS.—

(1) OWNERSHIP AND INVESTMENT INTERESTS IN WHOLE HOSPITALS.—

(A) IN GENERAL.—Section 1877(d)(3) (42 U.S.C. 1395nn(d)(3)) is amended—

(i) by striking ''and'' at the end of subparagraph (A); and

(ii) by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following:

''(B) the hospital is not a specialty hospital (as defined in subsection (h)(7)); and''.

(B) DEFINITION.—Section 1877(h) (42 U.S.C. 1395nn(h)) is amended by adding at the end the following:

''(7) SPECIALTY HOSPITAL.—

''(A) IN GENERAL.—For purposes of this section, except as provided in subparagraph (B), the term 'specialty hospital' means a hospital that is primarily or exclusively engaged in the care and treatment of one of the following:

''(i) patients with a cardiac condition;

''(ii) patients with an orthopedic condition;

''(iii) patients receiving a surgical procedure; or

''(iv) any other specialized category of patients or cases that the Secretary designates as inconsistent with the purpose of permitting physician ownership and investment interests in a hospital under this section.

''(B) EXCEPTION.—For purposes of this section, the term 'specialty hospital' does not include any hospital—

''(i) determined by the Secretary—

''(I) to be in operation before June 12, 2003; or

''(II) under development as of such date;

''(ii) for which the number of beds and the number of physician investors at any time on or after such date is no greater than the number of such beds or investors as of such date; and

''(iii) that meets such other requirements as the Secretary may specify.''.

(2) OWNERSHIP AND INVESTMENT INTERESTS IN A RURAL PROVIDER.—Section 1877(d)(2) (42 U.S.C. 1395nn(d)(2)) is amended to read as follows:

''(2) RURAL PROVIDERS.—In the case of designated health services furnished in a rural area (as defined in section 1886(d)(2)(D)) by an entity, if—

''(A) substantially all of the designated health services furnished by the entity are furnished to individuals residing in such a rural area;

''(B) the entity is not a specialty hospital (as defined in subsection (h)(7)); and

''(C) the Secretary determines, with respect to such entity, that such services would not be available in such area but for the ownership or investment interest.''.

(b) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this section shall apply to referrals made for designated health services on or after January 1, 2004.

(c) APPLICATION OF EXCEPTION FOR HOSPITALS UNDER DEVELOPMENT.—For purposes of section 1877(h)(7)(B)(i)(II) of the Social Security Act, as added by subsection (a)(1)(B), in determining whether a hospital is under development as of June 12, 2003, the Secretary shall consider—

(1) whether architectural plans have been completed, funding has been received, zoning requirements have been met, and necessary approvals from appropriate State agencies have been received; and

(2) any other evidence the Secretary determines would indicate whether a hospital is under development as of such date.

SEC. 454. DEMONSTRATION PROGRAM FOR SUBSTITUTE ADULT DAY SERVICES.

(a) ESTABLISHMENT.—The Secretary shall establish a demonstration program (in this section referred to as the ''demonstration program'') under which the Secretary provides eligible medicare beneficiaries with coverage under the medicare program of substitute adult day services furnished by an adult day services facility.

(b) PAYMENT RATE FOR SUBSTITUTE ADULT DAY SERVICES.—

(1) PAYMENT RATE.—For purposes of making payments to an adult day services facility for substitute adult day services under the demonstration program, the following rules shall apply:

(A) ESTIMATION OF PAYMENT AMOUNT.—The Secretary shall estimate the amount that would otherwise be payable to a home health agency under section 1895 of the Social Security Act (42 U.S.C. 1395fff) for all home health services described in subsection (i)(4)(B)(i) under the plan of care.

(B) AMOUNT OF PAYMENT.—Subject to paragraph (3)(B), the total amount payable for substitute adult day services under the plan of care is equal to 95 percent of the amount estimated to be payable under subparagraph (A).

(2) LIMITATION ON BALANCE BILLING.—Under the demonstration program, an adult day services facility shall accept as payment in full for substitute adult day services (including those services described in clauses (ii) through (iv) of subsection (i)(4)(B)) furnished by the facility to an eligible medicare beneficiary the amount of payment provided under the demonstration program for home health services consisting of substitute adult services.

(3) ADJUSTMENT IN CASE OF OVERUTILIZATION OF SUBSTITUTE ADULT DAY SERVICES TO ENSURE BUDGET NEUTRALITY.—The Secretary shall monitor the expenditures under the demonstration program and under title XVIII of the Social Security Act for home health services. If the Secretary estimates that the total expenditures under the demonstration program and under such title XVIII for home health services for a period determined by the Secretary exceed expenditures that would have been made under such title XVIII for home health services for such period if the demonstration program had not been conducted, the Secretary shall adjust the rate of payment to adult day services facilities under paragraph (1)(B) in order to eliminate such excess.

(c) DEMONSTRATION PROGRAM SITES.—The demonstration program shall be conducted in not more than 3 sites selected by the Secretary.

(d) DURATION; IMPLEMENTATION.—

(1) DURATION.—The Secretary shall conduct the demonstration program for a period of 3 years.

(2) IMPLEMENTATION.—The Secretary may not implement the demonstration program before October 1, 2004.

(e) VOLUNTARY PARTICIPATION.—Participation of eligible medicare beneficiaries in the demonstration program shall be voluntary.

(f) WAIVER AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq.; 1395 et seq.) as may be necessary for the purposes of carrying out the demonstration program.

(2) MAY NOT WAIVE ELIGIBILITY REQUIREMENTS FOR HOME HEALTH SERVICES.—The Secretary may not waive the beneficiary eligibility requirements for home health services under title XVIII of the Social Security Act.

(g) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall conduct an evaluation of the clinical and cost effectiveness of the demonstration program.

(2) REPORT.—Not later than 30 months after the commencement of the demonstration program, the Secretary shall submit to Congress a report on the evaluation conducted under paragraph (1) and shall include in the report the following:

(A) An analysis of the patient outcomes and costs of furnishing care to the eligible medicare beneficiaries participating in the demonstration program as compared to such outcomes and costs to such beneficiaries receiving only home health services under title XVIII of the Social Security Act for the same health conditions.

(B) Such recommendations regarding the extension, expansion, or termination of the program as the Secretary determines appropriate.

(i) DEFINITIONS.—In this section:

(1) ADULT DAY SERVICES FACILITY.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the term ''adult day services facility'' means a public agency or private organization, or a subdivision of such an agency or organization, that—

(i) is engaged in providing skilled nursing services and other therapeutic services directly or under arrangement with a home health agency;

(ii) provides the items and services described in paragraph (4)(B); and

(iii) meets the requirements of paragraphs (2) through (8) of subsection (o).

(B) INCLUSION.—Notwithstanding subparagraph (A), the term ''adult day services facility'' shall include a home health agency in which the items and services described in clauses (ii) through (iv) of paragraph (4)(B) are provided—

(i) by an adult day services program that is licensed or certified by a State, or accredited, to furnish such items and services in the State; and

(ii) under arrangements with that program made by such agency.

(C) WAIVER OF SURETY BOND.—The Secretary may waive the requirement of a surety bond under section 1861(o)(7) of the Social Security Act (42 U.S.C. 1395x(o)(7)) in the case of an agency or organization that provides a comparable surety bond under State law.

(2) ELIGIBLE MEDICARE BENEFICIARY.—The term ''eligible medicare beneficiary'' means an individual eligible for home health services under title XVIII of the Social Security Act.

(3) HOME HEALTH AGENCY.—The term ''home health agency'' has the meaning given such term in section 1861(o) of the Social Security Act (42 U.S.C. 1395x(o)).

(4) SUBSTITUTE ADULT DAY SERVICES.—

(A) IN GENERAL.—The term ''substitute adult day services'' means the items and services described in subparagraph (B) that are furnished to an individual by an adult day services facility as a part of a plan under section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)) that substitutes such services for some or all of the items and services described in subparagraph (B)(i) furnished by a home health agency under the plan, as determined by the physician establishing the plan.

(B) ITEMS AND SERVICES DESCRIBED.—The items and services described in this subparagraph are the following items and services:

(i) Items and services described in paragraphs (1) through (7) of such section 1861(m).

(ii) Meals.

(iii) A program of supervised activities designed to promote physical and mental health and furnished to the individual by the adult day services facility in a group setting for a period of not fewer than 4 and not greater than 12 hours per day.

(iv) A medication management program (as defined in subparagraph (C)).

(C) MEDICATION MANAGEMENT PROGRAM.—For purposes of subparagraph (B)(iv), the term ''medication management program'' means a program of services, including medicine screening and patient and health care provider education programs, that provides services to minimize—

(i) unnecessary or inappropriate use of prescription drugs; and

(ii) adverse events due to unintended prescription drug-to-drug interactions.

TITLE V—MEDICARE APPEALS, REGULATORY, AND CONTRACTING IMPROVEMENTS

Subtitle A—Regulatory Reform

SEC. 501. RULES FOR THE PUBLICATION OF A FINAL REGULATION BASED ON THE PREVIOUS PUBLICATION OF AN INTERIM FINAL REGULATION.

(a) IN GENERAL.—Section 1871(a) (42 U.S.C. 1395hh(a)) is amended by adding at the end the following new paragraph:

''(3)(A) With respect to the publication of a final regulation based on the previous publication of an interim final regulation—

''(i) subject to subparagraph (B), the Secretary shall publish the final regulation within the 12-month period that begins on the date of publication of the interim final regulation;

''(ii) if a final regulation is not published by the deadline established under this paragraph, the interim final regulation shall not continue in effect unless the Secretary publishes a notice described in subparagraph (B) by such deadline; and

''(iii) the final regulation shall include responses to comments submitted in response to the interim final regulation.

''(B) If the Secretary determines before the deadline otherwise established in this paragraph that there is good cause, specified in a notice published before such deadline, for delaying the deadline otherwise applicable under this paragraph, the deadline otherwise established under this paragraph shall be extended for such period (not to exceed 12 months) as the Secretary specifies in such notice.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act and shall apply to interim final regulations published on or after such date.

(c) STATUS OF PENDING INTERIM FINAL REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall publish a notice in the Federal Register that provides the status of each interim final regulation that was published on or before the date of enactment of this Act and for which no final regulation has been published. Such notice shall include the date by which the Secretary plans to publish the final regulation that is based on the interim final regulation.

SEC. 502. COMPLIANCE WITH CHANGES IN REGULATIONS AND POLICIES.

(a) NO RETROACTIVE APPLICATION OF SUBSTANTIVE CHANGES.—

(1) IN GENERAL.—Section 1871 (42 U.S.C. 1395hh) is amended by adding at the end the following new subsection:

''(d)(1)(A) A substantive change in regulations, manual instructions, interpretative rules, statements of policy, or guidelines of general applicability under this title shall not be applied (by extrapolation or otherwise) retroactively to items and services furnished before the effective date of the change, unless the Secretary determines that—

''(i) such retroactive application is necessary to comply with statutory requirements; or

''(ii) failure to apply the change retroactively would be contrary to the public interest.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to substantive changes issued on or after the date of enactment of this Act.

(b) TIMELINE FOR COMPLIANCE WITH SUBSTANTIVE CHANGES AFTER NOTICE.—

(1) IN GENERAL.—Section 1871(d)(1), as added by subsection (a), is amended by adding at the end the following:

''(B) A compliance action may be made against a provider of services, physician, practitioner, or other supplier with respect to noncompliance with such a substantive change only for items and services furnished on or after the effective date of the change.

''(C)(i) Except as provided in clause (ii), a substantive change may not take effect before the date that is the end of the 30-day period that begins on the date that the Secretary has issued or published, as the case may be, the substantive change.

''(ii) The Secretary may provide for a substantive change to take effect on a date that precedes the end of the 30-day period under clause (i) if the Secretary finds that waiver of such 30-day period is necessary to comply with statutory requirements or that the application of such 30-day period is contrary to the public interest. If the Secretary provides for an earlier effective date pursuant to this clause, the Secretary shall include in the issuance or publication of the substantive change a finding described in the first sentence, and a brief statement of the reasons for such finding.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to compliance actions undertaken on or after the date of enactment of this Act.

SEC. 503. REPORT ON LEGAL AND REGULATORY INCONSISTENCIES.

Section 1871 (42 U.S.C. 1395hh), as amended by section 502(a)(1), is amended by adding at the end the following new subsection:

''(e)(1) Not later than 2 years after the date of enactment of this subsection, and every 3 years thereafter, the Secretary shall submit to Congress a report with respect to the administration of this title and areas of inconsistency or conflict among the various provisions under law and regulation.

''(2) In preparing a report under paragraph (1), the Secretary shall collect—

''(A) information from beneficiaries, providers of services, physicians, practitioners, and other suppliers with respect to such areas of inconsistency and conflict; and

''(B) information from medicare contractors that tracks the nature of all communications and correspondence.

''(3) A report under paragraph (1) shall include a description of efforts by the Secretary to reduce such inconsistency or conflicts, and recommendations for legislation or administrative action that the Secretary determines appropriate to further reduce such inconsistency or conflicts.''.

Subtitle B—Appeals Process Reform

SEC. 511. SUBMISSION OF PLAN FOR TRANSFER OF RESPONSIBILITY FOR MEDICARE APPEALS.

(a) SUBMISSION OF TRANSITION PLAN.—

(1) IN GENERAL.—Not later than April 1, 2004, the Commissioner of Social Security and the Secretary shall develop and transmit to Congress and the Comptroller General of the United States a plan under which the functions of administrative law judges responsible for hearing cases under title XVIII of the Social Security Act (and related provisions in title XI of such Act) are transferred from the responsibility of the Commissioner and the Social Security Administration to the Secretary and the Department of Health and Human Services.

(2) CONTENTS.—The plan shall include information on the following:

(A) WORKLOAD.—The number of such administrative law judges and support staff required now and in the future to hear and decide such cases in a timely manner, taking into account the current and anticipated claims volume, appeals, number of beneficiaries, and statutory changes.

(B) COST PROJECTIONS AND FINANCING.—Funding levels required for fiscal year 2005 and subsequent fiscal years to carry out the functions transferred under the plan and how such transfer should be financed.

(C) TRANSITION TIMETABLE.—A timetable for the transition.

(D) REGULATIONS.—The establishment of specific regulations to govern the appeals process.

(E) CASE TRACKING.—The development of a unified case tracking system that will facilitate the maintenance and transfer of case specific data across both the fee-for-service and managed care components of the medicare program.

(F) FEASIBILITY OF PRECEDENTIAL AUTHORITY.—The feasibility of developing a process to give decisions of the Departmental Appeals Board in the Department of Health and Human Services addressing broad legal issues binding, precedential authority.

(G) ACCESS TO ADMINISTRATIVE LAW JUDGES.—The feasibility of—

(i) filing appeals with administrative law judges electronically; and

(ii) conducting hearings using tele- or video-conference technologies.

(H) INDEPENDENCE OF ADMINISTRATIVE LAW JUDGES.—The steps that should be taken to ensure the independence of administrative law judges, including ensuring that such judges are in an office that is functionally and operationally separate from the Centers for Medicare & Medicaid Services and the Center for Medicare Choices.

(I) GEOGRAPHIC DISTRIBUTION.—The steps that should be taken to provide for an appropriate geographic distribution of administrative law judges throughout the United States to ensure timely access to such judges.

(J) HIRING.—The steps that should be taken to hire administrative law judges (and support staff).

(K) PERFORMANCE STANDARDS.—The establishment of performance standards for administrative law judges with respect to timelines for decisions in cases under title XVIII of the Social Security Act.

(L) SHARED RESOURCES.—The feasibility of the Secretary entering into such arrangements with the Commissioner of Social Security as may be appropriate with respect to transferred functions under the plan to share office space, support staff, and other resources, with appropriate reimbursement.

(M) TRAINING.—The training that should be provided to administrative law judges with respect to laws and regulations under title XVIII of the Social Security Act.

(3) ADDITIONAL INFORMATION.—The plan may also include recommendations for further congressional action, including modifications to the requirements and deadlines established under section 1869 of the Social Security Act (as amended by sections 521 and 522 of BIPA (114 Stat. 2763A–534) and this Act).

(b) GAO EVALUATION.—The Comptroller General of the United States shall—

(1) evaluate the plan submitted under subsection (a); and

(2) not later than 6 months after such submission, submit to Congress, the Commissioner of Social Security, and the Secretary a report on such evaluation.

(c) SUBMISSION OF GAO REPORT REQUIRED BEFORE PLAN IMPLEMENTATION.—The Commissioner of Social Security and the Secretary may not implement the plan developed under subsection (a) before the date that is 6 months after the date the report required under subsection (b)(2) is submitted to the Commissioner and the Secretary.

SEC. 512. EXPEDITED ACCESS TO JUDICIAL REVIEW.

(a) IN GENERAL.—Section 1869(b) (42 U.S.C. 1395ff(b)) is amended—

(1) in paragraph (1)(A), by inserting '', subject to paragraph (2),'' before ''to judicial review of the Secretary's final decision''; and

(2) by adding at the end the following new paragraph:

''(2) EXPEDITED ACCESS TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—The Secretary shall establish a process under which a provider of services or supplier that furnishes an item or service or a beneficiary who has filed an appeal under paragraph (1) (other than an appeal filed under paragraph (1)(F)(i)) may obtain access to judicial review when a review entity (described in subparagraph (D)), on its own motion or at the request of the appellant, determines that the Departmental Appeals Board does not have the authority to decide the question of law or regulation relevant to the matters in controversy and that there is no material issue of fact in dispute. The appellant may make such request only once with respect to a question of law or regulation for a specific matter in dispute in a case of an appeal.

''(B) PROMPT DETERMINATIONS.—If, after or coincident with appropriately filing a request for an administrative hearing, the appellant requests a determination by the appropriate review entity that the Departmental Appeals Board does not have the authority to decide the question of law or regulations relevant to the matters in controversy and that there is no material issue of fact in dispute, and if such request is accompanied by the documents and materials as the appropriate review entity shall require for purposes of making such determination, such review entity shall make a determination on the request in writing within 60 days after the date such review entity receives the request and such accompanying documents and materials. Such a determination by such review entity shall be considered a final decision and not subject to review by the Secretary.

''(C) ACCESS TO JUDICIAL REVIEW.—

''(i) IN GENERAL.—If the appropriate review entity—

''(I) determines that there are no material issues of fact in dispute and that the only issues to be adjudicated are ones of law or regulation that the Departmental Appeals Board does not have authority to decide; or

''(II) fails to make such determination within the period provided under subparagraph (B);

then the appellant may bring a civil action as described in this subparagraph.

''(ii) DEADLINE FOR FILING.—Such action shall be filed, in the case described in—

''(I) clause (i)(I), within 60 days of the date of the determination described in such clause; or

''(II) clause (i)(II), within 60 days of the end of the period provided under subparagraph (B) for the determination.

''(iii) VENUE.—Such action shall be brought in the district court of the United States for the judicial district in which the appellant is located (or, in the case of an action brought jointly by more than 1 applicant, the judicial district in which the greatest number of applicants are located) or in the District Court for the District of Columbia.

''(iv) INTEREST ON ANY AMOUNTS IN CONTROVERSY.—Where a provider of services or supplier is granted judicial review pursuant to this paragraph, the amount in controversy (if any) shall be subject to annual interest beginning on the first day of the first month beginning after the 60-day period as determined pursuant to clause (ii) and equal to the rate of interest on obligations issued for purchase by the Federal Supplementary Medical Insurance Trust Fund for the month in which the civil action authorized under this paragraph is commenced, to be awarded by the reviewing court in favor of the prevailing party. No interest awarded pursuant to the preceding sentence shall be deemed income or cost for the purposes of determining reimbursement due providers of services, physicians, practitioners, and other suppliers under this Act.

''(D) REVIEW ENTITY DEFINED.—For purposes of this subsection, a 'review entity' is a panel of no more than 3 members from the Departmental Appeals Board, selected for the purpose of making determinations under this paragraph.''.

(b) APPLICATION TO PROVIDER AGREEMENT DETERMINATIONS.—Section 1866(h)(1) (42 U.S.C. 1395cc(h)(1)) is amended—

(1) by inserting ''(A)'' after ''(h)(1)''; and

(2) by adding at the end the following new subparagraph:

''(B) An institution or agency described in subparagraph (A) that has filed for a hearing under subparagraph (A) shall have expedited access to judicial review under this subparagraph in the same manner as providers of services, suppliers, and beneficiaries may obtain expedited access to judicial review under the process established under section 1869(b)(2). Nothing in this subparagraph shall be construed to affect the application of any remedy imposed under section 1819 during the pendency of an appeal under this subparagraph.''.

(c) GAO STUDY AND REPORT ON ACCESS TO JUDICIAL REVIEW.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the access of medicare beneficiaries and health care providers to judicial review of actions of the Secretary and the Department of Health and Human Services with respect to items and services under title XVIII of the Social Security Act subsequent to February 29, 2000, the date of the decision of Shalala, Secretary of Health and Human Services, et al. v. Illinois Council on Long Term Care, Inc. (529 U.S. 1 (2000)).

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations as the Comptroller General determines to be appropriate.

(d) CONFORMING AMENDMENT.—Section 1869(b)(1)(F)(ii) (42 U.S.C. 1395ff(b)(1)(F)(ii)) is amended to read as follows:

''(ii) REFERENCE TO EXPEDITED ACCESS TO JUDICIAL REVIEW.—For the provision relating to expedited access to judicial review, see paragraph (2).''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to appeals filed on or after October 1, 2004.

SEC. 513. EXPEDITED REVIEW OF CERTAIN PROVIDER AGREEMENT DETERMINATIONS.

(a) TERMINATION AND CERTAIN OTHER IMMEDIATE REMEDIES.—

(1) IN GENERAL.—The Secretary shall develop and implement a process to expedite proceedings under sections 1866(h) of the Social Security Act (42 U.S.C. 1395cc(h)) in which—

(A) the remedy of termination of participation has been imposed;

(B) a sanction described in clause (i) or (iii) of section 1819(h)(2)(B) of such Act (42 U.S.C. 1395i–3(h)(2)(B)) has been imposed, but only if such sanction has been imposed on an immediate basis; or

(C) the Secretary has required a skilled nursing facility to suspend operations of a nurse aide training program.

(2) PRIORITY FOR CASES OF TERMINATION.—Under the process described in paragraph (1), priority shall be provided in cases of termination described in subparagraph (A) of such paragraph.

(b) INCREASED FINANCIAL SUPPORT.—In addition to any amounts otherwise appropriated, to reduce by 50 percent the average time for administrative determinations on appeals under section 1866(h) of the Social Security Act (42 U.S.C. 1395cc(h)), there are authorized to be appropriated (in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund) to the Secretary such sums for fiscal year 2004 and each subsequent fiscal year as may be necessary to increase the number of administrative law judges (and their staffs) at the Departmental Appeals Board of the Department of Health and Human Services and to educate such judges and staff on long-term care issues.

SEC. 514. REVISIONS TO MEDICARE APPEALS PROCESS.

(a) TIMEFRAMES FOR THE COMPLETION OF THE RECORD.—Section 1869(b) (42 U.S.C. 1395ff(b)), as amended by section 512(a)(2), is amended by adding at the end the following new paragraph:

''(3) TIMELY COMPLETION OF THE RECORD.—

''(A) DEADLINE.—Subject to subparagraph (B), the deadline to complete the record in a hearing before an administrative law judge or a review by the Departmental Appeals Board is 90 days after the date the request for the review or hearing is filed.

''(B) EXTENSIONS FOR GOOD CAUSE.—The person filing a request under subparagraph (A) may request an extension of such deadline for good cause. The administrative law judge, in the case of a hearing, and the Departmental Appeals Board, in the case of a review, may extend such deadline based upon a finding of good cause to a date specified by the judge or Board, as the case may be.

''(C) DELAY IN DECISION DEADLINES UNTIL COMPLETION OF RECORD.—Notwithstanding any other provision of this section, the deadlines otherwise established under subsection (d) for the making of determinations in hearings or review under this section are 90 days after the date on which the record is complete.

''(D) COMPLETE RECORD DESCRIBED.—For purposes of this paragraph, a record is complete when the administrative law judge, in the case of a hearing, or the Departmental Appeals Board, in the case of a review, has received—

''(i) written or testimonial evidence, or both, submitted by the person filing the request,

''(ii) written or oral argument, or both,

''(iii) the decision of, and the record for, the prior level of appeal, and

''(iv) such other evidence as such judge or Board, as the case may be, determines is required to make a determination on the request.''.

(b) USE OF PATIENTS' MEDICAL RECORDS.—Section 1869(c)(3)(B)(i) (42 U.S.C. 1395ff(c)(3)(B)(i)) is amended by inserting ''(including the medical records of the individual involved)'' after ''clinical experience''.

(c) NOTICE REQUIREMENTS FOR MEDICARE APPEALS.—

(1) INITIAL DETERMINATIONS AND REDETERMINATIONS.—Section 1869(a) (42 U.S.C. 1395ff(a)) is amended by adding at the end the following new paragraph:

''(4) REQUIREMENTS OF NOTICE OF DETERMINATIONS AND REDETERMINATIONS.—A written notice of a determination on an initial determination or on a redetermination, insofar as such determination or redetermination results in a denial of a claim for benefits, shall be provided in printed form and written in a manner to be understood by the beneficiary and shall include—

''(A) the reasons for the determination, including, as appropriate—

''(i) upon request in the case of an initial determination, the provision of the policy, manual, or regulation that resulted in the denial; and

''(ii) in the case of a redetermination, a summary of the clinical or scientific evidence used in making the determination (as appropriate);

''(B) the procedures for obtaining additional information concerning the determination or redetermination; and

''(C) notification of the right to seek a redetermination or otherwise appeal the determination and instructions on how to initiate such a redetermination or appeal under this section.''.

(2) RECONSIDERATIONS.—Section 1869(c)(3)(E) (42 U.S.C. 1395ff(c)(3)(E)) is amended to read as follows:

''(E) EXPLANATION OF DECISION.—Any decision with respect to a reconsideration of a qualified independent contractor shall be in writing in a manner to be understood by the beneficiary and shall include—

''(i) to the extent appropriate, a detailed explanation of the decision as well as a discussion of the pertinent facts and applicable regulations applied in making such decision;

''(ii) a notification of the right to appeal such determination and instructions on how to initiate such appeal under this section; and

''(iii) in the case of a determination of whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1862(a)(1)(A)) an explanation of the medical or scientific rationale for the decision.''.

(3) APPEALS.—Section 1869(d) (42 U.S.C. 1395ff(d)) is amended—

(A) in the heading, by inserting ''; NOTICE'' after ''SECRETARY''; and

(B) by adding at the end the following new paragraph:

''(4) NOTICE.—Notice of the decision of an administrative law judge shall be in writing in a manner to be understood by the beneficiary and shall include—

''(A) the specific reasons for the determination (including, to the extent appropriate, a summary of the clinical or scientific evidence used in making the determination);

''(B) the procedures for obtaining additional information concerning the decision; and

''(C) notification of the right to appeal the decision and instructions on how to initiate such an appeal under this section.''.

(4) PREPARATION OF RECORD FOR APPEAL.—Section 1869(c)(3)(J) (42 U.S.C. 1395ff(c)(3)(J)) is amended by striking ''such information as is required for an appeal'' and inserting ''the record for the appeal''.

(d) QUALIFIED INDEPENDENT CONTRACTORS.—

(1) ELIGIBILITY REQUIREMENTS OF QUALIFIED INDEPENDENT CONTRACTORS.—Section 1869(c) (42 U.S.C. 1395ff(c)) is amended—

(A) in paragraph (2)—

(i) by inserting ''(except in the case of a utilization and quality control peer review organization, as defined in section 1152)'' after ''means an entity or organization that''; and

(ii) by striking the period at the end and inserting the following: ''and meets the following requirements:

''(A) GENERAL REQUIREMENTS.—

''(i) The entity or organization has (directly or through contracts or other arrangements) sufficient medical, legal, and other expertise (including knowledge of the program under this title) and sufficient staffing to carry out duties of a qualified independent contractor under this section on a timely basis.

''(ii) The entity or organization has provided assurances that it will conduct activities consistent with the applicable requirements of this section, including that it will not conduct any activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

''(iii) The entity or organization meets such other requirements as the Secretary provides by regulation.

''(B) INDEPENDENCE REQUIREMENTS.—

''(i) IN GENERAL.—Subject to clause (ii), an entity or organization meets the independence requirements of this subparagraph with respect to any case if the entity—

''(I) is not a related party (as defined in subsection (g)(5));

''(II) does not have a material familial, financial, or professional relationship with such a party in relation to such case; and

''(III) does not otherwise have a conflict of interest with such a party (as determined under regulations).

''(ii) EXCEPTION FOR COMPENSATION.—Nothing in clause (i) shall be construed to prohibit receipt by a qualified independent contractor of compensation from the Secretary for the conduct of activities under this section if the compensation is provided consistent with clause (iii).

''(iii) LIMITATIONS ON ENTITY COMPENSATION.—Compensation provided by the Secretary to a qualified independent contractor in connection with reviews under this section shall not be contingent on any decision rendered by the contractor or by any reviewing professional.''; and

(B) in paragraph (3)(A), by striking '', and shall have sufficient training and expertise in medical science and legal matters to make reconsiderations under this subsection''.

(2) ELIGIBILITY REQUIREMENTS FOR REVIEWERS.—Section 1869 (42 U.S.C. 1395ff) is amended—

(A) by amending subsection (c)(3)(D) to read as follows:

''(D) QUALIFICATIONS OF REVIEWERS.—The requirements of subsection (g) shall be met (relating to qualifications of reviewing professionals).''; and

(B) by adding at the end the following new subsection:

''(g) QUALIFICATIONS OF REVIEWERS.—

''(1) IN GENERAL.—In reviewing determinations under this section, a qualified independent contractor shall assure that—

''(A) each individual conducting a review shall meet the qualifications of paragraph (2);

''(B) compensation provided by the contractor to each such reviewer is consistent with paragraph (3); and

''(C) in the case of a review by a panel described in subsection (c)(3)(B) composed of physicians or other health care professionals (each in this subsection referred to as a 'reviewing professional'), each reviewing professional meets the qualifications described in paragraph (4).

''(2) INDEPENDENCE.—

''(A) IN GENERAL.—Subject to subparagraph (B), each individual conducting a review in a case shall—

''(i) not be a related party (as defined in paragraph (5));

''(ii) not have a material familial, financial, or professional relationship with such a party in the case under review; and

''(iii) not otherwise have a conflict of interest with such a party (as determined under regulations).

''(B) EXCEPTION.—Nothing in subparagraph (A) shall be construed to—

''(i) prohibit an individual, solely on the basis of affiliation with a fiscal intermediary, carrier, or other contractor, from serving as a reviewing professional if—

''(I) a nonaffiliated individual is not reasonably available;

''(II) the affiliated individual is not involved in the provision of items or services in the case under review;

''(III) the fact of such an affiliation is disclosed to the Secretary and the beneficiary (or authorized representative) and neither party objects; and

''(IV) the affiliated individual is not an employee of the intermediary, carrier, or contractor and does not provide services exclusively or primarily to or on behalf of such intermediary, carrier, or contractor;

''(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as a reviewer merely on the basis of such affiliation if the affiliation is disclosed to the Secretary and the beneficiary (or authorized representative), and neither party objects; or

''(iii) prohibit receipt of compensation by a reviewing professional from a contractor if the compensation is provided consistent with paragraph (3).

''(3) LIMITATIONS ON REVIEWER COMPENSATION.—Compensation provided by a qualified independent contractor to a reviewer in connection with a review under this section shall not be contingent on the decision rendered by the reviewer.

''(4) LICENSURE AND EXPERTISE.—Each reviewing professional shall be a physician (allopathic or osteopathic) or health care professional who—

''(A) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

''(B) has medical expertise in the field of practice that is appropriate for the items or services at issue.

''(5) RELATED PARTY DEFINED.—For purposes of this section, the term 'related party' means, with respect to a case under this title involving an individual beneficiary, any of the following:

''(A) The Secretary, the medicare administrative contractor involved, or any fiduciary, officer, director, or employee of the Department of Health and Human Services, or of such contractor.

''(B) The individual (or authorized representative).

''(C) The health care professional that provides the items or services involved in the case.

''(D) The institution at which the items or services (or treatment) involved in the case are provided.

''(E) The manufacturer of any drug or other item that is included in the items or services involved in the case.

''(F) Any other party determined under any regulations to have a substantial interest in the case involved.''.

(3) NUMBER OF QUALIFIED INDEPENDENT CONTRACTORS.—Section 1869(c)(4) (42 U.S.C. 1395ff(c)(4)) is amended by striking ''12'' and inserting ''4''.

(e) IMPLEMENTATION OF CERTAIN BIPA REFORMS.—

(1) DELAY IN CERTAIN BIPA REFORMS.—Section 521(d) of BIPA (114 Stat. 2763A–543) is amended to read as follows:

''(d) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as specified in paragraph (2), the amendments made by this section shall apply with respect to initial determinations made on or after December 1, 2004.

''(2) EXPEDITED PROCEEDINGS AND RECONSIDERATION REQUIREMENTS.—For the following provisions, the amendments made by subsection (a) shall apply with respect to initial determinations made on or after October 1, 2003:

''(A) Subsection (b)(1)(F)(i) of section 1869 of the Social Security Act.

''(B) Subsection (c)(3)(C)(iii) of such section.

''(C) Subsection (c)(3)(C)(iv) of such section to the extent that it applies to expedited reconsiderations under subsection (c)(3)(C)(iii) of such section.

''(3) TRANSITIONAL USE OF PEER REVIEW ORGANIZATIONS TO CONDUCT EXPEDITED RECONSIDERATIONS UNTIL QICS ARE OPERATIONAL.—Expedited reconsiderations of initial determinations under section 1869(c)(3)(C)(iii) of the Social Security Act shall be made by peer review organizations until qualified independent contractors are available for such expedited reconsiderations.''.

(2) CONFORMING AMENDMENTS.—Section 521(c) of BIPA (114 Stat. 2763A–543) and section 1869(c)(3)(C)(iii)(III) of the Social Security Act (42 U.S.C. 1395ff(c)(3)(C)(iii)(III)), as added by section 521 of BIPA, are repealed.

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of the respective provisions of subtitle C of title V of BIPA, 114 Stat. 2763A–534.

(g) TRANSITION.—In applying section 1869(g) of the Social Security Act (as added by subsection (d)(2)), any reference to a medicare administrative contractor shall be deemed to include a reference to a fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and a carrier under section 1842 of such Act (42 U.S.C. 1395u).

SEC. 515. HEARING RIGHTS RELATED TO DECISIONS BY THE SECRETARY TO DENY OR NOT RENEW A MEDICARE ENROLLMENT AGREEMENT; CONSULTATION BEFORE CHANGING PROVIDER ENROLLMENT FORMS.

(a) HEARING RIGHTS.—

(1) IN GENERAL.—Section 1866 (42 U.S.C. 1395cc) is amended by adding at the end the following new subsection:

''(j) HEARING RIGHTS IN CASES OF DENIAL OR NONRENEWAL.—The Secretary shall establish by regulation procedures under which—

''(1) there are deadlines for actions on applications for enrollment (and, if applicable, renewal of enrollment); and

''(2) providers of services, physicians, practitioners, and suppliers whose application to enroll (or, if applicable, to renew enrollment) are denied are provided a mechanism to appeal such denial and a deadline for consideration of such appeals.''.

(2) EFFECTIVE DATE.—The Secretary shall provide for the establishment of the procedures under the amendment made by paragraph (1) within 18 months after the date of enactment of this Act.

(b) CONSULTATION BEFORE CHANGING PROVIDER ENROLLMENT FORMS.—Section 1871 (42 U.S.C. 1395hh), as amended by sections 502 and 503, is amended by adding at the end the following new subsection:

''(f) The Secretary shall consult with providers of services, physicians, practitioners, and suppliers before making changes in the provider enrollment forms required of such providers, physicians, practitioners, and suppliers to be eligible to submit claims for which payment may be made under this title.''.

SEC. 516. APPEALS BY PROVIDERS WHEN THERE IS NO OTHER PARTY AVAILABLE.

(a) IN GENERAL.—Section 1870 (42 U.S.C. 1395gg) is amended by adding at the end the following new subsection:

''(h) Notwithstanding subsection (f) or any other provision of law, the Secretary shall permit a provider of services, physician, practitioner, or other supplier to appeal any determination of the Secretary under this title relating to services rendered under this title to an individual who subsequently dies if there is no other party available to appeal such determination.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act and shall apply to items and services furnished on or after such date.

SEC. 517. PROVIDER ACCESS TO REVIEW OF LOCAL COVERAGE DETERMINATIONS.

(a) PROVIDER ACCESS TO REVIEW OF LOCAL COVERAGE DETERMINATIONS.—Section 1869(f)(5) (42 U.S.C. 1395ff(f)(5)) is amended to read as follows:

''(5) AGGRIEVED PARTY DEFINED.—In this section, the term 'aggrieved party' means—

''(A) with respect to a national coverage determination, an individual entitled to benefits under part A, or enrolled under part B, or both, who is in need of the items or services that are the subject of the coverage determination; and

''(B) with respect to a local coverage determination—

''(i) an individual who is entitled to benefits under part A, or enrolled under part B, or both, who is adversely affected by such a determination; or

''(ii) a provider of services, physician, practitioner, or supplier that is adversely affected by such a determination.''.

(b) CLARIFICATION OF LOCAL COVERAGE DETERMINATION DEFINITION.—Section 1869(f)(2)(B) (42 U.S.C. 1395ff(f)(2)(B)) is amended by inserting '', including, where appropriate, the specific requirements and clinical indications relating to the medical necessity of an item or service'' before the period at the end.

(c) REQUEST FOR LOCAL COVERAGE DETERMINATIONS BY PROVIDERS.—Section 1869 (42 U.S.C. 1395ff), as amended by section 514(d)(2)(B), is amended by adding at the end the following new subsection:

''(h) REQUEST FOR LOCAL COVERAGE DETERMINATIONS BY PROVIDERS.—

''(1) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process under which a provider of services, physician, practitioner, or supplier who certifies that they meet the requirements established in paragraph (3) may request a local coverage determination in accordance with the succeeding provisions of this subsection.

''(2) PROVIDER LOCAL COVERAGE DETERMINATION REQUEST DEFINED.—In this subsection, the term 'provider local coverage determination request' means a request, filed with the Secretary, at such time and in such form and manner as the Secretary may specify, that the Secretary, pursuant to paragraph (4)(A), require a fiscal intermediary, carrier, or program safeguard contractor to make or revise a local coverage determination under this section with respect to an item or service.

''(3) REQUEST REQUIREMENTS.—Under the process established under paragraph (1), by not later than 30 days after the date on which a provider local coverage determination request is filed under paragraph (1), the Secretary shall determine whether such request establishes that—

''(A) there have been at least 5 reversals of redeterminations made by a fiscal intermediary or carrier after a hearing before an administrative law judge on claims submitted by the provider in at least 2 different cases before an administrative law judge;

''(B) each reversal described in subparagraph (A) involves substantially similar material facts;

''(C) each reversal described in subparagraph (A) involves the same medical necessity issue; and

''(D) at least 50 percent of the total number of claims submitted by such provider within the past year involving the substantially similar material facts described in subparagraph (B) and the same medical necessity issue described in subparagraph (C) have been denied and have been reversed by an administrative law judge.

''(4) APPROVAL OR REJECTION OF REQUEST.—

''(A) APPROVAL OF REQUEST.—If the Secretary determines that subparagraphs (A) through (D) of paragraph (3) have been satisfied, the Secretary shall require the fiscal intermediary, carrier, or program safeguard contractor identified in the provider local coverage determination request, to make or revise a local coverage determination with respect to the item or service that is the subject of the request not later than the date that is 210 days after the date on which the Secretary makes the determination. Such fiscal intermediary, carrier, or program safeguard contractor shall retain the discretion to determine whether or not, and/or the circumstances under which, to cover the item or service for which a local coverage determination is requested. Nothing in this subsection shall be construed to require a fiscal intermediary, carrier or program safeguard contractor to develop a local coverage determination that is inconsistent with any national coverage determination, or any coverage provision in this title or in regulation, manual, or interpretive guidance of the Secretary.

''(B) REJECTION OF REQUEST.—If the Secretary determines that subparagraphs (A) through (D) of paragraph (3) have not been satisfied, the Secretary shall reject the provider local coverage determination request and shall notify the provider of services, physician, practitioner, or supplier that filed the request of the reason for such rejection and no further proceedings in relation to such request shall be conducted.''.

(d) STUDY AND REPORT ON THE USE OF CONTRACTORS TO MONITOR MEDICARE APPEALS.—

(1) STUDY.—The Secretary shall conduct a study on the feasibility and advisability of requiring fiscal intermediaries and carriers to monitor and track—

(A) the subject matter and status of claims denied by the fiscal intermediary or carrier (as applicable) that are appealed under section 1869 of the Social Security Act (42 U.S.C. 1395ff), as added by section 522 of BIPA (114 Stat. 2763A–543) and amended by this Act; and

(B) any final determination made with respect to such claims.

(2) REPORT.—Not later than the date that is 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation and administrative action as the Commission determines appropriate.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the amendments made by subsections (a), (b), and (c).

(f) EFFECTIVE DATES.—

(1) PROVIDER ACCESS TO REVIEW OF LOCAL COVERAGE DETERMINATIONS.—The amendments made by subsections (a) and (b) shall apply to—

(A) any review of any local coverage determination filed on or after October 1, 2003;

(B) any request to make such a determination made on or after such date; or

(C) any local coverage determination made on or after such date.

(2) PROVIDER LOCAL COVERAGE DETERMINATION REQUESTS.—The amendment made by subsection (c) shall apply with respect to provider local coverage determination requests (as defined in section 1869(h)(2) of the Social Security Act, as added by subsection (c)) filed on or after the date of enactment of this Act.

Subtitle C—Contracting Reform

SEC. 521. INCREASED FLEXIBILITY IN MEDICARE ADMINISTRATION.

(a) CONSOLIDATION AND FLEXIBILITY IN MEDICARE ADMINISTRATION.—

(1) IN GENERAL.—Title XVIII is amended by inserting after section 1874 the following new section:

''CONTRACTS WITH MEDICARE ADMINISTRATIVE CONTRACTORS

''SEC. 1874A. (a) AUTHORITY.—

''(1) AUTHORITY TO ENTER INTO CONTRACTS.—The Secretary may enter into contracts with any eligible entity to serve as a medicare administrative contractor with respect to the performance of any or all of the functions described in paragraph (4) or parts of those functions (or, to the extent provided in a contract, to secure performance thereof by other entities).

''(2) ELIGIBILITY OF ENTITIES.—An entity is eligible to enter into a contract with respect to the performance of a particular function described in paragraph (4) only if—

''(A) the entity has demonstrated capability to carry out such function;

''(B) the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement;

''(C) the entity has sufficient assets to financially support the performance of such function; and

''(D) the entity meets such other requirements as the Secretary may impose.

''(3) MEDICARE ADMINISTRATIVE CONTRACTOR DEFINED.—For purposes of this title and title XI—

''(A) IN GENERAL.—The term 'medicare administrative contractor' means an agency, organization, or other person with a contract under this section.

''(B) APPROPRIATE MEDICARE ADMINISTRATIVE CONTRACTOR.—With respect to the performance of a particular function in relation to an individual entitled to benefits under part A or enrolled under part B, or both, a specific provider of services, physician, practitioner, facility, or supplier (or class of such providers of services, physicians, practitioners, facilities, or suppliers), the 'appropriate' medicare administrative contractor is the medicare administrative contractor that has a contract under this section with respect to the performance of that function in relation to that individual, provider of services, physician, practitioner, facility, or supplier or class of provider of services, physician, practitioner, facility, or supplier.

''(4) FUNCTIONS DESCRIBED.—The functions referred to in paragraphs (1) and (2) are payment functions (including the function of developing local coverage determinations, as defined in section 1869(f)(2)(B)), provider services functions, and beneficiary services functions as follows:

''(A) DETERMINATION OF PAYMENT AMOUNTS.—Determining (subject to the provisions of section 1878 and to such review by the Secretary as may be provided for by the contracts) the amount of the payments required pursuant to this title to be made to providers of services, physicians, practitioners, facilities, suppliers, and individuals.

''(B) MAKING PAYMENTS.—Making payments described in subparagraph (A) (including receipt, disbursement, and accounting for funds in making such payments).

''(C) BENEFICIARY EDUCATION AND ASSISTANCE.—Serving as a center for, and communicating to individuals entitled to benefits under part A or enrolled under part B, or both, with respect to education and outreach for those individuals, and assistance with specific issues, concerns, or problems of those individuals.

''(D) PROVIDER CONSULTATIVE SERVICES.—Providing consultative services to institutions, agencies, and other persons to enable them to establish and maintain fiscal records necessary for purposes of this title and otherwise to qualify as providers of services, physicians, practitioners, facilities, or suppliers.

''(E) COMMUNICATION WITH PROVIDERS.—Serving as a center for, and communicating to providers of services, physicians, practitioners, facilities, and suppliers, any information or instructions furnished to the medicare administrative contractor by the Secretary, and serving as a channel of communication from such providers, physicians, practitioners, facilities, and suppliers to the Secretary.

''(F) PROVIDER EDUCATION AND TECHNICAL ASSISTANCE.—Performing the functions described in subsections (e) and (f), relating to education, training, and technical assistance to providers of services, physicians, practitioners, facilities, and suppliers.

''(G) ADDITIONAL FUNCTIONS.—Performing such other functions, including (subject to paragraph (5)) functions under the Medicare Integrity Program under section 1893, as are necessary to carry out the purposes of this title.

''(5) RELATIONSHIP TO MIP CONTRACTS.—

''(A) NONDUPLICATION OF ACTIVITIES.—In entering into contracts under this section, the Secretary shall assure that activities of medicare administrative contractors do not duplicate activities carried out under contracts entered into under the Medicare Integrity Program under section 1893. The previous sentence shall not apply with respect to the activity described in section 1893(b)(5) (relating to prior authorization of certain items of durable medical equipment under section 1834(a)(15)).

''(B) CONSTRUCTION.—An entity shall not be treated as a medicare administrative contractor merely by reason of having entered into a contract with the Secretary under section 1893.

''(6) APPLICATION OF FEDERAL ACQUISITION REGULATION.—Except to the extent inconsistent with a specific requirement of this title, the Federal Acquisition Regulation applies to contracts under this title.

''(b) CONTRACTING REQUIREMENTS.—

''(1) USE OF COMPETITIVE PROCEDURES.—

''(A) IN GENERAL.—Except as provided in laws with general applicability to Federal acquisition and procurement, the Federal Acquisition Regulation, or in subparagraph (B), the Secretary shall use competitive procedures when entering into contracts with medicare administrative contractors under this section.

''(B) RENEWAL OF CONTRACTS.—The Secretary may renew a contract with a medicare administrative contractor under this section from term to term without regard to section 5 of title 41, United States Code, or any other provision of law requiring competition, if the medicare administrative contractor has met or exceeded the performance requirements applicable with respect to the contract and contractor, except that the Secretary shall provide for the application of competitive procedures under such a contract not less frequently than once every 6 years.

''(C) TRANSFER OF FUNCTIONS.—The Secretary may transfer functions among medicare administrative contractors without regard to any provision of law requiring competition. The Secretary shall ensure that performance quality is considered in such transfers. The Secretary shall provide notice (whether in the Federal Register or otherwise) of any such transfer (including a description of the functions so transferred and contact information for the contractors involved) to providers of services, physicians, practitioners, facilities, and suppliers affected by the transfer.

''(D) INCENTIVES FOR QUALITY.—The Secretary may provide incentives for medicare administrative contractors to provide quality service and to promote efficiency.

''(2) COMPLIANCE WITH REQUIREMENTS.—No contract under this section shall be entered into with any medicare administrative contractor unless the Secretary finds that such medicare administrative contractor will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as the Secretary finds pertinent.

''(3) PERFORMANCE REQUIREMENTS.—

''(A) DEVELOPMENT OF SPECIFIC PERFORMANCE REQUIREMENTS.—The Secretary shall develop contract performance requirements to carry out the specific requirements applicable under this title to a function described in subsection (a)(4) and shall develop standards for measuring the extent to which a contractor has met such requirements. In developing such performance requirements and standards for measurement, the Secretary shall consult with providers of services, organizations representative of beneficiaries under this title, and organizations and agencies performing functions necessary to carry out the purposes of this section with respect to such performance requirements. The Secretary shall make such performance requirements and measurement standards available to the public.

''(B) CONSIDERATIONS.—The Secretary shall include, as 1 of the standards, provider and beneficiary satisfaction levels.

''(C) INCLUSION IN CONTRACTS.—All contractor performance requirements shall be set forth in the contract between the Secretary and the appropriate medicare administrative contractor. Such performance requirements—

''(i) shall reflect the performance requirements published under subparagraph (A), but may include additional performance requirements;

''(ii) shall be used for evaluating contractor performance under the contract; and

''(iii) shall be consistent with the written statement of work provided under the contract.

''(4) INFORMATION REQUIREMENTS.—The Secretary shall not enter into a contract with a medicare administrative contractor under this section unless the contractor agrees—

''(A) to furnish to the Secretary such timely information and reports as the Secretary may find necessary in performing his functions under this title; and

''(B) to maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (A) and otherwise to carry out the purposes of this title.

''(5) SURETY BOND.—A contract with a medicare administrative contractor under this section may require the medicare administrative contractor, and any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

''(6) RETAINING DIVERSITY OF LOCAL COVERAGE DETERMINATIONS.—A contract with a medicare administrative contractor under this section to perform the function of developing local coverage determinations (as defined in section 1869(f)(2)(B)) shall provide that the contractor shall—

''(A) designate at least 1 different individual to serve as medical director for each State for which such contract performs such function;

''(B) utilize such medical director in the performance of such function; and

''(C) appoint a contractor advisory committee with respect to each such State to provide a formal mechanism for physicians in the State to be informed of, and participate in, the development of a local coverage determination in an advisory capacity.

''(c) TERMS AND CONDITIONS.—

''(1) IN GENERAL.—Subject to subsection (a)(6), a contract with any medicare administrative contractor under this section may contain such terms and conditions as the Secretary finds necessary or appropriate and may provide for advances of funds to the medicare administrative contractor for the making of payments by it under subsection (a)(4)(B).

''(2) PROHIBITION ON MANDATES FOR CERTAIN DATA COLLECTION.—The Secretary may not require, as a condition of entering into, or renewing, a contract under this section, that the medicare administrative contractor match data obtained other than in its activities under this title with data used in the administration of this title for purposes of

identifying situations in which the provisions of section 1862(b) may apply.

''(d) LIMITATION ON LIABILITY OF MEDICARE ADMINISTRATIVE CONTRACTORS AND CERTAIN OFFICERS.—

''(1) CERTIFYING OFFICER.—No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of the reckless disregard of the individual's obligations or the intent by that individual to defraud the United States, be liable with respect to any payments certified by the individual under this section.

''(2) DISBURSING OFFICER.—No disbursing officer shall, in the absence of the reckless disregard of the officer's obligations or the intent by that officer to defraud the United States, be liable with respect to any payment by such officer under this section if it was based upon an authorization (which meets the applicable requirements for such internal controls established by the Comptroller General) of a certifying officer designated as provided in paragraph (1) of this subsection.

''(3) LIABILITY OF MEDICARE ADMINISTRATIVE CONTRACTOR.—No medicare administrative contractor shall be liable to the United States for a payment by a certifying or disbursing officer unless, in connection with such a payment, the medicare administrative contractor acted with reckless disregard of its obligations under its medicare administrative contract or with intent to defraud the United States.

''(4) RELATIONSHIP TO FALSE CLAIMS ACT.—Nothing in this subsection shall be construed to limit liability for conduct that would constitute a violation of sections 3729 through 3731 of title 31, United States Code (commonly known as the ''False Claims Act'').

''(5) INDEMNIFICATION BY SECRETARY.—

''(A) IN GENERAL.—Notwithstanding any other provision of law and subject to the succeeding provisions of this paragraph, in the case of a medicare administrative contractor (or a person who is a director, officer, or employee of such a contractor or who is engaged by the contractor to participate directly in the claims administration process) who is made a party to any judicial or administrative proceeding arising from, or relating directly to, the claims administration process under this title, the Secretary may, to the extent specified in the contract with the contractor, indemnify the contractor (and such persons).

''(B) CONDITIONS.—The Secretary may not provide indemnification under subparagraph (A) insofar as the liability for such costs arises directly from conduct that is determined by the Secretary to be criminal in nature, fraudulent, or grossly negligent.

''(C) SCOPE OF INDEMNIFICATION.—Indemnification by the Secretary under subparagraph (A) may include payment of judgments, settlements (subject to subparagraph (D)), awards, and costs (including reasonable legal expenses).

''(D) WRITTEN APPROVAL FOR SETTLEMENTS.—A contractor or other person described in subparagraph (A) may not propose to negotiate a settlement or compromise of a proceeding described in such subparagraph without the prior written approval of the Secretary to negotiate a settlement. Any indemnification under subparagraph (A) with respect to amounts paid under a settlement are conditioned upon the Secretary's prior written approval of the final settlement.

''(E) CONSTRUCTION.—Nothing in this paragraph shall be construed—

''(i) to change any common law immunity that may be available to a medicare administrative contractor or person described in subparagraph (A); or

''(ii) to permit the payment of costs not otherwise allowable, reasonable, or allocable under the Federal Acquisition Regulations.''.

(2) CONSIDERATION OF INCORPORATION OF CURRENT LAW STANDARDS.—In developing contract performance requirements under section 1874A(b) of the Social Security Act (as added by paragraph (1)) the Secretary shall consider inclusion of the performance standards described in sections 1816(f)(2) of such Act (relating to timely processing of reconsiderations and applications for exemptions) and section 1842(b)(2)(B) of such Act (relating to timely review of determinations and fair hearing requests), as such sections were in effect before the date of enactment of this Act.

(b) CONFORMING AMENDMENTS TO SECTION 1816 (RELATING TO FISCAL INTERMEDIARIES).—Section 1816 (42 U.S.C. 1395h) is amended as follows:

(1) The heading is amended to read as follows:

''PROVISIONS RELATING TO THE ADMINISTRATION OF PART A''.

(2) Subsection (a) is amended to read as follows:

''(a) The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1874A.''.

(3) Subsection (b) is repealed.

(4) Subsection (c) is amended—

(A) by striking paragraph (1); and

(B) in each of paragraphs (2)(A) and (3)(A), by striking ''agreement under this section'' and inserting ''contract under section 1874A that provides for making payments under this part''.

(5) Subsections (d) through (i) are repealed.

(6) Subsections (j) and (k) are each amended—

(A) by striking ''An agreement with an agency or organization under this section'' and inserting ''A contract with a medicare administrative contractor under section 1874A with respect to the administration of this part''; and

(B) by striking ''such agency or organization'' and inserting ''such medicare administrative contractor'' each place it appears.

(7) Subsection (l) is repealed.

(c) CONFORMING AMENDMENTS TO SECTION 1842 (RELATING TO CARRIERS).—Section 1842 (42 U.S.C. 1395u) is amended as follows:

(1) The heading is amended to read as follows:

''PROVISIONS RELATING TO THE ADMINISTRATION OF PART B''.

(2) Subsection (a) is amended to read as follows:

''(a) The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1874A.''.

(3) Subsection (b) is amended—

(A) by striking paragraph (1);

(B) in paragraph (2)—

(i) by striking subparagraphs (A) and (B);

(ii) in subparagraph (C), by striking ''carriers'' and inserting ''medicare administrative contractors''; and

(iii) by striking subparagraphs (D) and (E);

(C) in paragraph (3)—

(i) in the matter before subparagraph (A), by striking ''Each such contract shall provide that the carrier'' and inserting ''The Secretary'';

(ii) by striking ''will'' the first place it appears in each of subparagraphs (A), (B), (F), (G), (H), and (L) and inserting ''shall'';

(iii) in subparagraph (B), in the matter before clause (i), by striking ''to the policyholders and subscribers of the carrier'' and inserting ''to the policyholders and subscribers of the medicare administrative contractor'';

(iv) by striking subparagraphs (C), (D), and (E);

(v) in subparagraph (H)—

(I) by striking ''if it makes determinations or payments with respect to physicians' services,''; and

(II) by striking ''carrier'' and inserting ''medicare administrative contractor'';

(vi) by striking subparagraph (I);

(vii) in subparagraph (L), by striking the semicolon and inserting a period;

(viii) in the first sentence, after subparagraph (L), by striking ''and shall contain'' and all that follows through the period; and

(ix) in the seventh sentence, by inserting ''medicare administrative contractor,'' after ''carrier,'';

(D) by striking paragraph (5);

(E) in paragraph (6)(D)(iv), by striking ''carrier'' and inserting ''medicare administrative contractor''; and

(F) in paragraph (7), by striking ''the carrier'' and inserting ''the Secretary'' each place it appears.

(4) Subsection (c) is amended—

(A) by striking paragraph (1);

(B) in paragraph (2), by striking ''contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B),'' and inserting ''contract under section 1874A that provides for making payments under this part'';

(C) in paragraph (3)(A), by striking ''subsection (a)(1)(B)'' and inserting ''section 1874A(a)(3)(B)'';

(D) in paragraph (4), by striking ''carrier'' and inserting ''medicare administrative contractor'';

(E) in paragraph (5), by striking ''contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall require the carrier'' and ''carrier responses'' and inserting ''contract under section 1874A that provides for making payments under this part shall require the medicare administrative contractor'' and ''contractor responses'', respectively; and

(F) by striking paragraph (6).

(5) Subsections (d), (e), and (f) are repealed.

(6) Subsection (g) is amended by striking ''carrier or carriers'' and inserting ''medicare administrative contractor or contractors''.

(7) Subsection (h) is amended—

(A) in paragraph (2)—

(i) by striking ''Each carrier having an agreement with the Secretary under subsection (a)'' and inserting ''The Secretary''; and

(ii) by striking ''Each such carrier'' and inserting ''The Secretary'';

(B) in paragraph (3)(A)—

(i) by striking ''a carrier having an agreement with the Secretary under subsection (a)'' and inserting ''medicare administrative contractor having a contract under section 1874A that provides for making payments under this part''; and

(ii) by striking ''such carrier'' and inserting ''such contractor'';

(C) in paragraph (3)(B)—

(i) by striking ''a carrier'' and inserting ''a medicare administrative contractor'' each place it appears; and

(ii) by striking ''the carrier'' and inserting ''the contractor'' each place it appears; and

(D) in paragraphs (5)(A) and (5)(B)(iii), by striking ''carriers'' and inserting ''medicare administrative contractors'' each place it appears.

(8) Subsection (l) is amended—

(A) in paragraph (1)(A)(iii), by striking ''carrier'' and inserting ''medicare administrative contractor''; and

(B) in paragraph (2), by striking ''carrier'' and inserting ''medicare administrative contractor''.

(9) Subsection (p)(3)(A) is amended by striking ''carrier'' and inserting ''medicare administrative contractor''.

(10) Subsection (q)(1)(A) is amended by striking ''carrier''.

(d) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on October 1, 2005, and the Secretary is authorized to take such steps before such date as may be necessary to implement such amendments on a timely basis.

(B) CONSTRUCTION FOR CURRENT CONTRACTS.—Such amendments shall not apply to contracts in effect before the date specified under subparagraph (A) that continue to retain the terms and conditions in effect on such date (except as otherwise provided under this title, other than under this section) until such date as the contract is let out for competitive bidding under such amendments.

(C) DEADLINE FOR COMPETITIVE BIDDING.—The Secretary shall provide for the letting by competitive bidding of all contracts for functions of medicare administrative contractors for annual contract periods that begin on or after October 1, 2011.

(2) GENERAL TRANSITION RULES.—

(A) AUTHORITY TO CONTINUE TO ENTER INTO NEW AGREEMENTS AND CONTRACTS AND WAIVER OF PROVIDER NOMINATION PROVISIONS DURING TRANSITION.—Prior to the date specified in paragraph (1)(A), the Secretary may, consistent with subparagraph (B), continue to enter into agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u). The Secretary may enter into new agreements under section 1816 during the time period without regard to any of the provider nomination provisions of such section.

(B) APPROPRIATE TRANSITION.—The Secretary shall take such steps as are necessary to provide for an appropriate transition from agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u) to contracts under section 1874A, as added by subsection (a)(1).

(3) AUTHORIZING CONTINUATION OF MIP ACTIVITIES UNDER CURRENT CONTRACTS AND AGREEMENTS AND UNDER TRANSITION CONTRACTS.—The provisions contained in the exception in section 1893(d)(2) of the Social Security Act (42 U.S.C. 1395ddd(d)(2)) shall continue to apply notwithstanding the amendments made by this section, and any reference in such provisions to an agreement or contract shall be deemed to include agreements and contracts entered into pursuant to paragraph (2)(A).

(e) REFERENCES.—On and after the effective date provided under subsection (d)(1), any reference to a fiscal intermediary or carrier under title XI or XVIII of the Social Security Act (or any regulation, manual instruction, interpretative rule, statement of policy, or guideline issued to carry out such titles) shall be deemed a reference to an appropriate medicare administrative contractor (as provided under section 1874A of the Social Security Act).

(f) SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 6 months after the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this section.

(g) REPORTS ON IMPLEMENTATION.—

(1) PROPOSAL FOR IMPLEMENTATION.—At least 1 year before the date specified in subsection (d)(1)(A), the Secretary shall submit a report to Congress and the Comptroller General of the United States that describes a plan for an appropriate transition. The Comptroller General shall conduct an evaluation of such plan and shall submit to Congress, not later than 6 months after the date the report is received, a report on such evaluation and shall include in such report such recommendations as the Comptroller General deems appropriate.

(2) STATUS OF IMPLEMENTATION.—The Secretary shall submit a report to Congress not later than October 1, 2008, that describes the status of implementation of such amendments and that includes a description of the following:

(A) The number of contracts that have been competitively bid as of such date.

(B) The distribution of functions among contracts and contractors.

(C) A timeline for complete transition to full competition.

(D) A detailed description of how the Secretary has modified oversight and management of medicare contractors to adapt to full competition.

Subtitle D—Education and Outreach Improvements

SEC. 531. PROVIDER EDUCATION AND TECHNICAL ASSISTANCE.

(a) COORDINATION OF EDUCATION FUNDING.—

(1) IN GENERAL.—The Social Security Act is amended by inserting after section 1888 the following new section:

''PROVIDER EDUCATION AND TECHNICAL ASSISTANCE

''SEC. 1889. (a) COORDINATION OF EDUCATION FUNDING.—The Secretary shall coordinate the educational activities provided through medicare contractors (as defined in subsection (e), including under section 1893) in order to maximize the effectiveness of Federal education efforts for providers of services, physicians, practitioners, and suppliers.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act.

(3) REPORT.—Not later than October 1, 2004, the Secretary shall submit to Congress a report that includes a description and evaluation of the steps taken to coordinate the funding of provider education under section 1889(a) of the Social Security Act, as added by paragraph (1).

(b) INCENTIVES TO IMPROVE CONTRACTOR PERFORMANCE.—

(1) IN GENERAL.—Section 1874A, as added by section 521(a)(1), is amended by adding at the end the following new subsection:

''(e) INCENTIVES TO IMPROVE CONTRACTOR PERFORMANCE IN PROVIDER EDUCATION AND OUTREACH.—

''(1) METHODOLOGY TO MEASURE CONTRACTOR ERROR RATES.—In order to give medicare contractors (as defined in paragraph (3)) an incentive to implement effective education and outreach programs for providers of services, physicians, practitioners, and suppliers, the Secretary shall develop and implement by October 1, 2004, a methodology to measure the specific claims payment error rates of such contractors in the processing or reviewing of medicare claims.

''(2) GAO REVIEW OF METHODOLOGY.—The Comptroller General of the United States shall review, and make recommendations to the Secretary, regarding the adequacy of such methodology.

''(3) MEDICARE CONTRACTOR DEFINED.—For purposes of this subsection, the term 'medicare contractor' includes a medicare administrative contractor, a fiscal intermediary with a contract under section 1816, and a carrier with a contract under section 1842.''.

(2) REPORT.—The Secretary shall submit to Congress a report that describes how the Secretary intends to use the methodology developed under section 1874A(e)(1) of the Social Security Act, as added by paragraph (1), in assessing medicare contractor performance in implementing effective education and outreach programs, including whether to use such methodology as a basis for performance bonuses.

(c) IMPROVED PROVIDER EDUCATION AND TRAINING.—

(1) INCREASED FUNDING FOR ENHANCED EDUCATION AND TRAINING THROUGH MEDICARE INTEGRITY PROGRAM.—Section 1817(k)(4) (42 U.S.C. 1395i(k)(4)) is amended—

(A) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)'';

(B) in subparagraph (B), by striking ''The amount appropriated'' and inserting ''Subject to subparagraph (C), the amount appropriated''; and

(C) by adding at the end the following new subparagraph:

''(C) ENHANCED PROVIDER EDUCATION AND TRAINING.—

''(i) IN GENERAL.—In addition to the amount appropriated under subparagraph (B), the amount appropriated under subparagraph (A) for a fiscal year (beginning with fiscal year 2004) is increased by $35,000,000.

''(ii) USE.—The funds made available under this subparagraph shall be used only to increase the conduct by medicare contractors of education and training of providers of services, physicians, practitioners, and suppliers regarding billing, coding, and other appropriate items and may also be used to improve the accuracy, consistency, and timeliness of contractor responses to written and phone inquiries from providers of services, physicians, practitioners, and suppliers.''.

(2) TAILORING EDUCATION AND TRAINING FOR SMALL PROVIDERS OR SUPPLIERS.—

(A) IN GENERAL.—Section 1889, as added by subsection (a), is amended by adding at the end the following new subsection:

''(b) TAILORING EDUCATION AND TRAINING ACTIVITIES FOR SMALL PROVIDERS OR SUPPLIERS.—

''(1) IN GENERAL.—Insofar as a medicare contractor conducts education and training activities, it shall take into consideration the special needs of small providers of services or suppliers (as defined in paragraph (2)). Such education and training activities for small providers of services and suppliers may include the provision of technical assistance (such as review of billing systems and internal controls to determine program compliance and to suggest more efficient and effective means of achieving such compliance).

''(2) SMALL PROVIDER OF SERVICES OR SUPPLIER.—In this subsection, the term 'small provider of services or supplier' means—

''(A) an institutional provider of services with fewer than 25 full-time-equivalent employees; or

''(B) a physician, practitioner, or supplier with fewer than 10 full-time-equivalent employees.''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect on January 1, 2004.

(d) ADDITIONAL PROVIDER EDUCATION PROVISIONS.—

(1) IN GENERAL.—Section 1889, as added by subsection (a) and as amended by subsection (c)(2), is amended by adding at the end the following new subsections:

''(c) ENCOURAGEMENT OF PARTICIPATION IN EDUCATION PROGRAM ACTIVITIES.—A medicare contractor may not use a record of attendance at (or failure to attend) educational activities or other information gathered during an educational program conducted under this section or otherwise by the Secretary to select or track providers of

services, physicians, practitioners, or suppliers for the purpose of conducting any type of audit or prepayment review.

''(d) CONSTRUCTION.—Nothing in this section or section 1893(g) shall be construed as providing for disclosure by a medicare contractor—

''(1) of the screens used for identifying claims that will be subject to medical review; or

''(2) of information that would compromise pending law enforcement activities or reveal findings of law enforcement-related audits.

''(e) DEFINITIONS.—For purposes of this section and section 1817(k)(4)(C), the term 'medicare contractor' includes the following:

''(1) A medicare administrative contractor with a contract under section 1874A, a fiscal intermediary with a contract under section 1816, and a carrier with a contract under section 1842.

''(2) An eligible entity with a contract under section 1893.

Such term does not include, with respect to activities of a specific provider of services, physician, practitioner, or supplier an entity that has no authority under this title or title XI with respect to such activities and such provider of services, physician, practitioner, or supplier.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act.

SEC. 532. ACCESS TO AND PROMPT RESPONSES FROM MEDICARE CONTRACTORS.

(a) IN GENERAL.—Section 1874A, as added by section 521(a)(1) and as amended by section 531(b)(1), is amended by adding at the end the following new subsection:

''(f) COMMUNICATING WITH BENEFICIARIES AND PROVIDERS.—

''(1) COMMUNICATION PROCESS.—The Secretary shall develop a process for medicare contractors to communicate with beneficiaries and with providers of services, physicians, practitioners, and suppliers under this title.

''(2) RESPONSE TO WRITTEN INQUIRIES.—Each medicare contractor (as defined in paragraph (5)) shall provide general written responses (which may be through electronic transmission) in a clear, concise, and accurate manner to inquiries by beneficiaries, providers of services, physicians, practitioners, and suppliers concerning the programs under this title within 45 business days of the date of receipt of such inquiries.

''(3) RESPONSE TO TOLL-FREE LINES.—The Secretary shall ensure that medicare contractors provide a toll-free telephone number at which beneficiaries, providers, physicians, practitioners, and suppliers may obtain information regarding billing, coding, claims, coverage, and other appropriate information under this title.

''(4) MONITORING OF CONTRACTOR RESPONSES.—

''(A) IN GENERAL.—Each medicare contractor shall, consistent with standards developed by the Secretary under subparagraph (B)—

''(i) maintain a system for identifying who provides the information referred to in paragraphs (2) and (3); and

''(ii) monitor the accuracy, consistency, and timeliness of the information so provided.

''(B) DEVELOPMENT OF STANDARDS.—

''(i) IN GENERAL.—The Secretary shall establish (and publish in the Federal Register) standards regarding the accuracy, consistency, and timeliness of the information provided in response to inquiries under this subsection. Such standards shall be consistent with the performance requirements established under subsection (b)(3).

''(ii) EVALUATION.—In conducting evaluations of individual medicare contractors, the Secretary shall consider the results of the monitoring conducted under subparagraph (A) taking into account as performance requirements the standards established under clause (i). The Secretary shall, in consultation with organizations representing providers of services, suppliers, and individuals entitled to benefits under part A or enrolled under part B, or both, establish standards relating to the accuracy, consistency, and timeliness of the information so provided.

''(C) DIRECT MONITORING.—Nothing in this paragraph shall be construed as preventing the Secretary from directly monitoring the accuracy, consistency, and timeliness of the information so provided.

''(5) MEDICARE CONTRACTOR DEFINED.—For purposes of this subsection, the term 'medicare contractor' has the meaning given such term in subsection (e)(3).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2004.

SEC. 533. RELIANCE ON GUIDANCE.

(a) IN GENERAL.—Section 1871(d), as added by section 502(a), is amended by adding at the end the following new paragraph:

''(2) If—

''(A) a provider of services, physician, practitioner, or other supplier follows written guidance provided—

''(i) by the Secretary; or

''(ii) by a medicare contractor (as defined in section 1889(e) and whether in the form of a written response to a written inquiry under section 1874A(f)(1) or otherwise) acting within the scope of the contractor's contract authority,

in response to a written inquiry with respect to the furnishing of items or services or the submission of a claim for benefits for such items or services;

''(B) the Secretary determines that—

''(i) the provider of services, physician, practitioner, or supplier has accurately presented the circumstances relating to such items, services, and claim to the Secretary or the contractor in the written guidance; and

''(ii) there is no indication of fraud or abuse committed by the provider of services, physician, practitioner, or supplier against the program under this title; and

''(C) the guidance was in error;

the provider of services, physician, practitioner, or supplier shall not be subject to any penalty or interest under this title (or the provisions of title XI insofar as they relate to this title) relating to the provision of such items or service or such claim if the provider of services, physician, practitioner, or supplier reasonably relied on such guidance. In applying this paragraph with respect to guidance in the form of general responses to frequently asked questions, the Secretary retains authority to determine the extent to which such general responses apply to the particular circumstances of individual claims.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to penalties imposed on or after the date of enactment of this Act.

SEC. 534. MEDICARE PROVIDER OMBUDSMAN.

(a) MEDICARE PROVIDER OMBUDSMAN.—Section 1868 (42 U.S.C. 1395ee) is amended—

(1) by adding at the end of the heading the following: ''; MEDICARE PROVIDER OMBUDSMAN'';

(2) by inserting ''PRACTICING PHYSICIANS ADVISORY COUNCIL.—(1)'' after ''(a)'';

(3) in paragraph (1), as so redesignated under paragraph (2), by striking ''in this section'' and inserting ''in this subsection'';

(4) by redesignating subsections (b) and (c) as paragraphs (2) and (3), respectively; and

(5) by adding at the end the following new subsection:

''(b) MEDICARE PROVIDER OMBUDSMAN.—

''(1) IN GENERAL.—By not later than 1 year after the date of enactment of the Prescription Drug and Medicare Improvement Act of 2003, the Secretary shall appoint a Medicare Provider Ombudsman.

''(2) DUTIES.—The Medicare Provider Ombudsman shall—

''(A) provide assistance, on a confidential basis, to entities and individuals providing items and services, including covered drugs under part D, under this title with respect to complaints, grievances, and requests for information concerning the programs under this title (including provisions of title XI insofar as they relate to this title and are not administered by the Office of the Inspector General of the Department of Health and Human Services) and in the resolution of unclear or conflicting guidance given by the Secretary and medicare contractors to such providers of services and suppliers regarding such programs and provisions and requirements under this title and such provisions; and

''(B) submit recommendations to the Secretary for improvement in the administration of this title and such provisions, including—

''(i) recommendations to respond to recurring patterns of confusion in this title and such provisions (including recommendations regarding suspending imposition of sanctions where there is widespread confusion in program administration), and

''(ii) recommendations to provide for an appropriate and consistent response (including not providing for audits) in cases of self-identified overpayments by providers of services and suppliers.

''(3) STAFF.—The Secretary shall provide the Medicare Provider Ombudsman with appropriate staff.''.

(b) FUNDING.—There are authorized to be appropriated to the Secretary (in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (including the Prescription Drug Account)) to carry out the provisions of subsection (b) of section 1868 of the Social Security Act (42 U.S.C. 1395ee) (relating to the Medicare Provider Ombudsman), as added by subsection (a)(5), such sums as are necessary for fiscal year 2004 and each succeeding fiscal year.

SEC. 535. BENEFICIARY OUTREACH DEMONSTRATION PROGRAMS.

(a) DEMONSTRATION ON THE PROVISION OF ADVICE AND ASSISTANCE TO MEDICARE BENEFICIARIES AT LOCAL OFFICES OF THE SOCIAL SECURITY ADMINISTRATION.—

(1) ESTABLISHMENT.—The Secretary shall establish a demonstration program (in this subsection referred to as the ''demonstration program'') under which medicare specialists employed by the Department of Health and Human Services provide advice and assistance to medicare beneficiaries at the location of existing local offices of the Social Security Administration.

(2) LOCATIONS.—

(A) IN GENERAL.—The demonstration program shall be conducted in at least 6 offices or areas. Subject to subparagraph (B), in selecting such offices and areas, the Secretary shall provide preference for offices with a high volume of visits by medicare beneficiaries.

(B) ASSISTANCE FOR RURAL BENEFICIARIES.—The Secretary shall provide for the selection of at least 2 rural areas to participate in the demonstration program. In conducting the demonstration program in such rural areas, the Secretary shall provide for medicare specialists to travel among local offices in a rural area on a scheduled basis.

(3) DURATION.—The demonstration program shall be conducted over a 3-year period.

(4) EVALUATION AND REPORT.—

(A) EVALUATION.—The Secretary shall provide for an evaluation of the demonstration program. Such evaluation shall include an analysis of—

(i) utilization of, and beneficiary satisfaction with, the assistance provided under the program; and

(ii) the cost-effectiveness of providing beneficiary assistance through out-stationing medicare specialists at local social security offices.

(B) REPORT.—The Secretary shall submit to Congress a report on such evaluation and shall include in such report recommendations regarding the feasibility of permanently out-stationing Medicare specialists at local social security offices.

(b) DEMONSTRATION ON PROVIDING PRIOR DETERMINATIONS.—

(1) ESTABLISHMENT.—By not later than 1 year after the date of enactment of this Act, the Secretary shall establish a demonstration project to test the administrative feasibility of providing a process for medicare beneficiaries and entities and individuals furnishing such beneficiaries with items and services under title XVIII of the Social Security Act program to make a request for, and receive, a determination (after an advance beneficiary notice is issued with respect to the item or service involved but before such item or service is furnished to the beneficiary) as to whether the item or service is covered under such title consistent with the applicable requirements of section 1862(a)(1)(A) of such Act (42 U.S.C. 1395y(a)(1)(A)) (relating to medical necessity).

(2) EVALUATION AND REPORT.—

(A) EVALUATION.—The Secretary shall provide for an evaluation of the demonstration program conducted under paragraph (1).

(B) REPORT.—By not later than January 1, 2006, the Secretary shall submit to Congress a report on such evaluation together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

Subtitle E—Review, Recovery, and Enforcement Reform

SEC. 541. PREPAYMENT REVIEW.

(a) IN GENERAL.—Section 1874A, as added by section 521(a)(1) and as amended by sections 531(b)(1) and 532(a), is amended by adding at the end the following new subsection:

''(g) CONDUCT OF PREPAYMENT REVIEW.—

''(1) STANDARDIZATION OF RANDOM PREPAYMENT REVIEW.—A medicare administrative contractor shall conduct random prepayment review only in accordance with a standard protocol for random prepayment audits developed by the Secretary.

''(2) LIMITATIONS ON INITIATION OF NONRANDOM PREPAYMENT REVIEW.—A medicare administrative contractor may not initiate nonrandom prepayment review of a provider of services, physician, practitioner, or supplier based on the initial identification by that provider of services, physician, practitioner, or supplier of an improper billing practice unless there is a likelihood of sustained or high level of payment error (as defined by the Secretary).

''(3) TERMINATION OF NONRANDOM PREPAYMENT REVIEW.—The Secretary shall establish protocols or standards relating to the termination, including termination dates, of nonrandom prepayment review. Such regulations may vary such a termination date based upon the differences in the circumstances triggering prepayment review.

''(4) CONSTRUCTION.—Nothing in this subsection shall be construed as preventing the denial of payments for claims actually reviewed under a random prepayment review. In the case of a provider of services, physician, practitioner, or supplier with respect to which amounts were previously overpaid, nothing in this subsection shall be construed as limiting the ability of a medicare administrative contractor to request the periodic production of records or supporting documentation for a limited sample of submitted claims to ensure that the previous practice is not continuing.

''(5) RANDOM PREPAYMENT REVIEW DEFINED.—For purposes of this subsection, the term 'random prepayment review' means a demand for the production of records or documentation absent cause with respect to a claim.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) DEADLINE FOR PROMULGATION OF CERTAIN REGULATIONS.—The Secretary shall first issue regulations under section 1874A(g) of the Social Security Act, as added by subsection (a), by not later than 1 year after the date of enactment of this Act.

(3) APPLICATION OF STANDARD PROTOCOLS FOR RANDOM PREPAYMENT REVIEW.—Section 1874A(g)(1) of the Social Security Act, as added by subsection (a), shall apply to random prepayment reviews conducted on or after such date (not later than 1 year after the date of enactment of this Act) as the Secretary shall specify. The Secretary shall develop and publish the standard protocol under such section by not later than 1 year after the date of enactment of this Act.

SEC. 542. RECOVERY OF OVERPAYMENTS.

(a) IN GENERAL.—Section 1874A, as added by section 521(a)(1) and as amended by sections 531(b)(1), 532(a), and 541(a), is amended by adding at the end the following new subsection:

''(h) RECOVERY OF OVERPAYMENTS.—

''(1) USE OF REPAYMENT PLANS.—

''(A) IN GENERAL.—If the repayment, within the period otherwise permitted by a provider of services, physician, practitioner, or other supplier, of an overpayment under this title meets the standards developed under subparagraph (B), subject to subparagraph (C), and the provider, physician, practitioner, or supplier requests the Secretary to enter into a repayment plan with respect to such overpayment, the Secretary shall enter into a plan with the provider, physician, practitioner, or supplier for the offset or repayment (at the election of the provider, physician, practitioner, or supplier) of such overpayment over a period of at least 1 year, but not longer than 3 years. Interest shall accrue on the balance through the period of repayment. The repayment plan shall meet terms and conditions determined to be appropriate by the Secretary.

''(B) DEVELOPMENT OF STANDARDS.—The Secretary shall develop standards for the recovery of overpayments. Such standards shall—

''(i) include a requirement that the Secretary take into account (and weigh in favor of the use of a repayment plan) the reliance (as described in section 1871(d)(2)) by a provider of services, physician, practitioner, and supplier on guidance when determining whether a repayment plan should be offered; and

''(ii) provide for consideration of the financial hardship imposed on a provider of services, physician, practitioner, or supplier in considering such a repayment plan.

In developing standards with regard to financial hardship with respect to a provider of services, physician, practitioner, or supplier, the Secretary shall take into account the amount of the proposed recovery as a proportion of payments made to that provider, physician, practitioner, or supplier.

''(C) EXCEPTIONS.—Subparagraph (A) shall not apply if—

''(i) the Secretary has reason to suspect that the provider of services, physician, practitioner, or supplier may file for bankruptcy or otherwise cease to do business or discontinue participation in the program under this title; or

''(ii) there is an indication of fraud or abuse committed against the program.

''(D) IMMEDIATE COLLECTION IF VIOLATION OF REPAYMENT PLAN.—If a provider of services, physician, practitioner, or supplier fails to make a payment in accordance with a repayment plan under this paragraph, the Secretary may immediately seek to offset or otherwise recover the total balance outstanding (including applicable interest) under the repayment plan.

''(E) RELATION TO NO FAULT PROVISION.—Nothing in this paragraph shall be construed as affecting the application of section 1870(c) (relating to no adjustment in the cases of certain overpayments).

''(2) LIMITATION ON RECOUPMENT.—

''(A) NO RECOUPMENT UNTIL RECONSIDERATION EXERCISED.—In the case of a provider of services, physician, practitioner, or supplier that is determined to have received an overpayment under this title and that seeks a reconsideration of such determination by a qualified independent contractor under section 1869(c), the Secretary may not take any action (or authorize any other person, including any Medicare contractor, as defined in subparagraph (C)) to recoup the overpayment until the date the decision on the reconsideration has been rendered.

''(B) PAYMENT OF INTEREST.—

''(i) RETURN OF RECOUPED AMOUNT WITH INTEREST IN CASE OF REVERSAL.—Insofar as such determination on appeal against the provider of services, physician, practitioner, or supplier is later reversed, the Secretary shall provide for repayment of the amount recouped plus interest for the period in which the amount was recouped.

''(ii) INTEREST IN CASE OF AFFIRMATION.—Insofar as the determination on such appeal is against the provider of services, physician, practitioner, or supplier, interest on the overpayment shall accrue on and after the date of the original notice of overpayment.

''(iii) RATE OF INTEREST.—The rate of interest under this subparagraph shall be the rate otherwise applicable under this title in the case of overpayments.

''(C) MEDICARE CONTRACTOR DEFINED.—For purposes of this subsection, the term 'medicare contractor' has the meaning given such term in section 1889(e).

''(3) PAYMENT AUDITS.—

''(A) WRITTEN NOTICE FOR POST-PAYMENT AUDITS.—Subject to subparagraph (C), if a medicare contractor decides to conduct a post-payment audit of a provider of services, physician, practitioner, or supplier under this title, the contractor shall provide the provider of services, physician, practitioner, or supplier with written notice (which may be in electronic form) of the intent to conduct such an audit.

''(B) EXPLANATION OF FINDINGS FOR ALL AUDITS.—Subject to subparagraph (C), if a medicare contractor audits a provider of services, physician, practitioner, or supplier under this title, the contractor shall—

''(i) give the provider of services, physician, practitioner, or supplier a full review and explanation of the findings of the audit in a manner that is understandable to the provider of services, physician, practitioner, or supplier and permits the development of an appropriate corrective action plan;

''(ii) inform the provider of services, physician, practitioner, or supplier of the appeal

rights under this title as well as consent settlement options (which are at the discretion of the Secretary); and

''(iii) give the provider of services, physician, practitioner, or supplier an opportunity to provide additional information to the contractor.

''(C) EXCEPTION.—Subparagraphs (A) and (B) shall not apply if the provision of notice or findings would compromise pending law enforcement activities, whether civil or criminal, or reveal findings of law enforcement-related audits.

''(4) NOTICE OF OVER-UTILIZATION OF CODES.—The Secretary shall establish, in consultation with organizations representing the classes of providers of services, physicians, practitioners, and suppliers, a process under which the Secretary provides for notice to classes of providers of services, physicians, practitioners, and suppliers served by a medicare contractor in cases in which the contractor has identified that particular billing codes may be overutilized by that class of providers of services, physicians, practitioners, or suppliers under the programs under this title (or provisions of title XI insofar as they relate to such programs).

''(5) STANDARD METHODOLOGY FOR PROBE SAMPLING.—The Secretary shall establish a standard methodology for medicare administrative contractors to use in selecting a sample of claims for review in the case of an abnormal billing pattern.

''(6) CONSENT SETTLEMENT REFORMS.—

''(A) IN GENERAL.—The Secretary may use a consent settlement (as defined in subparagraph (D)) to settle a projected overpayment.

''(B) OPPORTUNITY TO SUBMIT ADDITIONAL INFORMATION BEFORE CONSENT SETTLEMENT OFFER.—Before offering a provider of services, physician, practitioner, or supplier a consent settlement, the Secretary shall—

''(i) communicate to the provider of services, physician, practitioner, or supplier in a nonthreatening manner that, based on a review of the medical records requested by the Secretary, a preliminary evaluation of those records indicates that there would be an overpayment; and

''(ii) provide for a 45-day period during which the provider of services, physician, practitioner, or supplier may furnish additional information concerning the medical records for the claims that had been reviewed.

''(C) CONSENT SETTLEMENT OFFER.—The Secretary shall review any additional information furnished by the provider of services, physician, practitioner, or supplier under subparagraph (B)(ii). Taking into consideration such information, the Secretary shall determine if there still appears to be an overpayment. If so, the Secretary—

''(i) shall provide notice of such determination to the provider of services, physician, practitioner, or supplier, including an explanation of the reason for such determination; and

''(ii) in order to resolve the overpayment, may offer the provider of services, physician, practitioner, or supplier—

''(I) the opportunity for a statistically valid random sample; or

''(II) a consent settlement.

The opportunity provided under clause (ii)(I) does not waive any appeal rights with respect to the alleged overpayment involved.

''(D) CONSENT SETTLEMENT DEFINED.—For purposes of this paragraph, the term 'consent settlement' means an agreement between the Secretary and a provider of services, physician, practitioner, or supplier whereby both parties agree to settle a projected overpayment based on less than a statistically valid sample of claims and the provider of services, physician, practitioner, or supplier agrees not to appeal the claims involved.''.

(b) EFFECTIVE DATES AND DEADLINES.—

(1) Not later than 1 year after the date of enactment of this Act, the Secretary shall first—

(A) develop standards for the recovery of overpayments under section 1874A(h)(1)(B) of the Social Security Act, as added by subsection (a);

(B) establish the process for notice of overutilization of billing codes under section 1874A(h)(4) of the Social Security Act, as added by subsection (a); and

(C) establish a standard methodology for selection of sample claims for abnormal billing patterns under section 1874A(h)(5) of the Social Security Act, as added by subsection (a).

(2) Section 1874A(h)(2) of the Social Security Act, as added by subsection (a), shall apply to actions taken after the date that is 1 year after the date of enactment of this Act.

(3) Section 1874A(h)(3) of the Social Security Act, as added by subsection (a), shall apply to audits initiated after the date of enactment of this Act.

(4) Section 1874A(h)(6) of the Social Security Act, as added by subsection (a), shall apply to consent settlements entered into after the date of enactment of this Act.

SEC. 543. PROCESS FOR CORRECTION OF MINOR ERRORS AND OMISSIONS ON CLAIMS WITHOUT PURSUING APPEALS PROCESS.

(a) IN GENERAL.—The Secretary shall develop, in consultation with appropriate medicare contractors (as defined in section 1889(e) of the Social Security Act, as added by section 531(d)(1)) and representatives of providers of services, physicians, practitioners, facilities, and suppliers, a process whereby, in the case of minor errors or omissions (as defined by the Secretary) that are detected in the submission of claims under the programs under title XVIII of such Act, a provider of services, physician, practitioner, facility, or supplier is given an opportunity to correct such an error or omission without the need to initiate an appeal. Such process shall include the ability to resubmit corrected claims.

(b) DEADLINE.—Not later than 1 year after the date of enactment of this Act, the Secretary shall first develop the process under subsection (a).

SEC. 544. AUTHORITY TO WAIVE A PROGRAM EXCLUSION.

The first sentence of section 1128(c)(3)(B) (42 U.S.C. 1320a–7(c)(3)(B)) is amended to read as follows: ''Subject to subparagraph (G), in the case of an exclusion under subsection (a), the minimum period of exclusion shall be not less than 5 years, except that, upon the request of an administrator of a Federal health care program (as defined in section 1128B(f)) who determines that the exclusion would impose a hardship on beneficiaries of that program, the Secretary may, after consulting with the Inspector General of the Department of Health and Human Services, waive the exclusion under subsection (a)(1), (a)(3), or (a)(4) with respect to that program in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community.''.

TITLE VI—OTHER PROVISIONS

SEC. 601. INCREASE IN MEDICAID DSH ALLOTMENTS FOR FISCAL YEARS 2004 AND 2005.

(a) IN GENERAL.—Section 1923(f)(4) (42 U.S.C. 1396r–4(f)(4)) is amended—

(1) in the paragraph heading, by striking ''FISCAL YEARS 2001 AND 2002'' and inserting ''CERTAIN FISCAL YEARS'';

(2) in subparagraph (A)—

(A) in clause (i)—

(i) by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (3)''; and

(ii) by striking ''and'' at the end;

(B) in clause (ii), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(iii) for fiscal year 2004, shall be the DSH allotment determined under paragraph (3) for that fiscal year increased by the amount equal to the product of 0.50 and the difference between—

''(I) the amount that the DSH allotment would be if the DSH allotment for the State determined under clause (ii) were increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the Consumer Price Index for all urban consumers (all items; U.S. city average) for each of fiscal years 2002 and 2003; and

''(II) the DSH allotment determined under paragraph (3) for the State for fiscal year 2004; and

''(iv) for fiscal year 2005, shall be the DSH allotment determined under paragraph (3) for that fiscal year increased by the amount equal to the product of 0.50 and the difference between—

''(I) the amount that the DSH allotment would be if the DSH allotment for the State determined under clause (ii) were increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the Consumer Price Index for all urban consumers (all items; U.S. city average) for each of fiscal years 2002, 2003, and 2004; and

''(II) the DSH allotment determined under paragraph (3) for the State for fiscal year 2005.''; and

(3) in subparagraph (C)—

(A) in the subparagraph heading, by striking ''AFTER FISCAL YEAR 2002'' and inserting ''FOR OTHER FISCAL YEARS''; and

(B) by striking ''2003 or'' and inserting ''2003, fiscal year 2006, or''.

(b) DSH ALLOTMENT FOR THE DISTRICT OF COLUMBIA.—Section 1923(f)(4) (42 U.S.C. 1396r–4(f)(4)), as amended by paragraph (1), is amended—

(1) in subparagraph (A), by inserting ''and except as provided in subparagraph (C)'' after ''paragraph (2)'';

(2) by redesignating subparagraph (C) as subparagraph (D); and

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

''(C) DSH ALLOTMENT FOR THE DISTRICT OF COLUMBIA.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), the DSH allotment for the District of Columbia for fiscal year 2004, shall be determined by substituting '49' for '32' in the item in the table contained in paragraph (2) with respect to the DSH allotment for FY 00 (fiscal year 2000) for the District of Columbia, and then increasing such allotment, subject to subparagraph (B) and paragraph (5), by the percentage change in the Consumer Price Index for all urban consumers (all items; U.S. city average) for each of fiscal years 2000, 2001, 2002, and 2003.

''(ii) NO APPLICATION TO ALLOTMENTS AFTER FISCAL YEAR 2004.—The DSH allotment for the District of Columbia for fiscal year 2003, fiscal year 2005, or any succeeding fiscal year shall be determined under paragraph (3) without regard to the DSH allotment determined under clause (i).''.

(c) CONFORMING AMENDMENT.—Section 1923(f)(3) of such Act (42 U.S.C. 1396r–4(f)(3)) is amended by inserting '', paragraph (4),'' after ''subparagraph (B)''.

SEC. 602. INCREASE IN FLOOR FOR TREATMENT AS AN EXTREMELY LOW DSH STATE UNDER THE MEDICAID PROGRAM FOR FISCAL YEARS 2004 AND 2005.

(a) IN GENERAL.—Section 1923(f)(5) (42 U.S.C. 1396r–4(f)(5)) is amended—

(1) by striking ''In the case of'' and inserting the following:

''(A) IN GENERAL.—In the case of''; and

(2) by adding at the end the following:

''(B) INCREASE IN FLOOR FOR FISCAL YEARS 2004 AND 2005.—

''(i) FISCAL YEAR 2004.—In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 2000, as reported to the Administrator of the Centers for Medicare & Medicaid Services as of August 31, 2003, is greater than 0 but less than 3 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for fiscal year 2004 shall be increased to 3 percent of the State's total amount of expenditures under such plan for such assistance during such fiscal year.

''(ii) FISCAL YEAR 2005.—In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 2001, as reported to the Administrator of the Centers for Medicare & Medicaid Services as of August 31, 2004, is greater than 0 but less than 3 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for fiscal year 2005 shall be the DSH allotment determined for the State for fiscal year 2004 (under clause (i) or paragraph (4) (as applicable)), increased by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2004.

''(iii) NO APPLICATION TO ALLOTMENTS AFTER FISCAL YEAR 2005.—The DSH allotment for any State for fiscal year 2006 or any succeeding fiscal year shall be determined under this subsection without regard to the DSH allotments determined under this subparagraph.''.

(b) ALLOTMENT ADJUSTMENT.—

(1) IN GENERAL.—Section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)) is amended—

(A) by redesignating paragraph (6) as paragraph (7); and

(B) by inserting after paragraph (5) the following:

''(6) ALLOTMENT ADJUSTMENT.—Only with respect to fiscal year 2004 or 2005, if a statewide waiver under section 1115 that was implemented on January 1, 1994, is revoked or terminated before the end of either such fiscal year, the Secretary shall—

''(A) permit the State whose waiver was revoked or terminated to submit an amendment to its State plan that would describe the methodology to be used by the State (after the effective date of such revocation or termination) to identify and make payments to disproportionate share hospitals, including children's hospitals and institutions for mental diseases or other mental health facilities (other than State-owned institutions or facilities), on the basis of the proportion of patients served by such hospitals that are low-income patients with special needs; and

''(B) provide for purposes of this subsection for computation of an appropriate DSH allotment for the State for fiscal year 2004 or 2005 (or both) that provides for the maximum amount (permitted consistent with paragraph (3)(B)(ii)) that does not result in greater expenditures under this title than would have been made if such waiver had not been revoked or terminated.''.

(2) TREATMENT OF INSTITUTIONS FOR MENTAL DISEASES.—Section 1923(h)(1) of the Social Security Act (42 U.S.C. 1396r–4(h)(1)) is amended—

(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting ''(subject to paragraph (3))'' after ''the lesser of the following''; and

(B) by adding at the end the following new paragraph:

''(3) SPECIAL RULE.—The limitation of paragraph (1) shall not apply in the case of a State to which subsection (f)(6) applies.''.

SEC. 603. INCREASED REPORTING REQUIREMENTS TO ENSURE THE APPROPRIATENESS OF PAYMENT ADJUSTMENTS TO DISPROPORTIONATE SHARE HOSPITALS UNDER THE MEDICAID PROGRAM.

Section 1923 (42 U.S.C. 1396r–4) is amended by adding at the end the following new subsection:

''(j) ANNUAL REPORTS REGARDING PAYMENT ADJUSTMENTS.—With respect to fiscal year 2004 and each fiscal year thereafter, the Secretary shall require a State, as a condition of receiving a payment under section 1903(a)(1) with respect to a payment adjustment made under this section, to submit an annual report that—

''(1) identifies each disproportionate share hospital that received a payment adjustment under this section for the preceding fiscal year and the amount of the payment adjustment made to such hospital for the preceding fiscal year; and

''(2) includes such other information as the Secretary determines necessary to ensure the appropriateness of the payment adjustments made under this section for the preceding fiscal year.''.

SEC. 604. CLARIFICATION OF INCLUSION OF INPATIENT DRUG PRICES CHARGED TO CERTAIN PUBLIC HOSPITALS IN THE BEST PRICE EXEMPTIONS FOR THE MEDICAID DRUG REBATE PROGRAM.

(a) IN GENERAL.—Section 1927(c)(1)(C)(i)(I) of the Social Security Act (42 U.S.C. 1396r–8(c)(1)(C)(i)(I)) is amended by inserting before the semicolon the following: ''(including inpatient prices charged to hospitals described in section 340B(a)(4)(L) of the Public Health Service Act)''.

(b) ANTI-DIVERSION PROTECTION.—Section 1927(c)(1)(C) of the Social Security Act (42 U.S.C. 1396r–8(c)(1)(C)) is amended by adding at the end the following:

''(iii) APPLICATION OF AUDITING AND RECORDKEEPING REQUIREMENTS.—With respect to a covered entity described in section 340B(a)(4)(L) of the Public Health Service Act, any drug purchased for inpatient use shall be subject to the auditing and recordkeeping requirements described in section 340B(a)(5)(C) of the Public Health Service Act.''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2003.

SEC. 605. ASSISTANCE WITH COVERAGE OF LEGAL IMMIGRANTS UNDER THE MEDICAID PROGRAM AND SCHIP.

(a) MEDICAID PROGRAM.—Section 1903(v) (42 U.S.C. 1396b(v)) is amended—

(1) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (4)''; and

(2) by adding at the end the following new paragraph:

''(4)(A) With respect to any or all of fiscal years 2005 through 2007, a State may elect (in a plan amendment under this title) to provide medical assistance under this title (including under a waiver authorized by the Secretary) for aliens who are lawfully residing in the United States (including battered aliens described in section 431(c) of such Act) and who are otherwise eligible for such assistance, within either or both of the following eligibility categories:

''(i) PREGNANT WOMEN.—Women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy).

''(ii) CHILDREN.—Children (as defined under such plan), including optional targeted low-income children described in section 1905(u)(2)(B).

''(B)(i) In the case of a State that has elected to provide medical assistance to a category of aliens under subparagraph (A), no debt shall accrue under an affidavit of support against any sponsor of such an alien on the basis of provision of assistance to such category and the cost of such assistance shall not be considered as an unreimbursed cost.

''(ii) The provisions of sections 401(a), 402(b), 403, and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall not apply to a State that makes an election under subparagraph (A).''.

(b) SCHIP.—Section 2107(e)(1) (42 U.S.C. 1397gg(e)(1)) is amended by redesignating subparagraphs (C) and (D) as subparagraph (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

''(C) Section 1903(v)(4) (relating to optional coverage of categories of permanent resident alien children), but only if the State has elected to apply such section to the category of children under title XIX and only with respect to any or all of fiscal years 2005 through 2007.''.

SEC. 606. ESTABLISHMENT OF CONSUMER OMBUDSMAN ACCOUNT.

(a) IN GENERAL.—Section 1817 (42 U.S.C. 1395i) is amended by adding at the end the following new subsection:

''(i) CONSUMER OMBUDSMAN ACCOUNT.—

''(1) ESTABLISHMENT.—There is hereby established in the Trust Fund an expenditure account to be known as the 'Consumer Ombudsman Account' (in this subsection referred to as the 'Account').

''(2) APPROPRIATED AMOUNTS TO ACCOUNT FOR HEALTH INSURANCE INFORMATION, COUNSELING, AND ASSISTANCE GRANTS.—

''(A) IN GENERAL.—There are hereby appropriated to the Account from the Trust Fund for each fiscal year beginning with fiscal year 2005, the amount described in subparagraph (B) for such fiscal year for the purpose of making grants under section 4360 of the Omnibus Budget Reconciliation Act of 1990.

''(B) AMOUNT DESCRIBED.—For purposes of subparagraph (A), the amount described in this subparagraph for a fiscal year is the amount equal to the product of—

''(i) $1; and

''(ii) the total number of individuals receiving benefits under this title for the calendar year ending on December 31 of the preceding fiscal year.''.

(b) CONFORMING AMENDMENT.—Section 4360(g) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1395b–4(g)) is amended to read as follows:

''(g) FUNDING.—The Secretary shall use amounts appropriated to the Consumer Ombudsman Account in accordance with section 1817(i) of the Social Security Act for a fiscal year for making grants under this section for that fiscal year.''.

SEC. 607. GAO STUDY REGARDING IMPACT OF ASSETS TEST FOR LOW-INCOME BENEFICIARIES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study to determine the extent to which drug utilization and access to covered drugs for an individual described in subsection (b) differs from the drug utilization and access to covered drugs of an individual who qualifies for

the transitional assistance prescription drug card program under section 1807A of the Social Security Act (as added by section 111) or for the premiums and cost-sharing subsidies applicable to a qualified medicare beneficiary, a specified low-income medicare beneficiary, or a qualifying individual under section 1860D–19 of the Social Security Act (as added by section 101).

(b) INDIVIDUAL DESCRIBED.—An individual is described in this subsection if the individual does not qualify for the transitional assistance prescription drug card program under section 1807A of the Social Security Act or for the premiums and cost-sharing subsidies applicable to a qualified medicare beneficiary, a specified low-income medicare beneficiary, or a qualifying individual under section 1860D–19 of the Social Security Act solely as a result of the application of an assets test to the individual.

(c) REPORT.—Not later than September 30, 2007, the Comptroller General shall submit a report to Congress on the study conducted under subsection (a) that includes such recommendations for legislation as the Comptroller General determines are appropriate.

(d) DEFINITIONS.—In this section:

(1) COVERED DRUGS.—The term ''covered drugs'' has the meaning given that term in section 1860D(a)(D) of the Social Security Act.

(2) QUALIFIED MEDICARE BENEFICIARY; SPECIFIED LOW-INCOME MEDICARE BENEFICIARY; QUALIFYING INDIVIDUAL.—The terms ''qualified medicare beneficiary'', ''specified low-income medicare beneficiary'' and ''qualifying individual'' have the meaning given those terms under section 1860D–19 of the Social Security Act.

SEC. 608. HEALTH CARE INFRASTRUCTURE IMPROVEMENT.

At the end of the Social Security Act, add the following new title:

''TITLE XXII—HEALTH CARE INFRASTRUCTURE IMPROVEMENT

''SEC. 2201. DEFINITIONS.

''In this title, the following definitions apply:

''(1) ELIGIBLE PROJECT COSTS.—The term 'eligible project costs' means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of—

''(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental study and review, permitting, architectural engineering and design work, and other preconstruction activities;

''(B) construction, reconstruction, rehabilitation, replacement, and acquisition of facilities and real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment;

''(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

''(D) major medical equipment determined to be appropriate by the Secretary; and

''(E) refinancing projects or activities that are otherwise eligible for financial assistance under subparagraphs (A) through (D).

''(2) FEDERAL CREDIT INSTRUMENT.—The term 'Federal credit instrument' means a secured loan, loan guarantee, or line of credit authorized to be made available under this title with respect to a project.

''(3) INVESTMENT-GRADE RATING.—The term 'investment-grade rating' means a rating category of BBB minus, Baa3, or higher assigned by a rating agency to project obligations offered into the capital markets.

''(4) LENDER.—The term 'lender' means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including—

''(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

''(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

''(5) LINE OF CREDIT.—The term 'line of credit' means an agreement entered into by the Secretary with an obligor under section 2204 to provide a direct loan at a future date upon the occurrence of certain events.

''(6) LOAN GUARANTEE.—The term 'loan guarantee' means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

''(7) LOCAL SERVICER.—The term 'local servicer' means a State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.

''(8) OBLIGOR.—The term 'obligor' means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

''(9) PROJECT.—The term 'project' means any project that is designed to improve the health care infrastructure, including the construction, renovation, or other capital improvement of any hospital, medical research facility, or other medical facility or the purchase of any equipment to be used in a hospital, research facility, or other medical research facility.

''(10) PROJECT OBLIGATION.—The term 'project obligation' means any note, bond, debenture, lease, installment sale agreement, or other debt obligation issued or entered into by an obligor in connection with the financing of a project, other than a Federal credit instrument.

''(11) RATING AGENCY.—The term 'rating agency' means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

''(12) SECURED LOAN.—The term 'secured loan' means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 2203.

''(13) STATE.—The term 'State' has the meaning given the term in section 101 of title 23, United States Code.

''(14) SUBSIDY AMOUNT.—The term 'subsidy amount' means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

''(15) SUBSTANTIAL COMPLETION.—The term 'substantial completion' means the opening of a project to patients or for research purposes.

''SEC. 2202. DETERMINATION OF ELIGIBILITY AND PROJECT SELECTION.

''(a) ELIGIBILITY.—To be eligible to receive financial assistance under this title, a project shall meet the following criteria:

''(1) APPLICATION.—A State, a local servicer identified under section 2205(a), or the entity undertaking a project shall submit a project application to the Secretary.

''(2) ELIGIBLE PROJECT COSTS.—To be eligible for assistance under this title, a project shall have total eligible project costs that are reasonably anticipated to equal or exceed $40,000,000.

''(3) SOURCES OF REPAYMENTS.—Project financing shall be repayable, in whole or in part, from reliable revenue sources as described in the application submitted under paragraph (1).

''(4) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored or sponsored by an entity that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

''(b) SELECTION AMONG ELIGIBLE PROJECTS.—

''(1) ESTABLISHMENT.—The Secretary shall establish criteria for selecting among projects that meet the eligibility criteria specified in subsection (a).

''(2) SELECTION CRITERIA.—

''(A) IN GENERAL.—The selection criteria shall include the following:

''(i) The extent to which the project is nationally or regionally significant, in terms of expanding or improving the health care infrastructure of the United States or the region or in terms of the medical benefit that the project will have.

''(ii) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, credit enhancement requirements, or debt services coverages, to ensure repayment.

''(iii) The extent to which assistance under this title would foster innovative public-private partnerships and attract private debt or equity investment.

''(iv) The likelihood that assistance under this title would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

''(v) The extent to which the project uses or results in new technologies.

''(vi) The amount of budget authority required to fund the Federal credit instrument made available under this title.

''(vii) The extent to which the project helps maintain or protect the environment.

''(B) SPECIFIC REQUIREMENTS.—The selection criteria shall require that a project applicant—

''(i) be engaged in research in the causes, prevention, and treatment of cancer;

''(ii) be designated as a cancer center for the National Cancer Institute or be designated by the State as the official cancer institute of the State; and

''(iii) be located in a State that, on the date of enactment of this title, has a population of less than 3,000,000 individuals.

''(C) RATING LETTER.—For purposes of subparagraph (A)(ii), the Secretary shall require each project applicant to provide a rating letter from at least 1 rating agency indicating that the project's senior obligations have the potential to achieve an investment-grade rating with or without credit enhancement.

''SEC. 2203. SECURED LOANS.

''(a) IN GENERAL.—

''(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

''(A) to finance eligible project costs;

''(B) to refinance interim construction financing of eligible project costs; or

''(C) to refinance existing debt or prior project obligations;

of any project selected under section 2202.

''(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

''(3) RISK ASSESSMENT.—Before entering into an agreement for a secured loan under this subsection, the Secretary, in consultation with each rating agency providing a rating letter under section 2202(b)(2)(B), shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account such letter.

''(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a secured loan under this section shall be contingent on the project's senior obligations receiving an investment-grade rating, except that—

''(A) the Secretary may fund an amount of the secured loan not to exceed the capital reserve subsidy amount determined under paragraph (3) prior to the obligations receiving an investment-grade rating; and

''(B) the Secretary may fund the remaining portion of the secured loan only after the obligations have received an investment-grade rating by at least 1 rating agency.

''(b) TERMS AND LIMITATIONS.—

''(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

''(2) MAXIMUM AMOUNT.—The amount of the secured loan shall not exceed 100 percent of the reasonably anticipated eligible project costs.

''(3) PAYMENT.—The secured loan—

''(A) shall—

''(i) be payable, in whole or in part, from reliable revenue sources; and

''(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

''(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

''(4) INTEREST RATE.—The interest rate on the secured loan shall be not less than the yield on marketable United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

''(5) MATURITY DATE.—The final maturity date of the secured loan shall be not later than 30 years after the date of substantial completion of the project.

''(6) NONSUBORDINATION.—The secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

''(7) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

''(c) REPAYMENT.—

''(1) SCHEDULE.—The Secretary shall establish a repayment schedule for each secured loan under this section based on the projected cash flow from project revenues and other repayment sources.

''(2) COMMENCEMENT.—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

''(3) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this section shall include any revenue generated by the project.

''(4) DEFERRED PAYMENTS.—

''(A) AUTHORIZATION.—If, at any time during the 10 years after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

''(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

''(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

''(ii) be scheduled to be amortized over the remaining term of the loan beginning not later than 10 years after the date of substantial completion of the project in accordance with paragraph (1).

''(C) CRITERIA.—

''(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.

''(ii) REPAYMENT STANDARDS.—The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

''(5) PREPAYMENT.—

''(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, reimbursement agreement, credit agreement, loan agreement, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

''(B) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty, regardless of whether such repayment is from the proceeds of refinancing from non-Federal funding sources.

''(6) FORGIVENESS OF INDEBTEDNESS.—The Secretary may forgive a loan secured under this title under terms and conditions that are analogous to the loan forgiveness provision for student loans under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.), except that the Secretary shall condition such forgiveness on the establishment by the project of—

''(A) an outreach program for cancer prevention, early diagnosis, and treatment that provides services to a substantial majority of the residents of a State or region, including residents of rural areas;

''(B) an outreach program for cancer prevention, early diagnosis, and treatment that provides services to multiple Indian tribes; and

''(C)(i) unique research resources (such as population databases); or

''(ii) an affiliation with an entity that has unique research resources.

''(d) SALE OF SECURED LOANS.—

''(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

''(2) CONSENT OF OBLIGOR.—In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the written consent of the obligor.

''(e) LOAN GUARANTEES.—

''(1) IN GENERAL.—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

''(2) TERMS.—The terms of a guaranteed loan shall be consistent with the terms set forth in this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

''SEC. 2204. LINES OF CREDIT.

''(a) IN GENERAL.—

''(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available lines of credit to 1 or more obligors in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 2202.

''(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

''(3) RISK ASSESSMENT.—Before entering into an agreement for a secured loan under this subsection, the Secretary, in consultation with each rating agency providing a rating letter under section 2202(b)(2)(B), shall determine an appropriate subsidy amount for each secured loan, taking into account such letter.

''(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on the project's senior obligations receiving an investment-grade rating from at least 1 rating agency.

''(b) TERMS AND LIMITATIONS.—

''(1) IN GENERAL.—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

''(2) MAXIMUM AMOUNTS.—

''(A) TOTAL AMOUNT.—The total amount of the line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs.

''(B) 1-YEAR DRAWS.—The amount drawn in any 1 year shall not exceed 20 percent of the total amount of the line of credit.

''(3) DRAWS.—Any draw on the line of credit shall represent a direct loan and shall be made only if net revenues from the project (including capitalized interest, any debt service reserve fund, and any other available reserve) are insufficient to pay the costs specified in subsection (a)(2).

''(4) INTEREST RATE.—The interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year marketable United States Treasury securities as of the date on which the line of credit is obligated.

''(5) SECURITY.—The line of credit—

''(A) shall—

''(i) be payable, in whole or in part, from reliable revenue sources; and

''(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

''(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

''(6) PERIOD OF AVAILABILITY.—The line of credit shall be available during the period beginning on the date of substantial completion of the project and ending not later than 10 years after that date.

''(7) RIGHTS OF THIRD-PARTY CREDITORS.—

''(A) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on the line of credit.

''(B) ASSIGNMENT.—An obligor may assign the line of credit to 1 or more lenders or to a trustee on the lenders' behalf.

''(8) NONSUBORDINATION.—A direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

''(9) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

''(10) RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.—A project that receives a line of credit under this section also shall not receive a secured loan or loan guarantee under section 2203 of an amount that, combined with the amount of the line of credit, exceeds 100 percent of eligible project costs.

''(c) REPAYMENT.—

''(1) TERMS AND CONDITIONS.—The Secretary shall establish repayment terms and conditions for each direct loan under this section based on the projected cash flow from project revenues and other repayment sources.

''(2) TIMING.—All scheduled repayments of principal or interest on a direct loan under this section shall commence not later than 5 years after the end of the period of availability specified in subsection (b)(6) and be fully repaid, with interest, by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).

''(3) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this section shall include reliable revenue sources.

''SEC. 2205. PROJECT SERVICING.

''(a) REQUIREMENT.—The State in which a project that receives financial assistance under this title is located may identify a local servicer to assist the Secretary in servicing the Federal credit instrument made available under this title.

''(b) AGENCY; FEES.—If a State identifies a local servicer under subsection (a), the local servicer—

''(1) shall act as the agent for the Secretary; and

''(2) may receive a servicing fee, subject to approval by the Secretary.

''(c) LIABILITY.—A local servicer identified under subsection (a) shall not be liable for the obligations of the obligor to the Secretary or any lender.

''(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms in the field of project finance to assist in the underwriting and servicing of Federal credit instruments.

''SEC. 2206. STATE AND LOCAL PERMITS.

''The provision of financial assistance under this title with respect to a project shall not—

''(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;

''(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

''(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

''SEC. 2207. REGULATIONS.

''The Secretary may issue such regulations as the Secretary determines appropriate to carry out this title.

''SEC. 2208. FUNDING.

''(a) FUNDING.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this title, $49,000,000 to remain available during the period beginning on July 1, 2004 and ending on September 30, 2008.

''(2) ADMINISTRATIVE COSTS.—From funds made available under paragraph (1), the Secretary may use, for the administration of this title, not more than $2,000,000 for each of fiscal years 2004 through 2008.

''(b) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, approval by the Secretary of a Federal credit instrument that uses funds made available under this title shall be deemed to be acceptance by the United States of a contractual obligation to fund the Federal credit instrument.

''(c) AVAILABILITY.—Amounts appropriated under this section shall be available for obligation on July 1, 2004.

''SEC. 2209. REPORT TO CONGRESS.

''Not later than 4 years after the date of enactment of this title, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this title, including a recommendation as to whether the objectives of this title are best served—

''(1) by continuing the program under the authority of the Secretary;

''(2) by establishing a Government corporation or Government-sponsored enterprise to administer the program; or

''(3) by phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this title without Federal participation.''.

SEC. 609. CAPITAL INFRASTRUCTURE REVOLVING LOAN PROGRAM.

(a) IN GENERAL.—Part A of title XVI of the Public Health Service Act (42 U.S.C. 300q et seq.) is amended by adding at the end the following new section:

''CAPITAL INFRASTRUCTURE REVOLVING LOAN PROGRAM

''SEC. 1603. (a) AUTHORITY TO MAKE AND GUARANTEE LOANS.—

''(1) AUTHORITY TO MAKE LOANS.—The Secretary may make loans from the fund established under section 1602(d) to any rural entity for projects for capital improvements, including—

''(A) the acquisition of land necessary for the capital improvements;

''(B) the renovation or modernization of any building;

''(C) the acquisition or repair of fixed or major movable equipment; and

''(D) such other project expenses as the Secretary determines appropriate.

''(2) AUTHORITY TO GUARANTEE LOANS.—

''(A) IN GENERAL.—The Secretary may guarantee the payment of principal and interest for loans made to rural entities for projects for any capital improvement described in paragraph (1) to any non-Federal lender.

''(B) INTEREST SUBSIDIES.—In the case of a guarantee of any loan made to a rural entity under subparagraph (A), the Secretary may pay to the holder of such loan, for and on behalf of the project for which the loan was made, amounts sufficient to reduce (by not more than 3 percent) the net effective interest rate otherwise payable on such loan.

''(b) AMOUNT OF LOAN.—The principal amount of a loan directly made or guaranteed under subsection (a) for a project for capital improvement may not exceed $5,000,000.

''(c) FUNDING LIMITATIONS.—

''(1) GOVERNMENT CREDIT SUBSIDY EXPOSURE.—The total of the Government credit subsidy exposure under the Credit Reform Act of 1990 scoring protocol with respect to the loans outstanding at any time with respect to which guarantees have been issued, or which have been directly made, under subsection (a) may not exceed $50,000,000 per year.

''(2) TOTAL AMOUNTS.—Subject to paragraph (1), the total of the principal amount of all loans directly made or guaranteed under subsection (a) may not exceed $250,000,000 per year.

''(d) CAPITAL ASSESSMENT AND PLANNING GRANTS.—

''(1) NONREPAYABLE GRANTS.—Subject to paragraph (2), the Secretary may make a grant to a rural entity, in an amount not to exceed $50,000, for purposes of capital assessment and business planning.

''(2) LIMITATION.—The cumulative total of grants awarded under this subsection may not exceed $2,500,000 per year.

''(e) TERMINATION OF AUTHORITY.—The Secretary may not directly make or guarantee any loan under subsection (a) or make a grant under subsection (d) after September 30, 2008.''.

(b) RURAL ENTITY DEFINED.—Section 1624 of the Public Health Service Act (42 U.S.C. 300s–3) is amended by adding at the end the following new paragraph:

''(14)(A) The term 'rural entity' includes—

''(i) a rural health clinic, as defined in section 1861(aa)(2) of the Social Security Act;

''(ii) any medical facility with at least 1 bed, but with less than 50 beds, that is located in—

''(I) a county that is not part of a metropolitan statistical area; or

''(II) a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725));

''(iii) a hospital that is classified as a rural, regional, or national referral center under section 1886(d)(5)(C) of the Social Security Act; and

''(iv) a hospital that is a sole community hospital (as defined in section 1886(d)(5)(D)(iii) of the Social Security Act).

''(B) For purposes of subparagraph (A), the fact that a clinic, facility, or hospital has been geographically reclassified under the medicare program under title XVIII of the Social Security Act shall not preclude a hospital from being considered a rural entity under clause (i) or (ii) of subparagraph (A).''.

(c) CONFORMING AMENDMENTS.—Section 1602 of the Public Health Service Act (42 U.S.C. 300q–2) is amended—

(1) in subsection (b)(2)(D), by inserting ''or 1603(a)(2)(B)'' after ''1601(a)(2)(B)''; and

(2) in subsection (d)—

(A) in paragraph (1)(C), by striking ''section 1601(a)(2)(B)'' and inserting ''sections 1601(a)(2)(B) and 1603(a)(2)(B)''; and

(B) in paragraph (2)(A), by inserting ''or 1603(a)(2)(B)'' after ''1601(a)(2)(B)''.

SEC. 610. FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, $250,000,000 for each of fiscal years 2005 through 2008, for the purpose of making allotments under this section to States described in paragraph (1) or (2) of subsection (b). Funds appropriated under the preceding sentence shall remain available until expended.

(b) STATE ALLOTMENTS.—

(1) BASED ON PERCENTAGE OF UNDOCUMENTED ALIENS.—

(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $167,000,000 of such

amount to make allotments for such fiscal year in accordance with subparagraph (B).

(B) FORMULA.—The amount of the allotment for each State for a fiscal year shall be equal to the product of—

(i) the total amount available for allotments under this paragraph for the fiscal year; and

(ii) the percentage of undocumented aliens residing in the State with respect to the total number of such aliens residing in all States, as determined by the Statistics Division of the Immigration and Naturalization Service, as of January 2003, based on the 2000 decennial census.

(2) BASED ON NUMBER OF UNDOCUMENTED ALIEN APPREHENSION STATES.—

(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $83,000,000 of such amount to make allotments for such fiscal year for each of the 6 States with the highest number of undocumented alien apprehensions for such fiscal year.

(B) DETERMINATION OF ALLOTMENTS.—The amount of the allotment for each State described in subparagraph (A) for a fiscal year shall bear the same ratio to the total amount available for allotments under this paragraph for the fiscal year as the ratio of the number of undocumented alien apprehensions in the State in that fiscal year bears to the total of such numbers for all such States for such fiscal year.

(C) DATA.—For purposes of this paragraph, the highest number of undocumented alien apprehensions for a fiscal year shall be based on the 4 most recent quarterly apprehension rates for undocumented aliens in such States, as reported by the Immigration and Naturalization Service.

(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State that is described in both of paragraphs (1) and (2) from receiving an allotment under both paragraphs for a fiscal year.

(c) USE OF FUNDS.—

(1) AUTHORITY TO MAKE PAYMENTS.—From the allotments made for a State under subsection (b) for a fiscal year, the Secretary shall pay directly to local governments, hospitals, or other providers located in the State (including providers of services received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization) that provide uncompensated emergency health services furnished to undocumented aliens during that fiscal year, and to the State, such amounts (subject to the total amount available from such allotments) as the local governments, hospitals, providers, or State demonstrate were incurred for the provision of such services during that fiscal year.

(2) LIMITATION ON STATE USE OF FUNDS.—Funds paid to a State from allotments made under subsection (b) for a fiscal year may only be used for making payments to local governments, hospitals, or other providers for costs incurred in providing emergency health services to undocumented aliens or for State costs incurred with respect to the provision of emergency health services to such aliens.

(3) INCLUSION OF COSTS INCURRED WITH RESPECT TO CERTAIN ALIENS.—Uncompensated emergency health services furnished to aliens who have been allowed to enter the United States for the sole purpose of receiving emergency health services may be included in the determination of costs incurred by a State, local government, hospital, or other provider with respect to the provision of such services.

(d) APPLICATIONS; ADVANCE PAYMENTS.—

(1) DEADLINE FOR ESTABLISHMENT OF APPLICATION PROCESS.—

(A) IN GENERAL.—Not later than September 1, 2004, the Secretary shall establish a process under which States, local governments, hospitals, or other providers located in the State may apply for payments from allotments made under subsection (b) for a fiscal year for uncompensated emergency health services furnished to undocumented aliens during that fiscal year.

(B) INCLUSION OF MEASURES TO COMBAT FRAUD.—The Secretary shall include in the process established under subparagraph (A) measures to ensure that fraudulent payments are not made from the allotments determined under subsection (b).

(2) ADVANCE PAYMENT; RETROSPECTIVE ADJUSTMENT.—The process established under paragraph (1) shall allow for making payments under this section for each quarter of a fiscal year on the basis of advance estimates of expenditures submitted by applicants for such payments and such other investigation as the Secretary may find necessary, and for making reductions or increases in the payments as necessary to adjust for any overpayment or underpayment for prior quarters of such fiscal year.

(e) DEFINITIONS.—In this section:

(1) HOSPITAL.—The term ''hospital'' has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)).

(2) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms ''Indian tribe'' and ''tribal organization'' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

(3) PROVIDER.—The term ''provider'' includes a physician, any other health care professional licensed under State law, and any other entity that furnishes emergency health services, including ambulance services.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(5) STATE.—The term ''State'' means the 50 States and the District of Columbia.

SEC. 611. INCREASE IN APPROPRIATION TO THE HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.

Section 1817(k)(3)(A) (42 U.S.C. 1395i(k)(3)(A)) is amended—

(1) in clause (i)—

(A) in subclause (II), by striking ''and'' at the end; and

(B) by striking subclause (III), and inserting the following new subclauses:

''(III) for fiscal year 2004, the limit for fiscal year 2003 increased by $10,000,000;

''(IV) for fiscal year 2005, the limit for fiscal year 2003 increased by $15,000,000;

''(V) for fiscal year 2006, the limit for fiscal year 2003 increased by $25,000,000; and

''(VI) for each fiscal year after fiscal year 2006, the limit for fiscal year 2003.''; and

(2) in clause (ii)—

(A) in subclause (VI), by striking ''and'' at the end;

(B) in subclause (VII)—

(i) by striking ''each fiscal year after fiscal year 2002'' and inserting ''fiscal year 2003''; and

(ii) by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(VIII) for fiscal year 2004, $170,000,000;

''(IX) for fiscal year 2005, $175,000,000;

''(X) for fiscal year 2006, $185,000,000; and

''(XI) for each fiscal year after fiscal year 2006, not less than $150,000,000 and not more than $160,000,000.''.

SEC. 612. INCREASE IN CIVIL PENALTIES UNDER THE FALSE CLAIMS ACT.

(a) IN GENERAL.—Section 3729(a) of title 31, United States Code, is amended—

(1) by striking ''$5,000'' and inserting ''$7,500''; and

(2) by striking ''$10,000'' and inserting ''$15,000''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to violations occurring on or after January 1, 2004.

SEC. 613. INCREASE IN CIVIL MONETARY PENALTIES UNDER THE SOCIAL SECURITY ACT.

(a) IN GENERAL.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)), in the matter following paragraph (7), is amended—

(1) by striking ''$10,000'' each place it appears and inserting ''$12,500'';

(2) by striking ''$15,000'' and inserting ''$18,750''; and

(3) striking ''$50,000'' and inserting ''$62,500''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to violations occurring on or after January 1, 2004.

SEC. 614. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''September 30, 2013''.

Mr. GRASSLEY. Mr. President, the technical corrections in this modification obviously have been agreed to by Senator BAUCUS or I would not have offered it, and they are not controversial. The corrected items in this modification are technical in nature. It merely perfects policies in the Finance Committee's reported mark that were drafted incorrectly in S. 1. The corrected items also reflect drafting changes that, while small, were important from CBO's perspective in getting us a complete score. All of these technical changes are incorporated now into this modified version of S. 1.

The new version also includes an official line-by-line score from the Congressional Budget Office. I am looking forward to getting on to amendments at this point. I repeat what I said yesterday: My hope is the spirit of comity and consensus building that existed in the Finance Committee last week will be and can be, and I am surely going to work for it to be, replicated here on the Senate floor. The Finance Committee members reached across party lines to arrive at that consensus. For some it was very difficult. But the final vote showed a lot of give and take because that vote out of committee was 16 to 5. I hope that same spirit will prevail here today and in the coming days this week and next week that we are on the bill.

There was another part of the consent I did not ask. I now ask unanimous consent the amendment be agreed to—our professional staff has some disagreement whether or not I should be making that motion at this point, so I will not.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from Michigan is now going to offer her amendment. We are willing to enter into a time agreement on the amendment. There are a number of meetings at the White House, I am told, that prevent our arriving at a definite time for the amendment today. I have spoken to the staff on both sides, and maybe at 3:15 we could have a vote.

Members should keep that in mind, that we may be able to do that.

There is nothing definite at this stage. I want the record to reflect we are not trying to stall movement of this bill. We have this amendment, this important amendment. We are ready to vote on it earlier than 3:15. But because of the White House calling Senators down, we will be unable to do that.

Mr. GRASSLEY. Mr. President, in addition to what the Senator expressed, it is a desire on our part that we would have some votes yet today and that we would like to move along very quickly. I think the spirit he has set is one that is shared on our side, even to the point of being specific statements from our leadership, the extent to which they would hope to have some votes today.

I yield the floor.

Mr. REID. It was suggested earlier today that we would rotate back and forth on amendments. That is fine. I think we have more amendments than you have, but if that is the case, we are happy to alternate back and forth.

Mr. GRASSLEY. Mr. President, if I may further add to what the Senator said, for our part, we would like to have a very general rule that we would alternate back and forth, but it is also our belief on this side that we would give great deference to the other side to offer amendments, two Democratic or three Democratic amendments in order so we could be very flexible on that. We did want to reserve and provide some predictability to the order on the floor because there might be some Members on the Republican side who would like to offer an amendment, and they want some certainty when that would be done.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 931

Ms. STABENOW. Mr. President, I send an amendment to the desk on behalf of myself, Senators BOXER, BOB GRAHAM, ROCKEFELLER, HARKIN, CANTWELL, KERRY, BINGAMAN, JACK REED, CLINTON, and MIKULSKI. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Ms. STABENOW], for herself, Mrs. BOXER, Mr. GRAHAM of Florida, Mr. ROCKEFELLER, Mr. HARKIN, Ms. CANTWELL, Mr. KERRY, Mr. BINGAMAN, Mr. REED, Mrs. CLINTON, and Ms. MIKULSKI, proposes an amendment numbered 931.

Ms. STABENOW. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require that the Medicare plan, to be known as the Medicare Guaranteed Option, be available to all eligible beneficiaries in every year)

Beginning on page 74, strike line 10 and all that follows through page 84, line 3, and insert the following:

''(e) MEDICARE GUARANTEED OPTION.—

''(1) ACCESS.—

''(A) IN GENERAL.—The Administrator shall enter into a contract with an entity in each area (established under section 1860D–10) to provide eligible beneficiaries enrolled under this part (and not, except for an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage, enrolled in a MedicareAdvantage plan) and residing in the area with standard prescription drug coverage (including access to negotiated prices for such beneficiaries pursuant to section 1860D–6(e)). An entity may be awarded a contract for more than 1 area but the Administrator may enter into only 1 such contract in each such area.

''(B) ENTITY REQUIRED TO MEET BENEFICIARY PROTECTION AND OTHER REQUIREMENTS.—An entity with a contract under subparagraph (A) shall meet the requirements described in section 1860D–5 and such other requirements determined appropriate by the Administrator.

''(C) COMPETITIVE PROCEDURES.—Competitive procedures (as defined in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5))) shall be used to enter into a contract under subparagraph (A).

''(D) SAME TIMEFRAME AS MEDICARE PRESCRIPTION DRUG PLANS.—The Administrator shall apply similar timeframes for the submission of bids and entering into to contracts under this subsection as the Administrator applies to Medicare Prescription Drug plans.

''(2) MONTHLY BENEFICIARY OBLIGATION FOR ENROLLMENT.—In the case of an eligible beneficiary receiving access to qualified prescription drug coverage through enrollment with an entity with a contract under paragraph (1)(A), the monthly beneficiary obligation of such beneficiary for such enrollment shall be an amount equal to the applicable percent (as determined under section 1860D–17(c) before any adjustment under paragraph (2) of such section) of the monthly national average premium (as computed under section 1860D–15 before any adjustment under subsection (b) of such section) for the year.

''(3) PAYMENTS UNDER THE CONTRACT.—

''(A) IN GENERAL.—A contract entered into under paragraph (1)(A) shall provide for—

''(i) payment for the negotiated costs of covered drugs provided to eligible beneficiaries enrolled with the entity; and

''(ii) payment of prescription management fees that are tied to performance requirements established by the Administrator for the management, administration, and delivery of the benefits under the contract.

''(B) PERFORMANCE REQUIREMENTS.—The performance requirements established by the Administrator pursuant to subparagraph (A)(ii) shall include the following:

''(i) The entity contains costs to the Prescription Drug Account and to eligible beneficiaries enrolled under this part and with the entity.

''(ii) The entity provides such beneficiaries with quality clinical care.

''(iii) The entity provides such beneficiaries with quality services.

''(C) ENTITY ONLY AT RISK TO THE EXTENT OF THE FEES TIED TO PERFORMANCE REQUIREMENTS.—An entity with a contract under paragraph (1)(A) shall only be at risk for the provision of benefits under the contract to the extent that the management fees paid to the entity are tied to performance requirements under subparagraph (A)(ii).

''(4) TERM OF CONTRACT.—A contract entered into under paragraph (1)(A) shall be for a period of at least 2 years but not more than 5 years.

''(5) NO EFFECT ON ACCESS REQUIREMENTS.—The contract entered into under subparagraph (1)(A) shall be in addition to the plans required under subsection (d)(1).

''(6) AUTHORITY TO PREVENT INCREASED COSTS.—If the Administrator determines that Federal payments made with respect to eligible beneficiaries enrolled in a contract under paragraph (1)(A) exceed on average the Federal payments made with respect to eligible beneficiaries enrolled in a Medicare Prescription Drug plan or a MedicareAdvantage plan (with respect to qualified prescription drug coverage), the Administrator may adjust the requirements or payments under such a contract to eliminate such excess.

Ms. STABENOW. Mr. President, first of all, before explaining the amendment, I commend my colleagues for their leadership on the Finance Committee. They have been working very diligently—the chairman, Senator GRASSLEY, and the ranking member, Senator BAUCUS, and members on both sides of the aisle. I commend them for bringing forward one of the most critical issues affecting American people, American families, American seniors today. While we may disagree on specifics and on what is the best approach, I very much commend them for giving us the opportunity to debate this critical issue and for the hard work that has gone on, on both sides.

My amendment is a simple one. It would provide another choice of prescription drug plans for seniors on Medicare. In fact, it would provide the choice the majority of seniors want to make on Medicare.

The underlying bill allows seniors to choose a prescription drug plan, but only if the plan is one offered by a private insurance company. My amendment simply allows seniors to get their prescription drugs through the Medicare Program. It is creating one more option. The legislation before us tries to expand health care choices for people on Medicare. Regrettably, it does not provide the full range of choices for seniors.

Without my amendment, we are not in fact providing the full range of choices, including the one for which the seniors are asking. My amendment will allow seniors the choice to get their prescriptions filled within traditional Medicare, to choose a private prescription drug plan, or enroll in a PPO or an HMO. This range of choice will foster competition among the different plans and allow our seniors to make the best possible choice for themselves. This amendment puts all of the plans on the same footing and does not favor one over the other.

I think it is also important to note that the private plans described in the bill don't exist today. In fact, Robert Reischauer was quoted recently in the New York Times saying, ''Private drug-only plans don't exist in nature.'' They don't currently exist in nature. So we are designing a system around plans that do not currently exist.

Medicare does exist. A Medicare plan is one that we know we can put together and that seniors can count on, at the same time giving the opportunity for new plans to be created, as

well as the structures of HMOs and PPOs.

I also think this plan could actually save the Federal Government dollars, and certainly the record would reflect that. There is ample objective evidence that providing health care through the Medicare Program is more efficient than through the private sector. This is one area where the evidence is clear, based on various points of information. Let me just share some with you.

On May 5, 2003, the New York Times reported on findings by MedPAC, our own nonpartisan advisory plan. MedPAC discovered that private health plan fees are about 15 percent higher than Medicare. The Center for Studying Health Systems Change has also made similar findings. So we know that if we go to private plans, on average, services will be about 15 percent higher—more costly for fees for services. Surgeries, they found, were about 26 percent more. Radiology was about 19 percent more. Hospital and nursing home visits and consultations were 9 percent more. On average, we know it doesn't in fact cost less to provide services to private plans. Independent, nonpartisan organizations have found that it in fact costs more.

Also, using private plans would likely cost additional dollars. In the year 2000, our own General Accounting Office estimated that payments to Medicare+Choice plans—and those are the Medicare HMOs that were set up in 1997—exceeded the costs that would have been incurred for treating patients directly through traditional Medicare by an annual average of 13.2 percent.

So, again, we have a situation where our own nonpartisan, objective General Accounting Office said that providing services through Medicare HMOs actually cost, on average, 13.2 percent more than the same service offered under traditional Medicare, where seniors get to select their own doctors and have the dependability of knowing that Medicare will be there.

Thirdly, private plans are not necessarily more efficient than Medicare. The inspector general of the Department of Health and Human Services found that HMOs that contract with Medicare, on average, spent 15 percent of their revenue on administrative costs rather than on health care. In fact, we know those numbers can be even higher in other private sector plans. Dollars have been put aside in this plan to cover higher administrative costs. Some managed care systems spend as much as 32 percent of their revenue. That means that for every precious dollar we have that we want to help seniors pay for their medicine, about one-third of that could go to administration.

By contrast, the Medicare plan spends only 2 percent of its budget on administrative overhead. On average, a private HMO—and we realize more plans are being developed under this proposal than just HMOs, but if we look at what we have to go on in terms of the differences, it is 2 percent administrative costs under Medicare and an average of 15 percent for HMOs. And we know that in some areas, in fact, it is even higher administrative costs for other private insurance plans.

Furthermore, the enrollment experience with private plans in Medicare has certainly not been stellar. In the past 5 years, 2.5 million seniors have been dropped by their Medicare HMO. As I have indicated before, one of those in fact was my own mother in Lansing, MI, who had a very positive experience under a Medicare HMO. But the decision was made, for financial reasons, to no longer cover Medicare recipients. She lost her plan and her doctor, and she was left to figure out how else she would be receiving care under Medicare.

In 2002, three plans in Michigan dropped out of Medicare+Choice altogether, while two dropped significant numbers of enrollees. More than 31,000 seniors in Michigan have been dropped just since 2002. What does that mean in real terms for people? It means that they went into a system, they had a doctor, they were within a certain kind of health care system; then the private managed care plan decided to pull out, and they were then left to go find another plan, actually another doctor, and another way of providing health care.

Only 8 of 83 counties in Michigan now have private Medicare HMO plans, and all of them are concentrated in one area, southeastern Michigan, around metro Detroit, which means that those in the Upper Peninsula of our State don't have that choice. I expect it would be very difficult for them to find a private sector plan, even into the future, in northern Michigan, the Upper Peninsula, or the west side of the State. Right now, the only option is obviously around metro Detroit. None of the remaining Medicare HMOs in Michigan is accepting new enrollees.

One Michigan provider even chose to pay a $25,000 fine to get out of Medicare+Choice and stop serving seniors immediately rather than go through the official withdrawal process. That requires more than 3 months of notice of intent to withdraw. By pulling out immediately, this plan left our seniors in the lurch with very little transition time to explore other ways in order to be able to get their health coverage.

Because of the poor records of the Medicare+Choice plan, almost 9 out of 10 seniors—basically 89 percent—have decided to stay in traditional Medicare. I believe they ought to have the choice to do that. That is what my amendment is all about. It is saying to those right now who have had a choice of a private managed care plan or traditional Medicare since 1997, who have chosen to stay with traditional Medicare, to choose their own doctor, to know that regardless of where they live they will have the dependability, the stability of Medicare, it will be there for those individuals who have chosen overwhelmingly to stay in traditional Medicare—89 percent.

Any one of us would love that kind of a percentage when people are choosing in an election. Eighty-nine percent of the seniors today have said they want traditional Medicare. Yet this choice they have made is not available to them if there are two or more private sector plans available in their region. Essentially, unfortunately, what the current plan says is you have made your choice; we do not like your choice; pick again. My amendment would guarantee seniors would be able to have that choice.

I know some colleagues strongly believe that moving seniors into the private sector is the best way to provide them prescription drug coverage. While I respectfully disagree with this premise, I think it is a good idea to provide private sector options for those who desire them.

Back to my own family, I think my mother should have that choice, and she should be able to go into Medicare+Choice or another managed care plan if she so desires. I absolutely agree with that if it works for them.

The question is whether the Federal Government should force seniors into a plan, whether it is a private insurance plan or traditional Medicare. Should we be deciding what our seniors should have for their prescription drug coverage? Should we make that choice or should they make the choice? That is why my amendment is so important. It will allow seniors to choose the appropriate plan for them, not the Federal Government.

I have heard a lot of arguments that we should provide seniors with the same options that Members of Congress and Federal employees have in the Federal Employees Health Benefits Plan. Under that plan, we have several options ranging from fee for service to PPOs to HMOs. If we like one of those options—and we choose that option, by the way—the Federal Government does not come in and say, If you work for the Senate, you cannot have option A, you can only get B, C, D, and only A under certain circumstances. We say here is the range of options; you select the one that works for you. If we like the one we selected, we can stay in that plan as long as we want. As long as we are covered by the Federal employees health plan, we can choose that plan. We are never forced to switch plans.

Mr. President, can you imagine if we were living under the plan we are asking seniors to live under; if every employee had to switch back and forth, potentially, depending on what was offered in the private sector, rather than remaining with the plan they desired? We have never been forced to switch plans ourselves. It should be the same for our seniors. If we do not have to switch plans year to year, then seniors should not have to switch either.

My guess is most of us like the plans we are in and probably want to stay with them. Certainly, if we do not, we have the opportunity to change. But the last thing we want to do is switch health plans every year or every other year and try to leaf through hundreds of pages of brochures to evaluate the benefits of a new plan. I, for one, find it is difficult to find the time to do that. I cannot imagine anyone would want the chore of going through every year or every other year all of the paperwork to figure out what is best for them, particularly if they like the plan they are in.

Many seniors want stability. They seek a good, solid, guaranteed health plan where they can see their own doctors. There are some seniors who prefer to experiment with private plans, and they should be given that option. But all seniors should have all options, and that is what my amendment would do. It would make sure the choice is in the hands of our seniors.

Again, this approach is within the framework of the bill. It is within the $400 billion that has been carved out within the budget resolution. It is within the framework of the benefits structure that has been designed by the committee. This amendment does not change anything other than to say every senior should have the option, as 89 percent of them have chosen to do, to not only have their own doctor under Medicare, but to have a prescription drug plan under Medicare regardless of where they live, and a plan they can count on and depend on.

Again, I commend my colleagues who have been working diligently on this issue. I know it has been a challenge for everyone. I believe this amendment does exactly what the seniors of America want and allows all of us to enthusiastically embrace this proposal as being the right proposal.

I hope my colleagues will support my amendment to offer one more choice to seniors. It builds on the structure of this bipartisan plan and provides more choices.

I know many of us believe this bill can be improved. Outside objective critics have even used stronger language about the way this is restricted in the bill. For example, former CBO Director Robert Reischauer said:

> The benefit is rather skimpy and has a bizarre structure. It is an insurance structure that exists nowhere in the private sector or in nature.

Through this amendment we will have a structure that makes sense, that is dependable, that is explainable, that is simple and straightforward, that provides all range of options to seniors so they can decide what it is they wish to do in terms of prescription drug coverage.

Mr. President, I have a letter from the National Committee to Preserve Social Security and Medicare. I will read a portion of it:

> On behalf of the millions of members and supporters of the National Committee to Preserve Social Security and Medicare, I am writing in support of your ''Medicare Guaranteed Option'' amendment to S. 1. Since the current Senate prescription drug bill, S. 1, wants to offer seniors choices, your amendment would offer seniors real choices because they would have the choice of what they really want, which is a defined benefit under Medicare.

I ask unanimous consent that this letter be printed in the RECORD.

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

June 17, 2003.

Hon. DEBBIE STABENOW,
U.S. Senate,
Washington, DC.

DEAR SENATOR STABENOW: On behalf of the millions of members and supporters of the National Committee to Preserve Social Security and Medicare (NCPSSM), I am writing in support of your ''Medicare Guaranteed Option'' amendment to S. 1. Since the current Senate prescription drug bill, S. 1, wants to offer seniors choices, your amendment would offer seniors real choices because they would have the choice of what they really want, which is defined benefit under Medicare.

We understand that your amendment would allow traditional Medicare to be an option that stands side-by-side next to the other two or more private plans that are required to be in that region. Instead of the current requirement that Medicare stand as a fall back, only if there are no private plans in the area, it would allow Medicare to be a third choice for seniors who prefer to get their benefits through traditional Medicare. We agree that seniors should have the right to select the option in which they are most comfortable, and for many, that choice might be to stay with traditional Medicare versus one of private plans that are located within their region.

We applaud your efforts and dedication on behalf of America's seniors, and appreciate your continued leadership on this issue. We look forward to continuing to work with you.

Sincerely,

BARBARA B. KENNELLY,
President.

Ms. STABENOW. I thank the Chair. Mr. President, again, I urge my colleagues to join in this amendment. I am hopeful we can join together enthusiastically in embracing a system that has worked since 1965 for our seniors. I hope also we can join together to improve it, not only prescription drug coverage, but ways to minimize paperwork and focus more on prevention, as the Secretary of HHS has suggested.

There are many opportunities for us to improve within the structure of Medicare a plan that is focused more on prevention, to eliminate the paperwork, and to do it together and still provide our seniors with the choice for which they are asking.

In conclusion, I ask unanimous consent to add Senator LEVIN, Senator KOHL, and Senator DODD as cosponsors of my amendment.

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

Ms. STABENOW. I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, first, I congratulate the Senator from Michigan. She has worked very hard and, I might add, effectively in helping make this a better bill.

Everyone in this body wants legislation passed that gives good, solid prescription drug benefits to seniors.

The debate is somewhat over delivery; that is, how we set the plan up, who provides the benefits and so on. The bottom line is the same for all of us. We want good, solid prescription drug benefits for seniors.

The Senator from Michigan is probably as well-versed in this subject and more of an advocate for seniors than any other Member of this body, or at least as much as any other Member of this body. I thank her very much for what she has done.

The issue basically is that we have roughly $400 billion to spend over 10 years, and the question is how we best assure that seniors get those benefits. Now, $400 billion over 10 years may sound like a lot of money to some folks but when it is cranked out in terms of deductibles, copays, premiums and benefits, it is really a modest benefit for seniors. It is not a lot of money.

Some other programs give much more generous prescription drug benefits than is called for under this legislation. For example, under TRICARE, that is the military plan, military retirees receive substantially more benefits than are called for under this bill. The same is true for the VA. If the U.S. Government, under this legislation, were to provide the same benefits for seniors generally that the military does under TRICARE, this bill would not be $400 billion, it would be upwards of $800 billion to a trillion dollars, which gives one a sense of the difference.

The VA's benefits are greater. The Federal Employees Health Benefits Plan, FEHBP, provides drug benefits that are greater than called for under this bill.

I mention that so the expectations are not raised too high that this legislation is going to be the be-all and end-all, that it is going to help seniors with all their drug expenditures. It will not, but it is a first step. It is a major advancement in helping seniors get their prescription drug benefits.

There will be many bills later on in the next several years as we address ways to improve our health care delivery system generally, on how we can help improve prescription drug benefits to seniors more specifically, but we are operating under a bit of a constraint and the constraint is $400 billion. That is what we in the Congress agreed to, $400 billion on the Senate side for prescription drug benefits for seniors.

Under that constraint, we have to work very hard to try to achieve some balance. One goal is stability, another is efficiency. What do I mean?

Under stability, we clearly want this program to be as stable as possible so seniors know what they are getting for the premiums they will be paying. This is a voluntary program. Seniors are not

required to sign up. What we want is a stable program. We do not want a program that is changing a lot. That is unsettling to seniors.

We also want to achieve efficiencies. By that I mean lower some costs. The Medicare Program is growing exponentially. We all know that not too many years from now, when the baby boomers start to retire, we are going to face some significant challenges on how we address Medicare payments generally, which certainly will include some prescription drug benefits. We want to try to cut costs, and the idea that a balance is struck between stability and efficiency is essentially one where both private plans and the U.S. Government participate.

I strongly wish we were able to have more dollars to spend so we would have more stability and have a program that more closely resembles the military's TRICARE plan or the Federal Employees Health Benefits Plan or the Veterans' Administration plan, and even some private plans, but we do not. We are taking this steadily, a step at a time.

The Senator from Michigan has a good idea. Her idea is that in the interest of stability, as opposed to efficiency, that any senior would have the right to participate for life in the Government-sponsored plan as opposed to the private sector. We in the Finance Committee have labored mightily to try to find the right balance, and the right balance is not easy to find, I must say. We have Senators from one side of the spectrum and Senators from the other side of the spectrum bending my ear and bending the ear of the chairman. Quite often, our ears are bent so much we wonder if there is any rubber left in them. We have been talked to.

I have been talked to very much by the wonderful Senator from Michigan about her amendment. If I had my druthers, it would be something I would prefer, but we are a bit constrained. I do not know that I can support the amendment for that reason because we are trying to keep a balance.

I do want to highly commend the Senator for the great effort she has undertaken. She has clearly helped advance the ball in many ways. She will continue to advance the ball, there is no doubt in my mind. She is a great Senator for the people of the State of Michigan.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Iowa.

Mr. GRASSLEY. Madam President, I rise in opposition to the amendment. I have had a chance to hear what the Senator from Montana has said about the amendment. I associate myself with his remarks. I also heard what he said about the Senator from Michigan being a fair player and offering alternatives, and I share his compliments of her and how she approaches these issues.

This is a place where we have some honest disagreements. We are going to debate those honest disagreements, and I hope the Senator from Michigan comes out on the short end of this debate when we have a rollcall vote.

Before I make some specific statements in opposition to her amendment, I will state that the chart she has before her right now is an accurate chart, but I would like to comment on it from the standpoint of not being maybe a complete picture. I think the percentages are very accurate but we also need to remember that Medicare+Choice is not offered in all parts of the United States. For instance, in my State of Iowa, there is only 1 county out of 99—and that is Pottawattamie County, Council Bluffs county seat across from Omaha—where there are about 4,000 people out of about 350,000 seniors who belong to a Medicare+Choice plan, and I find that they like it very well. They can join in that county because they are associated with Omaha across the river in Nebraska.

Also in several major cities in California, Arizona, Texas, Florida, and New York there are several, maybe even some rural areas in those States, where they get a very high percentage. Now, how much higher than 11 percent, I do not know, but I remember back in the mid-to-late 1990s that I was able to say—whether I can still say it today, I do not know—that 40 percent of the seniors in some large cities did, in fact, choose Medicare+Choice plans. Whatever higher percentage it is in those cities, we have to realize that people are in these Medicare+Choice plans voluntarily.

I also have come in contact with many Iowans who winter in other States where they have Medicare+Choice, and they do not seem to understand why we cannot have Medicare+Choice in Iowa, and I wonder that myself. I took action in 1997 to very dramatically increase the payment to Medicare+Choices so they would come to the State of Iowa, but they still have not come.

We have increased it from $300 per month per beneficiary up to a national floor now of $490, and they still don't come, even considering the fact that fee for service in Iowa is closer to the $300 per month per beneficiary. So I don't know why we can get almost 50 percent more and at least 70 percent more Medicare+Choice, yet the plans don't come to Iowa.

What I am saying to the Senator from Michigan is it is not fair to say Medicare fee for service is so well liked by seniors, as her chart would imply, that we ought to completely forget about anything but fee for service. In a lot of places people like it. A high percentage of seniors are in it. They are in it voluntarily. They can come in one year and get out the next if they want to go to the fee for service. In my State of Iowa, citizens are irritated because in Arizona they see people getting benefits through Medicare+Choice that we do not get in fee for service within the State of Iowa.

There is nothing wrong with your chart except I think it ought to be magnified to some extent so that there are a lot of people with Medicare+Choice who like it. More would choose it if it was more widely available. That is one of the advantages of our PPO section of the bill before the Senate: to give more people that opportunity. That does not necessarily mean HMO. It can be preferred provider organization or it could even be a fee for service.

Let me get back to the specifics of the amendment. The purpose of the amendment is to make the Government-run fallback plan available in every area all the time, even when the bill before us has very strict standards for the presence of private plans, and that these be met, and when they are met or provided for, no fallback is needed.

In essence, this amendment would destroy our bill's competitive incentives and replace them with a Government-controlled regime for dispensing drugs in this country. The amendment before us would also create an unlevel playing field between the Government-run plans and private plans. As a result, it would discourage the initial entry of private plans, dooming the effort to provide the drug benefit through competing private plans. This would place the drug benefit right back in the very command-and-control mentality of Government-run health care plans we ought to try to move away from. It would reinstitute Government micromanagement, and it would bring about price controls.

It would ultimately put the Government into the full-time business of setting drug prices and determining what drugs are covered and which are not.

This is the opposite result of what the underlying bill is seeking to achieve with a competitive private-sector-run prescription health plan. The Government-run approach saves less than competing private plans. Private plans competing to enroll beneficiaries would achieve greater savings because at-risk plans would work harder to negotiate lower prices and work harder to offer more affordable premiums.

This fact is brought out by CBO this year, but it reaffirms everything we knew about every plan in the Senate discussed last July, including the tripartisan plan that set out the tripartisan plan savings and costing less as opposed to the Government-run plans that were offered on the other side of the aisle last summer when we debated this same issue.

CBO has indicated that a structure based on competing at-risk private plans has a higher cost management factor than Government-run plans which cannot respond quickly to market changes. The Congressional Budget Office recognizes that private plans will do a better job of managing drug costs and keeping pace with market changes.

Don't we want the seniors to have a right to choose? And they do have the

right to choose. That is what this approach is all about: not forcing something down the throats of seniors. But don't we all think we ought to have programs that respond to the market because that gives our seniors an opportunity to select products and services that are the result of the dynamics of our marketplace?

You know how long it takes Congress to make a decision. You know how long it takes a bureaucracy to make a decision. It does not serve seniors as adequately as we should be serving seniors. In fact, we know already the Government does a very poor job of reimbursing for prescription drugs because of the years of overpayment for the drugs already covered under Part B of Medicare.

Medicare has been overpaying for Part B drugs for years because of its inability to keep up with the marketplace. Taxpayers are paying more because CMS is about 2 or 3 years behind in pricing new therapies, such as new approaches in the area of prosthetics.

In fact, the bill before us includes reforms to Part B drug payments to end the overpayments Medicare is already making. But it has taken years for General Accounting Office reports and investigations by the Inspector General for Congress to act to fix this problem.

Overpayment for drugs in Part B has cost taxpayers billions of dollars and our underlying bill seeks to correct that problem. But we should learn the lessons of history and recognize that if the Government is wasting billions in overpayments for the drugs covered under Part B today, how much would be wasted by the Government if such a system were used for all prescription drugs dispensed to the seniors.

In answering that question, don't believe the assumption in my question, believe what CBO has already said about it. The Congressional Budget Office has the expertise of pricing these things and accounting for the costs. The potential waste, then, the overpayments for drugs and increased costs to the taxpayers has become astonishingly high.

Setting up a Government-run plan that undermines or eliminates private-sector competition will take choices and savings away from seniors. By pushing private plans out of the market, I believe, regardless of how well-intended the amendment by the Senator from Michigan is, it would reduce the broad array of choices that would otherwise be available to beneficiaries under the bill before the Senate. This would deny seniors the opportunity to enroll in the plan that best fits their needs by forcing these seniors into the typical one-size-fits-all model.

This would effectively deny seniors a private plan operation, which would deny them the enhanced savings achieved by the private plans. This would effectively undermine a major principle of this legislation: the right of seniors to choose. Seniors ought to have that right. They may not want to exercise that right, but we should not assume, when there are 40-some-million seniors in America, that one program is right for all of them. We give alternatives. The right to choose is very important. The right to choose in Medicare is one of the major ways we modernize and strengthen Medicare. Medicare has become a part of the social fabric of America, like Social Security. We do not want to, in any way, affect this integral part of the social fabric of America except to give American seniors more right to choose.

The amendment before the Senate by the Senator from Michigan takes away some right to choose or destroys the dynamics of the choices we are giving to seniors.

I urge my colleagues to defeat this amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I will respond to my colleague, the chairman of the Finance Committee. First, I thank the Senator for his kind words and my esteemed ranking member from Montana, as well, for his kind words. We have different views, different perspectives on how best to provide seniors with prescription drug help, but we all share a common desire to do that and, within the confines we are operating under, to create a way to do that.

First, the Senator from Iowa, the chairman of the committee, is correct: A portion of the individuals who are in traditional Medicare are there because there are not plans available in their area. In Michigan, as I indicated in explaining the amendment, only 2 percent of the people right now in Medicare in Michigan have access to Medicare+Choice. So it is definitely true.

It is my understanding, though, that CBO has said under the new plan only 1 or 2 percent of the folks would go into managed care under this bill. If that is correct, we would not see much of a choice even if it were available.

However, the larger point is whether or not the market has worked as it relates to health care for seniors. In 1965, when Medicare was created, it came about because at that time half the seniors in the country could not find health care insurance or could not afford it. The market was not working for older Americans at that time.

I argue, also, the fact that there are no managed care plans in Iowa, northern Michigan, or other parts of the country. Again, it is a question of whether or not the market works in those circumstances. The reason Medicare came into being is because there were not health care plans in rural America, there were not health care plans available to those who needed them. We decided in one of the best decisions that has been made by the Congress—I was not there at that time—one of the wisest things that was done at that time was to say our value, as Americans, is that older Americans, the disabled in our country, should not have to struggle to find health care. We believe health care should be available to them whether they live in a rural community, whether they live in a city or a suburb, anywhere in the United States. Our priority as Americans is to create a system that, regardless of where you live, health care would be available and affordable for older Americans and disabled.

Many say today we should be going in the exact opposite direction of expanding what we are doing to make sure everyone has the opportunity for the same health care that seniors and the disabled have in our country; that children and families, working hard every day, that individuals working two and three part-time jobs who cannot find health insurance, ought to have the ability to buy into a system of health care coverage.

There is a great need to make sure that health care is available and affordable. Medicare has done that.

I agree there are improvements to be made, such as more focus on prevention. We can certainly streamline the paperwork and bring it into the 21st century as far as technology and other options, to make the system better. From my perspective, here is a plan, unfortunately, that moves away from that stability, the dependability and affordability of Medicare.

I see my esteemed colleague from Iowa, Senator HARKIN, and I know he wants to speak. Members feel strongly about this issue. What we are doing with this amendment is the ultimate choice. It is the real choice. It is the choice the majority of seniors have already made, and it is the choice they want. Under the underlying bill, the only way they could get to the place to choose what they want is if private insurance plans were not available in their area. The plan goes through all kinds of changes to try and make that available, even if it costs more.

Ask any small business, any large business in this country today, how fast their private insurance premiums are going up. We have seen small business premiums double in 5 years. We have seen Medicare going up about 5 percent. We see private sector going up 15, 20, 25, 30 percent a year. This says rather than having a plan that goes up 5 percent a year, we are going to design this so it goes up 15 or 20 percent a year.

That does not make sense. In all honesty, the only group this makes sense for are the pharmaceutical companies who do not want folks in one place to be able to bargain and negotiate lower prices, which is what Medicare would be able to do—negotiate lower prices.

For all who want to get this right for our seniors, I urge my colleagues to join in creating real choice for our seniors. Give them the opportunity for the choice they want. If, in fact, someone chooses to go into managed care, an HMO, PPO, or other kinds of private plans, they should have that choice, as

well. This amendment allows them to do that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, as the cosponsor of the Stabenow amendment, I add my strong support for the amendment offered by my distinguished colleague from Michigan.

Senator STABENOW has it right. She understands what is happening. Senator STABENOW has time and time again come to the floor to point out we need to give seniors more choices rather than fewer choices. That is what we are doing with this amendment.

The bill we are considering in the Senate this week, S. 1, has a number of flaws despite its good intentions. Its prescription drug benefit for seniors is far from comprehensive. There is a significant coverage gap. Premiums are not fixed. Many of the copays are too high. The bill does not contain the actual costs of prescription drugs. Although the generics amendment, which I assume will be added to the bill, which will certainly help in that regard, the bill does not go into effect until 2006; interestingly enough, just to get us by the 2004 election.

I have a number of concerns. I plan to speak about all of these as we proceed on this bill this week. One of the most significant flaws in this bill is addressed by this amendment offered by Senator STABENOW; that is, this bill requires seniors obtain the prescription drug benefit through private insurance unless there are not two such private insurance plans in their area. In other words, a prescription drug benefit through Medicare is only available as a so-called fallback.

In other words, if you are a senior in, let us say, a rural State where there are no private HMOs—speaking about my State of Iowa, we don't have one Medicare-based HMO in the State of Iowa. Let us say you are in an area and you have two private plans. You don't have a choice other than those two. That is all you have. You have those two. If you are in a State where there are not two plans, then you can get Medicare. Let us talk about this. It is only a fallback position. If the two plans aren't there, then you can get it through Medicare.

What Senator STABENOW's amendment says is that we want a prescription drug benefit through Medicare that would be available to all seniors at all times so they can have a real choice. Under this amendment, this is how it would change the bill.

You are in an area and you have two private plans. You could also have Medicare. Now you have one of three choices. Under the bill here, you have one of two choices. We are expanding the choices. We are saying you can go with private plan A, private plan B, or Medicare. You have the choice. If private plans are so desirable and they are so good, then let them compete against a Medicare benefit. Let us see which one a senior chooses.

I found the arguments propounded by my friend and colleague from my own State of Iowa Orwellian at best. The chairman of the committee was talking about choices. We want to give seniors choices. If a senior has one of two choices, or one of three choices, which one gives the senior more choices? The chairman of the committee said the first one that offers two plans gives them more choices. That is Orwellian. It is Orwellian-speak that somehow two choices are more than three choices. Go figure.

To me, this is the key issue that needs to be fixed in this bill. I am glad it is the first amendment because it is vital. I think it represents the fundamental difference between many on our side and many on the Republican side on this bill.

I want to be very clear. I am not against a free market. I am not against the private sector or private health insurance plans. But the reality is that the private sector by its very nature leaves certain groups of people behind, especially in the health care area.

Let us be honest about it. People with disabilities are not a profitable group. You have a disability. Try getting insurance. Try it. There is no money to be made there. People with mental illnesses are not a profitable group. We have been trying for some time to get mental health parity. We still don't have it because the private sector understands they can't make money.

Guess what other group is not profitable? Senior citizens are not profitable. They use more health care as they get older. So they are not profitable.

If you look back in history, that is why we established Medicare in the first place in the 1960s—to care for those people who were left behind by the private sector.

I remember as though it were yesterday when my father was in his later years and had health care problems. In the 1950s my father was then in his early seventies. He had been quite disabled from working for over 20 years in coal mines. He had ''miners lung,'' as they called it then. Later they called it ''black lung.'' He had had some accidents. He was now in his late sixties. He was in his early seventies in the 1950s. His health was in bad shape. He was on Social Security. That is all he had. He had no life savings. He had no dividends. He owned no stock. My father only went to the 8th grade. He worked most of his life in the coal mines. After that, he worked as a handyman. All he owned was a small house on 1 acre of land. That is all he had. Thank God he worked enough to pay into Social Security to get a Social Security benefit. But he had no health care insurance. He had no outside sources of income. He had some young kids, me being one of them. We had no outside source of income at all. My father's income in the 1950s on an annual basis was probably around about—I would be surprised if it was over $2,000 or maybe $2,500 a year at the most. He couldn't get health insurance.

There was no one who would sell my father health insurance, even if we could have afforded it. Later on, when a couple of his kids got out of college and we looked around to try to see if we could get some, no one would cover him. He was now in his midseventies and had black lung disease. He had a few other problems. Try to find an insurance program. There were health insurance programs at that time. There were a lot of health insurance programs that covered a lot of workers at that time through their employment but they were not about to cover my father. That would not have been profitable.

I remember when Medicare came in. My father got his Medicare card. Now he could go to the doctor and go to the hospital.

There are those of us who lived through this and saw our parents denied health care coverage because they couldn't afford a private health care plan because the private health care plans left them behind. We look at this bill and say: Wait a minute. You are saying you are going to have these two private plans out there but you are not going to have a Medicare choice?

We experimented with private health care and HMOs. Guess what happened. Seniors all over the country were dumped by plans. They had a plan. They signed up. As soon as the plan saw they weren't making money, they said: We are out of town. So seniors were dumped. We didn't have a law that said you had to cover them. They just walked away from it.

That is what is going to happen with this bill, too. Obviously, they can do it on an annual basis. That is another point of this bill that is going to get highlighted. A plan could be in effect and they find out after a year they are not making enough money. Bang, they walk away. Then maybe another plan will come in. Oh, well. Maybe a senior can sign up for that. What is the coverage, or the copay, or what is the deductible? It may be different.

For years, Republicans have not so subtly wanted to privatize Medicare. There were public comments such as then-Speaker Newt Gingrich who said about Medicare that he wanted to ''let it wither on the vine.''

I think when you read those statements and the statements by the third ranking Republican in the Senate who said that the basic Medicare benefit basically needs to be done away with, you get an insight into the long-term goal of those on that side.

What they state is their support for including the private sector here to take advantage of the efficiency by the experience and the virtues of private competition. All well and good. I am all for competition and efficiency. But what happens is that this bill now before us relies on the participation of private plans to deliver this drug benefit to our seniors. But you have to set the rhetoric aside.

The current structure of this bill before us invests unwisely in private health plans to provide the drug benefit for seniors, and it restricts their choice. It restricts it. As I said, the Senator from Iowa, the chairman of the committee, spoke about giving seniors choices. That is exactly what the Stabenow amendment does. If they do not want to be in Medicare, they can go out and get a private plan. But under the bill before us, if they do not want to be in a private plan and want to stay in Medicare, they cannot do it.

Now, again, for some reason I am having trouble understanding this argument made by the chairman of the committee that somehow having two choices gives you more choices than having three choices. Someone has to really explain this to me because that is what the Stabenow amendment does. It gives you three choices: Medicare, plan A, plan B. The bill before us gives you two choices: plan A or plan B.

Now, again, this is especially bad for seniors in rural States where private plans have shown no interest in participating in the Medicare program. Now, again, the scheme in this bill of having the private plans only—if there was some history to back this up, and the chairman of the committee talked about history. Well, OK, let's look at the history. We know from history the administrative costs in Medicare are much lower than in private health plans—2 to 3 percent a year compared to 15 percent in the private health care plans. We know that. That is fact. That is data.

We also know that over the past 30 years Medicare spending has grown at a slower rate than private health care spending; about 9.6 percent for Medicare, over 11 percent for private health care plans. We know that. It is factual. Yet ignoring this history, in the plan before us, this administration and the Republican leadership in the Senate insist on relying almost solely on private plans to provide this drug benefit to our seniors.

As I said, the bill before us might be reasonable if we had some past history to back up the fact that the private health care plans were the most efficient. They want to talk about efficiency. The facts show that administrative costs are about one-fifth—one-fifth—as much in Medicare as in private plans, 2 to 3 percent compared to 15 percent. So efficiency? Obviously, Medicare is more efficient.

And the cost, well, as I said, over the last 30 years Medicare has grown at a slower rate than private health plan spending. So which costs more, Medicare or private health care plans? Well, we have the facts. We have the data. This cannot be ignored.

The only way you can ignore this data and these facts is if your ideology trumps experience. If you have an ideology that says we are going to set up a system that will ensure that Medicare sometime in the future fails, I guess you could ignore facts, you could ignore the history. And that is really what this is all about, folks.

The result of all this private plan investment means there is less money available to actually help seniors get the drugs they need. It is estimated that the underlying bill will actually pay private insurance companies over $25 billion just to participate. Boy, talk about a sweetheart deal.

OK, let me get it straight now. We want only two private plans out there in a region for seniors. The bill will not let Medicare compete. That is what the Stabenow amendment does for us, it allows Medicare to compete. The bill will not. So you have two private plans out there. Because why? ''They are more efficient. They have more experience,'' et cetera, et cetera. ''They will have competition, and the competition will keep the price down.'' Then why are we giving them $25 billion in subsidies to get them into the program? You would think they would be knocking the doors of the Senate down rushing to get in on this.

Let me proffer a question. What if we took out the subsidies to the private insurance plans? How many would come into this program? Zero. No, we are going to give them $25 billion. What if we took that $25 billion and we put it into a prescription drug benefit? Well, we could cut down what? We could cut down the deductible, maybe. We could cut down the copays. We could close the coverage gap—all of which would help our seniors. No, no, no. We are going to take $25 billion and we are going to help the private insurance companies. We are going to coax them. I have a different word. We are going to bribe them. We are going to bribe them with $25 billion of money to come in here.

Talk about efficiency. Boy, isn't the private sector grand. Isn't competition wonderful when the Government comes in with your taxpayers' dollars and gives them $25 billion so they can offer some kind of a prescription drug plan.

I mentioned just a minute ago about how in the past private plans have come into existence. Seniors join them, and then the plans close down, leaving the seniors holding the bag. That is the history. That is the data. That is what has happened. Because of the structure of this plan, seniors could be forced to switch plans and drugs on a yearly basis—yearly—as private plans may join and then pull out of the markets.

So you have these two plans out there. Your grandparents, your parents, join plan B because it looks good for them, and it turns out maybe the first year it is OK for them, but the plan they joined finds they are not making enough money. Guess what. At the end of the year they walk away.

Now, what do your grandma and grandpa do then? Well, they can go to maybe plan A, or maybe another plan will come in, have a different copay, different deductible, different this, different that. And I will tell you, if you think your health plan today is confusing—and it is. I look at my health care plan every year when the open season comes around and I try to make heads or tails of it. I was trained as a lawyer. I may not be a very good one, but I was trained as a lawyer, and reading these things is confusing, even for someone trained. Put these plans out there for the average senior citizen to read every year of who gives what, what is the benefit—total confusion.

Then what happens? Well, people get confused. They get upset with the program. Seniors talk among themselves at their various groups and clubs, and they find out that Mrs. Jones over here, while she has an income of $14,640 a year—guess what—her deductible and her copays are up here, they are high. Mrs. Smith, her friend and neighbor, who comes to the same club, her income is $14,639—$1 less—and she gets all hers free. Think about that. Think about what this is going to mean to the elderly out there when they see: Wait a minute, my neighbor, my friend, they get a few dollars more a year than I do. They pay. I get a few dollars less. I don't have to pay anything.

What is that going to lead to? Not only to confusion, it is going to lead to anger, and it is going to lead ultimately to seniors saying that this whole system has to be changed. And that is the end result of what the Republicans want to do with this bill; that is, to strike a dagger to the heart of Medicare. Now they can't go after the heart right now, so you cut a few veins. You take a leg here and a leg there and an arm here and an arm there, and pretty soon Medicare is done for.

That is why this amendment by Senator STABENOW is so important. It follows a simple and reasonable philosophy that says seniors who want to stay in traditional Medicare ought to have that choice. We are not forcing them. Senator STABENOW is not forcing any senior to stay in any plan. She is simply providing them the choice.

Again, as the chairman of the committee said earlier, as the President has said, they extoll the virtues of giving seniors more choices. I say yes, let's give them more choices. This amendment does that by doing two things. It gives seniors the option of staying in traditional Medicare for all of their health care needs including prescription drugs. They have that choice. They don't have to if they don't want to. And as Senator STABENOW has shown time and time again, 11 percent of the seniors have said no, they don't want to stay in Medicare. Fine, if they want to go somewhere else, that is their privilege. Her amendment would not change that whatsoever.

But the second thing the Stabenow amendment does is it guarantees our seniors, especially those who live in rural areas where private plans are less likely to participate, a reliable and consistent option that will never leave them without coverage.

Throughout this debate, we have heard and will continue to hear our

friends on the other side, the Republicans, talk about how great private plans are, how they will control costs through competition. I just cited some statistics that show that historically this has not been true. The Stabenow amendment will make sure that every senior in every State has access to a consistent benefit and the option of staying in the Medicare Program.

I would think—maybe I am naive; I hope not—that if the chairman of the committee and the Republicans really wanted to give choices to seniors, they would welcome this amendment. If you listen to our friends on the Republican side and trust them, you will believe the private plans will provide a better benefit at a better price to seniors. If that is the case, what are they afraid of?

If the Republicans truly believe the private plans will provide a better benefit at a better price to seniors, why are they so afraid of letting seniors have Medicare as an option then? Because obviously they would pick the private plan because it would be better than Medicare. So what are they afraid of? Why would they not want this amendment? Because, all rhetoric aside, the Republicans want to constrict choice. They want to force seniors into private health care plans—force them—and only if there are not two plans available, then you get this fallback into Medicare. If it is good enough as a fallback, why not let it compete upfront?

I may have an amendment on this later in the week, but if these private plans are going to be so good and they are so good at competition and efficiency and so good at keeping prices down, why do we have to give them $25 billion in subsidies? Let them go out there on their own. That is the private market. I don't think they need the subsidies if they are truly going to provide this kind of a benefit. Again, I am not arguing it now. I am saying that may come along later.

The Stabenow amendment provides seniors with three choices. The bill provides them with two choices. So this amendment offers them more choices than the underlying bill does. If what the Republicans want are more choices, this is it. They should support the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, on behalf of the leadership, I ask unanimous consent that following my remarks, Senator GRAHAM of Florida be recognized to speak for up to 10 minutes on the Stabenow amendment.

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

TENTH CIRCUIT COURT OF APPEALS DECISION

Mr. DOMENICI. Madam President, I thank Senator GRAHAM for allowing me to speak on a matter of utmost importance to my State. That accounts for the consent that he would follow me. He was supposed to speak next.

I come to the floor to discuss a situation of grave concern in my State of New Mexico. On June 12, the Tenth Circuit Court of Appeals issued an opinion that puts the fate of a small endangered fish called the silvery minnow ahead of the interests of the people of New Mexico. This ruling has far-reaching implications for all Americans. It essentially favors fish over people.

This ruling requires that the Bureau of Reclamation reassess its contractual obligations to provide water to the cities of Albuquerque, Santa Fe, and others—even water resulting from interbasin transfers. The two judges issuing the majority opinion conclude that under the Endangered Species Act, the water needs of the silvery minnow come before the water needs of the people of my State.

This far-reaching opinion essentially says that the Endangered Species Act can be used to artificially create a drought. That is precisely what is going to happen if the Bureau of Reclamation deprives cities, farms, and Indian reservations in my State of the water they desperately need. The ruling says the Endangered Species Act can preempt anything and everything, essentially.

This opinion creates a new Federal right for endangered species. It effectively invalidates preexisting contracts and orders the importation of water from another basin in violation of New Mexico law that allows only for municipal use. In essence, it says even that water must be used for the fish. The water resulting from the interbasin transfer was never part of the ecosystem or the stream basin. It was brought in for other purposes. Under the court's theory, no city, county, State, or agricultural community can reasonably expect a permanent water supply.

This is not what Congress intended when we passed the Endangered Species Act. This is not what I intended when I voted for the law. The concurring opinion of Judge Porfilio says that the Endangered Species Act can undermine any contract with the Federal Government for the supply of water resources if bureaucrats determine that an endangered fish or threatened species needs the water. As we saw with Klamath Falls 2 years ago, bureaucrats are often wrong in these affairs. But no matter, according to the court, what Federal bureaucrats mandate in the name of ESA must be so, regardless of the devastating consequences.

Did any of us who voted for the Endangered Species Act believe we were amending all Federal laws and contracts at the time of its passage? I certainly did not. Has anyone who has contracted with the Federal Government for a timber lease, mineral lease, for water, or for use of Federal facilities included a clause that says such contract will not be amended by action under the ESA? Because, according to this ruling, if one didn't, the contract won't stand if a bureaucrat somehow or somewhere decides that a fly, a fish, or rodent needs that resource.

This decision cannot be allowed to stand. It threatens all Federal contracts. It undermines the financial integrity of the United States of America and all of those with whom she contracts.

This opinion will be devastating for western water users at a time of growing crisis in the West. Currently, after years of drought, agriculture, States, cities, and counties are struggling to meet their water needs now and in the future. There simply isn't enough water to go around. Members of Congress have been deeply involved in trying to resolve this growing crisis. Now comes the Tenth Circuit Court of Appeals with its announcement that the ESA preempts 75 years of existing water law, all existing contracts, and the needs of the burgeoning western population. This ruling hobbles us in our efforts to address the western water crisis.

Judge Kelly, in his dissent, rightly characterizes the ESA as a Frankenstein. Despite good intentions, this law has become a monster.

Congress never meant for this to happen. Yet, for years, we have stood by as our own law has wreaked havoc—oftentimes needlessly—in the cooperative relationship of man and nature.

I believe there is a better way. I believe we can amend this law to better protect struggling species, while still respecting the authority of this Government, States, localities, and Indian tribes. I believe we can amend this law to better protect struggling species, while still allowing people access to the resources we need to survive.

Critics have rightly pointed out that since the passage of the ESA, the number of threatened and endangered species has increased exponentially. There are now more than 1,100 species on that list. Only a handful have recovered since the passage of the ESA. Most of them, like the bald eagle, recovered because we banned the use of DDT. I have not seen evidence of any species that recovered because of abrogated water rights, which is the principal issue discussed by this Senator regarding this opinion.

As this law is now written and interpreted by the courts, we are failing our struggling species. We are also failing our citizens who look to us, State, and local leaders, for access to the resources they need to live.

This ruling says we cannot even guarantee them the very water they need for survival, sanitation, and food. In fact, it says we cannot do that by importing water into a river basin in which the fish lived before the importation. This decision says that even imported water for local use can and must be allocated for these fish. Government cannot function under such prescribed chaos.

Madam President, we must amend this law. I don't know when it will happen, but I will ask this Senate to address this law and the far-reaching implications of this decision. I will have that ready soon so that the first bill that goes through here can carry it along to fruition.

Certainty is the bedrock of western water law. That certainty is critical for our people and our country and our economy and, yes, our environment, including the endangered species. Certainty is a must for endangered species also. The court, however, chose to abandon collaborative efforts and the 2003 biological opinion and directly threaten every interstate compact in America, established adjudication, and the intent of Congress.

These rights are all out the window by virtue of this 2-to-1 opinion. A request for a rehearing en banc will be made to the Tenth Circuit and, obviously, the State of New Mexico must take it to the Supreme Court, if necessary. But I am going to look to the Senate—at least for New Mexico and what I have described here today—for a way to fix it by statutory prescription. I will be looking for the help of Senators within the next month or two on one of the bills that moves its way through here.

I yield the floor.

AMENDMENT NO. 931

Mr. BAUCUS. Madam President, if I am not mistaken, the pending amendment is the one offered by the Senator from Michigan. I see the Senator from Florida, Senator GRAHAM, who would like to address the Senate.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM of Florida. Madam President, I rise in strong support of the amendment offered by the Senator from Michigan. We are about to undertake a massive social experiment. We are about to do it with the 39 million older Americans, including some of the most vulnerable and frail of our fellow citizens. Why do I say this is a massive social experiment? Because there is no example in America of a freestanding drug-only insurance policy as the means to gain access to prescription drugs.

There are some very fundamental reasons why we don't do that in the Federal Employees Health Benefit Program, and why even the pharmaceutical industry doesn't do it in distributing drugs to its employees. There are two basic reasons why this is a first-of-a-kind social experiment. One is this is not an insurable risk. The example that has been frequently used is the one of fire insurance. If you are going to purchase fire insurance, you buy it on the whole house, from the bedroom to the living room, to the garage, to the kitchen. If you were to go to your insurance company and say I don't want to insure the whole house, I only want to insure the kitchen, the answer would be we won't sell you such a policy because the kitchen is the most vulnerable part of the house to actually have a fire.

This is a similar proposition. Prescription drugs are the fastest growing part of the health care budget. Insurance companies don't want to sell a prescription-drug-only freestanding policy. That is seen in the structure of this bill. Essentially, although the statement is made that we are going to get better prices because of competition and the willingness of insurance agencies to assume the risk, the Federal Government is assuming virtually all the risk under this plan. Therefore, all of the expectations and representations that we are going to have competition through that lower cost is a mirage.

The second reason is the fact that within health care, there are tradeoffs. As an example, just a few years ago the standard way of dealing with ulcers was surgery. Today there is almost no ulcer surgery; the standard treatment is through prescription drugs.

What is the relevance of that? If you are only providing prescription drugs, if you had a freestanding prescription drug only policy, all you would have is the additional cost of prescription drugs. If you are insuring the whole body, you get the savings of avoiding surgery while you get the additional cost of providing the prescription drugs.

Those are just two of the reasons there is no other example of what we are about to impose on 39 million old, many very sick, many very frail, Americans as a social experiment. If we were going to do this, I think what we ought to do is say we are going to change the Federal health insurance policy starting now and let us all be the experiment to find out whether such a freestanding prescription drug policy will work.

We represent a much more diverse population—Federal employees. Many of us are younger, healthier than the Medicare population. We would be a more appropriate guinea pig for this experimentation than to focus this on the oldest and, in many cases, the most vulnerable of our people.

A second concern I have about this approach is that it denies choice. Under the structure of this bill, once the elderly have made two choices, then they will not have any choice at all as it relates to prescription drugs.

The first choice they make is the choice that they are making today and have made for many years in the past: Will I get my total health care coverage through traditional Medicare, the fee-for-service plan, or will I get it through some form of a managed care plan?

The jury has come in and rendered its verdict on that issue. Over 85 percent of America's elderly have decided they want to get their health care through the traditional fee for service. The basic reason they want fee for service is that is the true access to choice. Under fee for service, they can decide what doctor, what hospital they wish to use. Under the various managed care plans, they frequently are restricted in their choice, and they have to use a gatekeeper in order to get to what choices are available.

We have had a big debate in this Chamber, a debate I anticipate we will return to, and that is over the standards of managed care. That debate was sparked because so many people have had a negative experience with managed care, where services were denied or where they did not have access to the physician they wanted for their particular needs.

This whole debate about whether there should be some Federal standards for HMOs is because of the actual real-life human experience of many Americans, including older Americans, as to how these managed care systems work.

After the Americans have made the judgment as to which plan they wish to be in, then they will make a second judgment, and that is, under this prescription drug plan, do they want to take advantage of it? It is yes or no as to whether they will participate in the prescription drug plan.

Once they have decided, yes, I wish to participate, then they lose their choices. If they are in the traditional care plan and if there are not two or more standalone prescription drug plans, then they will be forced to get their prescription drugs through the social experiment with a freestanding prescription drug plan. If there is only one plan where they live, they will be denied access to that single plan and they will have to get their drugs through traditional Medicare. I think that is a denial of the fundamental option and choice which has been a key part of the success of Medicare.

I also think denial of choice could well be the torpedo which will sink prescription drugs. We learned a lesson about 15 years ago when we passed something called catastrophic care which the Congress thought would be received by the elderly with roses and flowers and applause. In fact, it ended up being received by the chairman of the House Ways and Means Committee having his car turned upside down, there was so much objection to that plan.

I think we had better keep our cars in the garage after we pass this because we may experience the same thing, and this issue will be one of the reasons, in my judgment, that there will be less elderly participation in the prescription drugs and an increased likelihood that there will be a sufficient revolt that we will be forced, as were our predecessors, to repeal what we thought was going to be a very popular plan.

This prescription drug architecture only works if a very high percentage of the elderly sign up to participate. If the only ones who sign up are those who are already sick and using high levels of prescription drugs, this plan will crater as being actuarially unsustainable. If it is to attract

enough of the elderly who are not sick and do not have high drug bills, who will see this as a true insurance policy—that is, that they are purchasing this plan not just based on their current prescription drug costs but because they believe they may someday become ill, sicker than they are today, and get into this category of high cost—we must be able to attract that group of the elderly in order to make this plan sustainable.

I think one of the reasons the relatively healthy elderly will resist joining this is precisely this issue of the denial of choice. If I am an elderly person and I live in a rural area of Florida where only one prescription drug plan is available, why shouldn't I be able to elect that one prescription drug plan or traditional Medicare? If, on the other hand, I am in an urban area where there are 20 freestanding plans, although I think this is a highly unlikely prospect, why shouldn't I be allowed to elect one of the prescription drug plans or traditional Medicare?

Why? What is the rationale of us denying the elderly that important choice when there is no evidence that the standalone plans are going to actually save money? This bill itself is the best evidence of its unlikelihood of doing so since the Federal Government is picking up most of the risk that the standalone plans will, of their necessity, entail and while we are denying choice to elderly as to which of the various options they want to utilize.

I cannot conceive of why we are saying to America's elderly that they will be denied the choice how they want to get their prescription drugs, particularly when they have spoken so overwhelmingly of their desire to stay in traditional fee-for-service Medicare for the rest of their benefits.

So for those who favor the approach we are taking, they ought to be the strongest voices for the Stabenow amendment because it is one of the key steps in assuring that this plan will be positively received by Medicare beneficiaries and will actually work once it is in place.

I urge all of my colleagues, those who favor the basic principles of this plan and those who have reservations, to vote for this amendment because it is fundamental to achieving the results that are being sought, a broadly participated in prescription drug plan which is sufficiently attractive, including attractive through choice, for America's older citizens.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Nevada.

Mr. REID. Parliamentary inquiry. Is there any consent now in effect dealing with who speaks next on this amendment?

The PRESIDING OFFICER. There is none.

Mr. REID. The two managers asked if Senator REED from Rhode Island could speak for up to 5 minutes—is that right?

Mr. REED. Ten.

Mr. REID. Ten minutes. The Senator from Georgia only has 5 minutes to speak generally on the bill. So I am wondering if the Senator from Rhode Island would allow him to speak for 5 minutes?

Mr. REED. I would be happy to.

Mr. REID. Is that right?

Mr. CHAMBLISS. That is correct.

Mr. REID. I ask unanimous consent that the Senator from Georgia be recognized for 5 minutes to speak on the bill generally and following that the Senator from Rhode Island be recognized for 10 minutes to speak on the amendment.

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

The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I thank the Senator from Nevada and my friend Senator REED for being gracious enough to let me speak on this bill.

All of us who have served in this body over the past several years, whether it is during our campaigns, going back home for town halls, or visiting home over the weekends, have talked about the need for a prescription drug benefit within Medicare. We all agree on that. I am very pleased that this week, as well as all of next week, we will be debating this issue regarding the inclusion of a prescription drug benefit within Medicare and the overall improvement of Medicare.

I am also very pleased that the particular bill that came out of the committee has certain options available for seniors in it. The one thing we tend to do from a legislative perspective is to put mandates and dictates on people, particularly when dealing with health care. This particular bill does not do that. There are significant options in this bill that Medicare beneficiaries are going to have with respect to a prescription drug benefit. I think having these options in place is going to put competition in place within Medicare and allow the marketplace to work.

There are senior citizens today that we all refer to, and now I would like to concentrate on. I am talking about those low-income senior citizens who have high drug costs that need to be taken care of. While I remain positive that we are developing a bill—and there are a lot of positive things within this bill—I am very concerned that we are reaching beyond what most of us in this body have talked about over the last several years with respect to a prescription drug benefit; We are going way above and beyond providing that benefit just for those low-income, high-monthly-drug-cost individuals who so desperately need this benefit.

The reason I am so concerned is that from a fiscally responsible standpoint, it is incumbent on us, as Members of this body and as members of the House, that we do not overreach and put a burden on the young people in this country. I don't want them coming back to us one day and saying, ''What in the world did you folks do to us in 2003 by imposing such a heavy financial burden on Medicare? Because of this prescription drug benefit, Medicare cannot remain solvent without increasing payments going into Medicare.''

I have strong concerns that we are overreaching with this bill. That is why I am so pleased the Senator from Nebraska, the Presiding Officer today, and the Senator from Nevada, Senator ENSIGN, who have studied this issue and have developed a substitute which may be offered as an amendment. I look forward to having a healthy debate working with their language in addition to the base bill coming out of committee. It is my sincere hope that we can find the right answers, and at the same time, continue to serve and provide a benefit to those people who so desperately need it.

There is another issue that I want to make sure we are very deliberate about and that we cover, and that is the issue regarding the ability of our pharmacists, particularly in rural areas, to participate in this program. We cannot afford to have a one-size-fits-all benefit that allows individuals to go straight to the manufacturing source for their benefits under this plan. These pharmacists, particularly in rural areas, deal with individual patients and customers on a daily basis. They provide a service that not only benefits the patient and the customer but benefits Medicare. Pharmacists give advice and counsel regarding the drugs that have been prescribed for them, and I think without question will save millions of dollars in future years in this program within Medicare.

Lastly, I could not stand up and talk about a prescription drug benefit without recognizing that our drug companies over the years—and I happened to be sitting in the chair yesterday when Senator DORGAN was talking about this, and Senator DORGAN is exactly right—have stepped up to serve seniors by providing significant amounts of drugs to low-income individuals who simply could not afford to buy those drugs. These companies offer monetary discounts on large quantities of drugs to seniors involved in their plans. One of those companies, Pfizer, happened to be in my office today reiterated exactly what they have done. This is a very positive thing we should all remember when we are talking about our drug companies.

As we move forward with this bill for the next 2 weeks, I remain very cautious about where we are going to be at the end of the day. We do have to make sure that we have a healthy debate in light of the fact that we do have to provide a prescription drug benefit. We know a bill is going to pass, but we certainly need to send the right bill into conference with the House, so that when it comes out of conference it benefits those folks who need it most, those low-income individuals with enormous monthly drug bills. We should be able to look these young

pages in the eye and say we did not saddle them with a burden that will be unaffordable years from now.

So I thank the Senator from Nevada for letting me interrupt and the Senator from Rhode Island for letting me come in and give my speech now. I look forward to the debate over the next 10 days as we conclude this at the end of next week.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 931

Mr. REED. Mr. President, I rise in strong support of the Stabenow amendment. I believe the Senator from Michigan has done exactly what is right, proper, and wise to do, which is to provide for a permanent fallback prescription drug benefit for our seniors in the context of this new Part D drug program. Indeed, out of the 650-plus page of this bill, the proposal by the Senator from Michigan is the one that most closely resembles what is familiar to seniors with regard to the current Medicare Program. It is an important issue.

According to the Congressional Budget Office, roughly 32 percent of Medicare beneficiaries enrolled in the proposed new Part D program would receive their drug coverage through the fallback plan, at least during the initial implementation of the program, so a significant number of seniors we already know will participate in these fallback plans.

The reason is because under the existing language of the bill, if two private companies are not prepared to offer pharmaceutical benefits in a particular region, Medicare must have a fallback program for seniors. That makes entirely good sense. The problem is, if and when there are two companies, this fallback provision evaporates. It goes away. What this will lead to is instability and a circumscribed choice for seniors.

We can just imagine a senior who enters the fallback program may spend 1, 2, 3, or 4 years there, is happy with the program, satisfied with the benefits, and suddenly they are told, no, this program is going away because there are now two competitors in the marketplace. It does not make sense. It circumscribes choice and it creates instability and uncertainty in a program that should be full of stability, certainty, and choice. I hope we can adopt this amendment to ensure that the Medicare fallback program is a permanent part of the Part D program.

Let me suggest something else. When we think of the dynamics of this proposed program, two pharmaceutical beneficiary management companies come into a particular region knowing full well if one decides to go, then Medicare would have to reconstitute this fallback program—expensive—probably on short notice. That is tremendous leverage for other PBMs in the market to go back to the Medicare program and say, wait a second, we are leaving unless you provide additional incentives, additional compensation, additional risk sharing.

That is a leverage point that I think will be exploited by businesses. It is a fair point to exploit. They can vote with their feet. They can leave the region. That is tremendous power to put in the hands of any one plan—it is not the two; anyone could decide to go—and suddenly you have to constitute the standby.

If there is a permanent fallback program, that leverage does not exist. Automatically, the senior would choose or not choose to get their benefits from the fallback program. That is another important aspect.

We also understand these managed care programs and pharmaceutical benefit managers operate, obviously, to make a profit. They are prepared and capable of leaving on short notice if, in fact, they believe they are not realizing a profit.

We have seen this in my home State of Rhode Island, a state with a significant penetration of Medicare managed care. Thirty percent of beneficiaries in Medicare in my State are enrolled in a managed care plan. There used to be several managed care plans, but most have left the market, leaving essentially one insurance company providing these managed care benefits. When the other plans departed, we saw increases in costs to seniors and less generous terms offered by the surviving companies. Why? Simple. Competition slacked off; they did not have to be as aggressive competing for seniors. That likelihood could happen in this case.

Again, that is a strong argument for the Stabenow amendment, to have at least one plan that will be there, with permanent, defined benefits that are not likely to change as other competitors drop out of the market. That is another selling point, a strong selling point, for the Stabenow plan.

I believe this amendment is very important. It will go a long way to assuring seniors they are not part of some arbitrary experiment in the marketplace, that there will be at least one plan that is always there, that the benefits are well defined, and that plan will be an important aspect of making sure there is market discipline as well as consumer choice for seniors.

Some people might say: We cannot do this because we have a cap of $400 billion over 10 years that limits us. That is an arbitrary limit, obviously. In fact, it seems to me it is a limit that is not justified, given the generous tax cuts we have already provided to so many wealthy Americans as opposed to those likely recipients of this package. This arbitrary cap should not limit us from creating a program that we hope will not only endure for a long time but will be efficient, effective, and attractive to seniors.

I believe if we pass the Stabenow amendment, we are going to make this program much more attractive to seniors, give them confidence they have at least one choice through the standby plan, that will not leave the marketplace, that will not change benefits as competitive forces change, that will be something they can count on. As well as receiving pharmaceutical benefits, I think seniors are asking for something else, and that is confidence that their benefits will endure and not be ephemeral.

As a result, I urge my colleagues to support the Stabenow amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Michigan.

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

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

Ms. STABENOW. Mr. President, I appreciate my colleagues coming to the floor in support of my amendment. I take a moment to reiterate what we are doing in this amendment.

We are indicating in this amendment we want to make sure every senior has the choice of traditional Medicare for prescription drugs as well as a choice of HMOs or PPOs or other private sector plans. We are talking about seniors wanting to have choice or the desire to give seniors choice.

The majority of seniors, as a matter of fact, like traditional Medicare. It is very clear. They either have chosen traditional Medicare or do not have any private options, and 89 percent of our seniors fall in that category. The majority have chosen Medicare or may live in a rural area where they do not have the choice of a private plan but they are in Medicare and they have their coverage, they can choose their doctor, they can live anywhere within their State or anywhere in the country and know the cost will be the same. It is dependable; it is available it them.

That is what we are trying to do, guarantee seniors will be able to continue to have that choice along with new options for those who live in an area where there is a managed care plan and they choose to go into an HMO or PPO, that would be absolutely available to them. If they choose another private insurance plan, assuming there are those available to them, fine, that is certainly an option that we all agree should be available to our seniors.

The question is whether we will shut off the choice the majority of seniors have already selected, the one they say they want. With all of the talk about choices, what I hear from folks is not: Please give me more insurance plans to wade through or to figure out how to get health care; please give me more insurance bureaucracy to wade through each day. Seniors say: Update Medicare and cover prescription drugs.

It is simple. They want their traditional Medicare, choose their own doctor, choose their own pharmacy, to be able to make their own choices and to have them available regardless of where they are in the country, but they want to make sure they have prescription drugs as well.

We know if health care in 1965 were like it is now, prescription drugs would have automatically been covered. We know that. We also know in 1965, as I indicated earlier, Medicare came into being essentially because of a failure in the private market. That is not a criticism; it is a reality that covering older Americans certainly is more costly as we use more health care. As we get up in age, we find we use more health care, we use more prescription drugs. There are fewer carriers wanting to cover. Certainly, way back in 1965, that was the case when half the seniors in the country could not find a private insurance plan or could not afford a private insurance plan available.

Medicare came into being in order to make sure that health care was available for older Americans and for the disabled in our country. It was a value statement about who we are and what we think is important. It was an important value statement just as Social Security coming into being was a value statement about the fact we wanted to make sure there was a basic amount of money for everyone to know there is a certain amount of financial support available to them as they get older, as they retire. It is a value statement. Medicare and Social Security have both been great American success stories.

We are now at a point where medicine has changed, the delivery system, the way we provide care. Most of us go to the doctor's office and walk out with at least one prescription. We have the opportunity to take medicine to keep us well, to manage our high blood pressure, cholesterol, or other issues that allow us to remain healthy and remain out of the hospital. These are all very positive. We also have the opportunity to avoid heart surgery by taking a pill or have other options by taking medications that cause us not to have to go into inpatient care in the hospital.

A lot of good has happened. We are now at a point where it makes sense to update Medicare. The question is how to do that. We really have two different views on how to do that.

One that I share says we should take a system that has worked and we should make sure it is fully funded so our physicians and hospitals and home health care and nursing homes have what they need to provide services. That is another critical issue—the resources being pulled out of Medicare and the underfunding of Medicare which has caused problems. We should provide full funding, and we should make sure it is modernized to cover preventive efforts and that we cover prescription drugs as a part of an integrated, modern health care system under Medicare. We should use more technology so there is less paperwork and more streamlining, which I know is of great concern to health care providers. We can do all that within the framework of Medicare, which has worked so well. Why is that important? Because it is dependable, reliable, affordable, and it is a value statement about who we are as Americans. That is one view.

Another view is we should move back to the model before Medicare came into existence, and that is more of a reliance on private health insurance plans. We hear from many insurance carriers that they are not interested in prescription-only policies. They are not interested. It is different. Insurance usually means you provide insurance to a large number of people assuming only some of them will get sick or some will have automobile crashes or some will have their homes burn down—not everybody.

In the area of prescription drugs for seniors, from an insurance model it is very different. In fact, when you cover people, you can be assured almost all of them, if not all of them, will in fact need your insurance. They will need your coverage. So it is a very different kind of model than traditional insurance, where only some people use the insurance but everybody is paying into a system and spreading the risk.

That is one of the difficulties we have had, trying to fit this model of private insurance into the fact that we are talking about private insurance for health care, prescription drug care, where everyone who is buying the product will be using it. There are a number of questions about how to fit that model in and make it work.

Then there are questions about why. Why do we do that? Why do we propose something that is complicated, that on the one hand provides choice, which is good, from the private sector, but on the other hand is convoluted and complicated for those who want to stay in traditional Medicare and not make them make that choice. That is one of the questions, Why is this happening?

From the pharmaceuticals' standpoint, they are very much opposed to seniors being under one plan, 40 million people in one place, to be able to negotiate large discounts in price. As a result of that, they certainly have lobbied very heavily for a plan that divides seniors into a lot of different places so they have less leverage to be able to lower prices and negotiate discounts. That is also a concern of mine.

We know also that under traditional Medicare, we actually save money. We hear all the talk about market forces and lowering prices. In reality, facts show the opposite. In fact, commonsense I think shows the opposite when we look at what is happening in the private sector today. The average small business has seen its insurance premiums double in the last 5 years. Certainly in Michigan, major high-tech manufacturing in the State has seen 15 or 20 percent or more increases in the cost of private health insurance every year. Yet under Medicare we see the costs going up about 5 percent a year.

We look at this and say: Wait a minute, we are talking about a plan that costs more, not less. How does that make sense?

We also know, when we look at administrative costs, we are told by those who have analyzed it that administrative costs for Medicare to administer the program are about 2 percent. In the private HMOs in place right now under Medicare, their costs are 15 percent for administration. We are told that in the private sector they actually go higher, that in some private plans it has been as high as 31 percent for administrative costs.

We look at that and say, How does this make sense? We don't want 15 percent going into administration when it can be 2 percent so more of those precious dollars that we have can then go into buying medicine. That would seem to make sense.

There are a number of different reasons I believe it makes sense to make sure the real choice seniors want to have, which is traditional Medicare, is one of the choices available to them. I personally believe it will save dollars. It will allow the money we have to be used more for purchasing medicine and for health care rather than for administration or other kinds of costs.

Medicare is a nonprofit system by design. I know there are differences in philosophy about a for-profit system under health care versus a nonprofit system. But the majority of hospitals in this country are nonprofit. The Medicare system itself is set up so that every dollar possible goes into care. I believe that is a model we should continue. I believe it is a model, although it can always be improved—and I would be the first to say we can improve and streamline the Medicare system—fundamentally it has worked for people. It has been there. It has been a system that has held down costs. It has been dependable and reliable for every single person who is an older American, or for a disabled person in our country. I wish we would embrace it rather than talk about dismantling it.

I ask colleagues to come today, as we vote on this amendment, and join together to provide real choice for our seniors, the choice they are asking for as well as every other choice. Let's make sure every choice they might want to have they could have, including traditional Medicare.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Oregon.

Mr. SMITH. Mr. President, I rise to respond to the Senator from Michigan. I think she makes a number of points that are worth our consideration. I think this can be done through the Government route. But the grand experiment here is predicated on a belief that the marketplace can actually work.

If we were to adopt the Stabenow amendment, it would clearly undermine the private sector from forming plans and offering prices which have the potential of very real savings for our seniors and providing us with some very real reforms which seniors are counting on; that is, that we provide this benefit without undermining the financial integrity of Medicare.

We need to make up our minds. We can either go the Government route or we can go the market route. The Government route can work but it comes at a cost that is, frankly, hard to calculate.

Even as we speak, right now on Part B Medicare, the Government is looking at gross overpayments already on prescription drugs and is having to make reimbursements because of that.

Imagine all of the inefficiencies that would be infused into the system if we relied upon the Federal Government to manage every prescription drug for every senior in this country. If they are overpaying on one and wasting money at the same time, I hate to think of the bill the Federal Government would have to foot if we did this for every senior on the basis that the Senator is describing.

Moreover, the Congressional Budget Office has just announced an initial estimate of what the Stabenow amendment would cost, which is an additional $50 billion over 10 years. Without a doubt, with the budget that provides $400 billion over 10 years, this would exceed that by $50 billion. I am sure at some point a manager of the bill will make a budget point of order. It has come at a significant additional cost of $50 billion.

Again, I return to the point that we can either let the marketplace work or we can let the Government do it. But if you have a permanent Government backup as opposed to a fallback provision until the marketplace develops, you will retard, if not destroy, the marketplace from ever developing. It is that simple.

The predicate of the compromise between Republicans and Democrats that has been a result of the prescription drug benefit coming to our seniors is that we are going to have a fallback. But we are going to give the marketplace a chance. We are going to see which one works. As for me and my money, I am placing my bet on the marketplace, if we provide an economic structure for it to develop. If it develops, it will give real hope and a real renewed life to Medicare, and it will give our seniors the benefit they need of a prescription drug immediately. I think that is the better vote. I think it is the better way.

I think we know how Government works. When it is necessary for a Government bureaucrat to be between you and your medicine cabinet, I shutter, frankly, at the inefficiencies that can come from that; whereas, if you allow the marketplace to work—as with PPOs which the Presiding Officer and I have as Federal employees—frankly, they can take a holistic approach to your health by including prescription drugs. It gives us a very real chance to give our seniors a program that includes prescription drugs, which includes holistic health care, and which doesn't rely on a Government formulary and Government price setting to determine what drugs you can have and what they are going to cost.

I urge my colleagues to vote no on the Stabenow amendment because it undermines entirely the bipartisan agreement that has been arrived at in the Finance Committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, my friend from Oregon was speaking about medicine cabinets. On the question of whether you want a for-profit insurance company or a bureaucrat between you and your medicine cabinet, or whether you want Medicare, which we have known and relied upon since 1965, I appreciate that there is a different view and philosophy. I think there is a fundamental difference in ideology that is working here.

It is interesting. I had a chance to go back to the debates when Medicare was first developed. The same kind of differences occurred at that time and the same debate about whether or not we should provide care under one plan under Medicare that is stable and reliable or use the private market private insurance company. The very same kind of debate was going on then that is going on now.

I believe the right choice in 1965 was Medicare. I believe it continues to be one of the choices that makes sense to offer to seniors.

I wish to respond to the Congressional Budget Office estimate. It is disappointing to me to find that they have chosen to score it at $50 billion above the $400 billion. We have worked with them. In fact, we made it clear that the intent of this amendment was not to add $1 to the budget resolution. It is to use the $400 billion and within that to have a carve-out or choice of Medicare. In fact, so as to guarantee that, we included at the end of the bill an authority to prevent increased costs. If the administrator—in this case we are talking about HHS—determines that Federal payments made with respect to eligible beneficiaries enrolled in a contract under this section exceed on average the Federal payments made with respect to eligible beneficiaries enrolled in a Medicare prescription drug plan or MedicareAdvantage, the administrator may adjust the requirement or payment under such a contract to eliminate such excess.

The reason we have included that is to guarantee that it is within the $400 billion parameter. If, in fact, the Congressional Budget Office has not looked at that, it is unfortunate. I would disagree with their analysis.

I indicate again that this is not about changing the budget resolution or the amount of dollars. It is about creating the best choice or one more choice. It may not be the best for an individual. They may decide that going through a PPO or an HMO or some other part of the alphabet might be a better choice for them. The question is whether people will have a full range of choices including the choice that the overwhelming number of seniors have told us they want.

The intent of this amendment is in fact not to add anything to the cost of this particular bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, I have heard the Senator from Michigan describe her amendment. I have to say I would be concerned about a Government-run prescription drug benefit because of what it would do to our free enterprise system and our capability to have competition which I think is very important. I think the underlying bill provides the competitiveness that will be so important for a balanced system, and it is also one that will give seniors the best prices and the best choices.

I would like to make a statement in general about the bill we have before us. I have to say that we have been talking about reform of Medicare for years—maybe for the 10 years I have been here. But today we are now talking about a real bill and maybe a real chance to reform this very important program.

I think it is clear that any time there is reform we must include a prescription drug component. We must have a choice which is similar to that in the private sector, and we must admit that Medicare has not kept pace with the rapid changes in our health care system.

As our research community pushes the envelope and develops lifesaving medicines and procedures, our Nation's health care system must take that innovation into account or it will not be the greatest health care system in the world.

Pharmaceuticals have revolutionized medical care. Increasingly, ailments are treated with medication as opposed to invasive surgeries. It is imperative that those who rely on Medicare have access to affordable prescription drugs.

When Medicare won't pay for medicine to treat diabetes but will pay for the amputation of a limb caused by complications of diabetes, I think we can admit that we have a problem.

A prescription drug benefit alone is not the answer. True reform must provide our Nation's seniors the freedom to choose physicians and benefits based on their individual needs. If a beneficiary is satisfied with existing coverage, the beneficiary should have the option to stay put. But if she chooses to enroll in a private insurance PPO or HMO, she should be allowed that choice. This choice is incorporated in the underlying bill.

Also, I have an amendment, cosponsored by Senators KENNEDY, DURBIN, SPECTER, and TALENT, to restore cuts in Medicare reimbursement to teaching hospitals. Texas hospitals are facing the loss of $26 million in 2003 due to Medicare reimbursement cuts. Nationwide, teaching hospitals will lose $794 million this year and $4.2 billion over the next 5 years. Every State will be similarly affected.

Teaching hospitals are experiencing a terrible financial crisis. My amendment restores the fiscal year 2002 level of reimbursement for indirect medical education—they are called IME payments—to teaching hospitals. This allowance has been cut incrementally since the Balanced Budget Act of 1997 from 7.7 percent to 5.5 percent in fiscal year 2003.

Teaching hospitals have higher costs due to their critical role in educating tomorrow's physicians. They run more tests, they have newer technology, and they require more staff because they are training our future health professionals. The additional payment is vital to continuing this training. A disproportionate percentage of the most seriously ill and injured patients recover and convalesce in teaching hospitals. These hospitals have 78 percent of all trauma centers and 92 percent of all burn beds.

Although only 21 percent of all hospitals are teaching hospitals, they deliver over two-thirds of charity care. They conduct groundbreaking research. The University of Texas Medical Branch in Galveston—as one example in my State—will lose $1.9 million in these payments this year if the amendment is not adopted. UTMB leads research on anthrax, smallpox, and plague. We cannot afford to have teaching hospitals cut back on research that benefits every individual.

In the budget we passed earlier this year, $400 billion was set aside for Medicare reform. It is our responsibility to use that $400 billion wisely and to bring this incredible program into the 21st century so that America's seniors will have the medical coverage they need and deserve.

I think the bill before us needs work. We all agree that it is not a perfect bill and we want to make it better. We want to make sure it does two basic things: that it increases the quality of health care for our seniors, and, secondly, that it does so at a reasonable price for our future generations. We do not want another huge commitment that is going to turn into an entitlement that is unbearable in the future. But when Medicare will cover the cost of a hospital stay for 5 days for the amputation of a limb but it will not allow you to pay for the medicine that will keep you from having to amputate that limb, something is wrong in the system, and we must fix it. This time we can do it.

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

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have been listening to this debate and listening to the distinguished Senator from Michigan. If you love the Federal Government and the Federal Government's control over all of our lives, boy, this is the program for you, because it certainly would fly in the face of everything we have been trying to do to create a program where you have some options, some choices, and where people can make their own decisions as to what type of health care they want, seniors in particular.

So I rise in opposition to the Stabenow amendment. The way I understand the amendment, it would require a permanent fallback to be offered to beneficiaries in addition to the private stand-alone drug plans. Making the fallback plan a permanent option will completely undermine the very structure upon which this bill is built.

First and foremost, including a permanent fallback plan creates an uneven playing field. Frankly, we hope the Government fallback plan is never needed. The only reason it is in this bill is to take care of those situations where there are no bidding competitors to provide the health care. We believe there would be bidding competitors, and there is no real reason to have a fallback other than in those rural areas or tough areas where it is uneconomical for business to compete for the business, where you are going to need a no-risk, Government sponsored and subsidized, and completely controlled fallback plan.

So first and foremost, including a permanent fallback plan creates an uneven playing field. The Government fallback is a non-risk-bearing entity. The fallback plan will operate in regions without any risk for gains or losses. The Government pays for the fallback plan's administrative costs associated with delivering the drug benefit. If we make the fallback plan permanent, as the distinguished Senator from Michigan would do, we are basically requiring privately delivered drug plans, which are at least partially responsible for bearing the risk of delivering this benefit, to enter this same market and compete with these Government fallback plans.

This would not only be unfair, but it also sets up our drug plan for failure. There isn't a private health plan out there that will enter such a lopsided market where we give their competitors such a large financial advantage. Simply put, this amendment would discourage the initial entry of private plans, dooming the effort to provide beneficiaries the drug benefit through competing private plans with all of the cost savings and benefits that would come from competition.

In addition, including a permanent fallback plan would add billions of dollars to the cost of this bill. CBO estimates that the cost of this fallback plan would be at least $50 billion over 10 years. So, literally, by including a permanent fallback plan that will cost $50 billion-plus over 10 years to the cost of this bill, we would be relying, at least partially, on an inefficient, more costly, Government-controlled, Government-style delivery system to provide beneficiaries with drug coverage.

When the Senate was debating the Medicare prescription drug issue last year, this was one of the biggest criticisms against the Graham drug benefit. The Graham drug benefit plan created a one-size-fits-all drug benefit delivered by the Federal Government. This is not what Medicare beneficiaries want.

Beneficiaries want choice in drug coverage. They do not want to be forced into a Government-run plan and offered a one-size-fits-all benefit. The Stabenow amendment would place the drug benefit right back in the hands of Government-run health care, Government micromanagement, and, worst of all, price controls. Government bureaucrats would ultimately put the Government in charge of setting drug prices. We simply do not want Government bureaucrats in charge of setting drug prices. We want the private market to make these decisions, not the Federal Government.

My colleague from Florida was just reminiscing about the 1988 catastrophic law. I was here. I argued against it. We all saw the people jumping up and down on Danny Rostenkowski's car when they realized they had to pay for their drug expenses. Well, you can imagine what is going to happen if we have Government take over this program.

If this amendment passes, we will be creating another Medicare catastrophe. In fact, we already know the Federal Government does not do the best job of reimbursing for prescription drugs due to years of overpayments for the drugs already covered under Part B of Medicare.

Medicare has been overpaying for Part B drugs for years because of its inability to keep up with the marketplace. The intent of S. 1 is to introduce a new model to deliver care to Medicare beneficiaries. We want to offer Medicare beneficiaries a meaningful drug benefit. This drug benefit will include multiple choices but it only works when all options are expected to participate under the same rules. You

don't set it up so that all the options that have a chance of working fail because you have a government-run, government-subsidized, government-controlled, government-bureaucratized program, which is exactly what the Stabenow amendment would establish.

Those who are extremely liberal will love that program, because it just means Government controls every aspect of our lives in health care. In S. 1, we included the Government fallback as a safety net to ensure that every senior has access to pharmaceutical drug coverage. But it is a fallback of last resort. We hope we will never have to have a fallback plan for any region or any area. But it is a last resort, if we need it. That is because even the Congressional Budget Office concludes that the permanent fallback plan is a more costly, less efficient model to deliver pharmaceutical benefits.

Again, let me remind everybody that the CBO says the Stabenow amendment will cost at least $50 billion over the next 10 years. Knowing the Government as I do, I say at least $50 billion. It will probably be a lot more than that. It will take all the incentives to keep costs down out of the program, as we take away risk, which is what the competing companies have to meet. They have to meet risk factors.

In conclusion, the Stabenow amendment would deny Medicare beneficiaries the opportunity to enroll in the plan that best fits their needs. They would be denied that opportunity. The Stabenow plan would force all our seniors into a government-run, government-controlled, government-bureaucratized drug benefit. It would basically undermine every possible competitive aspect that might possibly hold costs in line and bring them down.

This amendment by the distinguished Senator from Michigan would effectively deny beneficiaries a private plan option thus denying beneficiaries a choice in drug coverage, one of the fundamental principles of this bill—choice, the right to pick the coverage you want. That is what our prescription drug program would give beneficiaries.

There are those who believe that socialism is the answer to everything. Let government do it. Government can do it more efficiently. If you believe that, you haven't watched the last 50 years. I urge my colleagues to defeat this amendment because it will take away important drug coverage choices for Medicare beneficiaries. It will lead us into a situation where Government is going to control everything, and, as a result, Medicare beneficiaries will be left with no choices in drug coverage. I don't want to go back to those days when they were jumping up and down on Danny Rostenkowski's car because the senior citizens realized they had to pay for it. I want to give Medicare beneficiaries choices and make sure there is some competition in the marketplace so that the choices will be good ones. I don't want to go to just a one-size-fits-all government program which literally will not work except at a tremendously costly expense to U.S. taxpayers.

For these reasons, I urge my colleagues to oppose the Stabenow amendment.

I yield the floor.

Ms. MIKULSKI. Mr. President, I want a medicare prescription drug plan that benefits seniors—not a plan that benefits insurance companies. That is why I am a cosponsor of the Stabenow amendment.

This amendment gives seniors a choice: to get their prescription drugs through traditional Medicare or through a private insurance company

Why is this important? Because it lets seniors choose the program that fits their needs. Seniors trust Medicare. It has provided a safety net for seniors for almost 40 years. Medicare hasn't let them down.

We can't say the same about insurance companies. We have been down that road in Maryland with Medicare+Choice. The insurance companies came in. They enticed seniors with promises of better care and prescription drugs. They took the money from our seniors and left town leaving over 100,000 Maryland seniors without coverage.

Seniors in my State were gouged and abandoned. So I don't trust insurance companies to be there for seniors. I trust seniors to make their own decision to decide which prescription drug plan is best for them.

Seniors trust Medicare. When given an opportunity, I think seniors will choose Medicare. In the mid-1990s, when Medicare HMOs offered prescription drug benefits. Only about 15 percent of beneficiaries signed up.

Yet year after year, Senate Democrats have fought off efforts to privatize Medicare—to force seniors to leave their family doctors and join HMOs and other private plans. We heard Newt Gingrich talk about making Medicare ''wither on the vine.'' Then this year, the President's prescription drug proposal would have forced seniors to leave the Medicare they trust to get the drugs they need.

I believe honor thy mother and father is not just a good commandment to live by. It is good public policy to govern by. That is why I feel so strongly about Medicare.

Medicare is not the problem. It is the solution. That is why Congress must now provide a prescription drug benefit for seniors. To benefit seniors—not to benefit insurance companies. We must do it now—to help seniors, to help families, top help American business and to help our economy.

I urge my colleagues to join me in supporting the Stabenow amendment.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, I ask unanimous consent that the vote in relationship to the pending amendment No. 931 occur at 3:15 today with no amendments in order to the amendment prior to the vote and 5 minutes for debate equally divided prior to the vote.

I further ask unanimous consent that at 2:15 today the amendment be set aside and Senator ENZI then be recognized to offer an amendment.

Mr. REID. Reserving the right to object, the senior Senator from Illinois is on the floor. I am wondering how long the Senator wishes to speak on the Stabenow amendment. If the Senator from Oregon would allow the Senator from Illinois to speak until 2:15 on the Stabenow amendment.

Mr. SMITH. I have no objection.

Mr. REID. I would ask for a modification; that we be recognized for 10 minutes; following that, Senator ENZI be recognized after the Stabenow amendment is set aside.

The PRESIDING OFFICER (Mr. ALEXANDER). Is there objection to the modified request?

Without objection, it is so ordered.

The Senator from Illinois.

Mr. DURBIN. Pursuant to the unanimous consent request, it is my understanding I am recognized for 10 minutes.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. Mr. President, at about 3:15 we will have a chance to vote on an amendment. It is an important amendment to the prescription drug plan, an amendment offered by my colleague and friend Senator STABENOW of Michigan, who has been our leader in the Democratic caucus on the prescription drug issue. There is no one who has put more time in it. Senator STABENOW is going to give the Senate a very basic choice to make.

Under the Grassley-Baucus bill, a senior citizen, once this goes in effect after the Presidential election, will take a look at the area they live in and if they can find two private providers for prescription drugs, they have to choose between the two of them. If they can't find two that will provide that protection, that service, then there will be a Medicare plan known as a fallback plan which the senior can turn to, but it is not a plan that will be administered by Medicare. It is a plan that will be administered by a private provider under Medicare. So no matter where you turn as a senior under this plan, you are always going to find a private provider, a private insurance company.

The Republicans, many who support the bill, argue that is real competition. Senator STABENOW takes it to another level and says, if you want real competition, one of the options that should always be available to the senior is to go to a prescription drug plan administered by Medicare itself.

Why would you want a Federal agency to administer this plan? I will give you two reasons. First, there is no profit motive. Medicare is basically going to be involved in this to try to provide

the service, and we know that the services they provide are at a lower administrative cost than any private insurance company. No. 2—and this is where the rubber meets the road—Medicare can say to the drug companies, we want you to be part of the Medicare alternative; therefore, tell us what you will do to contain the cost of your prescription drugs. So they have bargaining power on behalf of seniors to reduce the overall cost of drugs that are offered to seniors, a win/win situation.

Does it work? Go to the Veterans' Administration hospitals. Look what they have accomplished. They said to the drug companies, you want to sell drugs to veterans, great. But tell us the best price you will give us, and the best price offered at veterans' hospitals to the men and women in uniform is 40 to 50 percent below what seniors are paying over the counter for their prescription drugs across America today. So if you go to the Stabenow alternative, a Medicare-administered plan, no profit motive, low administrative cost and a formulary, a group of drugs that has been discounted for seniors, it is an absolute win situation for seniors and for the Government and for the cost of the program.

Those who are arguing for competition on the other side say, just let these private providers get at it. Boy, they will really show you how they can bring prices down. They live in fear that if Medicare is involved in it, Medicare will show them how prices can really come down. That is what this is all about.

I hear these arguments on the floor from people who I respect saying the Stabenow amendment is going to limit choices. The heck it will. The Stabenow amendment gives to seniors the real choice, the Medicare choice, the choice that they want.

I would like to ask the Senator from Michigan if she will respond to a question. She has a chart that shows the interests of senior citizens on this issue. If this is any indication, how would the senior citizens vote on the Stabenow amendment?

Ms. STABENOW. First, I thank my colleague for his eloquence. It is true that 89 percent of the seniors in this country are in traditional Medicare. Only 11 percent are currently in managed HMO plans. Since 1997, seniors have been given a choice between what has been called Medicare+Choice and traditional Medicare. Overwhelmingly, they have stayed in Medicare.

Mr. DURBIN. Does the Senator's amendment limit the choices for seniors—

Ms. STABENOW. Absolutely not.

Mr. DURBIN.—when you compare it to the underlying bill?

Ms. STABENOW. Absolutely not. What we are doing is saying, instead of two private insurance plans, we add a third, so instead of two choices, you have at least three.

Mr. DURBIN. Again, let me ask, through the Chair, if I might, is it not true that if Medicare then can offer this plan on behalf of tens of millions of seniors, Medicare can go to the drug companies and say: All right, you want to sell us Celebrex or Zoloft or whatever; what is the best price you will offer Medicare?

Isn't that more of an assurance that the prices seniors will pay under that alternative will be lower?

Ms. STABENOW. Absolutely. The Senator from Illinois has hit what I think is the most critical point, and the reason there is such opposition, certainly from the pharmaceutical industry, to what we are trying to do through Medicare. They don't want the majority of seniors in one insurance plan together in Medicare where they can force a group discount. They would like to divide seniors up in lots of different insurance plans and not give them the leverage to bring prices down.

Mr. DURBIN. Also, I ask, under the underlying Grassley-Baucus bill, what force is there for cost containment? What kinds of elements are in that bill that will help bring down the cost of prescription drugs for America's families and America's seniors if we don't put Medicare into the process bargaining on their behalf?

Ms. STABENOW. I don't see anything in here that brings it down. In fact, what we are doing in the underlying bill is adding the profit. We are putting for-profit business into this process, so you are actually adding to the cost of this system. I don't see anything in here that will bring prices down. I think that is why the pharmaceutical industry is very supportive of this plan because, unfortunately, the average retail price of an advertised brand is going up three times the rate of inflation. This does nothing to address that and bring the prices down.

Mr. DURBIN. I thank the Senator.

While I still have a minute or two, I will just say this. Time and again, our friends on the Republican side of the aisle say we should contract out Government services, privatize them, to save the taxpayers money. They say, if you will just get it away from the Government bureaucracy and put it into the private sector, we will show you how to really provide a service at a low cost. Sadly, many times that doesn't happen. The costs go up, the quality is not good, and we are stuck with private-side contractors when we contract out.

Now we have an interesting turn of events. We hear from the Republicans and conservative side that we don't want a Government agency to be able to compete with the private sector. We don't think that is going to be fair. There is no real choice there.

There is a choice. I think the choice is obvious. If Medicare—speaking for the vast majority of senior citizens—can bargain for lower prescription drug prices, the winners will be not only the seniors who will pay less but the taxpayers who will pay less. The $400 billion in this bill will go a lot further if we can have lower cost prescription drugs.

I say to my friends on the Republican side of the aisle, don't be afraid of competition, and don't be afraid if one of the competitors is Medicare. The seniors who you represent have already voted on this issue by a 9-to-1 margin. They prefer traditional Medicare. We should not be afraid of it.

The Stabenow amendment is a step in the right direction. It says if we are going to have a prescription drug plan that Americans can afford and that the taxpayers can afford to pay for, yes, we need to have cost containment. This bill has little or none. The Stabenow amendment brings in real competition and, unless that competition is there, let me tell you what we have done; we have said we will subsidize prescription drug costs no matter how high they go. Mark my words, as history has proven, they will continue to increase to a point where it bankrupts the current bill before us.

The Stabenow amendment is, I think, not only a stand for common sense but a guarantee that competition will really be there to protect seniors.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I will use my leader time. I am not sure what the allocation of time is right now.

I commend the distinguished Senator from Michigan and the Senator from Illinois for their work on this particular amendment. I think I can say for most, if not all, of our caucus members, this is the most important amendment as it relates to this bill, in large measure because it goes to the essence of what it is we believe we need to do.

What we have said from the very beginning is let's build on what we have achieved in the Medicare system now for the last 38 years. Obviously, we know there are ways in which the program needs to be updated and reformed. I think there is common agreement among Republicans and Democrats that if we are to reform Medicare, the single most important priority is to ensure that we recognize that health care delivery has changed dramatically in the last 40 years.

Health care delivery now is largely outpatient. Far more people get their health care in an outpatient setting than they do inpatient. With that recognition, we made a decision in the 1960s that was wrong. We said we would reimburse drug costs in a hospital but we would not reimburse drug costs outside of a hospital or doctor's office. Well, had we decided back then that we would reimburse drug costs regardless, we would not be here today. So we made a decision based on, I am sure, a lot of different factors—cost was probably important—that we wish now we could have reversed a long time ago. But that, in essence, is what we are talking about with reform. It is a recognition that health care delivery itself has changed.

The real question is, What will be the mechanism by which seniors acquire these prescription drugs? There are those who have suggested that seniors ought to have choice. I have heard the distinguished Senator from Michigan say so eloquently that if you are in favor of choice, you will be in favor of this amendment because that is basically what we are proposing—choice. We are saying to seniors, if you think you can find a better plan out there somewhere, offered within your region, take it. This is a voluntary program. We are not mandating that you do anything. But if you think Medicare has provided a good service and if you think, in order to be consistent with the spirit and the concept of Medicare to begin with, that it ought to be offered through the Medicare system, you ought to have a right to choose that as well.

Why in Heaven's name would we deny a senior the right to stay within Medicare when they get their doctor and hospital benefits through Medicare? They ought to get prescription drugs through Medicare. So that is, in essence, what the Senator from Michigan is suggesting with her amendment. Let's allow choice; let's allow consistency.

But I think it goes beyond the choice of the senior citizens. The reason it ought to be our choice occurred again last night to me as I listened to some of the debate in the House Committee. The question was asked last night: Can you tell us what the administrative costs will be for the private sector systems providing this new prescription drug benefit? On record last night during that debate the answer was given: 25 percent.

The administrative costs for the private sector plans is anticipated to be 25 percent. That means out of the $400 billion we are committing to the drug program under this legislation, $100 billion could go to paperwork.

We have asked what is the administrative cost of the Medicare system, and we are told by CBO and others that the administrative cost today for Medicare is between 3 and 4 percent. So we could save upwards of 20 percent if we had an opportunity for seniors to use the Medicare system. That is another reason that choice would make sense to us—to keep administrative costs down.

We only have to look to the Veterans Administration to see how effectively they have controlled costs, not only administratively but on drug acquisition costs. The drug acquisition cost through the Veterans Administration is dramatically lower, ranging anywhere from 15 to 30 percent below what is done in the private sector through private insurance companies. We could save in Medicare as well.

From a cost containment point of view, an administrative point of view, and a choice point of view, this amendment ought to pass. I think it is key to sending the right signal not only to our seniors about what kind of services we want to provide, about what kind of consistency, what kind of choice we want to offer, but it ought to be a message to the taxpayer. We are going to do it through the most efficient, most administratively simple concept to which we can subscribe. Extending Medicare, providing drug benefits through Medicare, is the way to do it.

Again, I commend the distinguished Senator from Michigan for her efforts and for her amendment. I hope it will enjoy broad bipartisan support. I yield the floor.

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

AMENDMENT NO. 932

Mr. ENZI. Mr. President, I send an amendment to the desk, and I ask unanimous consent that the pending amendment be set aside until 5 minutes before the vote.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. ENZI], for himself and Mr. REED, proposes an amendment numbered 932.

Mr. ENZI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To improve disclosure requirements and to increase beneficiary choices)

On page 57, between lines 21 and 22, insert the following:

''(3) DISCLOSURE.—The eligible entity offering a Medicare Prescription Drug plan and the MedicareAdvantage organization offering a MedicareAdvantage plan shall disclose to the Administrator (in a manner specified by the Administrator) the extent to which discounts, direct or indirect subsidies, rebates, or other price concessions or direct or indirect remunerations made available to the entity or organization by a manufacturer are passed through to enrollees through pharmacies and other dispensers or otherwise. The provisions of section 1927(b)(3)(D) shall apply to information disclosed to the Administrator under this paragraph in the same manner as such provisions apply to information disclosed under such section.

''(4) AUDITS AND REPORTS.—To protect against fraud and abuse and to ensure proper disclosures and accounting under this part, in addition to any protections against fraud and abuse provided under section 1860D–7(f)(1), the Administrator may periodically audit the financial statements and records of an eligible entity offering a Medicare Prescription Drug plan and a MedicareAdvantage organization offering a MedicareAdvantage plan.

On page 37, between lines 20 and 21, insert the following:

''(C) LEVEL PLAYING FIELD.—An eligible entity offering a Medicare Prescription Drug plan shall permit enrollees to receive benefits (which may include a 90-day supply of drugs or biologicals) through a community pharmacy, rather than through mail order, with any differential in cost paid by such enrollees.

''(D) PARTICIPATING PHARMACIES NOT REQUIRED TO ACCEPT INSURANCE RISK.—An eligible entity offering a Medicare Prescription Drug plan may not require participating pharmacies to accept insurance risk as a condition of participation.

Mr. ENZI. Mr. President, I rise today to offer an amendment that will contribute to fair prices for consumers and fair treatment for pharmacies under the new Medicare prescription drug benefit. I am pleased that my distinguished colleague from Rhode Island, Senator REED, is joining me in offering this amendment. He serves with me on the Health, Education, Labor, and Pensions Committee and has been a stalwart in helping with some of the small pharmacist issues. That is what a large area this bill seeks to take care of.

It is an issue across the entire country. It is not just an issue in Wyoming or the West. We all have local pharmacists. Local pharmacists provide a tremendous service to the people for whom they are providers. One of those local services is to explain how the drugs are used, what their proper use is. They have an excellent knowledge of the drugs a person is taking and recognize conflicts and iron those out with the doctor. They work with the doctor to come up with some generic drugs, in some cases, to save costs. Largely, they are left out of any of the pricing mechanisms. They do all of this on a very low margin.

This bill does not take care of that part of local pharmacists, but it allows them to still be in the market. This bill ensures fair prices for consumers.

The amendment we are proposing would ensure that we hold Medicare drug plans accountable for passing on to consumers a fair portion of the rebates, the discounts, and the other incentives that the plan may receive from drug manufacturers and other sources.

Specifically, the amendment would require Medicare prescription drug plans and Medicare Advantage organizations to disclose to the Federal Government the extent to which they pass those rebates and discounts on to Medicare beneficiaries.

The amendment would also clarify that the Federal Government may audit their financial statements and records to ensure compliance and deter fraud and abuse in this area.

To ensure fair treatment for pharmacies, the amendment we are offering would prohibit Medicare drug plans from implementing restrictions that would steer consumers to the mail order pharmacies. It would require the Medicare drug plans to allow local community pharmacists to fill long-term prescriptions—not just 30-day prescriptions, but 90-day prescriptions—and offer other services they are equipped and licensed to provide. It protects the rights of seniors to choose their trusted local pharmacist over a mail order house.

Our amendment would also prohibit Medicare prescription drug plans and Medicare Advantage organizations from requiring pharmacies to accept

insurance risk as a condition of participation in a plan. Pharmacists and pharmacies dispense medications and provide services; they are not insurance companies.

This provision will ease the minds of the pharmacists who are concerned that Medicare drug plans might force them to share the risk. This has come to light, I am sure, to all of us in town meetings we have held, town meetings where pharmacists have shown up, town meetings where the pharmacists either have their national publication or publications from their colleges that point out some of the difficulties they are having operating in the local market, the local market where they have the actual contact with the consumer, the local market where they are the ones providing the advice, the care, and sometimes the protection of the patient. We want to make absolutely sure we do not leave them out of the mix.

This is a part of the solution that has been suggested in those college publications and those national pharmacist publications. These are local professionals who provide a local service. They do an outstanding job of helping out their customers. They understand who the customer is because they see them face to face; they are not just a voice over the telephone taking an order.

They will play an important role in any drug benefit that is passed, whether it is through a profitable situation for them—and we hope they can stay in business so we have the help of this local pharmacist—or whether it is forced on them in a nonprofitable way. They have been doing that.

It would be nice if we watched out for the small businesses in the towns across America. Small businesses are the heart of America. They are the ones that provide the community help and community services. They are the ones that participate in all kinds of community events.

We have to be careful this bill does not take them out of the loop and put them out of business so that kind of service disappears from the face of America. It is part of America. The drug stores have been the heart of downtown for years and now the heart of the health care system. They are often the main source of health care service and advice, particularly in the rural and frontier areas. In the bigger cities, there may be more contact with people who can provide information. Some of that comes through the HMOs, and some of it comes through the prescription drug managers who are often tied in with those HMOs. But they are not the ones who really do the contact with the customer, particularly in the rural and frontier areas.

I sponsored a bill to remedy our pharmacist shortage, and I am hoping that bill will come to the floor. It is a bill that helps with the forgiveness of the loans it takes to get through the process of becoming a pharmacist. We have to make sure these people are available and continue to be available in smalltown America and in the big cities. We also have to make sure there are faculty to teach these people properly to interact with the customers.

Half of the money would go to providing loan forgiveness for pharmacists who become faculty and half to forgiveness for people who actually become pharmacists in underserved areas, and underserved areas are sometimes urban areas as well. This bill does not address this. That is another bill we need to fill in the pharmacist piece. It unanimously came through the Health, Education, Labor, and Pensions Committee, and it recognizes the need for local pharmacists and that local interface we are all used to having. Seniors and pharmacists are both concerned with how the interaction will happen. Seniors do trust their hometown pharmacist.

Senator REED and I believe this amendment will go a long way toward answering the concerns of seniors and pharmacists about how this new Medicare drug benefit will impact the trusted relationship that pharmacists and their senior patients share.

I encourage all of my colleagues to take a closer look at this amendment and help me get it adopted. As I mentioned, it has bipartisan support. If we had a little more time, I am sure we would have had a lot more cosponsors. We recognize this is an appropriate place for this amendment to appear and an appropriate service to provide under the prescription drug benefit of Medicare.

So I encourage my colleagues to vote for it. I thank them for their consideration.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Oregon.

Mr. SMITH. I thank my colleague for his amendment. I think the Enzi-Reed amendment will clearly improve beneficiaries' access to long-term prescriptions at their local pharmacies, as well as to increased disclosure requirements for participating plans. Community pharmacists play an integral and active role in health care delivery by providing programs that help patients manage their disease, prevent dangerous drug interactions and educate and counsel on the proper use of their medications. Any prescription drug program will rely heavily on community pharmacists.

Under S. 1, the underlying bill, entities eligible to offer a Medicare prescription drug plan would be required to ensure that beneficiaries have convenient access to community pharmacies in both rural and urban areas. Additionally, no eligible plan would be allowed to offer prescription drug coverage solely through mail order pharmacies.

The Enzi amendment builds on the provisions already included in S. 1 and would ensure that beneficiaries who enroll in prescription drug plans and Medicare Advantage plans that offer mail order benefits would also have the option to fill long-term prescriptions in community pharmacies. This amendment also would provide beneficiaries flexibility, convenience, and increased corporate reporting requirements for Medicare prescription drug plans. This should promote, not stifle, competition and improve choice.

So let's be clear. There are efficiencies inherent in mail order pharmacies and beneficiaries would continue to benefit financially by purchasing drugs through the mail, but this amendment would provide them with yet another choice, another option, as well.

It is certainly my intention to vote for the Enzi-Reed amendment. I am not in a position to say that the chairman is saying that yet, but I suspect he will.

I understand Senator ENZI will speak for a few more minutes.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I thank the Senator from Oregon for his comments. He has very concisely laid it out, has a tremendous understanding of this amendment and the need for it, and made a fair assumption that it could cost slightly more by going through the local pharmacist. But one of the things we want to do is make sure that local pharmacist is an option.

If beneficiaries getting the prescription drugs order it through the local pharmacy and the cost comes to more than it would be through a mail order firm, then the person receiving the prescription drugs does have to make up that difference in cost.

These four provisions in the amendment will make a tremendous difference to both consumers and to pharmacists. The aim is twofold. It is to have fair prices for consumers and then fair treatment for the local pharmacies. As was mentioned, the two provisions that require fair prices would require the Medicare prescription drug plans and Medicare Advantage organizations to disclose, to the extent that they pass Medicare beneficiaries, any rebates or discounts that they negotiate from drug manufacturers. In other words, if they get a break, the consumer is supposed to get a break. It permits the Government to audit the plans and the organizations' financial statements and records—and it is primarily the records that are important—to ensure compliance to make sure there is not fraud and abuse and to make sure, again, that those reductions get passed through to the consumer. So we want fair prices for consumers.

The consumers and pharmacies do support the first two provisions aimed at ensuring this transparency and accountability on the part of pharmacy benefit managers, PBMs, the companies that will probably win contracts or bids to manage the new drug benefit.

Pharmacies argue that the pharmacy benefit managers, the PBMs, are

squeezing their margins while consumers argue that the PBMs have financial incentives to steer patients to the drugs that make the most profits for the PBMs, even when they may not be the most appropriate drugs for the patients. So that is another reason that not only the fair price but the transparency has to be there.

What are these PBMs, pharmacy benefit managers? PBMs administer prescription drug benefits through contracts with employers, managed health care organizations, and insurance carriers. Today, the top 20 firms manage more than 90 percent of retail prescription drug purchases, and three firms, AdvancePCS, Express Scripts, and Merck-Medco Managed Care, dominate the market.

Large self-insured employers turned to PBMs during the 1990s to administer the popular drug benefit, to manage the costs and utilization trends to ensure appropriate use of drugs and improved quality care. However, the employer frustration over rising costs and questions about appropriateness of drug use are stimulating interest in PBM contractual relationships, especially financial arrangements with drug manufacturers, and the bearing those relationships have on the PBM performance.

PBMs once earned the bulk of their revenue by holding down drug costs for health plans. They now earn a large portion of their revenue from drug companies that pay them undisclosed rebates and other financial incentives for promoting certain medications. For nearly 4 years, the U.S. attorney's office in Philadelphia has been looking into how PBMs negotiate discounts, rebates, and payments from pharmaceutical manufacturers and how the resulting revenues are shared with PBM clients.

So what does the amendment do to answer the concerns? The amendment would give the Government the ability to ensure that the Medicare drug plans administered by PBMs are passing through the fair share of their rebates and discounts on to consumers. It would also clarify the Government's authority to audit the drug plans to confirm the accuracy of the disclosure of the rebates and discounts.

The main thrust of it is to make sure the local pharmacist has a fair shot for the service they provide. I hope everybody remembers when they go to a pharmacist the time he spends explaining how often they take the drugs and what they cannot take before or after, and what they can have with them. They also have an understanding of the other medications that people are taking so that if there is a possibility that there will be an interaction between two medications, they can solve that problem.

Of course, the only way that happens is if a person is working with one pharmacist. If people are calling a whole bunch of different pharmacists, because of privacy laws they do not have access to the interaction of the other drugs that a person is taking.

So that local pharmacist provides a tremendous service, and it is only fair that we include those professionals in the ability to compete in this market, and people can continue to place their trust in the local person that they can see face to face and from whom they can pick up their prescriptions. It is a relatively short amendment, but again it is one that has very strong bipartisan support and one that will fulfill a need. So far as we know, there is very little opposition. So I look forward to having my colleagues support it.

Again, I thank the Senator from Oregon for his comments and this opportunity to present the amendment.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. REED. Madam President, I rise in support of the Enzi-Reed pharmacy access amendment.

I compliment my colleague and friend, Senator ENZI from Wyoming. We have worked on several issues with respect to the pharmacy benefits. It has been a pleasure and it has been productive, not only for ourselves but for the professional pharmacy community. Pharmacists are the third largest health care profession in the country in terms of numbers of practitioners, and they are becoming increasingly more central to our health care system.

This amendment is designed to accomplish two very important objectives with respect to the proposed Medicare pharmacy benefit for seniors. First, its aim is to assure transparency and accountability in the collection and dissemination of negotiated savings by Medicare prescription drug benefit plans and Medicare Advantage plans. Second, it is designed to guarantee Medicare beneficiaries access to community pharmacies when filling prescriptions of 90 days or longer. Without the Enzi-Reed amendment, these protections, these safeguards, these essential elements would not be present in the bill we are considering today.

This language is very similar to proposed language included in the counterpart legislation being deliberated in the other body. If we are to rely upon private companies to negotiate and administer a benefit on behalf of the Federal Government as well as on behalf of tens of millions of elderly and disabled beneficiaries, we need to be sure these entities operate with the best interests of these parties in mind and not simply and exclusively their bottom line. Through this amendment, plans will be required to disclose to the Government the extent to which they pass on to Medicare beneficiaries rebates, discounts, and any other savings negotiated from the drug manufacturers.

We all recognize one of the essential elements of this legislation is the notion that private pharmacy benefit management companies will negotiate with pharmacies and manufacturers to get the best possible price. We hope that best possible price is passed on almost entirely to the beneficiaries and to the payers, which include the Federal Government. It would be ironic, indeed, if we establish a system in which the intermediaries gained huge profits, while the Government and beneficiaries continue to pay substantial sums for the pharmaceutical benefits.

By requiring disclosure of negotiated savings by drug plan administrators, we guarantee a greater degree of transparency and make sure beneficiaries are getting the best possible savings on their prescription drugs. The essence of the Enzi-Reed amendment is let the markets operate, but make sure everyone has complete information about who is reaping the benefits of these negotiated transactions between purchasers and suppliers of these pharmaceuticals.

Since beneficiaries are expected to pay anywhere between 50 percent and 100 percent of the cost of drugs—those individuals in the gap would be paying 100 percent of the cost of drugs—we have to make sure they are getting the best possible deal. This amendment will go a long way towards ensuring that actually happens.

If the PBMs do not pass these benefits and negotiated savings along to the public and the Federal Government, then we all should know. This amendment will ensure that level of accountability.

Second, the Enzi-Reed amendment allows beneficiaries to receive 90-day prescriptions and other related benefits through community pharmacies. Senator ENZI represents the great State of Wyoming in which a pharmacy—I am sure in some of the smaller communities—might be the only source of pharmaceutical supplies and medical advice and many other things. Pharmacies are an important part of the fabric of a community. To deny seniors the right to get their pharmaceutical supplies from these pharmacies would not only be wrong but inefficient. If that is where they would like to get their prescriptions, they would be assured they can get the benefit through the local pharmacy under this amendment.

Rhode Island is a little different from Wyoming, but pharmacies in Rhode Island have the same role in the lives of seniors, particularly in terms of getting their benefits and other important health care services. This amendment would allow beneficiaries to obtain 90-day supplies through the community pharmacist, wherever they are.

This does not exclude mail order, but it simply makes sure it is not the only option that seniors have; that they can continue to rely upon the local pharmacy for their benefits.

I should say something else. Not only is the local pharmacy a source of pharmaceuticals, it is usually an excellent source of advice and assistance by trained pharmacists. Increasingly, these pharmacists are taking on a very important role in advising seniors, within the limits of their practice, as to the appropriate use of pharmaceuticals and are also a source of advice on many other health care issues. So I hope my colleagues would agree that we should encourage the use of local pharmacies. This amendment will help do that.

I again commend Senator ENZI for his work and leadership on this issue. We share a common belief that professional pharmacy is a critical part of our health care system. If we allow pharmacists to operate, we will get the benefit of their expertise, and it will redound to the health needs of our seniors and to the financial responsibilities that we face in enacting this legislation.

I urge all my colleagues to support this amendment.

I yield the floor.

Mr. ENZI. Madam President, I thank the Senator from Rhode Island, Mr. REED, for his efforts on this bill and the efforts on all the other ones we worked on together over the years. We came to the Senate at the same time and served on the Health, Education, Pensions and Labor Committee since that time. I think we have been able to reach some reasonable solutions before, and we will have yet another one here. I appreciate his comments and his work.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Under the previous order, there are 5 minutes evenly divided before the vote on the Stabenow amendment.

Who yields time?

The Senator from Michigan.

Ms. STABENOW. Madam President, I appreciate those who are cosponsoring my amendment and have joined with me. I ask unanimous consent that Senator LIEBERMAN's name be added as a cosponsor to the amendment.

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

Ms. STABENOW. This amendment is very simple and very straightforward. What we are saying is, seniors ought to have every possible choice for their prescription drugs, and one of those choices should be under traditional Medicare.

Today, 89 percent of seniors and those with disabilities in our country are under the traditional Medicare insurance plan; only 11 percent are not. We want to make sure, in this amendment, those seniors who are under traditional Medicare—choosing their own doctor, having the confidence to know that regardless of where they live they will have the same premium, the same cost, the same benefit, the dependability of Medicare—that they, in fact, will be able to choose traditional Medicare.

Under every cost estimate we have looked at, in terms of administrative costs, the growth in programs, other kinds of costs, Medicare has always come out less expensive than the private plans that have been compared to it. So, in fact, this does not cost more money, it costs less.

In our proposal, we stay within the $400 billion parameters by allowing the Secretary of HHS to actually modify the plan to stay within the $400 billion in the budget resolution. This is no additional cost. This is a question of choice and making sure seniors who, overwhelmingly, choose to stay in traditional Medicare have the opportunity to do so. I ask my colleagues to join with us in creating true choice for our seniors.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Madam President, it is my understanding that CBO has evaluated the information just provided them by the Senator from Michigan, and they are standing by their opinion that her amendment will cost an additional $50 billion over 10 years. So while the Stabenow amendment does violate the budget, which allocates $400 billion, it is my understanding the leadership on this side does not want to raise a point of order and would like to take this vote just straight up on its merits.

The provisions of this bill offer Senators a choice between a new way or the old way. I ask my colleagues: Do you want to go the way of Government price control in which you put a bureaucrat between you and your medicine cabinet regardless of Medicare's terrible experience in evaluating market prices on prescription drugs? If you believe this is the way Medicare's future is best provided, then you should vote for the Stabenow amendment.

If you want to try a new way, if you want to see if the marketplace actually works to provide more choices, more cost control, and even better quality and innovation, then you should vote with the bipartisan agreement that has the support of, I believe, a majority of Senators.

This bill presents a choice between the past and the future, between Government, central planning, price controls, and a marketplace that can evolve. But that marketplace will not evolve if Government comes in and says, on a permanent basis: we are going to be the other choice. I can promise you capital will not follow, and there will be no marketplace developed.

I think seniors of this country are due a prescription drugs package that can pass and that the President will sign. The President is not going to sign a Medicare and Prescription Drugs bill that comprises the Stabenow amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, prior to 1965, seniors had to go to private insurance companies to get their health care. Half could not find or afford private health care. That is why we created Medicare.

Now we are looking at the opportunity to keep that choice for seniors, plus the opportunity to expand. If they want to be in an HMO, if they want to be in a PPO, they can find insurance in their community. That is terrific. That is their choice. But those who have chosen Medicare deserve the right to pick that choice.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Oregon.

Mr. SMITH. Madam President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. SMITH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 931.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN), are necessarily absent.

I also announce that the Senator from Massachusetts (Mr. KENNEDY) is absent attending a funeral.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

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

The result was announced—yeas 37, nays 58, as follows:

[Rollcall Vote No. 227 Leg.]

YEAS—37

Akaka	Dayton	Lautenberg
Bayh	Dodd	Leahy
Biden	Dorgan	Levin
Bingaman	Durbin	Lincoln
Boxer	Feingold	Mikulski
Byrd	Feinstein	Murray
Cantwell	Graham (FL)	Nelson (FL)
Clinton	Harkin	Pryor
Conrad	Hollings	Reed
Corzine	Johnson	
Daschle	Kohl	

Reid	Sarbanes	Stabenow
Rockefeller	Schumer	Wyden

NAYS—58

Alexander	DeWine	McConnell
Allard	Dole	Miller
Allen	Domenici	Murkowski
Baucus	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Breaux	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Carper	Hatch	Specter
Chafee	Hutchison	Stevens
Chambliss	Inhofe	Sununu
Cochran	Jeffords	Talent
Coleman	Kyl	Thomas
Collins	Landrieu	Voinovich
Cornyn	Lott	Warner
Craig	Lugar	
Crapo	McCain	

NOT VOTING—5

Edwards	Kennedy	Lieberman
Inouye	Kerry	

The amendment (No. 931) was rejected.

Mr. SMITH. I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, we are now on the Enzi amendment. I ask unanimous consent that the Enzi amendment be temporarily set aside so that at 4:20 the Senate can proceed to an amendment offered by the Senator from New Mexico, Mr. BINGAMAN.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BAUCUS. I also ask that there be 30 minutes on that amendment equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Mr. President, I withdraw the second request. So the only request pending, which I think the Chair has ruled on favorably, is that we go to the Bingaman amendment at 4:20.

The PRESIDING OFFICER. That is correct.

Mr. BAUCUS. I thank the Chair.

Mr. President, pending 4:20, when the Senator from New Mexico will offer his amendment, I rise to speak about the rural provisions in the Medicare bill.

This bill has a lot of provisions to help rural America. I am very proud of these provisions. I also wish to compliment the chairman of the committee, Senator GRASSLEY. Over the last year, he and I have jointly co-authored legislation to address the imbalance in Medicare payments that exists between rural and urban areas of our country. For many rural areas of our country, providing health care services is very challenging given Medicare's current payment rates.

In rural America, Medicare often dominates. That is, most hospitals, doctors and other health care providers receive the lion's share of their reimbursements from Medicare. I know that in many communities in Montana, particularly the smallest communities, Medicare accounts for over more than 50 percent of hospitals total reimbursements. This share is also as high in some larger towns, but certainly more the case in smaller towns.

Rural hospitals are often the major employer in their communities. It is what makes the small town tick. If it were not for the rural hospital, the population in those towns would deteriorate. I have seen that happen in a good number of communities in Montana, where the hospital—fewer than 20 beds in many cases—is the major employer in the town.

Once Medicare payments start to decline significantly, as is the case in many areas, that smalltown hospital has to close up, or converts to what is called a critical access facility and is no longer the full service hospital it was. So it is very important that rural America be adequately reimbursed under Medicare.

In addition to Medicare reimbursements, I believe we have also provided assistance to rural areas with respect to our proposed drug benefit. I believe that the drug benefit outlined in this bill will work for rural America. For example, if private drug-only plans do not materialize, our bill provides for a hard and fast fallback, a Government guarantee for rural seniors. This guarantee is important because many rural States have had an unfortunate experience with Medicare+Choice, the program that currently allows private health plans to participate in Medicare. But because there are so few people in rural America, HMOs and other Medicare+Choice plans, have found it too difficult to operate and have withdrawn.

I do not have the figures with me off the top of my head, but there are thousands of people in rural areas who once had access to a Medicare+Choice plan but no longer have that opportunity because the areas are just so sparsely populated for health plans to work. That is a real concern with respect to the prescription drug benefit we are providing in this bill; namely, will private drug plans, in addition to the preferred provider organizations, want to offer prescription drug benefits in rural America or not? It is a big question, and it is an unanswered question.

We hope they do want to come in and participate. We hope private plans that currently do not now exist will, under the provisions of this bill, when it goes into effect in a few years, want to provide prescription drug benefits for seniors. We hope that many plans want to come in and compete with each other to help reduce costs.

There is no great assurance that these private plans will reduce costs. If one looks at the HMOs, they currently are paid at a higher rate than what Medicare pays for beneficaries in the fee-for-service program. Some can make a strong argument that these private plans are going to cost more. The theory is that competition will allow them to bring down costs and provide the same benefits for seniors. So it is an unanswered question. People just do not know the degree to which these private plans are going to work. Therein lies the question: What about those parts of America where private plans do not participate? What about those seniors? How can we assure that they are going to get prescription drug benefits? The bill before us tries to address that.

The bill addresses this question by providing for a guaranteed fallback plan. In those parts of the country where there are not two or more competing private drug plans, government-backed fallback plan is guaranteed. Seniors will be able to get the prescription drug benefits under pharmacy benefit manager (PMB), or similar organization that is not required to bear insurance risk. It will only be required to bear performance risk for the administrative costs of providing the benefit. The fallback plan will not bear insurance risk as required of the private drug plans.

The purpose of the fallback plan is to make sure that rural America—in fact, any part of America where there are not two private plans—is served fairly by this prescription drug program.

As I mentioned, the bill includes many provisions to address the current imbalance in Medicare reimbursements between urban and rural America. One provision would correct differences in the standardized amount rate for inpatient hospitals. The standardized amount is higher for urban hospitals than for rural hospitals. The provision says that Medicare should pay the same across the board. Clearly, there will be other adjustments that affect different circumstances and different parts of the country, but the standardized amount would be the same rate for both urban and rural hospitals. That is extremely important to many hospitals in rural areas.

Last year's appropriations bill equalized the standardized amount for a 6-month period. This bill makes that permanent. It is a change that the Medicare Payment Advisory Commission, or MedPAC, has recommended that Congress make. This bill this and other MedPAC recommendations to heart by saying, You are the experts, you know better what is going on than anyone else.

This bill contains a couple of other important MedPAC recommendations. For example, it raises the Medicare disproportionate share threshold for rural hospitals. The Medicare DSH program says if you are a hospital and

have a disproportionate number of people under Medicare who are low income, you should receive extra assistance under Medicare. Our bill raises that threshold for rural hospitals a little higher.

The bill also adjusts payments for hospitals with very low patient volume. We know volume is a big component of whether a hospital is able to make ends meet.

The bill extends the rural home health add-on payment at a level of 5 percent. Home health care is extremely important in rural America.

This bill includes other provisions that not necessarily rural specific. For example, the legislation increases payments to dialysis providers, including those in urban areas, for a 2-year period.

The bill provides desperately needed assistance to urban hospitals that provide a disproportionate share of services to low income individuals. These hospitals are struggling with growing pressures of more uninsured and low income patients. It is not fair for those hospitals that have to bear these costs. They have to provide charity care. In fact, in many respects under the law they are required to. This gives them a bit of a break with these burdens and their nursing shortages

The bill provides much-needed regulatory relief for both rural and urban hospitals. We have heard from doctors and hospitals that say the carriers and fiscal intermediaries are too heavy-handed; they assume physicians and providers are guilty when they question reimbursement, instead of assuming we are innocent. The regulatory relief measures in this bill address this concern. These provisions are significant and go a long way to assure providers spend less time on paperwork burdens and more time with their patients.

Some may say that this bill does not go far enough to relieve these burdens. A lot of doctors and hospitals administrators will say: Gee, why all this Medicare paperwork? We want to spend time with our patients. Nevertheless, the regulatory provisions of this bill will reduce paperwork and unnecessary regulation.

I realize there are a number of provider provisions—with respect to doctors and hospitals and other providers—that are not addressed in this bill. These provisions include payments under the Medicare physician fee schedule, which will be cut in 2004 through 2007 unless further congressional action despite an additional $54 billion in the bill we passed earlier this year. We recognize the need to address these impending cuts in the future. Physician's fees are projected to drop significantly. We cannot address that in this bill. We do not have the money. That is a problem we will have to face in 2004. I alert Senators, that will be expensive. We will have to deal with it.

There are also Senators who want to address what is called IME, or indirect medical education. This is the special payment adjustor under Medicare for teaching hospitals. It is now currently reduced to its lowest level ever. That is, teaching hospitals are receiving less to help train physicians across the country. That is a concern many have. We are going to try to deal with that as best we can as this bill progresses.

Nursing home payments are not addressed. Many Senators have talked about addressing some of the problems facing nursing homes. They, too, experienced a sharp reduction in payments over in 2003. This list of payment provisions is not limited. There are several other provider provisions about which many Senators have raised concerns.

Our ability to deal with these additional issues is limited. Why? Because this is a $400 billion Medicare package. The fact remains, this is a package of relatively sparse drug benefits. Yes, $400 billion sounds like a lot of money, and it is. But $400 billion extended over 10 years, means that we have to carefully consider what the amounts should be for the deductible, copayments, and the premiums. The numbers are OK, but they are not great.

I don't want to oversell this bill or over promise. This legislation is a step in the right direction. This is a good first chapter. It is a start in providing prescription drug benefits for seniors. We only have $400 billion so we have not been able to address these other provisions. We would like to. We would like to find a way to deal with them. But at this time, the dollars are simply not there.

I might add, we will do what we can in future days, weeks, and months to try to address these concerns.

I know the chairman of the committee, Senator GRASSLEY, wants to work with our colleagues to address these provisions and also provide a fair deal for rural, as well as urban, folks in America. We want to address future geographic inequities with respect to the drug benefit. The fact is, rural States are very concerned if we enact this prescription drug benefit, are going to come out on the short end of the stick. More federal money will end up going to go to urban seniors. That will cause a great problem.

At the same time, seniors in urban areas are afraid the money will go to the rural areas, that the urban cities will end up on short end of the stick. The fact is, we do not know how it will work. We just don't know. Senator SNOWE offered an amendment in the Finance Committee for a study to address possible geographic inequities in drug spending across the country. She later amended it, made it a little stronger, to say that HHS will have the discretion to address any geographic inequities. There may be an amendment on the floor to require the HHS Secretary to address the inequities.

It is a point about which we are all very sensitive. We are trying to find a way to make this geographic adjustment process work. Geographic adjustment for drug spending has never been tried before. It is uncharted territory. We just don't know. It probably makes sense the Secretary have discretion.

That is a short summary of some of the rural provisions in the bill. I see the Senator from Texas is on the Senate floor. Does the Senator from Texas wish to speak at this point?

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I appreciate the Senator from Montana giving me a chance to say just a few words.

May I inquire, my understanding was Senator BINGAMAN was going to be coming at 4:20 under a previous agreement to speak, but there also was a possibility I might be allowed to continue a while longer, perhaps 20 minutes.

The PRESIDING OFFICER. Is there objection to the modification of the agreement?

Mr. BINGAMAN. Mr. President, I have no objection to the request of the Senator from Texas who asked if he could be allowed to speak for 15 or 20 minutes before we begin my amendment. If that is not a problem for the manager of the bill, I have no objection.

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

Mr. CORNYN. I express my appreciation to the managers of the bill and Senator BINGAMAN for his courtesy.

This is obviously a critical issue that confronts the Senate, one this body has talked about for a long time. It appears we are on the precipice of actually delivering what many of us have campaigned on, on both sides of the aisle, in previous elections.

Medicare has been a successful program for the last 30 years, and it has served our seniors well. But it faces major challenges. Obviously, we are all interested in strengthening Medicare so it will continue to be a program that will serve our children and grandchildren as it has our parents and grandparents. Medicare was created in 1965 and reflects the state of health care in that year. While the world has changed and medicine has changed, Medicare has not changed. It is time to improve and strengthen Medicare so it can serve the needs of Americans of this generation and the next, and can also be within our fiscal constraints.

Medicare is stuck in 1965, and so are its beneficiaries. Medicare's promise falls far short when its recipients suffer from outdated and inadequate benefits, limited protection against rising medical costs, or a stodgy Government plan that cannot deliver responsive medical services or ensure high-quality health care.

While health insurance has followed the demands of the free market, Medicare still lacks catastrophic protection or full coverage of many preventive benefits in a comprehensive outpatient prescription drug benefit.

One of the critical improvements included in this bill is immediate assistance, in the form of prescription drug

coverage, for those seniors who cannot currently obtain it or who do so only at great economic hardship and great personal hardship. I have supported the principle of a prescription drug benefit from day 1 for the seniors who need it. I am proud to reiterate my support here today.

Having said that, I have significant concerns about the legislation that is before this body—some aspects of it, significant aspects of it. While a prescription drug benefit and expanded treatment choices will help America's seniors, this bill falls substantially short of President Bush's framework for reform. If we endorse this legislation without real and meaningful reform, we rush to satisfy political interests rather than take the time to form sound policy, and we do a great disservice to the Medicare beneficiaries who depend on this coverage, to our constituencies, and to the future generations who will have the financial burden to pay for it. Ultimately, if we do not take care, we could do more harm than good.

According to estimates of the Congressional Budget Office, this plan will have unintended ramifications for Americans. It will force nearly 40 percent of retired Americans who currently have prescription drug benefits under private plans onto taxpayer-paid plans that would be provided under this bill. The CBO, the Congressional Budget Office, predicts that only 2 percent of seniors will actually choose the only vehicle for reform provided for under this bill, that of the preferred provider organizations, the PPOs, while the rest will remain in Medicare basically as it currently exists with a prescription drug benefit added, hardly what we could call true reform.

We should not fool ourselves. What we are actually providing seniors under Medicare, and through this bill, is actually very different from what Members of Congress receive. Under the Federal Employees Health Benefits Plan, all of us in this body, along with 10 million Federal employees, can enroll in a number of flexible preferred provider organizations. The plans we can choose as Federal employees do not have restrictive price caps, and they provide for more choice. As a result, those of us who work for the Federal Government can obtain better coverage and treatment than the vast majority of our constituents. This disparity, I believe, should not be tolerated under this plan, especially one that charges under the banner of reform.

Price controls are a recipe for long-term disaster. The best determiner of price in a product is the free market, not government bureaucrats sitting in darkened cubicles wearing green eyeshades. My other concern is that this purports to be a universal entitlement, based on nothing like what we have talked about in many of our campaigns, which is actually need. It will provide a prescription drug benefit to millionaires, including Members of this body who just do not need it. I question the morality of any proposal that would take the hard-earned money out of the pockets of truck drivers, schoolteachers, police officers, small business men and women and single moms, to subsidize a prescription drug benefit for people who are well to do.

When it comes to health care, I believe the proper role of government is to protect the freedom of all people to act as they see fit to maintain and improve their health care. Today, millions of Americans suffer from chronic diseases that are for the most part preventable. Our Nation spends about $1.4 trillion a year on health care—more than any other country in the world—and chronic diseases account for roughly 75 percent of those health care costs. Preventing disease before it happens is better, more humane, and less expensive than curing disease after it manifests itself, and prevention can lead to a far better quality of life. If Medicare is to adapt to the demands of a new populace, it must become a system refocused on the importance of preventive care.

I strongly believe that real positive change in our Medicare system must begin with the foundation of individual responsibility and the choices that can only be provided by the free market—not by a government mandate.

We must not offer up a short-term legislative answer that plays politics with people's health and the needs of future beneficiaries. We should not tinker only around the edges and call it reform.

As we work over this week and next to produce a solution to this challenge that lies before us, we cannot allow ourselves to believe our striving will fail, and we must not convince ourselves we have already succeeded.

In conclusion, let me say it is my most ardent hope that this bill, which I know was produced by great effort of the staff and on a bipartisan basis by the Senate Finance Committee, can be improved and that the improvement will allow us to make sure the benefit is targeted to those seniors who actually need the help and not millionaires, thereby having the wealth transferred out of the pockets of hard-working Americans to pay for a prescription drug benefit for millionaires and others who are well to do.

Second, let us make sure we don't crowd out private dollars that are currently paying for prescription drug benefits for many retired persons which they have negotiated under the terms of their retirement or pension plan. Right now up to 40 percent of those dollars will be chased off and the Federal Government—in other words, the taxpayer—will step forward and fill that gap. That is something we should not allow.

Third, if this is truly going to be reform, it has to be something more than business as usual.

What concerns me quite a bit is on the one hand the OMB estimates that some 40 percent of seniors will opt for the true vehicle for reform—the PPOs, the preferred provider organizations—but, on the other hand, another agency of the Federal Government, the Congressional Budget Office, says No, it won't be 43 percent. It won't be 40 percent. It will be 2 percent.

In other words, if the Congressional Budget Office is right, we will not have accomplished what the President has asked us to do and what many in this institution believe is so important; that is, true reform.

It is my hope and prayer we will be able to make the necessary adjustments to this very good start. But there are some very grave concerns that I and others have about the bill as it currently exists.

In a tight budget, I hope we do not vote for what is by most conservative estimates a $400 billion new entitlement on top of $2.2 trillion the Federal Government commits to nondiscretionary entitlement spending each year, unless we make sure it is absolutely necessary and targeted to those who need it most, and that it does not supplant other private insurance and other measures designed to provide prescription drug coverage for our seniors.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 933

Mr. BINGAMAN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 933.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To eliminate the application of an asset test for purposes of eligibility for premium and cost-sharing subsidies for low-income beneficiaries)

On page 120, between lines 16 and 17, insert the following:

''(I) ELIMINATION OF APPLICATION OF ASSET TEST.—With respect to eligibility determinations for premium and cost-sharing subsidies under this section made on or after October 1, 2008, such determinations shall be made without regard to subparagraph (C) of section 1905(p)(1) (to the extent a State, as of such date, has not already eliminated the application of such subparagraph).

Mr. BINGAMAN. Mr. President, this is a very straightforward, simple amendment that deals with a problem that is buried in this legislation and

which really needs to be dealt with. That is the so-called assets test. My amendment would eliminate the assets test beginning in the year 2009.

The first obvious question everyone should be asking is, What is the assets test? The assets test is as follows: The bill provides a more generous set of benefits for low-income individuals and low-income couples. That is as we intend.

I think all Members of the Senate recognize that those who have the least in the way of income really need the most help in paying for their prescription drugs, particularly when you are dealing with seniors who are not, in most cases, out in the workplace able to increase their income. We believe the proper, the humane, and the compassionate thing is to provide this greater level of subsidy for low-income individuals.

In particular, we look at those individuals with incomes up to 160 percent of poverty. That is the figure we have in this legislation. That translates into, I believe, what we are talking about. A couple with an income of perhaps $17,000 or $18,000 a year would qualify, and if they had any more income than that they would not qualify for this higher level of subsidy.

The bill also provides that if a low-income individual has as much as $4,000 in assets, that individual is not entitled to that subsidy in the same way others would be.

For example, if you have a 70 or 75-year-old widow who is receiving $5,000 a year in income or $6,000 a year or $8,000 in income and that widow also has $1,000 in U.S. savings bonds, and a car that has a blue book value of $3,100, then that widow is not entitled to the full benefit unless and until she goes out and either sells the savings bonds or sells the car or somehow or other impoverishes herself to be able to demonstrate she does not have assets worth $4,000.'

This is a test that was put in the law many years ago. It is one that adds great complexity to the law. In fact, a major effect of this assets test is to discourage a great many low-income individuals from even applying for the increased benefit that is provided for in this legislation because the requirements for reporting, filling out forms, getting blue book values on your automobile—these are complicated requirements that discourage people from applying across the board.

I also point out that under this assets test, not only is it $4,000 for an individual—so if you have $4,000 worth of income, of assets, as a widow, you fail the assets test—but if you are married, it is then $6,000. A lot of the Members of this Senate and the Congress have given speeches about what a terrible thing the marriage penalty is. Here is another marriage penalty that is in the law we are dealing with today. This is a penalty which says, if you get married, your ability to hold on to assets and still get this full benefit is reduced. You cannot hold on to as many assets. You can only hold on to $6,000 as a couple whereas you could hold on to $4,000 as an individual.

In my view, the justification for this assets test has long since gone away. The reality is, if people are unable to work, as most seniors are, unable to increase their income, if they are low-income individuals, and if they have very substantial prescription drug costs, they need the assistance we are providing in this legislation—or trying to provide in this legislation—and we should not take that away from them by virtue of their having $4,000 worth of assets as an individual or $6,000 worth of assets as a couple.

Let me elaborate on this a little bit more. There are about 40 million seniors and people with disabilities who depend on Medicare who could benefit from this prescription drug coverage we are talking about in this bill, and this assistance is particularly critical for those low-income individuals. Here we are talking about 14 million beneficiaries who have incomes less than 160 percent of poverty. Many of those individuals are in the State the Presiding Officer represents. Many of those individuals are in my State of New Mexico.

The bill provides a significant benefit to those low-income seniors and individuals with disabilities, but it does so only if they do not fail the assets test. I do not know the exact figures, but the Congressional Budget Office estimate is that 21 percent of Medicare beneficiaries who would otherwise qualify for this low-income benefit in fact will be denied that full benefit because they fail the assets test.

In fact, for those below 100 percent of poverty, if they fail the assets test, their cost sharing is increased, under this bill, by 400 percent. For those between 100 and 135 percent of poverty, the assets test causes their cost sharing to increase by 200 percent.

I believe strongly that in the year 2009—which is what I have in my amendment—we should eliminate the assets test. I would propose we do it earlier, frankly, but I am informed that the Budget Committee has calculated the cost of the bill in such a way that there is no funding available for us to do anything such as eliminate the assets test before the year 2009. So I have crafted the amendment so that it would become effective in the year 2009.

In addition to protecting low-income beneficiaries below 135 percent of poverty from much higher costs, much higher copays due to this assets test, it should also be noted that the assets test significantly increases the paperwork burden on seniors and on individuals with disabilities.

While the underlying bill provides physicians and other health providers with regulatory relief—and that is one of the things we keep talking about when we try to describe the benefits in this bill—I fear the bill will significantly complicate the ability of Medicare beneficiaries to receive prescription drug coverage, particularly low-income individuals. They may need—I said this in the committee during our markup, and I believe it is not a totally facetious statement—they may need an accountant or a lawyer just to figure out the paperwork having to do with this assets test and how they can access these benefits.

We should not be putting people to the choice of selling their car or liquidating their U.S. savings bonds in order to get the benefits of this bill. There are a great many low-income individuals who have very high prescription drug costs. That is a very unfortunate fact but one we are trying to come to grips with here.

Under the bill, if they fail the assets test, their copay requirement is 10 percent up until they hit the so-called doughnut portion of the bill, which means essentially $4,000 of prescription drug expense in any given year; and then for the next $1,500 or $1,800 beyond that, they pay a 20-percent copay. If you have high prescription drug costs, a 20-percent copay is substantial. If you have high prescription drug costs, even a 10-percent copay can be substantial if your income is extremely low. And that is the group we are talking about here.

So, Mr. President, I hope my colleagues will support the amendment. It is done in a responsible way. It is not drafted in such a way that it would take effect immediately. It takes effect in the year 2009, when we are advised by the Budget Committee funds will be available to pay to eliminate this assets test. It clearly is the right thing to do. It is the humane thing to do if, in fact, we are serious about helping low-income seniors deal with this very substantial burden. We should adopt this amendment and eliminate the assets test as soon as we can afford to do so. And the Budget Committee tells me that is in fiscal year 2009.

So I hope very much colleagues will support the amendment.

Mr. SPECTER. Mr. President, I have sought recognition to express my support for increased funding for rural hospitals. Pennsylvania is a geographically and demographically diverse State, and the health care needs of the communities across the Commonwealth differ significantly. But there is one constant—access to appropriate health care is critical, and if we are not prudent in making wise health care policy decisions now, we may jeopardize our citizens' ability to get the right care, in the right setting, at the right time.

We must be aware of the pressures and challenges that constantly weaken the foundation of the health care system—the medical liability insurance crisis, inadequate State and Federal reimbursements, workforce shortages, growing uncompensated care costs, rising costs of technology and pharmaceuticals, bioterrorism planning and

training, and a growing elderly population. As we look at restructuring a segment of the Medicare Program, we have the opportunity to strengthen that foundation. Improving our prescription drug benefits will not help the senior citizens of this country if health care providers cannot meet their needs.

We must also remember that our actions here in the Senate and by our colleagues in the House have implications not only for the quality and stability of our health care system but for our economic health as well. A recent study completed by the Penn State Cooperative Extension and the Pennsylvania Office of Rural Health shows that the State's hospitals are the largest component of the health services sector, generating more than $33.9 billion to the State's economy. This includes 260,000 full- and part-time jobs, a payroll exceeding $9.3 billion, and a ripple effect that provides another 179,400 jobs and $5.4 billion in additional employee compensation. In many counties, the hospital is the No. 1 employer. Furthermore, the State's research hospitals have been identified as an integral component of biotechnology clusters, serving as an engine of growth in the new economy.

Given all of these dynamics, we must support a legislative plan that adequately funds hospital and health systems. This plan must recognize that our rural communities face a unique set of challenges because they are often the only provider of health care in a vast geographic region and they have greater difficulty recruiting health care workers and physicians in today's health care climate. Such a plan should also include two major rural provisions dealing with the standardized rate amount and a change in the labor component to 62 percent. The standardized rate amount will allow rural hospitals to receive a Medicare standardized payment rate equal to the higher rate paid to urban areas. The adjustment of the labor component from 71 percent to 62 percent for rural hospitals will allow rural hospitals, which traditionally have low labor costs, to base a larger portion of their Medicare reimbursement on nonlabor provisions, thereby receiving a higher reimbursement from Medicare.

I urge my colleagues to join in making sound health care policy decisions to ensure we are strengthening the foundation of our health care delivery system in those areas in which it is most vulnerable.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. FRIST. Mr. President, I wish to take a few minutes to address the Prescription Drug and Medicare Improvement Act of 2003 in a very basic way, and that is to answer some of the questions I have received over the last several days since we have captured much of the attention both of the media as well as constituents around the country who realize we really are going to pass very significant, very important legislation that will affect their lives, that will affect the lives of seniors, individuals with disabilities, and that will affect the lives of future generations. And this will happen in the next 12 to 13 days.

It goes back to the question of, Do we really need to change? Are things really that different that they demand the sort of response we are putting forward where we talk about strengthening and improving the Medicare Program overall and at the same time providing prescription drug coverage for seniors and individuals with disabilities that is not being provided today, and do it in a way that can be sustained over time, recognizing that we will have a huge demographic shift of seniors over the next 30 years as a product of the baby boom following World War II. That fertility curve, that baby boom moving through the system begins to hit about 2007, 2008. That is when the curve moves through.

For the next 25 years after that, we will see this huge explosive growth in the number of seniors with fewer and fewer workers actually paying into the system.

We have now been on the bill Monday, Tuesday, and Wednesday, after having over 30 hearings on Medicare over the last several years and several hearings this year specifically on prescription drugs and Medicare modernization in the Finance Committee. We have done it in a very systematic way, in a bipartisan way that I think captures the very best of what this institution is all about, recognizing that we do not know all of the answers, we cannot cure all of the problems.

We have to be very careful not to overpromise because everybody wants as much health care resources as possible, so we cannot overpromise. As I say, we need to reform the system in a way that does not just respond to the needs of today but responds to the next year, 5 years from now and 10 years from now. Since we cannot do it perfectly now, we have to do it in a way so that the system is flexible and allows us to adapt appropriately.

Working on a bipartisan basis, the goal is to deliver a secure Medicare Program that is comprehensive and, at the same time, offers maximum choice with that increased flexibility and that much-needed prescription drug coverage which seniors do not have today through the Medicare Program.

I look forward to the continued debate over the next 10, 11 days on how we collectively determine how best to accomplish those goals. I am confident we will be able to cull the very best ideas from both sides of the aisle to pass a responsible and effective plan.

As I mentioned, I want to limit my comments today to about how medicine, science, and health care delivery has evolved and, indeed, how that evolution, which has been very rapid in terms of breakthroughs in science, which I have been privileged to watch and participate in as I was in the field of medicine for 20 years before coming to the Senate—it has been miraculous in so many ways. When I close my eyes, I see my patients with artificial hearts I had the privilege of implanting, and with the heart transplants I was blessed to do on a weekly basis or even more often. I was involved in not the whole period since 1965 when Medicare began, but shortly thereafter, I was in the active practice of clinical medicine over that period of time.

If we just look at the last 10 years, life expectancy has increased by around 2 to 3 years, and if we look at the last 40 years, going back to about 1960, life expectancy increased 10 years in that period of time since Medicare was begun.

Death rates from heart disease have been cut in about half over the period since Medicare began. Heart disease happens to be the field in which I specialized.

If we look at the field of cancer, whether it is prostate cancer, breast cancer, or colon cancer, because of new treatments, new medicines, and new diagnostic tools, we have seen markedly increased patient survival rates. At the same time, we have seen these great medical breakthroughs in the health care delivery system, the private health care delivery system—not Medicare—but the private health care delivery system has evolved and has responded.

The problem is that the underlying Medicare system itself has not evolved. In fact, there has been very little change in the Medicare system since 1965. So we have all these great medical advances and advances in health care delivery over time which has skyrocketed, with improved advances throughout, but we have a Medicare system that has changed very little. It is this gap, this difference between the great breakthroughs in medicine, science, and health care delivery and the pretty much nonchanging Medicare system. That gap is what we are attempting to fill, to respond to as we go forward.

Medicare was designed to respond to an acute illness. Let's say you are healthy and all of a sudden you have a heart attack and you have a good response to that heart attack in hospital treatment, and it worked pretty well as long as that was what health care delivery was.

Today, the situation has changed markedly. Preventive medicine today is exponentially more important than in 1965. Why? Because we understand how to prevent disease, how to maintain health. In 1965, we did not fully understand the nature of the science of preventive medicine. It simply was not

developed in 1965 to the degree it is today. Yet we have a Medicare system which has—I came close to saying almost no preventive care is provided in Medicare today. That is a little bit of an overexaggeration because we have to legislate that, yes, Medicare does cover mammography. Almost every one of these procedures has to be legislated, and with so many advances coming through quickly, we cannot keep up.

There is very little preventive care in Medicare today. Yet we all know how important it is if we look at managing one's health today, maximizing one's health.

In the 1970s, health care responded to acute episodic illnesses. Today it is preventive health care, maintaining wellness, management of chronic disease on an outpatient basis, using medicines, but Medicare has not changed very much.

I will give a couple of examples. Again, the goal is health care security for seniors. If you see a senior, you want to be able to say: The Government is helping you with health care security, and health care security means we have to include prescription drugs.

I mentioned Medicare lacks good preventive coverage. It also lacks the wellness care in chronic disease management. For example, Medicare does not cover cholesterol screening. If we look at heart disease, cholesterol is important. Yet Medicare does not cover cholesterol screening.

Medicare does not cover an annual physical examination today. I do not know if it has to be every year or every 18 months, but the point is, systematic regular examinations, if you are going to pick up that cancer when it is small or that heart disease before it becomes a massive heart attack, you can do it through annual physical exams, but they are not covered under Medicare.

Medicare does not protect at the extreme end, what we call catastrophic. That means if you are sick enough, if you have a lot of out-of-pocket expenditures, Medicare has no limit to that. Today if you have a catastrophic illness, there is no upper limit. A lot of people do not realize that.

The one issue we talk a lot about, because it is probably most dramatic, is that Medicare does not at all cover outpatient prescription drugs.

Thus, we have gaps in coverage for seniors. We are promising them health care security which they deserve, and yet we have these huge gaps in coverage which have been created since 1965. It is our obligation, our responsibility to respond, and, thus, over the next 12 days we will be putting together a bipartisan plan—though we do not know all the answers—we will be putting together the very best of what we do know to respond to these needs.

Today, on average—and a lot of people do not understand, or they were not aware of this, so it is important for us to keep saying it—Medicare covers right at about half of what a senior's medical care expenses are. Most think it covers 80 or 90 percent. If one is not yet a senior, it is important for them to know what their Government is doing for them now is to cover only about half of the expenses. Again, most people are not aware of that.

The response to that is that seniors and individuals with disabilities try to fill those gaps on their own, sometimes successfully, and many times not. They try to do it through Medicaid. They try to do it through private supplemental insurance programs, only to find that they are hit with these skyrocketing premiums that are growing 10, 15, 20 percent a year at this point. Or they find that their employer on whom they were depending is scaling back on the benefits that they once had when they were working full time.

I say all of this because it is important for people to understand why we are aggressively moving ahead in the way we are to develop a strengthened and improved Medicare plan.

I mentioned the lack of prescription drugs. If we look at aging, our population over the age of 65, we know prescription drugs become even more important than they are under 65 years of age or under 50 years of age or under 45 years of age, and that is new. It is really within the last 30 years that these medicines have become so important. Thus, it is our obligation to strengthen and improve access to prescription drugs.

I have had the privilege to observe a lot of this as a physician, and I will give a couple of examples. Over the past 3 decades—remember, Medicare started in 1965—the death rate from hardening of the arteries, or atherosclerosis, the underlying pathology within the heart, has declined by 74 percent. Deaths from ischemic heart disease—ischemic is low blood flow where the heart is not getting enough oxygen and blood, and that is what causes a heart attack, hardening of the arteries, myocardial infarction, heart attack—death rates have fallen over the last 30 years by 60 percent.

People ask why. There are lots of reasons, but I would say one of the major reasons is medicines today, that we are treating high blood pressure earlier; we are treating congestive heart failure earlier before these deaths from ischemic and other heart disease occur. Medicines that were not around 30 years ago are the beta blockers. It actually makes the heart so it does not beat so hard. If it is not beating so hard, it does not consume as much energy and does not need as much oxygen. Therefore, low blood flow to the heart does okay. Other drugs called ACE, A-C-E, inhibitors, the medicines, in large part, have explained this increasing survival fall in mortality.

Over the last 30 years since Medicare began, death rates from emphysema, or lung disease—a type of lung disease called chronic obstructive pulmonary disease, emphysema, is one of those two types—have fallen by 60 percent in large part because of the use of anti-inflammatory medications—they decrease the inflammation in the lungs—and also a group of drugs call bronchodilators, which dilate those little bronchial air waves in the lung. The point is, it is these medicines that in large part explain this improved health and the improved treatment of emphysema.

I have a couple of books with which I wanted to illustrate my point. Nearly 400 lifesaving drugs have been produced in the last 10 years. Meanwhile, there are over 600 medicines under development right now by the Nation's pharmaceutical research companies to treat diabetes, heart disease, cancer, stroke, and peripheral vascular disease.

I mentioned these books. This is called the PDR, the Physicians' Desk Reference, for pharmaceutical specialities and biologicals for the physician's desk. Every physician in the country uses this on a regular basis because it allows them to look up individual medicines. It gives the descriptions, the side effects, and the contraindications. No matter how smart one is or how much time one spends with it, there is no way to remember all of these drugs or everything in the book, although some people may be able to.

The point is, this book was printed in 1965. This is the year Medicare was actually passed and then implemented. That was over 30 years ago. Again, this book has 1,060 pages in it. The type is pretty small. It is just medicine after medicine. When I see this, I am kind of glad I do not have to know all of that right now because there is so much in it.

This PDR is the 57th edition, and this one is from 2003. It is pretty interesting to me because this first book is when Medicare started, and this other book is where we are today. Today's book is a little bigger but is a lot thicker, and instead of having 1,060 pages in it—these are not all lifesaving drugs but all drugs which have a real importance in terms of treating and quality of life—this book has 3,500 pages in it. I wish I could show this to the Chair, but the type in this new book is about half the size of the type in the old book. So the truth is, it is about 6,000 pages.

The point is, medicines make a difference. They made a difference in 1965. They really make a difference today. Seniors do not have access to these through our Medicare system in either case. Great advances, and our Medicare system has not changed. It does not recognize that as we go forward. That is why we are here. I want to make this case of why we are here and why this is so important today that the health care system, the delivery system, has markedly improved with great scientific advances, and Medicare is not capturing it today. Our seniors deserve for those to be captured.

Next month does mark the 38th anniversary of the launch of Medicare. On July 30, 1965, President Johnson traveled to Independence, MO, to sign the

bill into law. President Truman, who had initiated the drive for health care security for seniors about 20 years earlier, was on hand to receive that first Medicare card. President Johnson, upon signing that historic legislation, told the assembled lawmakers in 1965:

The benefits under the law are as varied and broad as the marvelous modern medicine itself. No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings that they have so carefully put away over a lifetime so that they might enjoy dignity in their later years. No longer will young families see their own incomes, and their own hopes, eaten away simply because they are carrying out their deep moral obligations to their parents . . .

Nearly 40 years later, we have an opportunity to realize this noble vision. Before the end of next week, the Senate will have the opportunity to pass legislation that does provide prescription drug coverage for our seniors, that does protect seniors and gives them health care security by giving them greater choices so that they can choose the health care coverage that best meets their individual needs.

I believe future generations will judge us by the choices we make over the next several days and at the end of next week, whether we chose to act responsibly, recognizing our obligations to strengthen and improve the system, or whether we chose just to talk about it, the same rhetoric, something that we should do. My position is clear; now is the time to act. I am delighted we are acting in a bipartisan way. Now is the time not just to tinker and play around the edges, but it is time to truly transform the system.

We have a responsibility to provide our seniors with a system that works, that indeed gives them health care security, and now is our opportunity to deliver it. It will require us to focus on the big picture. It will require us to focus on the future. It will require us to focus on our fellow citizens, whom we are so privileged to represent.

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

Mr. HATCH. Madam President, I compliment the distinguished majority leader for his excellent set of remarks today. The comparison between the two PDR books is startling. Anyone who looks at it has to admit we have come a long way since 1965.

This bill was a great addition to the health care for our people. It could not have happened without the distinguished Senator from Tennessee, our leader, plus the distinguished Senator from Iowa, Senator GRASSLEY, and the distinguished leader from Montana, Senator BAUCUS. I appreciate having a doctor in the Senate. As a former medical liability defense lawyer, I have to say I have always respected Senator FRIST very greatly, but nothing comes close to how much I respect him as a physician, as somebody who cares for people and has given so much of his life to healing people.

I am very grateful to have heard these remarks today.

Mr. FRIST. I thank the Senator.

AMENDMENT NO. 933

Mr. HATCH. Madam President, I will only take a few minutes, but I rise in opposition to the Bingaman amendment.

First, let me make one thing clear, and perfectly clear:

The assets test in S. 1 is the same assets test used for determining eligibility for the qualified Medicare beneficiaries, QMBs, specified low-income Medicare beneficiaries, SLMBs, and qualified individuals, QI–1s.

S. 1 provides a generous low-income subsidy for those who are below 160 percent of the Federal poverty level. Currently, in order for some individuals under 160 percent of poverty to receive limited Medicaid protections, they must meet both an income limit and an assets test.

In S. 1, we simply follow these same rules in order for low-income beneficiaries to receive assistance with their prescription drug coverage.

By including the Medicaid assets test for Medicare prescription drug subsidies, we are providing beneficiaries with seamless health coverage. We are not confusing beneficiaries and we are not adding additional administrative burdens to States.

Let me give you some background on the current assets test included in the Medicaid program.

Qualified Medicare beneficiaries are individuals below 100 percent of poverty. In 2006, the annual income limit is $9,670 for individuals and $13,051 for couples. QMBs are allowed to have assets below $4,000 for individuals and $6,000 for couples.

Specified low-income Medicare beneficiaries and QI–1s are those with incomes between 100 percent of poverty and 135 percent of poverty. In 2006, the annual income limit is $13,054 for individuals and $17,618 for couples. SLMBs and QI–1s are allowed to have assets below $4,000 for individuals and $6,000 for couples.

Beneficiaries between 136 percent and 159 percent of poverty will have annual income limits of $15,472 for individuals and $20,881 for couples in 2006. Beneficiaries between 136 and 159 percent of poverty would not be subjected to assets tests.

Current law establishes resource limits for low-income elderly or disabled individuals. Let met emphasize, this is not a newly added restriction on certain low-income Medicare beneficiaries. However, current law also provides States with the flexibility to choose to disregard all or part of these resources.

The Bingaman amendment, which eliminates the Medicaid assets test limits would add significantly to the number of eligible beneficiaries.

A study prepared for the Kaiser Family Foundation estimates that as many as 11 million individuals would be newly eligible for low-income assistance if the assets test were eliminated. I have no idea how much that will cost but it will be expensive.

In addition to increasing the Federal cost of the bill, this amendment would impose a significant, new, unfunded mandate on States, which must pay a share of Medicaid benefits by paying for the dual eligible beneficiary's liability for premiums, deductibles, and coinsurance.

Also, some States may experience an additional administrative or financial impact from potential program redesigns because, in some cases, States link eligibility for their state-only programs with the eligibility requirements for these special categories of the dually eligible.

S. 1 includes a provision to require the GAO to conduct a study and make recommendations to Congress by 2007 regarding the extent to which drug utilization and access to covered drugs differs between qualifying dual eligibles who receive subsidies and individuals who do not qualify solely because of the application of an assets test.

This amendment will not only cost money, it will cause confusion. I urge my colleagues to defeat the Bingaman amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, the underlying bill, the bill from the Senate Finance Committee to provide prescription drugs for the improvement and strengthening of Medicare, provides a very generous low-income subsidy for those who are below 160 percent of the Federal poverty level. For some of the seniors below 160 percent of the Federal poverty level, there is no asset test.

Currently, in order for some of the individuals below 160 percent of poverty to receive the most generous low-income subsidies, there is an asset test and there ought to be. The crafting of this bill provided everyone a conscientious effort and decision to make possible this legislation and to make it well balanced. There were extra dollars and the decision was made to fill in the coverage gap rather than eliminate the assets test. There is no limitless amount of funds for this prescription drug benefit.

We are in a position of zero sum gain. We have $400 billion under the budget to work with. This bill works to do the most for all Medicare beneficiaries. Seniors with incomes below 160 percent and who do not pass the established asset test still receive a very generous low-income subsidy. These beneficiaries will not have a gap in coverage.

This amendment by the Senator from New Mexico will add unknown costs to the current bill. It will change the structure of the bill and affect the current Medicaid Program by adding costs that are very substantial in the outyears. Therefore, when we vote tomorrow on the Bingaman amendment I hope we will have a strong vote against it. Not that I denigrate in any way the intentions of the Senator from New Mexico. I know him to be a very conscientious Senator, to do well, and to

be very thoughtful in his approach. Obviously, on this point he has some disagreement with the product of our committee that was voted out 16 to 5 last Thursday.

But, here again, we have to do the most we can within the $400 billion that the Budget Committee has given us to work with for providing a prescription drug benefit to our seniors as part of improving and strengthening the Medicare Program overall. We could have put more money into the asset test as he indicates he wants to do now with this amendment. We chose, as I indicated before, to help more people with the same amount of money by filling in the gap or, as some people would say, the donut hole.

We believe we should put as much effort as we can into taking care of that problem because, to help the very same people Senator BINGAMAN wants to help, we have put a lot of resources into the effort of prescription drugs for seniors, for those below 160 percent of poverty.

So, once again, I urge the amendment be defeated when we vote on it tomorrow.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. GRASSLEY. The first unanimous consent request is that the Senate proceed to a period for morning business.

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

COUNCIL ON FOREIGN RELATIONS INDEPENDENT TASK FORCE ON BURMA

Mr. MCCONNELL. Madam President, the Council on Foreign Relations Independent Task Force on Burma today released a report entitled: ''Burma: A Time for Change''. I am pleased to have had an opportunity to serve as a member of the Task Force along with my colleagues, Senators LUGAR and FEINSTEIN, and Representative LANTOS.

The report describes the State Peace and Development Council's repressive rule in Burma, and makes a number of recommendations including: increased humanitarian assistance for the people of Burma through NGOS, and in consultation with the NLD and other groups representative of a multiethnic Burma; an import ban on goods produced in Burma, visa denials to leaders of the military regime and its political arms, and the freezing of assets abroad; U.S. leadership in urging the United Nations Security Council to adopt a resolution that demands the immediate release of Suu Kyi and all other political prisoners, and to hold an emergency session to impose other sanctions on Burma; U.S. leadership in working with our allies and Burma's regional neighbors to bolster support for the struggle for freedom and the rule of law in Burma; no certification for Burma on narcotics cooperation as it has ''failed demonstrably'' to curtail drug production, drug trafficking and money laundering; and increased assistance to refugees fleeing Burma in Thailand, India, Bangladesh, and China.

I thank the council for the timeliness of the task force, and all the members for their participation.

Madam President, I ask unanimous consent that a copy of the executive summary of the report be printed in the RECORD.

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

BURMA: A TIME FOR CHANGE

EXECUTIVE SUMMARY

On May 30, 2003, the Burmese military regime orchestrated violent attacks by progovernment militia on Aung san Suu Kyi, the leader of the National League for Democracy (NLD) and her supporters as they traveled outside Mandalay. At least four of her bodyguards were killed as well as a significant number of others. She has been held in custody since then. Following the attacks, the regime arrested more than 100 democracy activists, imprisoned at least a dozen, shut down NLD offices across the country, and closed schools and universities. This is the bloodiest confrontation between Burma's military rulers and democracy supporters since 1988, when the government suppressed a popular uprising against the regime and thousands were killed.

Burma has been ruled for more than 40 years by a succession of military regimes that have systematically impoverished a country once known for its high literacy rate, excellent universities, and abundant natural resources. Today, Burma is one of the most tightly controlled dictatorships in the world, lacking any freedom of speech, assembly, or the press; denying any due process of law; and perpetuating human rights abuses, such as forced labor, military rape of civilians, political imprisonment, torture, trafficking in persons, and use of child soldiers. Burma is also facing what the United Nations Childrens Fund (UNICEF) has called a ''silent emergency,'' a health crisis of epidemic proportions. HIV/AIDS is spreading rapidly, and malaria, tuberculosis, leprosy, maternal mortality, and malnutrition are pervasive. Government spending on health and education is miniscule.

Burma is a leading producer of opium and methamphetamine for the illegal drug trade, which is a major source of corruption within Burma. Four decades of military operations against insurgent ethnic nationalities as well as mass forced relocations have created one of the largest refugee populations in Asia. As many as two million people have fled Burma for political and economic reasons; inside Burma, hundred of thousands have been internally displaced. They lack access to food, health care, schools, and even clean water.

In August 1988, a popular uprising against the military regime was brutally suppressed and thousands were killed. In 1990, the regime held elections for a multi-party parliament in which the National League for Democracy (NLD), led by Aung San Suu Kyi who was then under house arrest, won 82 percent of the seats. However, the elections were ignored by the junta and the elected parliamentary representatives never took office. The regime imprisoned hundreds of prodemocracy supporters, including elected members of parliament. Thousands more fled the country.

After the 1988 uprising, the United States imposed graduated sanctions on Burma, initially terminating economic aid, withdrawing trade preferences, imposing an arms embargo, and blocking loans the grants from international financial institutions. In 1997, based on a presidential finding that the Burmese government had committed large-scale repression and violence against the democratic opposition, the United States banned any new American investments in Burma.

In 2000, the United Nations, mandated by UN General Assembly resolutions, sent Special Envoy Razali Ismail to Rangoon to promote substantive political dialogue on transition to democratic government between Burmese government and the democratic opposition. Since then, Ambassador Razali has visited Rangoon nine times with no apparent progress toward establishing this dialogue. He is returning to Rangoon in early June.

In order to strengthen international efforts to install democratic government and end repression in Burma, the Task Force recommends that the United States take specific initiatives in four key areas:

Humanitarian assistance to address Burma's health crisis

In view of Burma's massive public health crisis, the United States should increase humanitarian assistance to Burma, provided that funds are given to international nongovermental organizations (NGOs) for basic human needs through a process that requires transparency, accountability, and consultation with the NLD and other groups representatives of a multiethnic Burma.

Although the United States should not generally provide humanitarian assistance directly to the Burmese government, the United States could provide technical assistance to the Ministry of Health if the Burmese government agrees to meet the U.S. Centers for Disease Control (CDC) standard that HIV/AIDS testing be voluntary and confidential.

The United States should work together with other donor governments, UN agencies, and if possible, the Burmese government State Peace and Development Council (SPDC) to establish certain minimal standards of independence for international NGOs operating in Burma, including clear guidelines for administrative operations, reporting, and other regulations involving duty-free entry privileges, memoranda of understanding and residency permits.

Promoting democracy, human rights, and the rule of law

In view of the recent government-sponsored attacks on members of the democratic opposition, resulting in a number of deaths, and the Burmese government's detention of Aung San Suu Kyi, the United States should urge the United Nations Security Council to adopt a resolution that demands the immediate release of Aung San Suu Kyi and all political prisoners and condemns the Burmese government's egregious human rights abuses as well as its refusal to engage in substantive political dialogue with the democratic opposition. In addition, the United States should urge the Security Council to hold an emergency session on Burma to discuss imposing targeted sanctions, which could include denying visas to leaders of the military regime, the Union Solidarity Development Association (USDA) and their families, freezing their assets and imposing bans

both on new investment in Burma and on importing goods produced in Burma.

Because the Burmese military government has failed to address human rights abuses, including the unconditional release of all political prisoners, and to move forward in talks with the NLD and other pro-democracy groups toward establishing a democratic government, the United States should increase well-targeted sanctions, including an import ban on goods produced in Burma, and encourage the United Nations and other countries to join with the United States in adopting similar sanctions.

The United States should redouble its efforts with the governments of China, Japan and the Association of Southeast Asian Nations (ASEAN) countries, particularly Thailand, Singapore and Malaysia, to press the SPDC to work with the NLD and ethnic nationalities toward political transition in Burma. The United States, as a member of the SEAN Regional Forum, should urge ASEAN to consider seriously the cross-border effects of internal problems including illegal migration, health, trafficking, narcotics and other issues connected with the internal situation in Burma. The United States should also continue to coordinate closely with the European Union on policies toward Burma.

Until the SPDC makes substantial progress in improving human rights and engaging in substantive political dialogue with the democratic opposition, the United States should strongly discourage the government of Japan from forgiving outstanding debt from bilateral grants and loans except those that directly address basic human needs. Such aid should exclude infrastructure projects, such as dams and airport renovations, and also be limited to basic human needs. Moreover, the United States should encourage Japan to use its influence with ASEAN governments to urge them to become pro-active in support of democracy and human rights in Burma.

While maintaining its own sanctions on Burma, the United States, as one of the largest donors to the international financial institutions, should urge Asian investors to press the Burmese government to begin implementing the economic measures recommended by the World Bank, International Monetary Fund and the Asian Development Bank as one of the prerequisites for further investment. The United States should also urge China to use its influence to press the Burmese government to reform its economy and move towards democratic governance in order to promote stability in the region.

In order to develop capacity for future democratic governance and to rebuild technical competence in Burma, the United States should promote cultural, media and educational exchanges with the Burmese, provided that these opportunities are readily accessible to qualified candidates, including representatives of the political opposition. The selection process should include widespread publicity of exchange and fellowship opportunities, a joint selection committee comprised of Burmese civilian authorities (academics, intellectuals) and representatives of the U.S. Embassy in Rangoon who, after consulting broadly, make their selections based on the quality of candidates and their potential to contribute to Burma's future. In addition, the United States should provide increased funding for the American Center in Rangoon as well as for English language training and scholarship opportunities.

U.S. narcotics control policy toward Burma

The United States should not certify Burma at this time because it has ''failed demonstrably'' to curtail drug production, drug trafficking and money laundering. In addition, the United States should not provide any counter-narcotics assistance to the Burmese government. Increased counter-narcotics cooperation should depend, at minimum, on significant steps by the Burmese government to curb methamphetamine production, to arrest leading traffickers, and to stop channeling drug money into the illicit economy.

IV. Refugees, migrants and internally displaced persons

The United States should strongly urge the Thai government to halt deportations of Burmese and protect the security of Burmese living in Thailand, regardless of their status. In addition, the United States should coordinate U.S. policy towards Thailand with donors, such as the governments of Norway, Denmark, Japan, and Canada.

The United States should provide increased humanitarian assistance, including cross-border assistance, for displaced Burmese along both sides of the Thai-Burma border as well as on Burmese's borders with India, Bangladesh, and China, as well as inside Burma. Support should be provided for clean water, sanitation services, primary health care, reproductive health, and health education for refugees and undocumented migrants living in refugee-like circumstances. Support of education, especially for women and children, is also critical.

The United States should urge greater access by international NGOs and UN agencies to northern Rakhine State provide humanitarian assistance and monitor abuses committed against Muslim communities and returned refugees.

SAVING FREEDOM OF SPEECH

Mr. HOLLINGS. Madam President, we are in trouble. The Federal Communications Commission, by a three to two vote, is prepared to bring about monopolistic control of the news, monopolistic control of the media, monopolistic control of entertainment. Public interest rules for cross ownership and market control are being abolished and no one points this out more cogently than Mortimer B. Zuckerman, Editor in Chief, in the June 23, 2003 edition of the U.S. News and World Report. The Congress will be compelled to act if we are to save freedom of speech in this country. To understand the issues I ask unanimous consent that the article be printed in the RECORD. I also commend to my colleagues the Columbia Journalism Review—www.cjr.org—of who owns what, listing the holdings of the five behemoths Viacom, News Corporation, AOL-Time Warner, Walt Disney Company and General Electric too much under the present rulings.

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

[From U.S. News & World Report, June 23, 2001]

A SURE-FIRE RECIPE FOR TROUBLE

(By Mortimer B. Zuckerman)

Three anonymous political appointees to the Federal Communications Commission have just delivered a body blow to American democracy. Large media companies are to be allowed to buy up more TV stations and newspapers, becoming more powerful and reaping a financial bonanza. Astonishingly, the FCC has done this without public review, without analyzing its consequences, and without the American people getting a dime in return for their public airwaves. Under the FCC deal, big media companies must make no commitment to provide better news, or even unbiased news. Ditto with local news coverage and children's programming. In fact, the new rules dramatically worsen opportunities for local news coverage, for diversity of views, and for competition. ''The public be damned!'' was a robber baron's slogan from the Gilded Age. Seems to be just what the FCC is saying.

Consider the enormity of the changes. The commissioners removed the ban on broadcasting and newspaper cross-ownership. They raised the national cap on audience reach by station-group owners to 45 percent. They allowed ownership of two stations in more markets, and even three in a handful of markets. There's more, but you get the idea.

Monopolies. These FCC rules allow new merger possibilities without any public-interest review. The details are complicated, but basically, thanks to the FCC, one company now can own UHF TV stations in 199 of the nation's 210 TV markets, which is pretty much the equivalent of owning stations in every TV market in every state except California. That means a single company could influence the elections for 98 U.S. senators, 382 members of the House of Representatives, 49 governors, 49 state legislatures, and countless local races. Employing another strategy now allowed by the FCC, that same company could own VHF stations in every TV market in 38 states, with the power to influence elections in 76 U.S. senate races, 182 House races, 38 gubernatorial races, and 38 state legislatures, along with countless local races. There are other scenarios. But again, you get the idea.

Easing the rules on cross-ownership means that in many local markets one company could own its leading daily newspaper—and, often, its only newspaper—its top-rated TV station, the local cable company, and, as a bonus, five to eight radio stations. Previously, no TV and newspaper mergers were allowed in the same market, except when a firm was failing. Now the merger of the dominant newspaper and TV station could create local news monopolies in 200 markets serving 98 percent of all Americans.

What's going on? Several years ago, the FCC allowed one company to own as many radio stations as it wanted. The unintended result is the monopolization of many local markets and three national companies owning half the stations in America, delivering a homogenized product that neglects local news coverage. Small to midsize firms know that major networks will gobble up affiliates, cut local programming costs, and program centrally from their own stations. Independents will be squeezed out. ''For Sale'' signs are already going up. More consolidation, more news sharing, and fewer journalists add up to an enhanced danger of media corporations abusing market power to slant coverage in ways that fit their political and financial interests—and suppressing coverage that doesn't. One defense of this outrage that big media companies offer is the diversity of the Web. Well, yes. But does anyone really think the Internet is anything like an organized political or media power, much less a counterweight to a claque of billion-dollar media behemoths?

The good news is that the nation, finally, is waking up. The FCC has received hundreds of thousands of protests. Congressmen, both Democrats and Republicans, are alarmed. So are groups as diverse as Common Cause, the National Rifle Association, and the Screen Actors Guild. One of our more thoughtful conservative columnists, William Safire of

the New York Times, writes that ''the concentration of power—political, corporate, media, cultural—should be anathema to conservatives.'' John Roberts in the Chicago Tribune deplores the ''blatantly disingenuous, if not dishonest, explanations being given by FCC Chairman Michael Powell and his supporters for their actions.''

No prizes for guessing who supports the commission: the major media conglomerates who have coincidentally spent more than $80 million on lobbying, plus over $25 million in political contributions, in the past three years and stand to gain enormously from this.

Regardless of their political ideology, we cannot risk nonelected media bosses having inappropriate local, regional, or national power. The FCC was created to ensure that the public interest is served by the media companies that use our airwaves. Everyone is entitled to a mistake sometime, but the FCC is abusing the privilege. Congress must act now and reverse the FCC's irresponsible new rules.

CHANGES TO H. CON. RES. 95 PURSUANT TO SECTION 401 MEDICARE RESERVE FUND ADJUSTMENT

Mr. NICKLES. Madam President, section 401 of H. Con. Res 95, the FY 2004 Budget Resolution, permits the Chairman of the Senate Budget Committee to make adjustments to the allocation of budget authority and outlays to the Senate Committee on Finance, provided certain conditions are met.

Pursuant to section 401, I ask unanimous consent that the following revisions to H. Con. Res. 95 be printed in the RECORD.

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

	Dollars in millions
Current Allocation to Senate Finance Committee	
FY 2004 Budget Authority	769,846
FY 2004 Outlays	773,735
FY 2004–2008 Budget Authority	4,504,397
FY 2004–2008 Outlays	4,513,658
FY 2004–2013 Budget Authority	10,591,162
FY 2004–2013 Outlays	10,606,226
Adjustments	
FY 2004 Budget Authority	.....
FY 2004 Outlays	.....
FY 2004–2008 Budget Authority	113,540
FY 2004–2008 Outlays	113,570
FY 2004–2013 Budget Authority	400,000
FY 2004–2013 Outlays	400,000
Revised Allocation to Senate Finance Committee	
FY 2004 Budget Authority	769,846
FY 2004 Outlays	773,735
FY 2004–2008 Budget Authority	4,617,937
FY 2004–2008 Outlays	4,627,228
FY 2004–2013 Budget Authority	10,991,162
FY 2004–2013 Outlays	11,006,226

PROTECT ACT OF 2003 TECHNICAL AMENDMENT

Mr. HATCH. Madam President, I rise today to speak to an issue that we need to promptly address. As part of the Protect Act of 2003, we authorized a pilot program to study the feasibility of instituting a national background check for those who volunteer in children's activities. The National Center for Missing and Exploited Children will provide its expertise to assist volunteer organizations in evaluating the criminal records of volunteers to determine if the volunteers are fit to interact and provide care for children.

Currently, the Protect Act tasks the National Center with operating the cyber tip line in addition to its participation in the pilot program. The Protect Act presently immunizes the National Center for operating the cyber tip line as long as it does so consistent with the purpose of the tip line. However, no similar protection was provided with respect to the National Center's activities related to the pilot program. The bill I have offered will extend the immunity to the National Center for its participation in the pilot program.

I would urge my colleagues to vote in favor of this technical fix so that the worthy goals of the pilot program can commence.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Madam President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in San Jose, CA. On October 12, 2001, a pregnant Yemini woman wearing a hijab and a long dress was beaten by a group of angry teenagers. After the attack, the woman needed to be hospitalized and remained in guarded condition until she delivered her baby.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

WRITING CONTEST ON IMMIGRATION

Mr. KENNEDY. Madam President, each year fifth graders across the United States compete in a writing contest on immigration sponsored by the American Immigrant Law Foundation and the American Immigration Layers Association. Thousands of students participated in this year's competition, responding to the question, ''Why I'm Glad America is a Nation of Immigrants.''

In 1958, President Kennedy, who was then completing his first term as a Senator, published a book with the title, ''A Nation of Immigrants,'' and I had the privilege of serving as one of the judges for this year's contest. It was impressive to see how the students responded. Their essays illustrate the wealth of diverse cultures that immigrants share with our Nation. The students' writings radiate with pride for our diversity and our immigrant heritage. Many students told personal stories of their families and friends and their immigration to the United States.

The winner of this year's contest is Miranda Santucci of Pittsburgh. In her essay, ''An American Patchwork Quilt,'' Miranda explores the value of her friends' cultures and how their diversity has enhanced her life. She compares the United States to a colorful patchwork quilt where ''every fabric piece tells an immigrant's story about overcoming hardship, seeking opportunities, and reaching for dreams,'' and where ''threads of different languages, customs, foods, cultures, religions and skills hold these pieces together.'' Miranda's eloquent essay reaches to the heart of what makes us all uniquely American.

Other students honored for their exceptional writing were Rachel Adams of Houston, Melissa Cheng of Atlanta, Jessica Du of Alameda, and Elias Reisman of Indianapolis. I congratulate these students on their outstanding achievement, and I know my brother would be proud of them too.

These award-winning essays will be of interest to all of us in the Senate, and I ask unanimous consent that they be printed in the RECORD.

The PRESIDING OFFICER. Without objection, so ordered.

There being no objection, the essays were printed in the RECORD, as follows:

[From the Winchester Thurston School, Pittsburgh, PA]

AN AMERICAN PATCHWORK QUILT

(By Miranda Santucci)

America reminds me of a beautiful patchwork quilt that covers our nation with a diversity of immigrants. Each quilt square is made up of different colors and textures with a unique design and pattern. Every fabric piece tells an immigrant's story about overcoming hardships, seeking opportunities, and reaching for dreams. Threads of different languages, customs, foods, cultures, religions, and skills hold all these pieces together. I'm glad America is a nation of immigrants because these individual patchwork pieces make the whole American quilt more beautiful.

The quilt covers my home, school, neighborhood, and city. It warms me when I celebrate the feast of fishes on Christmas Eve like my father's Italian ancestors did, when I play with my Greek friend Katarina Konstantinos after school, or when I share the basket blessing tradition at Easter with my neighbor, Peter Muszalski, in his church on Polish Hill. I see many colors in the fabric at my school when I look around at all the different skin tones. I feel how enormous the quilt is when I go through the Strip District and read the storefront signs like Sam-Bok, Stamboolis, Benkovitz, and Sunseri.

I cherish each piece of our country's quilt. All the immigrant patches are still unique, even though they are sewn together as one. They make our country rich, full and strong. America's patchwork quilt is a precious heirloom that should be handled with pride, and handed down through the generations of American history.

[From the Mayde Creek Elementary, Houston, TX]

AMERICA—MY NEW HOME

(By Rachel Adams)

America, America

lovely and bright,
so full of bluebonnets
and coyotes at night.

Free as a bird,
that soars in the sky,
oh, how I love the way
your flag waves far and wide.

Immigrant, immigrant,
traveling from afar,
warmly welcomed in America,
are those who are scarred.

That's what I am,
and I want to be free,
I want to have value,
and I want to be me.

I set out on a journey
and far will I roam
until I reach my new country,
a place I'll call home.

In this country of immigrants,
I want to have meaning
to have a life of peace
and freedom of being.

I travel to America
where opportunity awaits,
the land of the free
and the home of the brave.

[From the Montgomery Elementary School, Atlanta, GA]

WHY I AM GLAD AMERICA IS A NATION OF IMMIGRANTS

(By Melissa Cheng)

The Dutch Butcher, the German Baker, The Chinese who created paper, to this great land gathers great skill, and we all contribute, so do I, and make America greater still.

From some lands people flee,

To America the place of democracy,

For where they originated they had no freedom or rights for they had a dictator who didn't treat them right.

I am glad I have hearts of hope, dreams of freedom to be and practice who and what I want to be. For freedom there is a price.

We all must stand together willing to fight.

We all must stand together and earn this right.

Without these cultures from near and far, today we wouldn't be who we are.

Pasta from Italy, bread from Germany, and piniatas that come from Mexico, are what makes America unique.

All these things put together strengthen our unity and create one big community.

America the land of opportunity is a place where everybody has an equal chance including me!!!

That is why I am glad America is a nation of immigrants.

[From the Amelia Earhart School, Alameda, CA]

I AM GLAD AMERICA IS A NATION OF IMMIGRANTS

(By Jessica Du)

America is a nation of immigrants
As you can plainly see
Someone in your history
Made a change in your family tree.

Everyone must have a time
When they moved from place to place
To live a better life
And challenge it face to face

People come to America
For freedom and for rights
To speak freely and be educated
And explore new heights

My parents are from Vietnam
Dad escaped by boat
If someone was lucky, they'd make it to shore
If not, in the ocean they'd have to float

My parents changed my whole life
If they hadn't moved here
I would be in a different country
Living in a land of fear

My classmates are from here and there
We are all different races
We speak many languages
And smile with different faces

America is a nation of immigrants
We don't care what race you are
The poor and rich should know
You're welcome from near or far.

[From the International School of Indiana, Indianapolis, IN]

OPEN TO DIFFERENCES

(By Elias Reisman)

My grandma was from Russia
Her dad had a different belief.
The army came and seized him
Which caused her family grief.

She made it to the United States,
Fell in love with a Russian man,
War was looming, he signed up.
''Let's marry while we can.''

They had three kids
All three were raised as Jews.
My dad met mom, a Christian girl
And they had two little new.

Our self portrait is not crystal clear.
When asked, what do we tell?
There is no single label
That tells our story well.

We go to an international school
There are kids of every kind.
Every race and faith and country
Makes it even a better time.

When we seek out those who differ,
Respect all points of view,
We are happier, wiser, stronger,
And our country's safer too.

We do not care
Whether yellow, black, or white,
Immigrant or native—
IT IS ALL RIGHT!

RECOGNIZING GENERAL ERIC SHINSEKI ON HIS RETIREMENT AS ARMY CHIEF OF STAFF

Mr. INOUYE. Madam President, on June 11, 2003, I had the honor and privilege of attending the retirement ceremony at Fort Myer, VA, for GEN Eric Shinseki, who served with distinction during his 4 years as Army Chief of Staff. A native of Hawaii who rose through the ranks while devoting 38 years of his life to defending our Nation, General Shinseki ended his career as the highest ranking Asian-American in the history of the United States military.

His farewell speech was a message of thanks, a reminder of the need for shared values, and an underscoring of the importance of inspired leadership and the dangers of arrogance.

I ask that General Shinseki's speech, as well as the remarks that Acting Secretary of the Army Les Brownlee made during General Shinseki's retirement ceremony, be printed in the RECORD.

There being no objection, the speech was printed in the RECORD, as follows:

SPEECH BY GENERAL ERIC K. SHINSEKI, 34TH CHIEF OF STAFF OF THE U.S. ARMY, AT HIS RETIREMENT CEREMONY, AT FORT MYER, VA, ON JUNE 11, 2003

Secretary Brownlee, thank you for the generosity of your remarks, and for hosting today's ceremony. You lead the Army through a difficult period; best wishes in the execution of your important duties.

Secretary and Mrs. Norm Mineta, Transportation, thank you for being here.

We have received tremendous support from the defense oversight committees: Senate Armed Services Committee—Senators Warner and Levin; Senate Appropriations Committee for defense—Senators Stevens and Inouye; House Armed Services Committee—Congressmen Hunter and Skelton; Congressman Bill Young, Chairman of the House Appropriations Committee; and Congressmen Lewis and Murtha, House Appropriations Committee for Defense. Thank you all and your dedicated staffs, Sid Ashworth, Valerie Baldwin, John Bonsall, Dan Cox, and former Staff Director Steve Cortese, for your support of the Army, its initiatives for the future, and its soldiers.

Let me also acknowledge the leadership of the Senate and House Army Caucuses: Senators Inhofe and Akaka, Congressmen McHugh and Edwards. We truly appreciate the tremendous support you provide for the Army's initiatives.

We are fortunate to have some members of Congress with us today: Senators Dan Inouye, Daniel Akaka, Jack Reed, and former Senator Max Cleland; Congressmen Jerry Lewis, Ike Skelton, Gene Taylor, Neil Abercrombie, Rodney Frelinghuysen, Sylvestre Reyes, Charles Taylor, Chet Edwards, Eni Faleomavaega. Patty and I are honored that you could join us. Thank you.

Sincere thanks to the members of Congress who paid kind tributes to my service in recent days: Congressmen Lewis, McHugh, Edwards, and Skelton. I deeply appreciate the graciousness of your remarks.

Senator Dan Inouye, special thanks to you, sir, for your friendship and mentoring. I am indebted to you for introducing me at my Senate confirmation hearing. Your words then and your support over the last four years have been humbling. Thank you for your patriotism and your leadership.

Deputy Secretary England—Homeland Security, Secretary and Mrs. Jim Roche—Air Force, General Al Haig, thank you for honoring us with your presence. General Barry McCaffrey and Jill, thank you for honoring us as well.

Secretary Togo West, 16th Secretary of the Army, Secretary Tom and Susan White, 18th Secretary of the Army, thanks for your unwavering support of soldiers and the Army, for your friendship, and for being her today. When they call the roll of principled, loyal, tough guys, you will be at the top of the list.

General Dick Myers, our Chairman, his wife, Mary Jo, and Lynne Pace, wife of our Vice Chairman, fellow members of the Joint Chiefs of Staff and your ladies: Vern and Connie Clark, CNO; John and Ellen Jumper, CSAF; Mike and Silke Hagee, Commandant, Marine Corps; Tom and Nancy Collins, Commandant, Coast Guard. To the Joint Chiefs, you have my respect and admiration for the experience you bring to deliberations, the responsibilities you bear for the nation, and the care you engender for people.

Former Army Chiefs of Staff, General and Mrs. Reimer, General and Mrs. Sullivan, General and Mrs. Vuono; members of our outstanding Army Secretariat, including Joe Reeder and Mike Walker; former undersecretaries of the Army; our Vice Chief of Staff, Jack Keane and his wife, Terry, who have worked tirelessly for four years on behalf of soldiers and the Army, thank you both for your dedication and support.

Counterpart Army Chiefs who have traveled long distances to be here today: General and Mrs. Gert Gudera, old friends from Germany since our service together in Bosnia; General Edward Pietrzyk, Poland; General

and Mrs. Hillier, Canada; General Canelo-Franco, Paraguay; General Morozov, Russia; General Marekovic, Croatia. Patty and I are deeply honored by your presence.

Other fellow U.S. general and flag officers, serving and retired, active and reserve components, and your spouses, especially the retired four stars who are here today, thank you all for your support and your leadership. The Army is in good hands and it keeps rolling along. Let me particularly acknowledge the serving four-stars: Jim Ellis, Charlie Holland, Larry and Jean Ellis, Paul and Dede Kern, Leon and Judy Laporte, B.B. Bell, Tom and Toni Hill, Kevin and Carol Byrnes; and those recently retired from active duty, John and Ceil Abrams, Buck and Maryanne Kernan, Jay and Cherie Hendrix, Tom and Sandy Schwartz, John and Jan Coburn. Let me also acknowledge the important service and presence of the Joint and Army Staffs and the Army's general officers in command who provide strong, steady, and enduring leadership.

Sergeant Major of the Army Jack and Gloria Tilley, the Army could not have asked for two more enthusiastic proponents for soldiers and families. To you and the MACOM Sergeants Major who have gathered here today, thanks for your wise counsel and friendship. We are indebted to all of you for your leadership and your care and concern for soldiers.

Master Chief Petty Officer of the Navy and Mrs. Scott, former SMAs Hall, Kidd, and Bainbridge and your ladies, civilian aides to the Secretary of the Army.

My beloved family, some 70-strong, has journeyed great distances to be here. Grandma Shinseki, who turns 92 this year, has chosen not to travel, and my sister, Yvonne, has remained at home with her. But just about everyone else is here—my older brother, Paul, and his family, then Patty and our children—Lori, Ken, and their spouses who have made Patty and me grandparents five times over. Many others from Patty's and my wonderful family are gathered in strength—uncles, aunts, sisters, brothers, cousins, nephews and nieces—wonderful people who live simple lives in proud and vocal support of this Chief. God bless you all.

So many other dear friends and associates—too numerous to name but whose journeys have brought them miles, years, and memories to be here today. Kauai High School classmates, classmates from Hunterdon Central High School, where I spend a defining year of my life as an exchange student in New Jersey; the men and women of the distinguished West Point Class of 1965, representatives from industry and the nonprofits who have done so much for the Army and soldiers, especially Frances Hesselbein of the Leader to Leader Institute, members of our superb, professional media—Joe Galloway, Thom Shanker, Dick Cooper, Dave Moniz, Greg Jaffe, Ann Roosevelt, Joe Burlas, and others—who have helped to tell our soldiers' stories, the international representatives of the attache corps, our wonderful Army Arlington Ladies, who represent the Chief of Staff at each and every Army funeral in Arlington to honor our soldiers when they are laid to rest, thank you.

Youngsters from my front office and the Quarters 1 staffs, John Gingrich and members of my staff group; my XOs, Joe Riojas and Tom Bostick; and Lil Cowell, the steady hand in the office of the CSA for four Chiefs, who quietly retired last week; CW5 Dan Logan; SGM Bruce Cline and Team CSA; SFC John Turk and the Admin Section; Major Pedro Almeida, the last in a series of world-class aides; Linda Jacobs and the heroes of protocol, all kept the office of the Chief well-represented through sheer hard work and dedication, making my life and Patty's most rewarding. Thank you all.

Teri and Karen Maude and the Brian Birdwells, survivors of 11 September 2001, among the many hurt and scarred that day; spouses of the generals who ran the ground war in Iraqi Freedom; Carmen McKiernan, Kimberly Webster, Dee Thurman, and Bea Christianson, thank you for coming today and for your generosity, grace, and courage. Other distinguished guests, ladies and gentlemen.

My name is Shinseki, and I am a soldier—an American soldier, who was born in the midst of World War II, began his service in Vietnam 37 years ago, and retires today in the midst of war in Afghanistan and Iraq. The strategic environment remains dangerous and we, in the military, serve our nation by providing the very best capabilities to restore order in a troubled world. Soldiering is an honorable profession, and I am privileged to have served every day for the past 38 years as a soldier.

The Good Book tells us, to everything there is a season and a time to every purpose. Today is a time for thank yous, and our purpose is to say farewell. As we speak, more than 370,000 soldiers are deployed and forward stationed in 120 countries. Their missions range from combat to peacekeeping to rebuilding nations to humanitarian assistance to disaster relief—and a host of other missions in between. And as busy as they are, there have been no dropped balls—none, on any mission. They are trained, disciplined, focused, and well-led. The soldiers arrayed before us represent the magnificence of that Army. Their parade formation stretches not only from left to right across this field, but also backwards in history to a time before the republic was formed. Precision counts in this profession, and no one does it any better than the Old Guard and Pershing's Own. Please join me in thanking the soldiers on parade today and on duty here, behind the stars and around the world.

Thanks also to former bosses, mentors, friends, and fellow soldiers who trained me as a soldier, and grew me as a leader—some of them are here today. General Fred Franks, who more than anyone else has been coach and mentor in all the years I served as a general officer. Generals Butch Saint, Ed Burba, Rich Cardillo, Tom Tait, who fought to keep me on active duty after a service-disqualifying injury, Dick Davis, Colonel Greynolds, my hospital bunkmate Bill Hale, and Sergeant Ernie Kingcade, noncommissioned officer, who, while under way by ship to Vietnam, provided me the only officer basic course I would receive before going into battle—and I could not have had a better education. Ernie, it has been a long journey, and the example you set has been with me for 38 years. Thanks for that early model of what noncommissioned officers were supposed to be. I have never expected less, and it has made all the difference.

To the men of '65—strength and drive. Thirty-Eight years since we stepped off together as soldiers. You have been role models, friends, associates, and fellow soldiers for these many years. Your notes in the days following 11 September and during the height of Iraqi Freedom were of great comfort—wonderful reminders of all that we had been through together. Thanks for standing my last formation with me. It's been my distinct honor to have been associated with you and with what we've accomplished as a class. Your presence is most appreciated.

To Patty, my wife of 38 years, you taught me the meaning of selflessness, of elegance, of courage, and of a bright spirit undiminished by time or adversity. You have seen me at my worst and stuck with me—and you've seen me at my best and chuckled in disbelief. Throughout it all, your patience, your balance, your encouragement, and your love and support have sustained me. You stood beside my hospital bed for days. Helped me learn to walk a second time, enabled me to regain confidence and a sense of direction, helped me reestablish a professional career, moved our children and our household 31 times, and always, always provided great strength when it was needed most. You could have been and done anything you chose; yet you chose to be a soldier's wife. The profound grace of that decision has blessed me immeasurably. Thank you for 38 wonderful years in a profession I loved nearly as much as you.

Lastly, I want to thank the men who have served in this position, those who saw the Army through some dark days following Vietnam. It was a daunting and enormous task, but they, with others who are present today, did it. They gave us back an NCO Corps, and they gave us back an Army that fights: Generals Creighton Abrams, Fred Weyand, Bernie Rogers, Shy Meyer, John Wickham, Carl Vuono, Gordon Sullivan, and Denny Reimer.

These leaders rose to their enormous task because they understood the important distinction between command and effective leadership. They taught us that command is about authority, about an appointment to position—a set of orders granting title. Effective leadership is different. It must be learned and practiced in order for it to rise to the level of art. It has to do with values internalized and the willingness to sacrifice or subordinate all other concerns—advancement, personal well-being, safety—for others. So these men of iron invested tremendous time, energy, and intellect in leader development—to ensure that those who are privileged to be selected for command approach their duties with a sense of reverence, trust, and the willingness to sacrifice all, if necessary, for those they lead. You must love those you lead before you can be an effective leader. You can certainly command without that sense of commitment, but you cannot lead without it; and without leadership, command is a hollow experience—a vacuum often filled with mistrust and arrogance.

Our mentors understood that mistrust and arrogance are antithetical to inspired and inspiring leadership, breeding discontent, fostering malcontents, and confusing intent within the force. And so our mentors worked to reestablish that most important of virtues in our army—trust—the foundation upon which we have built our reputation as an army. We owe them all a tremendous debt of gratitude for the magnificent Army we have today, and the legacy of trust and honor they sustained.

This week, we celebrate the Army's 228th birthday—228 years. The Army's long history is, in so many ways, also the history of our nation, a history including 10 wars and all the years of restless peace in between. In those years, soldiers have been both servant and savior to the nation. Today, our nation is once again at war. The current war brings me full circle to where I began my journey as a soldier—the lessons I learned in Vietnam are always with me. They involve changes in the way many of my generation learned to train, to lead, to fight, and to always offer our best military judgment to our superiors. These were hard-learned lessons. Lessons about loyalty, about taking care of the people who sacrifice the most for the good of the nation, about uncompromising readiness that is achieved only through tough, realistic training, about the necessity for inspired and inspiring leadership, about the agility and versatility demanded by a dynamic, strategic environment, and most importantly that the Army must do two things well each and every day—train soldiers and

grow them into leaders, leaders who can unequivocally and without hesitation answer the critical question asked of any war fighter. ''Can you fight? Can you fight?''

That question and those lessons are enduring ones for the profession of arms. Four years ago, with these lessons in mind, with the results of our comprehensive Army transition assessment in hand, and with our eyes always on the dynamic strategic environment, we decided to undertake fundamental and comprehensive change. Those initiatives informed the Army vision, a vision that consists of three imperatives. People. Readiness. Transformation.

Secretary Brownlee, thank you for so well capturing the Army's progress toward achieving that vision, a result of hard work by so many people. I'll only reinforce that transformation has never been about just one thing—the future combat system or the objective force—and the Army vision has never been about one person. The Army vision and transformation are about comprehensive change at the very heart of our institution, of our culture: doctrine, organization, training, leader development, materiel, and soldiers. This is the message we have consistently reiterated to all who are listening.

In these last months, the performance of soldiers and Army families has spoken loudly, clearly, and eloquently—since 11 September, we have been enormously successful operationally. In Afghanistan, as members of a combined, joint team, soldiers banished the Taliban and Al Qaeda in weeks. In Iraq, they fought with speed and agility to As-Samawah, An-Najaf, Al-Hillah, Karbala, and Baghdad, unseating a dictator, freeing an oppressed people, defeating a persistent enemy in spite of the harsh, unforgiving environment. Our soldiers demonstrated unprecedented agility and flexibility: JSOTF West—special operators fighting with armor and conventional artillery, JSOTF North—the 173rd ABN BDE—1,000 paratroopers make a night jump and fight alongside TF 1–63 Armor—1st ID, and TF 2–14 INF and a field artillery battery from the 10th Mountain; the 82nd ABN DIV Task organized with 2nd ACR(–), TF 1–41 (MECH) from Fort Riley, and a brigade of the 101st Air Assault Division; the 101st(–) fighting with TF 2–70 Armor of the 1st AD. With the greatest of agility, versatility, and courage, they fought to victory, demonstrating once again that all our magnificent moments as an Army are delivered by our people. They won the fights, and they are now facing and overcoming tremendous challenges to ensure the Afghan and Iraqi people have the opportunity to rebuild their societies and create governments characterized by democracy, prosperity, peace, and hope rather than barbarity, instability, and pervasive fear. Just as impressively, soldiers have simultaneously allowed our nation to fulfill commitments in other important regions—the Sinai, the Balkans, the Philippines, and Korea to name but a few. And had the situation in Korea gone hot, we'd have been there, too. With deeds, not words, they have unequivocally answered the question, ''Can you fight?'' They do not flinch. They do not waiver. Our Army fights and wins.

Those successes are enabled by our great young leaders—noncommissioned officers, lieutenants and captains, battalion and brigade commanders—who understand both what a privilege it is to lead soldiers, and the tremendous responsibility that accompanies that privilege. They love their units and the soldiers who fill them—that is the essence of leadership.

Leadership is essential in any profession, but effective leadership is paramount in the profession of arms—for those who wear the uniform and those who do not. We, in the Army, have been blessed with tremendous civilian leadership, most notably in the service of Secretary Tom White, who we farewelled last month. We understand that leadership is not an exclusive function of uniformed service. So when some suggest that we, in the Army, don't understand the importance of civilian control of the military, well, that's just not helpful. And it isn't true. The Army has always understood the primacy of civilian control. We reinforce that principle to those with whom we train all around the world. So to muddy the waters when important issues are at stake, issues of life and death, is a disservice to all of those in and out of uniform who serve and lead so well.

Our Army's soldiers and leaders have earned our country's highest admiration and our citizens' broad support. But even as we congratulate our soldiers when we welcome them home from battle, we must beware of the tendency some may have to draw the wrong conclusions, the wrong lessons from recent operations, remembering all the while that no lesson is learned until it changes behavior. We must always maintain our focus on readiness. We must ensure that the Army has the capabilities to match the strategic environment in which we operate, a force sized correctly to meet the strategy set forth in the documents that guide us—our national security and national military strategies. Beware the 12-division strategy for a 10-division army. Our soldiers and families bear the risk and the hardship of carrying a mission load that exceeds what force capabilities we can sustain, so we must alleviate risk and hardship by our willingness to resource the mission requirement. And we must remember that decisive victory often has less to do with the plan than it does with years invested in the training of soldiers and the growing of leaders. Our nation has seen war too many times to believe that victory on the battlefield is due primarily to the brilliance of a plan—as opposed to leadership, tactical and technical proficiency, sheer grit and determination of the men and women who do the fighting and the bleeding.

Throughout my career, it has been an honor to serve with leaders who understand and are committed to uphold those obligations and duties to soldiers. Today, we find that kind of dedicated and caring leadership at every level in our Army. We are an institution that lives our values. Loyalty. Duty. Respect. Selfless service. Honor. Integrity. Personal courage. Army values—the bedrock on which our institution is built.

Those values are demonstrated outside our ranks as well as within, shared by Army families, as well as soldiers. In these last months, at the toughest times of greatest sadness and hardship, I have again and again been reminded that Army families and spouses are the most generous people I know.

As I was on the first day of my tenure four years ago, I am humbled to stand here on my last day as the 34th Chief of Staff of the United States Army. I thank the President for his confidence and trust in allowing me the opportunity to serve the nation, and this Army that has been my family for 38 years. To soldiers past and present with whom I have served, you have my deep and abiding respect and my profound thanks.

There is a magnificent Army out there—full of pride, discipline, spirit, values, commitment, and passion. General Creighton Abrams reminded us that ''soldiering is an affair of the heart,'' and it's never been better to be a soldier. We are a magnificent Army, and the nation knows it, and honors our profession. Soldiers represent what's best about our Army and our nation. Noble by sacrifice, magnificent by performance, and respected by all, they make us better than we ever expected to be. And for 38 years now, soldiers have never allowed me to have a bad day.

My name is Shinseki, and I'm a soldier. God bless all of you and your families. God bless our soldiers and our magnificent Army, and God bless our great nation. Thank you, and goodbye.

SPEECH BY THE HONORABLE LES BROWNLEE, ACTING SECRETARY OF THE ARMY, AT THE RETIREMENT CEREMONY FOR GENERAL ERIC K. SHINSEKI AT FORT MYER, VA, ON JUNE 11, 2003

Welcome everyone, and thanks for joining the Army family for this special retirement ceremony in which we are honoring a great American soldier, General Ric Shinseki, and his wife, Patty.

Secretary and Mrs. Mineta, Senator Inouye, Senator Akaka, Senator Reed, Senator Cleland, Congressman Skelton, Congressman Lewis, Congressman Faleomavaega, Congressman Gene Taylor, Congressman Abercrombie, Congressman Charles Taylor, Congressman Frelinghuysen, and Congressman Reyes.

Secretary Gordon England, General Alexander Haig, former Secretary of the Army Togo West, General and Mrs. Barry McCaffrey, Secretary of the Air Force and Mrs. Roche, Jim and Diane, former Secretary of the Army and Mrs. White, Tom and Susan.

The members of our Joint Chiefs of Staff, beginning with our Chairman, General Dick Meyers, and his wife, Mary Jo; the wife of our Vice Chairman, Mrs. Lynne Pace; Chief of Naval Operations, Admiral Vern Clark, and Mrs. Clark; Commandant of the Marine Corps, General Mike Hagee, and Mrs. Hagee; the Commandant of the Coast Guard, Admiral Thomas Collins, and Mrs. Collins; our distinguished former Chiefs of Staff, General Vuono, General Sullivan, and General Reimer; the Vice Chief of Staff, General Jack Keane, and his wife Terry.

Our distinguished counterpart Chiefs of Staff from Canada, Germany, Croatia, Poland, and Russia. And our great Sergeant Major of the Army, the master of the one-armed pushup, Jack Tilley, and his wife, Gloria.

Senior Army leaders from the Secretariat and the Army Staff, our civilian aides to the Secretary of the Army, other distinguished general officers. Three generations of the Shinseki family. Soldiers, family members, and friends of the Army.

Welcome.

To Colonel Laufenberg and the Old Guard, and to Colonel Lamb and the Army Band, ''Pershing's Own,'' you are tremendous representatives of all of our soldiers defending freedom around the globe.

Thank you for your professionalism, and your willingness to serve your country. Let's give them a round of applause.

It has been my distinct privilege to serve with and around Ric Shinseki for the last four decades—from the jungles of Vietnam, through the Cold War, on Capitol Hill, and more recently, in the halls of the Pentagon.

In all of those environments, he has epitomized the quiet professional. And, being the genuinely humble and modest man that he is, Ric Shinseki will never take personal credit for the enormous impact that he has had on our Army.

In organizing these comments for today, I thought back to remarks General Shinseki made in July 2000 at the Hall of Heroes induction ceremony for 22 Medal of Honor recipients of Asian and Pacific Island heritage. He said then:

''Whenever I attend a function of one of these units . . . I am always struck by this

same kind of reticence, this unwillingness ever to bring attention upon oneself. In fact, it usually takes a friend to tell the story of another friend, which is why sometimes even family members of those veterans have never heard those stories. They are unaware of the fact that someone they've known only as a father or husband or uncle or a brother is, to many others, a hero of magnificent proportions.''

Well, I think he has summed up how all of us feel about Ric Shinseki. He is that quiet warrior, reluctant to speak for himself, always deflecting the spotlight to those around him and, most importantly, to the soldiers he has served so well and so faithfully.

General Shinseki has always said that the Army vision cannot be linked to one man, that it must be embraced by the entire Army.

But on this day of his retirement after 38 years of faithful and honorable service, it is fitting that we recognize his personal contributions to our nation and our Army.

Ric Shinseki saw a need to transform the Army and he had the courage, perseverance and intelligence to make it happen.

When war came, as he knew and predicted it would, he ensured that our great soldiers could fight—and that they had what they needed to guarantee victory for our nation.

Simply stated, the Chief looked to the future, and conceived a vision for what our Army must be able to do to protect our nation in the 21st century.

He translated that vision into an ambitious, yet doable, plan of action—revolving around people, readiness, and transformation.

He went out and got the resources and implemented his plan with tremendous intellect, courage, and sheer force of will, irrevocably changing our Army for the better.

All of this took tremendous courage on the Chief's part, at a time when the word ''transformation'' was relatively unknown.

There are some leaders who might have been able to accomplish one or maybe two of the above, but I know of no one else who could have accomplished it all.

While his strategic leadership skills were essential to the Army's successes, equally important have been the Chief's strength of character and love of our soldiers.

Many of you already know the story of the formative years of General Ric Shinseki's life.

He was born during World War II, when many Americans of Japanese ancestry were interned and labeled ''enemy aliens,'' even as their young men etched a legacy of heroism that remains unrivaled in the annuals of our Army's history.

He grew up among these heroes, indeed was appointed to West Point by one of the 442nd Regimental Combat Team's Medal of Honor recipients, Senator Daniel Inouye, who we are honored to have with us here today.

After graduation from the academy in 1965, Ric served twice in Vietnam, both times seriously wounded. His second wound was so severe, and his recovery so difficult, that the doctors wanted to put him out of the military.

He could have easily accepted the honor and accolades justly due a wounded warrior forced from service before his time, but he did not.

His love of soldiers—soldiers who had carried him out of combat on their backs—twice—and his love of our Army—was so deep that he persevered.

The iron will and depth of character that the Chief developed through the long, painful months of recovery steeled an already proven warrior. His willingness to fight on behalf of the Army has had as much to do with our Army's accomplishments as his skills as a strategic leader.

As we all know, transformation has grabbed many headlines, but the Chief's contributions to the warfighting readiness of the entire Army set the conditions for the successes our soldiers have delivered in Afghanistan and Iraq and elsewhere around the globe.

As he said in 1999, he didn't know when or where it would occur, but he knew the Army would fight during his tenure as the Chief. This motivated his focus on preparing for that moment. Nothing escaped his scrutiny, from filling combat units to 100-percent ensuring we had sufficient spare tank engines. The victories in Kabul and Baghdad were accomplished by our soldiers, but those soldiers were supported by an institution that had been keenly focused by the Chief on preparing them for battle. And one thing is certain: No army in history was equal to the Army that this Chief of Staff prepared for battle in Iraq. No Army was ever better equipped, trained, or motivated. All of us are proud of that Army, and about what they accomplished, and continue to accomplish today.

But, Ric, you will always enjoy a special pride—because this was truly your Army—molded and sculpted as a reflection of your leadership and your character.

As an Army, we also owe an enormous debt of gratitude to Patty Shinseki, who epitomizes all that is good and wonderful about Army spouses. Her genuine concern for others, her energy, and her grace under fire are remarkable.

She has known the fear of a wife whose husband goes to combat and returns wounded—twice.

She has moved over 30 times in 38 years, raised a wonderful family in the process, and has served as the senior leadership's greatest ambassador to Army families and so many other constituencies.

Patty and Ric Shinseki are a remarkable team. When Ric set his sights on improving the well-being of our Army, Patty turned a laser-like focus on these issues. The result was: spouse orientation and leadership programs, Army Family Team Building, and the Army Spouse Employment Summit, to name but a few.

In an Army in which over half of our soldiers are married, these measures enable us to retain soldiers and their families despite the many sacrifices they make on behalf of the nation.

Patty, thank you so much for all you have done for our soldiers, their families, for our communities, and the Army. We will deeply miss you.

Once again, I'd like to paraphrase from General Shinseki's own words: ''It has been said, 'Poor is the nation that has no heroes, but beggared is the nation that has and forgets them.' The man we honor today answered his nation's call to duty, and in doing so, honored his heritage and his country.''

In short, he is a soldier.

Ric, thank you for a lifetime of service and sacrifice, for your vision, your courage, your steadfastness, and for all you have done for our soldiers who are the Army. We will be forever in your debt.

May God always bless you and Patty and your family, our magnificent soldiers, our Army and this great nation. Thank you.

ADDITIONAL STATEMENTS

FOSTER'S DAILY DEMOCRAT

● Mr. SUNUNU. Mr. President, I rise today on the 130th anniversary of the first printing of New Hampshire's Foster's Daily Democrat to highlight the outstanding contribution that this family-owned newspaper has made to residents of the Granite State.

On June 18, 1873, Joshua L. Foster printed the paper's premiere edition in Dover, NH, using the motto: ''We shall devote these columns mainly to the material and vital interests of Dover and vicinity. Whatever may tend to benefit this people and enhance their prosperity, will receive our warm and enthusiastic support.''

Since that day, the paper's pages have remained under direct ownership of the Foster family, whose members have diligently guided it to today's milestone in publishing history.

Today, under the direction of Robert and Therese Foster, the paper's motto holds true, its staff continuing to bring readers—more than 30,000 per day—the most accurate and detailed local news, sports, and commentary.

Such an effort takes teamwork, which has existed through more than a century of local news production. Readers have known they could turn to the columns of this paper for the information they wanted, whether it be a birth announcement, a wedding notice, a school board vote, the Little League team photo, or the school bus route.

And, always an organization to stay ahead of the curve, Foster's has moved its pages online, taking the time to provide some of the most up-to-date news and information available in New Hampshire.

I have no doubt that Foster's will continue to demonstrate the positive results of working hard every day toward a common goal. It is a New Hampshire tradition, and one that deserves our recognition today.●

TRIBUTE TO DR. RALPH NURNBERGER

● Mr. MCCAIN. Madam President, I am honored today to pay tribute to a truly remarkable American, Dr. Ralph Nurnberger. As some of my colleagues may already know, Dr. Nurnberger was recently presented with the 2003 Excellence in Teaching Faculty Award from Georgetown University. I can think of no one more deserving of this award than Ralph Nurnberger. I have known Ralph for many years and I have long admired his dedication to Georgetown's students and his fellow faculty members. Anyone who has the privilege of knowing this fine man will agree that Georgetown University continues to be held in such high esteem because of professors like Ralph Nurnberger. He is a good friend and I extend my most sincere congratulations.

I ask unanimous consent that the text of the citation honoring Dr. Nurnberger be printed in the RECORD.

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

EXCELLENCE IN TEACHING FACULTY AWARD,
GEORGETOWN UNIVERSITY, MAY 17, 2003

In 1977, just three years after the Liberal Studies Program started and two years after

receiving his Ph.D. in Diplomatic History at Georgetown University, Ralph Nurnberger began teaching in the Liberal Studies Degree Program. Over more than two decades he has taught courses in the Liberal Studies Program that focused on American foreign relations, the American national character and international relations, ideals and American foreign policy, Congressional relations and American foreign policy. Most recently he has been teaching a course on the aftermath of 9/11, considering the domestic and international aftermath for the United States.

Dr. Nurnberger's teaching has been accomplished with extensive experience in the field of domestic and international affairs and their interaction. His Capitol Hill experience included serving as foreign policy legislative assistant to Senator James Person (R-Kansas) and as a professional staff member of the Senate Foreign Relations Committee. He has been a senior Fellow and director of Congressional Relations for the Center for Strategic and International Studies (CSIS). He spent over eight years as a lobbyist for the American Israel Public Affairs Committee (AIPAC). In the wake of the Rabin-Arafat signing of the Oslo Accords he was appointed the Executive Director of an organization, ''Builders for Peace,'' set up with the guidance of then Vice-President Al Gore to help the Arab-Israeli peace process. His current position is that of Counsel with Preston Gates Ellis and Rouvelas Meeds law and lobbying firm and he also heads a government relations firm, Nurnberger and Associates, While teaching and filling these positions he has published extensively in major newspapers and journals. His most recent book deals with lobbying in America; his others have dealt with foreign policy and the political process.

Student evaluations applaud the examples and insights he can offer from real life experiences which are tempered and refined by his intellectual understanding and historical perspective. Students are particularly impressed with Dr. Nurnberger's ability to decipher complicated and contentious issues and make them understandable. His courses are engaging and insightful. In addition, students value the skillful balance he offers on these subjects, which in turn leads to thoughtful conversation and debate in class. He has become an example for the students in how to conduct civil discourse regardless of the intensity of emotion generated by a subject or the individual's own principles and convictions.

Over the years Ralph Nurnberger has patiently and meticulously directed numerous student theses, often against great odds but with sincere concern and unforgiving academic precision. When extraordinary demands were made on his time and attention his steady, generous commitment to the student's project made successful completion possible.

Today, we honor Ralph Nurnberger for his academic excellence which he transmits to and requires from his students; for his intellectual integrity whatever the issue; for his generous guidance of students' research; for his loyalty and enthusiasm for teaching Liberal Studies students these many years; for his ability to make sense of a so often chaotic world and America's role in that world. We are please to present him with the Excellence in Teaching Faculty Award for the year 2003.●

FATHER WILLIAM SHERMAN

● Mr. DORGAN. Madam President, for almost a half century a Catholic priest in North Dakota has lived a remarkable double life. In one guise, Father Bill Sherman is a holy man, the kind of warm and perfect parish priest who would have once been played by Spencer Tracy. But in his other role, he is the talented scholar and painstakingly diligent chronicler who, like no other authority, commands the ethnic history of North Dakota.

Because Father Sherman is retiring this month from the religious vineyards, I want to take note of his remarkable alter ego—that of the State's most eminent ethnic historian.

He has been a key player over the last 20 years in producing four impressive volumes on the subject—''Plain Folks: North Dakota's Ethnic History,'' ''Prairie Mosaic: An Ethnic Atlas of Rural North Dakota,'' ''African Americans in North Dakota,'' and the most recent book, ''Prairie Peddlers: Syrian-Lebanese in North Dakota,'' which is now coming off the presses. In addition, he was also one of the authors of ''Scattered Steeples, The Fargo Diocese, A Written Celebration of Its Centennial.''

His volumes on the State's ethnic heritage are extraordinary works—painstakingly researched, rich with thoughtful analysis, brightly written, and handsomely designed. They are works of careful scholarship of a high order and a real treasure for anyone intrigued with the marvelous ethnic diversity of America.

Born in Detroit in 1927, Father Sherman grew up in North Carolina and Oregon before his family moved to Lidgerwood, ND. After high school, he joined the Army, serving in the Philippines and Japan at the end of World War II. He graduated from St. John's University in Collegeville, MN, got a bachelor's degree from North Dakota State University and a master's degree from the University of North Dakota and became a priest in 1955.

He has served the parishes of the Cathedral of St. Mary in Fargo from 1955 to 1962, the Newman Center at the University of North Dakota from 1962 to 1964, St. Raphael's in Verona from 1964 to 1965, the Newman Center at NDSU from 1965 to 1975, St. Patrick's in Enderlin from 1975 to 1976 and finally the diocese's largest parish, the 5,000-member strong St. Michael's of Grand Forks for 27 years.

At UND, he taught religion and, at NDSU, where he is now professor emeritus, he taught sociology of religion and sociology of the Great Plains. He has received numerous awards, most recently an honorary doctorate of leadership degree from the University of Maryland.

In a profile of Father Sherman this month, the Grand Forks Herald said, ''Sherman's style, of being a sometimes gruff, no-nonsense defender of old-fashioned, blue-collar Catholicism, while being genial good company to anyone, and wearing his academic accomplishments lightly, attracted many to the parish. It's difficult, if not impossible, to find a discouraging word said about Sherman, a fairly remarkable fact about any member of the clergy who stays in one spot a long time.''

And a few days later, the editor of the newspaper called Father Sherman ''a remarkable man—a priest first and foremost, a man of old-fashioned faith, but also a scholar, a witty conversationalist, a polished orator, an able administrator, a distinguished patriot, a community builder, a cool head in a crisis, a giver and an excellent friend to many thousands of people both within and outside his church.''

Father Sherman is also a survivor. During the disastrous Red River flood of 1997, one of the worst to ever strike an American community, his parish was completed flooded and his church, school and rectory suffered heavy damage. Among the most painful losses was Father Sherman's collection of North Dakota history, a singular treasury of volumes on the State's heritage. But the indomitable cleric is now busy rebuilding that library and at work writing several more books, one on the transfer of Eastern European architecture to the Great Plains at the time of settlement and a second on another remarkable North Dakota priest who served during World War II with the Polish resistance.

It is clear that retirement to Father Sherman means something different than it does to the rest of us. Not only will he still minister on a part-time basis to Roman Catholics, but he will continue to energetically research and write about intriguing aspects of North Dakota's ethic legacy.

Although he has already provided a valuable and outstanding body of work on ethnic heritage, North Dakotans are grateful for his continued interest in the field. He is a scholar of the first order, a priest of the classic and finest model, and an exemplary citizen indeed.●

HONORING DONOVAN RILEY CLARKSON

● Mr. BUNNING. Madam President, I have the privilege and honor of rising today to recognize Mr. Donovan Riley Clarkson of Paducah, KY. Donovan was recently recognized for his accomplishments in dance.

This 10-year-old gentleman copes daily with the effects of central auditory processing disorder. In a person who suffers from this disorder, information is not correctly processed from the ear to the brain. This makes daily activities, from hearing conversations to hand-eye coordination, difficult to complete. Nevertheless, Donovan has not allowed this disorder to interfere with his dreams and accomplishments.

Donovan performs with a dance troupe at the Beverly Rogers Dance Academy. His family enrolled him in dance four years ago after a medical professional suggested that the movement could help his condition. Everyday after school, Donovan practices the assigned dance routine. He must practice twice as hard as his teammates in

order to execute these moves. This dedication paid off; he earned a spot on a local dance troupe. In fact, Donovan is the youngest member of this group. His big smile and smooth dance moves helped the group place first in many regional competitions and earn an almost perfect score, securing the troupe a spot in the national Odyssey Dance Competition held in Lakeside, FL.

Currently, Donovan attends the fourth grade at Reidland Elementary School in Paducah. His favorite subject is reading, which other individuals with his condition find difficult. In his free time, Donovan enjoys constructing toy models and Lego figures. However, spending time with his brother and sister is always on the top of his list.

What sets Donovan apart from other children is not his disorder or his remarkable dance skills, but his determination. He has overcome every single obstacle placed before him, making his life a testament to hard work. Please join me in congratulating Mr. Donovan Riley Clarkson and wishing him the best of luck.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 10:54 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House of Representatives to the bill (S. 342) to amend the Child Abuse Prevention and Treatment Act to make improvements to and reauthorize programs under that Act, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 43. Concurrent resolution expressing the sense of Congress that Congress should participate in and support activities to provide decent homes for the people of the United States.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 658. An act to provide for the protection of investors, increase confidence in the capital markets system, and fully implement the Sarbanes-Oxley Act of 2002 by streamlining the hiring process for certain employment positions in the Securities and Exchange Commission.

MEASURE REFERRED

The following concurrent resolution, previously received from the House of Representatives of concurrence, was referred as indicated:

H. Con. Res. 220. A concurrent resolution commending Medgar Wiley Evers and his widow, Myrlie Evers-Williams, for their lives and accomplishments; to the Committee on the Judiciary.

MEASURE HELD AT THE DESK

The following bill was ordered held at the desk by unanimous consent:

S. 1276. A bill to improve the manner in which the Corporation for National and Community Service approves, and records obligations relating to, national service positions.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–2797. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, a report entitled ''Assessment of Biofuels as an Alternative to Conventional Fossil Fuels''; to the Committee on Environment and Public Works.

EC–2798. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, a report entitled ''Assessment of Emissions Data and State Permit Information Available for Burning Biofuels (e.g., Animal Fats and Reclaimed Greases and Oils)''; to the Committee on Environment and Public Works.

EC–2799. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, a report entitled ''Headquarters Review of Site-Specific Risk Assessment Decisions for Hazardous Waste Combustors''; to the Committee on Environment and Public Works.

EC–2800. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, a report entitled ''Methyl Ethyl Ketone: Proposed Rule to Removal from Regulation as a Toxic Air Pollutant: Fact Sheet''; to the Committee on Environment and Public Works.

EC–2801. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, a report entitled ''Use of the Site-Specific Risk Assessment Policy and Guidance for Hazardous Waste''; to the Committee on Environment and Public Works.

EC–2802. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the OMB Cost Estimate for Pay-As-You-Go Calculations for Public Law 108–18; to the Committee on the Budget.

EC–2803. A communication from the Chairman of the United States International Trade Commission, transmitting, pursuant to law, a report on the U.S.-Singapore Free Trade Agreement—Potential Economywide and Selected Sectoral Effects; to the Committee on Finance.

EC–2804. A communication from the Chairman of the United States International Trade Commission, transmitting, pursuant to law, a report on the U.S.-Chile Free Trade Agreement—Potential Economywide and Selected Sectoral Effects; to the Committee on Finance.

EC–2805. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program: Change in the Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) under the Acute Care Hospital Inpatient and Long-Term Care Hospital Prospective Payment Systems'' (RIN0938–AM41) received on June 9, 2003; to the Committee on Finance.

EC–2806. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Temporary Regulation Regarding Disclosures of Tax Information to Agriculture'' (TD 9060) received on June 5, 2003; to the Committee on Finance.

EC–2807. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Weighted Average Interest Rate Update Notice'' (Notice 2003–30) received on June 5, 2003; to the Committee on Finance.

EC–2808. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Bond Mediation Pilot Program'' (Ann. 2003–36) received on June 5, 2003; to the Committee on Finance.

EC–2809. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''IRC 512(a)(3) and 45B—Unrelated Business Taxable Income and the IRC 45B Credit'' (Rev. Rul. 2003–64) received on June 5, 2003; to the Committee on Finance.

EC–2810. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''LMSB Fast Track Settlement Procedure'' (Rev. Proc. 2003–40) received on June 5, 2003; to the Committee on Finance.

EC–2811. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''SBSE Fast Track Mediation Procedure'' (Rev. Proc. 2003–41) received on June 5, 2003; to the Committee on Finance.

EC–2812. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Salary Reduction of Retirement Benefits'' (Rev. Rul. 2003–62) received on June 5, 2003; to the Committee on Finance.

EC–2813. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Determination of Interest Rate'' (Rev. Rul. 2003–63) received on June 5, 2003; to the Committee on Finance.

EC–2814. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Automatic Extension of Time to File Certain Information Returns and Exempt Organization Returns'' (RIN1545–BB55: TD9061) received on June 5, 2003; to the Committee on Finance.

EC–2815. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Frozen Plan Vesting'' (Rev. Rul. 2003–65) received on June 5, 2003; to the Committee on Finance.

EC–2816. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Coordination of Sections 755 and 1060; Allocation of Basis Adjustments Among Partnership Assets and Application of the Residual Method to Certain Partnership Transactions'' (RIN1545–AX18: TD9059) received on June 5, 2003; to the Committee on Finance.

EC–2817. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Update of Rev. Proc. 2002–47—Employee Plans Compliance Resolution System'' (Rev. Proc. 2003–44) received on June 5, 2003; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works:

Report to accompany S. 163, a bill to reauthorize the United States Institute for Environmental Conflict Resolution, and for other purposes (Rept. No. 108–74).

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 285. A bill to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, and for other purposes (Rept. No. 108–75).

By Mr. CAMPBELL, from the Committee on Indian Affairs, without amendment:

S. 558. A bill to elevate the position of Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretary for Indian Health, and for other purposes (Rept. No. 108–76).

By Mr. HATCH, from the Committee on the Judiciary, with amendments:

S. 1023. A bill to increase the annual salaries of justices and judges of the United States.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. COCHRAN for the Committee on Agriculture, Nutrition, and Forestry.

*Thomas C. Dorr, of Iowa, to be Under Secretary of Agriculture for Rural Development.

*Thomas C. Dorr, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation, vice Jill L. Long, resigned.

By Mr. WARNER for the Committee on Armed Services.

Army nomination of Lt. Gen. William S. Wallace.

Navy nomination of Adm. Edmund P. Giambastiani, Jr.

By Mr. ROBERTS for the Select Committee on Intelligence.

*Frank Libutti, of New York, to be Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BOND (for himself, Ms. MIKULSKI, Mr. SPECTER, Ms. COLLINS, Mr. ALEXANDER, Mr. SANTORUM, Mr. KENNEDY, Ms. SNOWE, Mr. BAUCUS, Mr. SARBANES, Mr. NELSON of Nebraska, Mr. BREAUX, Mrs. CLINTON, and Mr. BAYH):

S. 1276. A bill to improve the manner in which the Corporation for National and Community Service approves, and records obligations relating to, national service positions; considered and passed.

By Mr. BIDEN (for himself, Mr. MCCONNELL, Mr. BUNNING, and Mr. GRAHAM of South Carolina):

S. 1277. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement discipline, accountability, and due process laws; to the Committee on the Judiciary.

By Mr. WYDEN (for himself, Mr. SMITH, Mr. ROCKEFELLER, and Mr. BREAUX):

S. 1278. A bill to amend the Public Health Service Act to provide for a public response to the public health crisis of pain, and for other puposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. VOINOVICH (for himself, Mrs. CLINTON, Mr. DEWINE, and Mr. SCHUMER):

S. 1279. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster area; to the Committee on Environment and Public Works.

By Mr. HATCH (for himself and Mr. BIDEN):

S. 1280. A bill to amend the Protect Act to clarify certain volunteer liability; to the Committee on the Judiciary.

By Mr. GRAHAM of Florida:

S. 1281. A bill to amend title 38, United States Code, to presume additional diseases of former prisoners of war to be service-connected for compensation purposes, to enhance the Dose Reconstruction Program of the Department of Defense, to enhance and fund certain other epidemiological studies, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. GRAHAM of Florida (for himself, Mr. NELSON of Florida, and Mr. SESSIONS):

S. 1282. A bill to require the Secretary of Veterans Affairs to establish national cemeteries for geographically underserved populations of veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. GRAHAM of Florida:

S. 1283. A bill to require advance notification of Congress regarding any action proposed to be taken by the Secretary of Veterans Affairs in the implementation of the Capital Asset Realignment for Enhanced Services initiative of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

By Mrs. CLINTON:

S. 1284. A bill to provide for the establishment of the Kosovar-American Enterprise Fund to promote small business and microcredit lending and housing construction and reconstruction for Kosova; to the Committee on Foreign Relations.

By Mr. CARPER:

S. 1285. A bill to reform the postal laws of the United States; to the Committee on Governmental Affairs.

By Mr. LEAHY (for himself, Mr. DASCHLE, Mr. KENNEDY, Mr. FEINGOLD, and Mr. BINGAMAN):

S. 1286. A bill to combat nursing home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, and for other purposes; to the Committee on the Judiciary.

By Mr. DOMENICI:

S. 1287. A bill to amend section 502(a)(5) of the Higher Education Act of 1965 regarding the definition of a Hispanic-serving institution; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CHAMBLISS (for himself and Mr. MILLER):

S. 1288. A bill to amend title XVIII of the Social Security Act to exclude brachytherapy devices from the prospective payment system for outpatient hospital services under the medicare program ; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. HATCH:

S. Res. 174. A resolution designating Thursday, November 20, 2003, as ''Feed America Thursday''; to the Committee on the Judiciary.

By Mr. HATCH:

S. Res. 175. A resolution designating the month of October 2003, as ''Family History Month''; to the Committee on the Judiciary .

ADDITIONAL COSPONSORS

S. 13

At the request of Mr. KYL, the names of the Senator from Oregon (Mr. SMITH) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. 13, a bill to provide financial security to family farm and small business owners by ending the unfair practice of taxing someone at death.

S. 76

At the request of Mr. DASCHLE, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 76, a bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

S. 171

At the request of Mr. DAYTON, the name of the Senator from Georgia (Mr.

CHAMBLISS) was added as a cosponsor of S. 171, a bill to amend the title XVIII of the Social Security Act to provide payment to medicare ambulance suppliers of the full costs of providing such services, and for other purposes.

S. 189

At the request of Mr. WYDEN, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 189, a bill to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

S. 249

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 249, a bill to amend title 38, United States Code, to provide that remarriage of the surviving spouse of a deceased veteran after age 55 shall not result in termination of dependency and indemnity compensation otherwise payable to that surviving spouse.

S. 251

At the request of Mr. LOTT, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 251, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 300

At the request of Mr. KERRY, the names of the Senator from Nebraska (Mr. NELSON), the Senator from Louisiana (Mr. BREAUX), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Minnesota (Mr. DAYTON) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 316

At the request of Mr. CORZINE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 316, a bill to amend part A of title IV of the Social Security Act to include efforts to address barriers to employment as a work activity under the temporary assistance to needy families program, and for other purposes.

S. 333

At the request of Mr. BREAUX, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 333, a bill to promote elder justice, and for other purposes.

S. 480

At the request of Mr. HARKIN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 480, a bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 518

At the request of Ms. COLLINS, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 518, a bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy.

S. 557

At the request of Ms. COLLINS, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 557, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 595

At the request of Mr. HATCH, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 595, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financings to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 623

At the request of Mr. WARNER, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 623, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 659

At the request of Mr. CRAIG, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 659, a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

S. 678

At the request of Mr. AKAKA, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 678, a bill to amend chapter 10 of title 39, United States Code, to include postmasters and postmasters organizations in the process for the development and planning of certain policies, schedules, and programs, and for other purposes.

S. 877

At the request of Mr. BURNS, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 877, a bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

S. 882

At the request of Mr. BAUCUS, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 882, a bill to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safe-guards, and for other purposes.

S. 893

At the request of Mr. SANTORUM, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 893, a bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

S. 939

At the request of Mr. HAGEL, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 939, a bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part, to provide an exception to the local maintenance of effort requirements, and for other purposes.

S. 979

At the request of Mr. ENSIGN, the name of the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of S. 979, a bill to direct the Securities and Exchange Commission to require enhanced disclosures of employee stock options, to require a study on the economic impact of broad-based employee stock option plans, and for other purposes.

S. 982

At the request of Mr. SANTORUM, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 982

At the request of Mrs. BOXER, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 982, supra.

S. 983

At the request of Mr. CHAFEE, the names of the Senator from New Hampshire (Mr. SUNUNU), the Senator from Massachusetts (Mr. KERRY) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 983, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 985

At the request of Mr. DODD, the name of the Senator from Arizona (Mr.

MCCAIN) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1046

At the request of Mr. HOLLINGS, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1046, a bill to amend the Communications Act of 1934 to preserve localism, to foster and promote the diversity of television programming, to foster and promote competition, and to prevent excessive concentration of ownership of the nation's television broadcast stations.

S. 1052

At the request of Mr. NELSON of Florida, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1052, a bill to ensure that recipients of unsolicited bulk commercial electronic mail can identify the sender of such electronic mail, and for other purposes.

S. 1091

At the request of Mr. DURBIN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1091, a bill to provide funding for student loan repayment for public attorneys.

S. 1115

At the request of Mrs. MURRAY, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 1115, a bill to amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products.

S. 1180

At the request of Mr. SANTORUM, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1180, a bill to amend the Internal Revenue Code of 1986 to modify the work opportunity credit and the welfare-to-work credit.

S. 1181

At the request of Mr. CORZINE, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1181, a bill to promote youth financial education.

S. 1201

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 1201, a bill to promote healthy lifestyles and prevent unhealthy, risky behaviors among teenage youth.

S. 1233

At the request of Ms. MIKULSKI, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1233, a bill to authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center.

S. 1237

At the request of Mr. BENNETT, the names of the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of S. 1237, a bill to amend the Rehabilitation Act of 1973 to provide for more equitable allotment of funds to States for centers for independent living.

S. 1248

At the request of Mr. GREGG, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1248, a bill to reauthorize the Individuals with Disabilities Education Act, and for other purposes.

S. 1273

At the request of Mr. KENNEDY, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1273, a bill to provide for a study to ensure that students are not adversely affected by changes to the needs analysis tables, and to require the Secretary of Education to consult with the Advisory Committee on Student Financial Assistance regarding such changes.

S. CON. RES. 27

At the request of Mr. BOND, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. Con. Res. 27, a concurrent resolution urging the President to request the United States International Trade Commission to take certain actions with respect to the temporary safeguards on imports of certain steel products, and for other purposes.

S. CON. RES. 45

At the request of Ms. LANDRIEU, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Con. Res. 45, a concurrent resolution expressing appreciation to the Government of Kuwait for the medical assistance it provided to Ali Ismaeel Abbas and other children of Iraq and for the additional humanitarian aid provided by the Government and people of Kuwait, and for other purposes.

S. CON. RES. 52

At the request of Mr. HARKIN, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. Con. Res. 52, a concurrent resolution expressing the sense of Congress that the United States Government should support the human rights and dignity of all persons with disabilities by pledging support for the drafting and working toward the adoption of a thematic convention on the human rights and dignity of persons with disabilities by the United Nations General Assembly to augment the existing United Nations human rights system, and for other purposes.

S. RES. 151

At the request of Mr. WYDEN, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. Res. 151, a resolution eliminating secret Senate holds.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BIDEN (for himself, Mr. MCCONNELL, Mr. BUNNING, and Mr. GRAHAM of South Carolina):

S. 1277. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement discipline, accountability, and due process laws; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise to introduce the Law Enforcement Discipline, Accountability, and Due Process Act of 2003, along with the Chairman of the Judiciary Subcommittee on Crime, Corrections and Victims' Rights Senator GRAHAM, Senator MCCONNELL and Senator BUNNING.

These are trying times for the men and women on our front lines providing domestic security, our Nation's law enforcement personnel. State and local fiscal problems are forcing many communities to cut their police budgets. Each change in the Nation's homeland security alert level results in increased overtime and other costs for local law enforcement. Just yesterday, the FBI reported that the number of murders and rapes was up across the country in 2002. And this Administration is determined to dramatically scale back Federal crime-fighting initiatives like the COPS program, a proven initiative that has been hailed as one of the keys to the crime-drop of the nineties.

At the same time, the men and women of law enforcement work in extremely dangerous environments. An average of 165 police officers are killed in the line of duty every year. And at times, internal police investigations and administrative hearings do not provide officers with basic protections. According to the National Association of Police Organizations, ''[i]n roughly half of the states in this country, officers enjoy some legal protections against false accusations and abusive conduct, but hundreds of thousands of officers have very limited due process rights and confront limitations on their exercise of other rights, such as the right to engage in political activities.'' The Fraternal Order of Police notes that, ''[i]n a startling number of jurisdictions throughout this country, law enforcement officers have no procedural or administrative protections whatsoever; in fact, they can be, and frequently are, summarily dismissed from their jobs without explanation. Officers who lose their careers due to administrative or political expediency almost always find it impossible to find new employment in public safety. An officer's reputation, once tarnished by accusation, is almost impossible to restore.''

This legislation we introduce today seeks to provide officers with certain basic protections in those jurisdictions where such workplace protections are not currently provided. This bill allows law enforcement officials to engage in political activities. It provides standards and procedures to guide State and local law enforcement agencies during internal investigations, interrogations, and administrative disciplinary hearings of law enforcement officers, and it calls upon States to develop and enforce these disciplinary procedures. The bill would preempt State laws which confer fewer rights than those provided for in the legislation, but it would not preempt any State or local laws that confer rights or protections that are equal to or exceed the rights and protections afforded in the bill. My own State of Delaware has its own law enforcement officers' bill of rights, and as such Delaware would not be impacted by the provisions of this bill. I am pleased that the bill has earned the endorsement of the Fraternal Order of Police and of the National Association of Police Organizations.

Beyond benefiting those on the front lines of local law enforcement, this bill would enhance the ability of our citizens to hold their local police accountable if they do transgress while on the job. The legislation includes provisions that will ensure citizen complaints against police officers are investigated, and that citizens are informed of the outcome of these investigations. The bill balances the rights of police officers with the rights of citizens to raise valid concerns about the conduct of some of these officers. In addition, I have consulted with constitutional experts who have opined that the bill is consistent with Congress' powers under the Commerce Clause and that it does not run afoul of the Supreme Court's Tenth Amendment jurisprudence.

While I believe that the bill we introduce today takes the right approach, I want to note the International Association of Chiefs of Police's opposition to this measure. In April of this year I met with Richmond, California Chief of Police Joseph Samuels, the president of the IACP. Chief Samuels and I acknowledged that we disagreed on this bill, but I pledged to him that their concerns would be heard and taken into consideration as the bill we introduce today is debated in Congress. It is my view that without a meeting of the minds between police management and union officials on this issue, enactment of a meaningful law enforcement officers' bill of rights will be difficult. It is my hope that the newly-constituted Subcommittee on Crime, Corrections and Victims' Rights, on which I serve as ranking member, will hold a hearing on this measure. That subcommittee is the proper forum in which to debate the merits of our approach to guaranteeing basic procedural safeguards to the men and women of law enforcement.

I urge my colleagues to join Senators GRAHAM, MCCONNELL, BUNNING and me in providing all of the Nation's law enforcement officers with the basic rights they deserve.

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. 1277

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 ''State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2003''.

SEC. 2. FINDINGS AND DECLARATION OF PURPOSE AND POLICY.

(a) FINDINGS.—Congress finds that—

(1) the rights of law enforcement officers to engage in political activity or to refrain from engaging in political activity, except when on duty, or to run as candidates for public office, unless such service is found to be in conflict with their service as officers, are activities protected by the first amendment of the United States Constitution, as applied to the States through the 14th amendment of the United States Constitution, but these rights are often violated by the management of State and local law enforcement agencies;

(2) a significant lack of due process rights of law enforcement officers during internal investigations and disciplinary proceedings has resulted in a loss of confidence in these processes by many law enforcement officers, including those unfairly targeted for their labor organization activities or for their aggressive enforcement of the laws, demoralizing many rank and file officers in communities and States;

(3) unfair treatment of officers has potentially serious long-term consequences for law enforcement by potentially deterring or otherwise preventing officers from carrying out their duties and responsibilities effectively and fairly;

(4) the lack of labor-management cooperation in disciplinary matters and either the perception or the actuality that officers are not treated fairly detrimentally impacts the recruitment of and retention of effective officers, as potential officers and experienced officers seek other careers which has serious implications and repercussions for officer morale, public safety, and labor-management relations and strife and can affect interstate and intrastate commerce, interfering with the normal flow of commerce;

(5) there are serious implications for the public safety of the citizens and residents of the United States which threatens the domestic tranquility of the United States because of a lack of statutory protections to ensure—

(i) the due process and political rights of law enforcement officers;

(ii) fair and thorough internal investigations and interrogations of and disciplinary proceedings against law enforcement officers; and

(iii) effective procedures for receipt, review, and investigation of complaints against officers, fair to both officers and complainants; and

(6) resolving these disputes and problems and preventing the disruption of vital police services is essential to the well-being of the United States and the domestic tranquility of the Nation.

(b) DECLARATION OF POLICY.—Congress declares that it is the purpose of this Act and the policy of the United States to—

(1) protect the due process and political rights of State and local law enforcement officers and ensure equality and fairness of treatment among such officers;

(2) provide continued police protection to the general public;

(3) provide for the general welfare and ensure domestic tranquility; and

(4) prevent any impediments to the free flow of commerce, under the rights guaranteed under the United States Constitution and Congress' authority thereunder.

SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF OFFICERS.

(a) IN GENERAL.—Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by adding at the end the following:

''SEC. 820. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

''(a) DEFINITIONS.—In this section:

''(1) DISCIPLINARY ACTION.—The term 'disciplinary action' means any adverse personnel action, including suspension, reduction in pay, rank, or other employment benefit, dismissal, transfer, reassignment, unreasonable denial of secondary employment, or similar punitive action taken against a law enforcement officer.

''(2) DISCIPLINARY HEARING.—The term 'disciplinary hearing' means an administrative hearing initiated by a law enforcement agency against a law enforcement officer, based on an alleged violation of law, that, if proven, would subject the law enforcement officer to disciplinary action.

''(3) EMERGENCY SUSPENSION.—The term 'emergency suspension' means the temporary action by a law enforcement agency of relieving a law enforcement officer from the active performance of law enforcement duties without a reduction in pay or benefits when the law enforcement agency, or an official within that agency, determines that there is probable cause, based upon the conduct of the law enforcement officer, to believe that the law enforcement officer poses an immediate threat to the safety of that officer or others or the property of others.

''(4) INVESTIGATION.—The term 'investigation'—

''(A) means an action taken to determine whether a law enforcement officer violated a law by a public agency or a person employed by a public agency, acting alone or in cooperation with or at the direction of another agency, or a division or unit within another agency, regardless of a denial by such an agency that any such action is not an investigation; and

''(B) includes—

''(i) asking questions of any other law enforcement officer or non-law enforcement officer;

''(ii) conducting observations;

''(iii) reviewing and evaluating reports, records, or other documents; and

''(iv) examining physical evidence.

''(5) LAW ENFORCEMENT OFFICER.—The terms 'law enforcement officer' and 'officer' have the meaning given the term 'law enforcement officer' in section 1204, except the term does not include a law enforcement officer employed by the United States, or any department, agency, or instrumentality thereof.

''(6) PERSONNEL RECORD.—The term 'personnel record' means any document, whether in written or electronic form and irrespective of location, that has been or may be used in determining the qualifications of a law enforcement officer for employment, promotion, transfer, additional compensation, termination or any other disciplinary action.

''(7) PUBLIC AGENCY AND LAW ENFORCEMENT AGENCY.—The terms 'public agency' and 'law enforcement agency' each have the meaning given the term 'public agency' in section

1204, except the terms do not include the United States, or any department, agency, or instrumentality thereof.

''(8) SUMMARY PUNISHMENT.—The term 'summary punishment' means punishment imposed—

''(A) for a violation of law that does not result in any disciplinary action; or

''(B) for a violation of law that has been negotiated and agreed upon by the law enforcement agency and the law enforcement officer, based upon a written waiver by the officer of the rights of that officer under subsection (i) and any other applicable law or constitutional provision, after consultation with the counsel or representative of that officer.

''(b) APPLICABILITY.—

''(1) IN GENERAL.—This section sets forth the due process rights, including procedures, that shall be afforded a law enforcement officer who is the subject of an investigation or disciplinary hearing.

''(2) NONAPPLICABILITY.—This section does not apply in the case of—

''(A) an investigation of specifically alleged conduct by a law enforcement officer that, if proven, would constitute a violation of a statute providing for criminal penalties; or

''(B) a nondisciplinary action taken in good faith on the basis of the employment related performance of a law enforcement officer.

''(c) POLITICAL ACTIVITY.—

''(1) RIGHT TO ENGAGE OR NOT TO ENGAGE IN POLITICAL ACTIVITY.—Except when on duty or acting in an official capacity, a law enforcement officer shall not be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

''(2) RIGHT TO RUN FOR ELECTIVE OFFICE.—A law enforcement officer shall not be—

''(A) prohibited from being a candidate for an elective office or from serving in such an elective office, solely because of the status of the officer as a law enforcement officer; or

''(B) required to resign or take an unpaid leave from employment with a law enforcement agency to be a candidate for an elective office or to serve in an elective office, unless such service is determined to be in conflict with or incompatible with service as a law enforcement officer.

''(3) ADVERSE PERSONNEL ACTION.—An action by a public agency against a law enforcement officer, including requiring the officer to take unpaid leave from employment, in violation of this subsection shall be considered an adverse personnel action within the meaning of subsection (a)(1).

''(d) EFFECTIVE PROCEDURES FOR RECEIPT, REVIEW, AND INVESTIGATION OF COMPLAINTS AGAINST LAW ENFORCEMENT OFFICERS.—

''(1) COMPLAINT PROCESS.—Not later than 1 year after the effective date of this section, each law enforcement agency shall adopt and comply with a written complaint procedure that—

''(A) authorizes persons from outside the law enforcement agency to submit written complaints about a law enforcement officer to—

''(i) the law enforcement agency employing the law enforcement officer; or

''(ii) any other law enforcement agency charged with investigating such complaints;

''(B) sets forth the procedures for the investigation and disposition of such complaints;

''(C) provides for public access to required forms and other information concerning the submission and disposition of written complaints; and

''(D) requires notification to the complainant in writing of the final disposition of the complaint and the reasons for such disposition.

''(2) INITIATION OF AN INVESTIGATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an investigation based on a complaint from outside the law enforcement agency shall commence not later than 15 days after the receipt of the complaint by—

''(i) the law enforcement agency employing the law enforcement officer against whom the complaint has been made; or

''(ii) any other law enforcement agency charged with investigating such a complaint.

''(B) EXCEPTION.—Subparagraph (A) does not apply if—

''(i) the law enforcement agency determines from the face of the complaint that each allegation does not constitute a violation of law; or

''(ii) the complainant fails to comply substantially with the complaint procedure of the law enforcement agency established under this section.

''(3) COMPLAINANT OR VICTIM CONFLICT OF INTEREST.—The complainant or victim of the alleged violation of law giving rise to an investigation under this subsection may not conduct or supervise the investigation or serve as an investigator.

''(e) NOTICE OF INVESTIGATION.—

''(1) IN GENERAL.—Any law enforcement officer who is the subject of an investigation shall be notified of the investigation 24 hours before the commencement of questioning or to otherwise being required to provide information to an investigating agency.

''(2) CONTENTS OF NOTICE.—Notice given under paragraph (1) shall include—

''(A) the nature and scope of the investigation;

''(B) a description of any allegation contained in a written complaint;

''(C) a description of each violation of law alleged in the complaint for which suspicion exists that the officer may have engaged in conduct that may subject the officer to disciplinary action; and

''(D) the name, rank, and command of the officer or any other individual who will be conducting the investigation.

''(f) RIGHTS OF LAW ENFORCEMENT OFFICERS PRIOR TO AND DURING QUESTIONING INCIDENTAL TO AN INVESTIGATION.—If a law enforcement officer is subjected to questioning incidental to an investigation that may result in disciplinary action against the officer, the following minimum safeguards shall apply:

''(1) COUNSEL AND REPRESENTATION.—

''(A) IN GENERAL.—Any law enforcement officer under investigation shall be entitled to effective counsel by an attorney or representation by any other person who the officer chooses, such as an employee representative, or both, immediately before and during the entire period of any questioning session, unless the officer consents in writing to being questioned outside the presence of counsel or representative.

''(B) PRIVATE CONSULTATION.—During the course of any questioning session, the officer shall be afforded the opportunity to consult privately with counsel or a representative, if such consultation does not repeatedly and unnecessarily disrupt the questioning period.

''(C) UNAVAILABILITY OF COUNSEL.—If the counsel or representative of the law enforcement officer is not available within 24 hours of the time set for the commencement of any questioning of that officer, the investigating law enforcement agency shall grant a reasonable extension of time for the law enforcement officer to obtain counsel or representation.

''(2) REASONABLE HOURS AND TIME.—Any questioning of a law enforcement officer under investigation shall be conducted at a reasonable time when the officer is on duty, unless exigent circumstances compel more immediate questioning, or the officer agrees in writing to being questioned at a different time, subject to the requirements of subsections (e) and (f)(1).

''(3) PLACE OF QUESTIONING.—Unless the officer consents in writing to being questioned elsewhere, any questioning of a law enforcement officer under investigation shall take place—

''(A) at the office of the individual conducting the investigation on behalf of the law enforcement agency employing the officer under investigation; or

''(B) the place at which the officer under investigation reports for duty.

''(4) IDENTIFICATION OF QUESTIONER.—Before the commencement of any questioning, a law enforcement officer under investigation shall be informed of—

''(A) the name, rank, and command of the officer or other individual who will conduct the questioning; and

''(B) the relationship between the individual conducting the questioning and the law enforcement agency employing the officer under investigation.

''(5) SINGLE QUESTIONER.—During any single period of questioning of a law enforcement officer under investigation, each question shall be asked by or through 1 individual.

''(6) REASONABLE TIME PERIOD.—Any questioning of a law enforcement officer under investigation shall be for a reasonable period of time and shall allow reasonable periods for the rest and personal necessities of the officer and the counsel or representative of the officer, if such person is present.

''(7) NO THREATS, FALSE STATEMENTS, OR PROMISES TO BE MADE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no threat against, false or misleading statement to, harassment of, or promise of reward to a law enforcement officer under investigation shall be made to induce the officer to answer any question, give any statement, or otherwise provide information.

''(B) EXCEPTION.—The law enforcement agency employing a law enforcement officer under investigation may require the officer to make a statement relating to the investigation by explicitly threatening disciplinary action, including termination, only if—

''(i) the officer has received a written grant of use and derivative use immunity or transactional immunity by a person authorized to grant such immunity; and

''(ii) the statement given by the law enforcement officer under such an immunity may not be used in any subsequent criminal proceeding against that officer.

''(8) RECORDING.—

''(A) IN GENERAL.—All questioning of a law enforcement officer under an investigation shall be recorded in full, in writing or by electronic device, and a copy of the transcript shall be provided to the officer under investigation before any subsequent period of questioning or the filing of any charge against that officer.

''(B) SEPARATE RECORDING.—To ensure the accuracy of the recording, an officer may utilize a separate electronic recording device, and a copy of any such recording (or the transcript) shall be provided to the public agency conducting the questioning, if that agency so requests.

''(9) USE OF HONESTY TESTING DEVICES PROHIBITED.—No law enforcement officer under investigation may be compelled to submit to the use of a lie detector, as defined in section 2 of the Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001).

''(g) NOTICE OF INVESTIGATIVE FINDINGS AND DISCIPLINARY RECOMMENDATION AND OPPORTUNITY TO SUBMIT A WRITTEN RESPONSE.—

''(1) NOTICE.—Not later than 30 days after the conclusion of an investigation under this section, the person in charge of the investigation or the designee of that person shall notify the law enforcement officer who was the subject of the investigation, in writing, of the investigative findings and any recommendations for disciplinary action.

''(2) OPPORTUNITY TO SUBMIT WRITTEN RESPONSE.—

''(A) IN GENERAL.—Not later than 30 days after receipt of a notification under paragraph (1), and before the filing of any charge seeking the discipline of such officer or the commencement of any disciplinary proceeding under subsection (h), the law enforcement officer who was the subject of the investigation may submit a written response to the findings and recommendations included in the notification.

''(B) CONTENTS OF RESPONSE.—The response submitted under subparagraph (A) may include references to additional documents, physical objects, witnesses, or any other information that the law enforcement officer believes may provide exculpatory evidence.

''(h) DISCIPLINARY HEARING.—

''(1) NOTICE OF OPPORTUNITY FOR HEARING.—Except in a case of summary punishment or emergency suspension (subject to subsection (k)), before the imposition of any disciplinary action the law enforcement agency shall notify the officer that the officer is entitled to a due process hearing by an independent and impartial hearing officer or board.

''(2) REQUIREMENT OF DETERMINATION OF VIOLATION.—No disciplinary action may be taken against a law enforcement officer unless an independent and impartial hearing officer or board determines, after a hearing and in accordance with the requirements of this subsection, that the law enforcement officer committed a violation of law.

''(3) TIME LIMIT.—No disciplinary charge may be brought against a law enforcement officer unless—

''(A) the charge is filed not later than the earlier of—

''(i) 1 year after the date on which the law enforcement agency filing the charge had knowledge or reasonably should have had knowledge of an alleged violation of law; or

''(ii) 90 days after the commencement of an investigation; or

''(B) the requirements of this paragraph are waived in writing by the officer or the counsel or representative of the officer.

''(4) NOTICE OF HEARING.—Unless waived in writing by the officer or the counsel or representative of the officer, not later than 30 days after the filing of a disciplinary charge against a law enforcement officer, the law enforcement agency filing the charge shall provide written notification to the law enforcement officer who is the subject of the charge, of—

''(A) the date, time, and location of any disciplinary hearing, which shall be scheduled in cooperation with the law enforcement officer, or the counsel or representative of the officer, and which shall take place not earlier than 30 days and not later than 60 days after notification of the hearing is given to the law enforcement officer under investigation;

''(B) the name and mailing address of the independent and impartial hearing officer, or the names and mailing addresses of the independent and impartial hearing board members; and

''(C) the name, rank, command, and address of the law enforcement officer prosecuting the matter for the law enforcement agency, or the name, position, and mailing address of the person prosecuting the matter for a public agency, if the prosecutor is not a law enforcement officer.

''(5) ACCESS TO DOCUMENTARY EVIDENCE AND INVESTIGATIVE FILE.—Unless waived in writing by the law enforcement officer or the counsel or representative of that officer, not later than 15 days before a disciplinary hearing described in paragraph (4)(A), the law enforcement officer shall be provided with—

''(A) a copy of the complete file of the pre-disciplinary investigation; and

''(B) access to and, if so requested, copies of all documents, including transcripts, records, written statements, written reports, analyses, and electronically recorded information that—

''(i) contain exculpatory information;

''(ii) are intended to support any disciplinary action; or

''(iii) are to be introduced in the disciplinary hearing.

''(6) EXAMINATION OF PHYSICAL EVIDENCE.—Unless waived in writing by the law enforcement officer or the counsel or representative of that officer—

''(A) not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of that officer of all physical, non-documentary evidence; and

''(B) not later than 10 days before a disciplinary hearing, the prosecuting agency shall provide a reasonable date, time, place, and manner for the law enforcement officer or the counsel or representative of the law enforcement officer to examine the evidence described in subparagraph (A).

''(7) IDENTIFICATION OF WITNESSES.—Unless waived in writing by the law enforcement officer or the counsel or representative of the officer, not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of the officer, of the name and address of each witness for the law enforcement agency employing the law enforcement officer.

''(8) REPRESENTATION.—During a disciplinary hearing, the law enforcement officer who is the subject of the hearing shall be entitled to due process, including—

''(A) the right to be represented by counsel or a representative;

''(B) the right to confront and examine all witnesses against the officer; and

''(C) the right to call and examine witnesses on behalf of the officer.

''(9) HEARING BOARD AND PROCEDURE.—

''(A) IN GENERAL.—A State or local government agency, other than the law enforcement agency employing the officer who is subject of the disciplinary hearing, shall—

''(i) determine the composition of an independent and impartial disciplinary hearing board;

''(ii) appoint an independent and impartial hearing officer; and

''(iii) establish such procedures as may be necessary to comply with this section.

''(B) PEER REPRESENTATION ON DISCIPLINARY HEARING BOARD.—A disciplinary hearing board that includes employees of the law enforcement agency employing the law enforcement officer who is the subject of the hearing, shall include not less than 1 law enforcement officer of equal or lesser rank to the officer who is the subject of the hearing.

''(10) SUMMONSES AND SUBPOENAS.—

''(A) IN GENERAL.—The disciplinary hearing board or independent hearing officer—

''(i) shall have the authority to issue summonses or subpoenas, on behalf of—

''(I) the law enforcement agency employing the officer who is the subject of the hearing; or

''(II) the law enforcement officer who is the subject of the hearing; and

''(ii) upon written request of either the agency or the officer, shall issue a summons or subpoena, as appropriate, to compel the appearance and testimony of a witness or the production of documentary evidence.

''(B) EFFECT OF FAILURE TO COMPLY WITH SUMMONS OR SUBPOENA.—With respect to any failure to comply with a summons or a subpoena issued under subparagraph (A)—

''(i) the disciplinary hearing officer or board shall petition a court of competent jurisdiction to issue an order compelling compliance; and

''(ii) subsequent failure to comply with such a court order issued pursuant to a petition under clause (i) shall—

''(I) be subject to contempt of a court proceedings according to the laws of the jurisdiction within which the disciplinary hearing is being conducted; and

''(II) result in the recess of the disciplinary hearing until the witness becomes available to testify and does testify or is held in contempt.

''(11) CLOSED HEARING.—A disciplinary hearing shall be closed to the public unless the law enforcement officer who is the subject of the hearing requests, in writing, that the hearing be open to specified individuals or to the general public.

''(12) RECORDING.—All aspects of a disciplinary hearing, including pre-hearing motions, shall be recorded by audio tape, video tape, or transcription.

''(13) SEQUESTRATION OF WITNESSES.—Either side in a disciplinary hearing may move for and be entitled to sequestration of witnesses.

''(14) TESTIMONY UNDER OATH.—The hearing officer or board shall administer an oath or affirmation to each witness, who shall testify subject to the laws of perjury of the State in which the disciplinary hearing is being conducted.

''(15) FINAL DECISION ON EACH CHARGE.—

''(A) IN GENERAL.—At the conclusion of the presentation of all the evidence and after oral or written argument, the hearing officer or board shall deliberate and render a written final decision on each charge.

''(B) FINAL DECISION ISOLATED TO CHARGE BROUGHT.—The hearing officer or board may not find that the law enforcement officer who is the subject of the hearing is liable for disciplinary action for any violation of law, as to which the officer was not charged.

''(16) BURDEN OF PERSUASION AND STANDARD OF PROOF.—The burden of persuasion or standard of proof of the prosecuting agency shall be—

''(A) by clear and convincing evidence as to each charge alleging false statement or representation, fraud, dishonesty, deceit, moral turpitude, or criminal behavior on the part of the law enforcement officer who is the subject of the charge; and

''(B) by a preponderance of the evidence as to all other charges.

''(17) FACTORS OF JUST CAUSE TO BE CONSIDERED BY THE HEARING OFFICER OR BOARD.—A law enforcement officer who is the subject of a disciplinary hearing shall not be found guilty of any charge or subjected to any disciplinary action unless the disciplinary hearing board or independent hearing officer finds that—

''(A) the officer who is the subject of the charge could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct set forth in the charge against the officer;

''(B) the rule, regulation, order, or procedure that the officer who is the subject of the charge allegedly violated is reasonable;

''(C) the charging party, before filing the charge, made a reasonable, fair, and objective effort to discover whether the officer did

in fact violate the rule, regulation, order, or procedure as charged;

''(D) the charging party did not conduct the investigation arbitrarily or unfairly, or in a discriminatory manner, against the officer who is the subject of the charge, and the charge was brought in good faith; and

''(E) the proposed disciplinary action reasonably relates to the seriousness of the alleged violation and to the record of service of the officer who is the subject of the charge.

''(18) NO COMMISSION OF A VIOLATION.—If the officer who is the subject of the disciplinary hearing is found not to have committed the alleged violation—

''(A) the matter is concluded;

''(B) no disciplinary action may be taken against the officer;

''(C) the personnel file of that officer shall not contain any reference to the charge for which the officer was found not guilty; and

''(D) any pay and benefits lost or deferred during the pendency of the disposition of the charge shall be restored to the officer as though no charge had ever been filed against the officer, including salary or regular pay, vacation, holidays, longevity pay, education incentive pay, shift differential, uniform allowance, lost overtime, or other premium pay opportunities, and lost promotional opportunities.

''(19) COMMISSION OF A VIOLATION.—

''(A) IN GENERAL.—If the officer who is the subject of the charge is found to have committed the alleged violation, the hearing officer or board shall make a written recommendation of a penalty to the law enforcement agency employing the officer or any other governmental entity that has final disciplinary authority, as provided by applicable State or local law.

''(B) PENALTY.—The employing agency or other governmental entity may not impose a penalty greater than the penalty recommended by the hearing officer or board.

''(20) APPEAL.—Any officer who has been found to have committed an alleged violation may appeal from a final decision of a hearing officer or hearing board to a court of competent jurisdiction or to an independent neutral arbitrator to the extent available in any other administrative proceeding under applicable State or local law, or a collective bargaining agreement.

''(i) WAIVER OF RIGHTS.—

''(1) IN GENERAL.—An officer who is notified that the officer is under investigation or is the subject of a charge may, after such notification, waive any right or procedure guaranteed by this section.

''(2) WRITTEN WAIVER.—A written waiver under this subsection shall be—

''(A) in writing; and

''(B) signed by—

''(i) the officer, who shall have consulted with counsel or a representative before signing any such waiver; or

''(ii) the counsel or representative of the officer, if expressly authorized by subsection (h).

''(j) SUMMARY PUNISHMENT.—Nothing in this section shall preclude a public agency from imposing summary punishment.

''(k) EMERGENCY SUSPENSION.—Nothing in this section may be construed to preclude a law enforcement agency from imposing an emergency suspension on a law enforcement officer, except that any such suspension shall—

''(1) be followed by a hearing in accordance with the requirements of subsection (h); and

''(2) not deprive the affected officer of any pay or benefit.

''(l) RETALIATION FOR EXERCISING RIGHTS.—There shall be no imposition of, or threat of, disciplinary action or other penalty against a law enforcement officer for the exercise of any right provided to the officer under this section.

''(m) OTHER REMEDIES NOT IMPAIRED.—Nothing in this section may be construed to impair any other right or remedy that a law enforcement officer may have under any constitution, statute, ordinance, order, rule, regulation, procedure, written policy, collective bargaining agreement, or any other source.

''(n) DECLARATORY OR INJUNCTIVE RELIEF.—A law enforcement officer who is aggrieved by a violation of, or is otherwise denied any right afforded by, the Constitution of the United States, a State constitution, this section, or any administrative rule or regulation promulgated pursuant thereto, may file suit in any Federal or State court of competent jurisdiction for declaratory or injunctive relief to prohibit the law enforcement agency from violating or otherwise denying such right, and such court shall have jurisdiction, for cause shown, to restrain such a violation or denial.

''(o) PROTECTION OF LAW ENFORCEMENT OFFICER PERSONNEL FILES.—

''(1) RESTRICTIONS ON ADVERSE MATERIAL MAINTAINED IN OFFICERS' PERSONNEL RECORDS.—

''(A) IN GENERAL.—Unless the officer has had an opportunity to review and comment, in writing, on any adverse material included in a personnel record relating to the officer, no law enforcement agency or other governmental entity may—

''(i) include the adverse material in that personnel record; or

''(ii) possess or maintain control over the adverse material in any form as a personnel record within the law enforcement agency or elsewhere in the control of the employing governmental entity.

''(B) RESPONSIVE MATERIAL.—Any responsive material provided by an officer to adverse material included in a personnel record pertaining to the officer shall be—

''(i) attached to the adverse material; and

''(ii) released to any person or entity to whom the adverse material is released in accordance with law and at the same time as the adverse material is released.

''(2) RIGHT TO INSPECTION OF, AND RESTRICTIONS ON ACCESS TO INFORMATION IN, THE OFFICER'S OWN PERSONNEL RECORDS.—

''(A) IN GENERAL.—Subject to subparagraph (B), a law enforcement officer shall have the right to inspect all of the personnel records of the officer not less than annually.

''(B) RESTRICTIONS.—A law enforcement officer shall not have access to information in the personnel records of the officer if the information—

''(i) relates to the investigation of alleged conduct that, if proven, would constitute or have constituted a definite violation of a statute providing for criminal penalties, but as to which no formal charge was brought;

''(ii) contains letters of reference for the officer;

''(iii) contains any portion of a test document other than the results;

''(iv) is of a personal nature about another officer, and if disclosure of that information in non-redacted form would constitute a clearly unwarranted intrusion into the privacy rights of that other officer; or

''(v) is relevant to any pending claim brought by or on behalf of the officer against the employing agency of that officer that may be discovered in any judicial or administrative proceeding between the officer and the employer of that officer.

''(p) STATES' RIGHTS.—

''(1) IN GENERAL.—Nothing in this section may be construed—

''(A) to preempt any State or local law, or any provision of a State or local law, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2001, that confers a right or a protection that equals or exceeds the right or protection afforded by this section; or

''(B) to prohibit the enactment of any State or local law that confers a right or protection that equals or exceeds a right or protection afforded by this section.

''(2) STATE OR LOCAL LAWS PREEMPTED.—A State or local law, or any provision of a State or local law, that confers fewer rights or provides less protection for a law enforcement officer than any provision in this section shall be preempted by this section.

''(q) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this section may be construed to—

''(1) preempt any provision in a mutually agreed-upon collective bargaining agreement, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2001, that provides for substantially the same or a greater right or protection afforded under this section; or

''(2) prohibit the negotiation of any additional right or protection for an officer who is subject to any collective bargaining agreement.''.

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 819 the following:

''Sec. 820. Discipline, accountability, and due process of State and local law enforcement officers.''.

SEC. 4. PROHIBITION OF FEDERAL CONTROL OVER STATE AND LOCAL CRIMINAL JUSTICE AGENCIES.

Nothing in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control of any police force or any criminal justice agency of any State or any political subdivision thereof.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to each State on the earlier of—

(1) 2 years after the date of enactment of this Act; or

(2) the conclusion of the second legislative session of the State that begins on or after the date of enactment of this Act.

By Mr. VOINOVICH (for himself, Mrs. CLINTON, Mr. DEWINE, and Mr. SCHUMER):

S. 1279. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster area; to the Committee on Environmental and Public Works.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the text of the Disaster Area and Health and Environmental Monitoring Act of 2003 be printed in the RECORD.

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

S. 1279

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 ''Disaster Area Health and Environmental Monitoring Act of 2003''.

SEC. 2. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.

Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is amended by inserting after section 408 (42 U.S.C. 5174) the following:

''SEC. 409. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL.—The term 'individual' includes—

''(A) a worker or volunteer who responds to a disaster, including—

''(i) a police officer;

''(ii) a firefighter;

''(iii) an emergency medical technician;

''(iv) any participating member of an urban search and rescue team; and

''(v) any other relief or rescue worker or volunteer that the President determines to be appropriate;

''(B) a worker who responds to a disaster by assisting in the cleanup or restoration of critical infrastructure in and around a disaster area;

''(C) a person whose place of residence is in a disaster area;

''(D) a person who is employed in or attends school, child care, or adult day care in a building located in a disaster area; and

''(E) any other person that the President determines to be appropriate.

''(2) PROGRAM.—The term 'program' means a program described in subsection (b) that is carried out for a disaster area.

''(3) SUBSTANCE OF CONCERN.—The term 'substance of concern' means any chemical or substance associated with potential acute or chronic human health effects, the risk of exposure to which could potentially be increased as the result of a disaster.

''(b) PROGRAM.—

''(1) IN GENERAL.—If the President determines that 1 or more substances of concern are being, or have been, released in an area declared to be a disaster area under this Act, the President may carry out a program for the protection, assessment, monitoring, and study of the health and safety of individuals to ensure that—

''(A) the individuals are adequately informed about and protected against potential health impacts of the substance of concern and potential mental health impacts in a timely manner;

''(B) the individuals are monitored and studied over time, including through baseline and follow-up clinical health examinations, for—

''(i) any short- and long-term health impacts of any substance of concern; and

''(ii) any mental health impacts;

''(C) the individuals receive health care referrals as needed and appropriate; and

''(D) information from any such monitoring and studies is used to prevent or protect against similar health impacts from future disasters.

''(2) ACTIVITIES.—A program under paragraph (1) may include such activities as—

''(A) collecting and analyzing environmental exposure data;

''(B) developing and disseminating information and educational materials;

''(C) performing baseline and follow-up clinical health and mental health examinations and taking biological samples;

''(D) establishing and maintaining an exposure registry;

''(E) studying the long-term human health impacts of any exposures through epidemiological and other health studies; and

''(F) providing assistance to individuals in determining eligibility for health coverage and identifying appropriate health services.

''(3) TIMING.—To the maximum extent practicable, a program under paragraph (1) shall be established, and activities under the program shall be commenced (including baseline health examinations), in a timely manner that will ensure the highest level of public health protection and effective monitoring.

''(4) PARTICIPATION IN REGISTRIES AND STUDIES.—

''(A) IN GENERAL.—Participation in any registry or study that is part of a program under paragraph (1) shall be voluntary.

''(B) PROTECTION OF PRIVACY.—The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

''(5) COOPERATIVE AGREEMENTS.—The President may carry out a program under paragraph (1) through a cooperative agreement with a medical institution, or a consortium of medical institutions, that is—

''(A) located near the disaster area, and near groups of individuals that worked or volunteered in response to the disaster in the disaster area, with respect to which the program is carried out; and

''(B) experienced in the area of environmental or occupational health, toxicology, and safety, including experience in—

''(i) developing clinical protocols and conducting clinical health examinations, including mental health assessments;

''(ii) conducting long-term health monitoring and epidemiological studies;

''(iii) conducting long-term mental health studies; and

''(iv) establishing and maintaining medical surveillance programs and environmental exposure or disease registries.

''(6) INVOLVEMENT.—

''(A) IN GENERAL.—In establishing and maintaining a program under paragraph (1), the President shall ensure the involvement of interested and affected parties, as appropriate, including representatives of—

''(i) Federal, State, and local government agencies;

''(ii) labor organizations;

''(iii) local residents, businesses, and schools (including parents and teachers);

''(iv) health care providers; and

''(v) other organizations and persons.

''(B) COMMITTEES.—Involvement under subparagraph (A) may be provided through the establishment of an advisory or oversight committee or board.

''(c) REPORTS.—Not later than 1 year after the establishment of a program under subsection (b)(1), and every 5 years thereafter, the President, or the medical institution or consortium of such institutions having entered into a cooperative agreement under subsection (b)(5), shall submit to the Secretary of Homeland Security, the Secretary of Health and Human Services, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and appropriate committees of Congress a report on programs and studies carried out under the program.''.

SEC. 3. BLUE RIBBON PANEL ON DISASTER AREA HEALTH PROTECTION AND MONITORING.

(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this section, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency shall jointly establish a Blue Ribbon Panel on Disaster Area Health Protection and Monitoring (referred to in this section as the ''Panel'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Panel shall be composed of—

(A) 15 voting members, to be appointed by the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency in accordance with paragraph (2); and

(B) officers or employees of the Department of Health and Human Services, the Department of Homeland Security, the Environmental Protection Agency, and other Federal agencies, as appropriate, to be appointed by the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Administrator of the Environmental Protection Agency as nonvoting, ex officio members of the Panel.

(2) BACKGROUND AND EXPERTISE.—The voting members of the Panel shall be individuals who—

(A) are not officers or employees of the Federal Government; and

(B) have expertise in—

(i) environmental health, safety, and medicine;

(ii) occupational health, safety, and medicine;

(iii) clinical medicine, including pediatrics;

(iv) toxicology;

(v) epidemiology;

(vi) mental health;

(vii) medical monitoring and surveillance;

(viii) environmental monitoring and surveillance;

(ix) environmental and industrial hygiene;

(x) emergency planning and preparedness;

(xi) public outreach and education;

(xii) State and local health departments;

(xiii) State and local environmental protection departments;

(xiv) functions of workers that respond to disasters, including first responders; and

(xv) public health and family services.

(c) DUTIES.—

(1) IN GENERAL.—The Panel shall provide advice and recommendations regarding protecting and monitoring the health and safety of individuals potentially exposed to any chemical or substance associated with potential acute or chronic human health effects as the result of a disaster, including advice and recommendations regarding—

(A) the implementation of programs under section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by section 2); and

(B) the establishment of protocols for the monitoring of and response to releases of substances of concern (as defined in section 409(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by section 2)) in a disaster area for the purpose of protecting public health and safety, including—

(i) those substances of concern for which samples should be collected in the event of a disaster, including a terrorist attack;

(ii) chemical-specific methods of sample collection, including sampling methodologies and locations;

(iii) chemical-specific methods of sample analysis;

(iv) health-based threshold levels to be used and response actions to be taken in the event that thresholds are exceeded for individual chemicals or substances;

(v) procedures for providing monitoring results to—

(I) appropriate Federal, State, and local government agencies;

(II) appropriate response personnel; and

(III) the public;

(vi) responsibilities of Federal, State and local agencies for—

(I) collecting and analyzing samples;

(II) reporting results; and

(III) taking appropriate response actions; and

(vii) capabilities and capacity within the Federal Government to conduct appropriate environmental monitoring and response in the event of a disaster, including a terrorist attack; and

(C) other issues as specified by the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency.

(2) REPORT.—Not later than 1 year after the date of establishment of the Panel, the Panel shall submit to the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency a report of the findings and recommendations of the Panel under this section, including recommendations for such legislative and administrative actions as the Panel considers to be appropriate.

(d) POWERS.—

(1) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers necessary to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Panel may secure directly from any Federal department or agency such information as the Panel considers necessary to carry out this section.

(B) FURNISHING OF INFORMATION.—On request of the Panel, the head of the department or agency shall furnish the information to the Panel.

(3) POSTAL SERVICES.—The Panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) PERSONNEL.—

(1) TRAVEL EXPENSES.—The members of the Panel shall not receive compensation for the performance of services for the Panel, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(2) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the voluntary and uncompensated services of members of the Panel.

(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(4) STAFF, INFORMATION, AND OTHER ASSISTANCE.—The Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency shall provide to the Panel such staff, information, and other assistance as may be necessary to carry out the duties of the Panel.

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

(g) TERMINATION OF AUTHORITY.—This section, the authority provided under this section, and the Panel shall terminate on the date that is 18 months after the date of enactment of this Act.

By Mr. GRAHAM of Florida:

S. 1281. A bill to amend title 38, United Stated Code, to presume additional diseases of former prisoners of war to be service-connected for compensation purposes, to enhance the Dose Reconstruction Program of the Department of Defense, to enhance and fund certain other epidemiological studies, and for other purposes; to the Committee on Veterans' Affairs.

Mr. GRAHAM of Florida. Madam President, today I introduce legislation that would take one more step toward finding answers for veterans who may have been exposed to radiation, Agent Orange, or other hazards during their military service.

The last century saw the nature of war change forever. When mustard gas drifted across the trenches of World War I, troops learned that dangers less tangible, but no less deadly, than bullets might fill the air. Since then, many veterans have questioned whether health effects of the environmental hazards that they faced on and off the battlefield might appear years or even decades later.

Congress, VA, the military, and scores of independent researchers have struggled to answer those questions. Many veterans still wait for scientific evidence to fill the gaps. However, research in some areas has linked specific exposures to a risk of later disease, and we must respond to those new findings and encourage further investigation.

Peer-reviewed studies published in recent years suggest that veterans held prisoner during World War II, the Korean War, and in Vietnam suffer from some chronic diseases at a higher rate than expected. Scientists now report that the toll taken by malnutrition, long periods of forced confinement, and untreated infections appears to pose a lifelong risk. Based on these findings, I have introduced legislation that would add heart disease, strokes, and chronic liver diseases to the list of diseases that can be presumptively connected to service for certain former prisoners of war. This would allow eligible veterans with these conditions to seek VA benefits without having to prove that their illnesses resulted from deprivations suffered during captivity.

Other veterans who were exposed to large doses of ionizing radiation in post-war Japan or during nuclear tests, and who suffer from illnesses thought to be caused by radiation, can currently claim eligibility for VA benefits. However, some veterans who believe they received high doses of radiation have been frustrated to find that their military records do not reflect the same assumptions. Congress mandated nearly 20 years ago that veterans who suffer from diseases that they suspect might be linked to radiation exposure during service could request a dose reconstruction, or a scientific estimate of past exposure levels, to remedy this.

Many veterans felt that this method fell short of expectations, and Congress responded in 1998 by requiring an independent review of the Dose Reconstruction Program conducted by the Department of Defense. A panel of experts convened by the National Academy of Sciences reported recently that this contractor-operated program suffered from a shockingly cavalier approach to quality assurance, resulting in data that failed to meet the standards assumed by VA and veterans. This is not acceptable. Provisions introduced here would require the Secretaries of VA and Defense to establish permanent independent oversight of the Dose Reconstruction Program, and to create an advisory board to improve the program as necessary.

Our understanding of the consequences of exposure to the herbicides and dioxin in Agent Orange remains far from complete. It has been almost 25 years since Congress required the Air Force to conduct an epidemiologic study of the veterans of Operation Ranch Hand, the unit responsible for aerial spraying of herbicides during the Vietnam War. The last scheduled round of physical examinations took place just last month, and the fate of the millions of medical records and specimens remains undecided. Experts agree that both samples and data should be preserved for further research, but do not share an opinion on the best way to do so. The bill that I have introduced would task the National Academy of Sciences to develop research recommendations for extending the Air Force Health Study, or for preserving the samples and making them accessible to independent researchers as requested by many veterans' organizations.

Finally, the legislation that I have introduced would ensure that the scientific body charged with tracking veterans' and military health can continue its mission. The Medical Follow-Up Agency, MFUA, a board of the Institute of Medicine—the health agency of the National Academy of Sciences—was created at the end of World War II at the urging of the Army Surgeon General. For many years, it received funding only sporadically. In 1988, the now-defunct Office of Technology Assessment reported that MFUA's critical contribution to understanding military health issues was limited by a lack of consistent funding, which caused high staff turnover, incohesiveness in the research portfolio, and failure to maintain records.

Congress responded with Public Law 102–585, which required that VA and the military each contribute $250,000 in annual core funding to MFUA for 10 years. MFUA's staff uses this funding to update, maintain, and improve long-term epidemiological studies of military and veterans populations. Congress, VA, the military, and independent scientists have relied on these studies to evaluate whether specific exposures might have long-term health effects that suggest a need for benefits, new treatments, or further research. The legislation that I have introduced would extend MFUA's core funding for 10 more years.

This legislation would demonstrate to those who serve their nation now

that our commitment to them will not end with the wars that they fight. We must continue to seek remedies for the sometimes invisible wounds of the new battlefield, and ensure that those who have borne them receive the support that they need. I urge my colleagues in the Senate to join me in supporting this legislation.

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

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

S. 1281

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 ''Veterans Information and Benefits Enhancement Act of 2003''.

SEC. 2. PRESUMPTION OF ADDITIONAL DISEASES OF FORMER PRISONERS OF WAR TO BE SERVICE-CONNECTED FOR COMPENSATION PURPOSES.

(a) PRESUMPTION.—Section 1112(b) of title 38, United States Code, is amended—

(1) in paragraph (14), by striking ''or'' at the end; and

(2) by inserting after paragraph (15) the following new paragraphs:

''(16) cardiovascular disease (heart disease),

''(17) cerebrovascular disease (stroke), or

''(18) chronic liver disease, including cirrhosis and primary liver carcinoma,''.

(b) EFFECTIVE DATE.—(1) The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) No benefit may be paid by reason of the amendments made by subsection (a) for any period before the date of the enactment of this Act.

SEC. 3. DOSE RECONSTRUCTION PROGRAM OF DEPARTMENT OF DEFENSE.

(b) REVIEW OF MISSION, PROCEDURES, AND ADMINISTRATION.—(1) The Secretary of Veterans Affairs and the Secretary of Defense shall jointly conduct a review of the mission, procedures, and administration of the Dose Reconstruction Program of the Department of Defense.

(2) In conducting the review under paragraph (1), the Secretaries shall—

(A) determine whether any additional actions are required to ensure that the quality assurance and quality control mechanisms of the Dose Reconstruction Program are adequate and sufficient for purposes of the program; and

(B) determine the actions that are required to ensure that the mechanisms of the Dose Reconstruction Program for communication and interaction with veterans are adequate and sufficient for purposes of the program, including mechanisms to permit veterans to review the assumptions utilized in their dose reconstructions.

(3) Not later than 90 days after the date of the enactment of this Act, the Secretaries shall jointly submit to Congress a report on the review under paragraph (1). The report shall set forth—

(A) the results of the review;

(B) a plan for any actions determined to be required under paragraph (2); and

(C) such other recommendations for the improvement of the mission, procedures, and administration of the Dose Reconstruction Program as the Secretaries jointly consider appropriate.

(b) ON-GOING REVIEW AND OVERSIGHT.—The Secretaries shall jointly take appropriate actions to ensure the on-going independent review and oversight of the Dose Reconstruction Program, including the establishment of the advisory board required by subsection (c).

(c) ADVISORY BOARD.—(1) In taking actions under subsection (b), the Secretaries shall jointly appoint an advisory board to provide review and oversight of the Dose Reconstruction Program.

(2) The advisory board under paragraph (1) shall be composed of the following:

(A) At least one expert in historical dose reconstruction of the type conducted under the Dose Reconstruction Program.

(B) At least one expert in radiation health matters.

(C) At least one expert in risk communications matters.

(D) A representative of the Department of Veterans Affairs.

(E) A representative of the Defense Threat Reduction Agency.

(F) At least three veterans, including at least one veteran who is a member of an atomic veterans group.

(3) The advisory board under paragraph (1) shall—

(A) conduct periodic, random audits of dose reconstructions and decisions on claims for radiogenic diseases under the Dose Reconstruction Program;

(B) assist the Department of Veterans Affairs and the Defense Threat Reduction Agency in communicating to veterans information on the mission, procedures, and evidentiary requirements of the Dose Reconstruction Program; and

(C) carry out such other activities with respect to the review and oversight of the Dose Reconstruction Program as the Secretaries shall jointly specify.

(4) The advisory board under paragraph (1) may make such recommendations on modifications in the mission or procedures of the Dose Reconstruction Program as the advisory board considers appropriate as a result of the audits conducted under paragraph (3)(A).

SEC. 4. STUDY ON DISPOSITION OF AIR FORCE HEALTH STUDY.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall, in accordance with this section, carry out a study to determine the appropriate disposition of the Air Force Health Study, an epidemiologic study of Air Force personnel who were responsible for conducting aerial spray missions of herbicides during the Vietnam era.

(b) STUDY THROUGH NATIONAL ACADEMY OF SCIENCES.—Not later than sixty days after the date of the enactment of this Act, the Secretary shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, to carry out the study required by subsection (a).

(c) ELEMENTS.—Under the study under subsection (a), the National Academy of Sciences, or other appropriate scientific organization, shall address the following:

(1) The scientific merit of retaining and maintaining the medical records, other study data, and laboratory specimens collected in the course of the Air Force Health Study after the currently-scheduled termination date of the study in 2006.

(2) Whether or not any obstacles exist to retaining and maintaining the medical records, other study data, and laboratory specimens referred to in paragraph (1), including privacy concerns.

(3) The advisability of providing independent oversight of the medical records, other study data, and laboratory specimens referred to in paragraph (1), and of any further study of such records, data, and specimens, and, if so, the mechanism for providing such oversight.

(4) The advisability of extending the Air Force Health Study, including the potential value and relevance of extending the study, the potential cost of extending the study, and the Federal or non-Federal entity best suited to continue the study if extended.

(5) The advisability of making the laboratory specimens of the Air Force Health Study available for independent research, including the potential value and relevance of such research, and the potential cost of such research.

(d) REPORT.—Not later than 60 days after entering into an agreement under subsection (b), the National Academy of Sciences, or other appropriate scientific organization, shall submit to the Secretary and Congress a report on the results of the study under subsection (a). The report shall include the results of the study, including the matters addressed under subsection (c), and such other recommendations as the Academy, or other appropriate scientific organization, considers appropriate as a result of the study.

SEC. 5. FUNDING OF MEDICAL FOLLOW-UP AGENCY OF INSTITUTE OF MEDICINE OF NATIONAL ACADEMY OF SCIENCES FOR EPIDEMIOLOGICAL RESEARCH ON MEMBERS OF THE ARMED FORCES AND VETERANS.

(a) FUNDING BY DEPARTMENT OF VETERANS AFFAIRS.—(1) The Secretary of Veterans Affairs shall make available to the National Academy of Sciences in each of fiscal years 2004 through 2013, $250,000 for the Medical Follow-Up Agency of the Institute of Medicine of the Academy for purposes of epidemiological research on members of the Armed Forces and veterans.

(2) The Secretary of Veterans Affairs shall make available amounts under paragraph (1) for a fiscal year from amounts available for the Department of Veterans Affairs for that fiscal year.

(b) FUNDING BY DEPARTMENT OF DEFENSE.—(1) The Secretary of Defense shall make available to the National Academy of Sciences in each of fiscal years 2004 through 2013, $250,000 for the Medical Follow-Up Agency for purposes of epidemiological research on members of the Armed Forces and veterans.

(2) The Secretary of Defense shall make available amounts under paragraph (1) for a fiscal year from amounts available for the Department of Defense for that fiscal year.

(c) USE OF FUNDS.—The Medical Follow-Up Agency shall use funds made available under subsections (a) and (b) for epidemiological research on members of the Armed Forces and veterans.

(d) SUPPLEMENT NOT SUPPLANT.—Amounts made available to the Medical Follow-Up Agency under this section for a fiscal year for the purposes referred to in subsection (c) are in addition to any other amounts made available to the Agency for that fiscal year for those purposes.

By Mr. GRAHAM of Florida (for himself, Mr. NELSON of Florida, and Mr. SESSIONS):

S. 1282. A bill to require the Secretary of Veterans Affairs to establish national cemeteries for geographically underserved populations of veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. GRAHAM of Florida. Madam President, I rise today to introduce legislation that will ensure that America's veterans and their families have access to the funeral honors they have earned. The brave men and women who fought for our Nation are a population that is aging rapidly. In 2002, America

lost 646,264 veterans. Projections show that this rate will continue to climb through the year 2008, when the annual death of the World War II and Korea-era veterans will peak at 700,000.

By the end of 2004, only 64 of the 124 veterans national cemeteries will be available for both casketed and cremated remains. As cemetery service capabilities decrease, veterans in areas near those cemeteries that are at capacity may lose access to burial options located within a reasonable distance of their homes. In order to ensure that burial options are provided for veterans and their family members, we must develop new cemeteries and expand existing cemeteries. This process must start as soon as possible because the construction of a new cemetery takes an average of 7 years.

That is why I offer this bill today, which would authorize the construction of ten new national cemeteries and ensure that the burial needs of veterans and their family members will be met in the future.

In anticipation of veterans' future needs, the Department of Veterans Affairs conducted a study that identifies veteran population centers not served by an open national or state veterans cemetery. The report, ''Future Burial Needs,'' was initially released in May 2002 and has been recently revised using veteran population estimates from the 2000 census. My legislation would direct the Department of Veterans Affairs to establish ten new national veterans cemeteries in the top ten areas identified to be in the greatest need. These areas would include Sarasota, FL, Salem, OR, Birmingham, AL, St. Louis, MO, San Antonio, TX, Chesapeake, VA, Sumter, FL, Bakersfield, CA, Jacksonville, FL, and Philadelphia, PA.

We can not afford to wait any longer if we are to fulfill this commitment to our nation's veterans. Mr. President, I am proud to sponsor this important bill, and look forward to the support of my colleagues as we provide for our veterans who have given so much for our country. Thank you.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1281

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

SECTION 1. ESTABLISHMENT OF NATIONAL CEMETERIES FOR GEOGRAPHICALLY UNDERSERVED POPULATIONS OF VETERANS.

(a) IDENTIFICATION OF UNDERSERVED BURIAL SERVICE AREAS.—The Secretary of Veterans Affairs shall identify the 10 burial service areas in the United States that, as determined by the Secretary, are most in need of a new national cemetery in order to ensure that 90 percent of the veterans who reside in each such service area live within 75 miles of a national cemetery.

(b) BURIAL SERVICE AREA.—For purposes of this section, the term ''burial service area'' means a service area for burial in national cemeteries that is established by the Secretary utilizing the most current population data available to the Secretary as of the date of the enactment of this Act, which service area—

(1) has a radius of approximately 75 miles;

(2) contains a minimum population of veterans of approximately 170,000 veterans; and

(3) is not served as of the date of the enactment of this Act by a national cemetery or State cemetery for veterans.

(c) ESTABLISHMENT OF NATIONAL CEMETERIES.—The Secretary shall establish, in accordance with chapter 24 of title 38, United States Code, a national cemetery in each burial service area identified under subsection (a) in order to serve the burial needs of veterans and their families.

(d) ADVANCE PLANNING.—(1) The Secretary shall carry out in fiscal year 2004 such activities as the Secretary considers appropriate for advance planning for the establishment of national cemeteries under subsection (c).

(2) Amounts appropriated for fiscal year 2004 for the advance planning fund in the Construction, Major Projects account shall be available for activities under paragraph (1).

(e) REPORTS.—(1) Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the establishment of national cemeteries under subsection (c). The report shall set forth the following:

(A) Each burial service area identified by the Secretary under subsection (a) to require the establishment of a national cemetery under subsection (c).

(B) A schedule for the establishment of each such national cemetery.

(C) An estimate of the costs of the establishment of each such national cemetery.

(D) The amount to be obligated under subsection (d) during fiscal year 2004 for advance planning required under that subsection.

(2) Not later than one year after the date of the report under paragraph (1), and annually thereafter until the completion of each national cemetery required by subsection (c), the Secretary shall submit to Congress an update of the report under that paragraph (as previously updated, if at all, under this paragraph).

By Mr. GRAHAM of Florida:

S. 1283. A bill to require advance notification of Congress regarding any action proposed to be taken by the Secretary of Veterans Affairs in the implementation of the Capital Asset Realignment for Enhanced Services initiative of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

Mr. GRAHAM of Florida. Madam President, the Department of Veterans Affairs, VA, is in the midst of determining how best to serve the millions of veterans who turn to the VA health care system for their care. This process—known as CARES or Capital Asset Realignment for Enhanced Services—will likely bring significant change to the VA system. Recommendations stemming from this process could lead to billions of dollars in new facilities construction, on the one hand, and possible closure of facilities and thousands of beds, on the other. Despite the magnitude of these possible changes, Congress has virtually no formal role in the process.

I introduce legislation today that would allow for Congressional review of the CARES recommendations that the Secretary of VA will begin to implement at the end of this year.

The CARES initiative has been ongoing since the Fall of 2002, tasking VA facilities with developing recommendations based on a review of population data; the conduct of market analyses of veterans' health care needs; the identification of planning initiatives for each market area; and most important, the significant involvement of stakeholders, including myriad public meetings. These so-called planning initiatives are ultimately slated to be passed on to the Secretary, who will then make the final decisions.

While an independent review led by a national CARES Commission is already planned, in addition to public hearings—which I fully support—I must reiterate that Congress has little, if any, role in the CARES effort outside of construction authorization and appropriation activities. Yet, all states and most health care facilities will be affected by the results. The legislation I introduce today would give Congress a 60-day period to review the CARES recommendations submitted by the Secretary of Veterans Affairs. During that time, VA would be prohibited from moving forward with any bed or facility closures.

This oversight is absolutely essential—particularly in light of recent events. Just last month, all VA health care networks submitted their plans to VA headquarters. These plans were developed following substantial analysis and thorough stakeholder involvement. While abiding by the criteria and process set forth by VA, facilities made their recommendations to the Under Secretary for Health. In a surprise move and an apparent manipulation of the process, VA instructed the network directors to re-evaluate the plans they had already submitted for 20 different VA facilities. They were told to ''evaluate a strategy to convert from a 24-hour operation to an 8 hour a day operation. This includes any inpatient care, including long term care.''

One of these hospitals is in Lake City, in my home State of Florida. Network 8, which has responsibility for Lake City, had previously recommended that no long-term care beds be deactivated at this facility, yet they were told to go back to the drawing board to develop a strategy to close nursing home beds there.

Another facility tasked with re-examining their plan is Bedford, Massachusetts. In their network's plan, submitted to the Under Secretary, officials stated that they had in fact considered ''alternatives to consolidate Long Term Care, LTC, including the Alzheimer's and SCI Units, and Psychiatry inpatient beds from the Bedford to Brockton facilities'' yet, ''as final projections are not available for LTC inpatient beds and earlier projections indicated a substantial increase in LTC beds, it was determined to utilize current capacities.'' Despite these assessments to the contrary, VA has asked

that they instead plan to convert these facilities to outpatient operations only.

Yet one more example of this apparent manipulation involves another facility now slated for bed closures, the Leavenworth VA Medical Center in Kansas. The network plan concluded that ''[r]ealignment of workload from Leavenworth to Kansas City would exceed current capacity. . . . Elimination of inpatient and outpatient primary care capabilities at Leavenworth would seriously undermine continuity of care for the remaining long-term care patients, reduce timely access to care, hinder its ability to provide ongoing support to the DoD facility located at Ft. Leavenworth . . . '' . Again, analysis conducted at the regional level resulted in a recommendation that VA is now directing be reconsidered.

The VA facility in Knoxville, IA, is being targeted for significant changes as well. The current proposal is to move all of the beds from Knoxville to Des Moines. The Knoxville facility has more than 226 long-term care beds, 40 domiciliary beds, and 34 inpatient psychiatric beds. We need to take a look at this proposal and the many others that will affect veterans all across the country.

Other facilities asked to re-evaluate are: Batavia, Lyons, St. Albans, Montrose, Pittsburgh at Highland Drive, Augusta, Dublin, Lexington, Brecksville, Gulfport, Marlin/Waco, Vancouver, Livermore, and Hot Springs.

While VA intends to present a five-year capital plan to Congress, there is nothing that requires VA to inform Members about possible reductions, closures, and other decisions that would have a deleterious effect on VA health care services and our veterans. This is unacceptable. Congress' role should not be limited to merely funding the implementation of these decisions; rather, we should be involved in a process that could result in the significant loss of inpatient, long-term care, and domiciliary capacity at VA health care facilities nationwide. We can rectify this problem very easily, however, by enacting the legislation I propose today.

In an internal VA memo, Secretary Principi stated that ''the CARES process may be one of the most important activities undertaken by VA this decade. The outcome of this process will construct the foundation for, and set the course of, our health care system for the first half of the 21st century.'' In light of the great impact of this initiative on VA health care services, as well as recent actions that threaten the integrity of the process, it is imperative that Congress be granted a mere 60 days to review VA's proposals. I urge my colleagues to join me in this effort to secure the future of health care for our nation's veterans.

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. 1283

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

SECTION 1. ADVANCE NOTIFICATION OF A DEPARTMENT OF VETERANS AFFAIRS CAPITAL ASSET REALIGNMENT INITIATIVE.

(a) REQUIREMENT FOR ADVANCE NOTIFICATION.—Before taking any action proposed under the Capital Asset Realignment for Enhanced Services initiative of the Department of Veterans Affairs, the Secretary of Veterans Affairs shall submit to Congress a written notification of the intent to take such action.

(b) LIMITATION.—The Secretary of Veterans Affairs may not take any proposed action described in subsection (a) until the later of—

(1) the expiration of the 60-day period beginning on the date on which the Secretary submits to Congress the notification of the proposed action required under subsection (a); or

(2) the expiration of a period of 30 days of continuous session of Congress beginning on such date of notification or, if either House of Congress is not in session on such date, the first day after such date that both Houses of Congress are in session.

(c) CONTINUOUS SESSION OF CONGRESS.—For the purposes of subsection (b)—

(1) the continuity of session of Congress is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

By Mr. CARPER:

S. 1285. A bill to reform the postal laws of the United States; to the Committee on Governmental Affairs.

Mr. CARPER. Madam President, I rise today to introduce the Postal Accountability and Enhancement Act of 2003, legislation that makes the reforms necessary for the Postal Service to thrive in the 21st Century and to better serve the American people.

The Postal Service has, for the most part, operated in the same manner for more than thirty years. In the early 1970s, Senator STEVENS and others led the effort in the Senate to create the Postal Service out of the failing Post Office Department. At the time, the Post Office Department received about 20 percent of its revenue from taxpayer subsidies. The service it provided was suffering and there was little money available to expand. By all accounts, the product of Senator STEVENS' labors, the Postal Reorganization Act signed into law by President Nixon in 1971, has been a phenomenal success. The Postal Service today receives virtually no taxpayer support and the service its hundreds of thousands of employees provide to every American, every day is second to none. More than thirty years later, the Postal Service now delivers to 141 million addresses each day and is the anchor of a $900 billion mailing industry.

All that said, the Postal Service is clearly in need of modernization once again. When it started out in 1971, nobody had access to fax machines, cell phones and pagers and nobody imagined that we would ever enjoy conveniences like e-mail and electronic bill pay. After decades of success, electronic diversion of mail volume coupled with economic recession and terrorism have made for some rough going at the Postal Service in recent years. In 2001, as Postmaster General Potter assumed his position, the Postal Service was projecting its third consecutive year of deficits. They lost $199 million in fiscal year 2000 and $1.68 billion in fiscal year 2001. They were projecting losses of up to $4 billion in fiscal year 2002. Mail volume was falling, revenues were below projections and the Postal Service was estimating that it needed to spend $4 billion on security enhancements in order to prevent a repeat of the tragic anthrax attacks that took several lives. The Postal Service was also perilously close to its $15 billion debt ceiling and had been forced to raise rates three times in less than two years in order to pay for its operations, further eroding mail volume.

In recent months, however, the Postal Service's short-term financial outlook has improved. Under General Potter's strong leadership, Postal Service management cut a total of $2.9 billion in costs fiscal year 2002. They did this mostly by eliminating 23,000 positions, mostly through attrition. This included 800 management positions at postal headquarters in Washington and 2,000 administrative positions in regional offices. They also continued their drive to further automate their processing operations, most notably in the area of flats processing. They have continued their construction freeze and ended their self-imposed ban on post office closings, resulting in the closing of dozens of post offices across the country.

Most dramatically, the Postal Service learned in 2002 that an unfunded pension liability they once believed was as high as $32 billion was actually $5 billion. My friend from Maine, Ms. COLLINS, and I responded with legislation, the Postal Civil Service Retirement System Funding Reform Act, signed into law by President Bush last month, which cuts the amount the Postal Service must pay into the Civil Service Retirement System each year by nearly $3 billion. This will free up money for debt reduction and prevent the need for another rate increase until at least 2006.

Aggressive cost cutting and the lower pension payment, then, have put off the emergency that would have come if the Postal Service had reached their debt limit. Cost cutting can only go so far, however, and will not solve the Postal Service's long-term problems. It could actually hurt service. The Postal Service continues to add about 1.7 million new delivery points each year, creating the need for thousands of new routes and thousands of new letter carriers to work them. In addition, faster-

growing parts of the country will need new or expanded postal facilities in the coming years. Even if the economy recovers soon and the Postal Service begins to see volume and revenues improve, we will still need to make the fundamental reforms necessary to make the Postal Service as successful in the 21st Century as it was in the 20th Century.

As more and more customers turn to electronic forms of communication, letter carriers are bringing fewer and fewer pieces of mail to each address they serve. The rate increases that will be needed to maintain the Postal Service's current infrastructure, finance retirement obligations to its current employees, pay for new letter carriers and build facilities in growing parts of the country will only further erode mail volume. The Postal Service has been trying to improve on its own. They are making progress, but there is only so much they can do on their own.

That is where my bill comes in. First, the Postal Accountability and Enhancement Act begins the process of developing a modern rate system for pricing Postal Service products. The new rate system, to be developed by a strengthened Postal Rate Commission, re-named the Postal Regulatory Commission, would allow retained earnings, provide the Postal Service more flexibility in setting prices and streamline today's burdensome ratemaking process. It would also allow rates to be increased on an expedited basis during crises like a sharp spike in fuel prices and require that the Regulatory Commission develop a ''phased rate'' schedule whereby rate increases would be phased in gradually over a period of time.

In addition, the new rate system authorized through my bill will allow the Postal Service to negotiate service agreements with individual mailers. The Postal Rate Commission recently approved a service agreement the Postal Service negotiated with Capital One, but the process for considering the agreement took almost a year and the Postal Service's authority to enter into agreements is not clearly spelled out in law. The Postal Accountability and Enhancement Act allows the Postal Service to enter into agreements if the revenue generated from them covers all costs attributable to the Postal Service and results in a greater contribution to the Postal Service's institutional costs. No agreement would be permitted if it resulted in higher rates for any other mailer or prohibited any similarly situated mailer from negotiating a similar agreement.

Second, the Postal Accountability and Enhancement Act requires the Postal Regulatory Commission to set strong service standards for the Postal Service's Market Dominant products, a category made up mostly of those products, like First Class Mail, that are part of the postal monopoly. The Postal Service currently sets its own service standards, which allows them to pursue efforts like the elimination of Saturday delivery, a proposal floated two years ago. The new standards set by the Commission will aim to improve service and will be used by the Postal Service to establish performance goals and to rationalize their physical infrastructure. Once the standards are established, the Postal Service will recommend a list of facilities that can be closed or consolidated without hindering their ability to meet the standards. A new commission, called the Postal Network Modernization Commission, would then study the Postal Service's recommendations. The closings and consolidations recommended by this commission would be carried out, subject to approval by the President, unless Congress passed a resolution disapproving them.

Third, the Postal Accountability and Enhancement Act ensures that the Postal Service competes fairly. The bill prohibits the Postal Service from issuing anti-competitive regulations and makes the State Department, instead of the Postal Service, responsible for setting U.S. foreign policy on mailing issues. It also subjects the Postal Service to State zoning, planning and land use laws, requires them to pay an assumed Federal income tax on products like packages and Express Mail that private firms also offer and requires that these products as a whole pay their share of the Postal Service's institutional costs.

Fourth, the Postal Accountability and Enhancement Act improves Postal Service accountability, mostly by strengthening oversight. Qualifications for membership on the Regulatory Commission would be stronger than those for the Rate Commission so that Commissioners would have a background in finance or economics. Commissioners would also have the power to demand information from the Postal Service, including by subpoena, and have the power to punish them for violating rate and service regulations. In addition, the Commission will make an annual determination as to whether the Postal Service is in compliance with rate law and meeting service standards and will have the power to punish them for any transgressions.

Finally, and most importantly, the Postal Accountability and Enhancement Act preserves universal service and forces the Postal Service to concentrate solely on what they do best—processing and delivering the mail to all Americans. The bill for the first time limits the Postal Service to providing ''postal services,'' meaning they would be prohibited from engaging in other lines of business, such as e-commerce, that draw time and resources away from letter and package delivery. It also explicitly preserves the requirement that the Postal Service ''bind the Nation together through the mail'' and serve all parts of the country, urban, suburban and rural, in a non-discriminatory fashion. Any service standards established by the Postal Regulatory Commission will continue to ensure delivery to every address, every day. In addition, the bill maintains the prohibition on closing post offices solely because they operate at a deficit, ensuring that rural and urban customers continue to enjoy full access to retail postal services.

One thing the Postal Accountability and Enhancement Act does not do, is blame postal employees for the Postal Service's problems. The bill preserves collective bargaining and does nothing that would harm postal employees' pay or benefits.

Another thing the Postal Accountability and Enhancement Act does not do is privatize or downsize the Postal Service. The bill preserves the Postal Service's monopoly along with its sole access to the mailbox. While it could result in the closing of some postal facilities, the process I have laid out in the bill is completely driven by the service standards established by the Postal Regulatory Commission. Nothing will be closed for the sake of being closed. Instead, the bill encourages the Postal Service to find ways to improve customer access to retail services through things like vending machines or post offices located in grocery stores or pharmacies.

As my colleagues are aware, President Bush last year announced the creation of the President's Commission on the United States Postal Service, which is expected to release a set of postal reform proposals this summer that I hope will offer some fair, balanced recommendations. It is also my hope, however, that the President's Commission look to the Postal Accountability and Enhancement Act as a touchstone as they complete their work. The bill is the product of nearly a decade's worth of work on postal reform in the House of Representatives led by Congressman JOHN MCHUGH from New York and is based in large part on legislation Congressman MCHUGH introduced towards the end of the 107th Congress. While I cannot claim that the McHugh bill had unanimous support, it did draw the support of most postal employees, much of the mailing industry and the Postal Service's Board of Governors.

When Treasury Department Under Secretary Peter Fisher addressed the President's Commission at its first meeting, he stated that everything was on the table and that the Commission's findings were not predetermined. I know there is some concern that the Commission will recommend privatization, and that this was the idea from the beginning. I will admit that I initially shared these feelings but, based on what I have heard about the Commission's deliberations, they appear on track to develop a reasonable set of recommendations. That said, I urge them to take careful consideration of the work Congress has done on postal reform in the past. Radical reforms undertaken at a number of foreign posts in recent years should teach us a lesson

about going too far. When the British deregulated Royal Mail, service began to suffer dramatically. When the New Zealand Post Office was privatized, universal service was eliminated and customers in rural areas were forced to pay for delivery. When Argentina privatized its Postal Authority, the new private entity went bankrupt even before the country's economic crisis began. We cannot afford to gamble with similar reforms at the Postal Service.

I look forward to working with Chairman COLLINS, the Governmental Affairs Committee and all of my colleagues in passing comprehensive postal reform this year.

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. 1285

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Postal Accountability and Enhancement Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
TITLE I—DEFINITIONS; POSTAL SERVICES
Sec. 101. Definitions.
Sec. 102. Postal services.
TITLE II—MODERN RATE REGULATION
Sec. 201. Provisions relating to market-dominant products.
Sec. 202. Provisions relating to competitive products.
Sec. 203. Provisions relating to experimental and new products.
Sec. 204. Reporting requirements and related provisions.
Sec. 205. Complaints; appellate review and enforcement.
Sec. 206. Clerical amendment.
TITLE III—MODERN SERVICE STANDARDS
Sec. 301. Establishment of modern service standards.
Sec. 302. Postal service plan.
Sec. 303. Postal Network Modernization Commission.
Sec. 304. Closure and consolidation of facilities.
Sec. 305. Congressional consideration of commission report.
Sec. 306. Nonappealability to Postal Regulatory Commission.
TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION
Sec. 401. Postal Service Competitive Products Fund.
Sec. 402. Assumed Federal income tax on competitive products income.
Sec. 403. Unfair competition prohibited.
Sec. 404. Suits by and against the Postal Service.
Sec. 405. International postal arrangements.
Sec. 406. Change-of-address order involving a commercial mail receiving agency.
Sec. 407. Exception for competitive products.
TITLE V—GENERAL PROVISIONS
Sec. 501. Qualification requirements for Governors.
Sec. 502. Obligations.
Sec. 503. Private carriage of letters.
Sec. 504. Rulemaking authority.
Sec. 505. Noninterference with collective bargaining agreements, etc.
Sec. 506. Bonus authority.
TITLE VI—ENHANCED REGULATORY COMMISSION
Sec. 601. Reorganization and modification of certain provisions.
Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
Sec. 603. Appropriations for the Postal Regulatory Commission.
Sec. 604. Redesignation of the Postal Rate Commission.
TITLE VII—INSPECTORS GENERAL
Sec. 701. Inspector General of the Postal Regulatory Commission.
Sec. 702. Inspector General of the United States Postal Service to be appointed by the President.
TITLE VIII—EVALUATIONS
Sec. 801. Definition.
Sec. 802. Assessments of ratemaking, classification, and other provisions.
Sec. 803. Study on equal application of laws to competitive products.
Sec. 804. Greater diversity in Postal Service executive and administrative schedule management positions.
Sec. 805. Contracts with women, minorities, and small businesses.
Sec. 806. Rates for periodicals.
Sec. 807. Assessment of certain rate deficiencies.
TITLE IX—MISCELLANEOUS; TECHNICAL AND CONFORMING AMENDMENTS
Sec. 901. Employment of postal police officers.
Sec. 902. Date of postmark to be treated as date of appeal in connection with the closing or consolidation of post offices.
Sec. 903. Provisions relating to benefits under chapter 81 of title 5, United States Code, for officers and employees of the former Post Office Department.
Sec. 904. Obsolete provisions.
Sec. 905. Expanded contracting authority.
Sec. 906. Investments.
Sec. 907. Repeal of section 5403.
Sec. 908. Technical and conforming amendments.

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other services ancillary thereto;

''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate is applied;

''(7) 'rates', as used with respect to products, includes fees for postal services;

''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

''(c) Nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking ''404(a)(8)'' and inserting ''404(a)(7)''.

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621, 3622, and 3623 and inserting the following:

''§ 3621. Applicability; definitions

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1)(A) single piece first-class letters (both domestic and international);

''(B) single piece first-class cards (both domestic and international);

''(C) single piece parcels (both domestic and international); and

''(D) special services;

''(2) all first-class mail not included under paragraph (1);

''(3) periodicals;

''(4) standard mail (except for parcel post);

''(5) media mail;

''(6) library mail; and

''(7) bound printed matter,

subject to any changes the Postal Regulatory Commission may make under section 3642.

''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''§ 3622. Modern rate regulation

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 24 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

''(1) To reduce the administrative burden of the ratemaking process.

''(2) To create predictability and stability in rates.

''(3) To maximize incentives to reduce costs and increase efficiency.

''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

''(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

''(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

''(3) the direct and indirect postal costs attributable to each class or type of mail service plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

''(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

''(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

''(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

''(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

''(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

''(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

''(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

''(11) the educational, cultural, scientific, and informational value to the recipient of mail matter; and

''(12) the policies of this title as well as such other factors as the Commission deems appropriate.

''(d) ALLOWABLE PROVISIONS.—The system for regulating rates and classes for market-dominant products may include—

''(1) price caps, revenue targets, or other form of incentive regulation;

''(2) cost-of-service regulation; or

''(3) such other form of regulation as the Commission considers appropriate to achieve, consistent with subsection (c), the objectives of subsection (b).

''(e) REQUIREMENTS.—The system for regulating rates and classes for market-dominant products shall—

''(1) establish a schedule whereby rates, when necessary, would increase at regular intervals by predictable amounts; and

''(2) establish procedures whereby rates may be increased on a expedited basis when an unexpected decline in revenue or increase in costs threatens the ability of the Postal Service to maintain service at the standards established by the Postal Regulatory Commission under section 3691.

''(f) TRANSITION RULE.—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of the enactment of this section.

''§ 3623. Service agreements for market-dominant products

''(a) IN GENERAL.—

''(1) AUTHORITY.—The Postal Service may enter into service agreements with mailers that provide for the provision of postal services under terms and conditions that differ from those that would apply under the otherwise applicable market-dominant mail classification.

''(2) AGREEMENTS.—An agreement under this section may involve—

''(A) performance by the contracting mail user of mail preparation, processing, transportation, or other functions that reduce costs to the Postal Service;

''(B) performance by the Postal Service of additional mail preparation, processing, transportation, or other functions that increase costs to the Postal Service; or

''(C) other terms and conditions that meet the requirements of subsections (b) and (c).

''(b) REQUIREMENTS.—A service agreement under this section may only be entered into if the agreement will benefit the contracting mailer, the Postal Service, and mailers who are not parties to the agreement and if each of the following conditions is met:

''(1) The total revenue generated under the agreement—

''(A) will cover all costs attributable to the Postal Service; and

''(B) will result in a greater contribution to the institutional costs of the Postal Service than would have been granted had the agreement not been entered into.

''(2) Rates and fees for other mailers will not increase as a result of the agreement.

''(3) The agreement pertains exclusively to products in the market-dominant category of mail.

''(4) The agreement will not preclude or materially hinder similarly situated mail users from entering into agreements with the Postal Service on the same, or substantially the same, terms, and the Postal Service remains willing and able to enter into such.

''(c) LIMITATIONS.—A service agreement under this section shall—

''(1) be for a term of not to exceed 3 years; and

''(2) provide that such agreement shall be subject to the cancellation authority of the Commission under section 3662.

''(d) NOTICE REQUIREMENTS.—

''(1) IN GENERAL.—At least 30 days before a service agreement under this section is to take effect, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register the following:

''(A) With respect to each condition under subsection (b), information in sufficient detail to demonstrate the bases for the Postal Service's view that such condition would be met.

''(B) A description of the type of mail the agreement involves.

''(C) The mail preparation, processing, transportation, administration, or other additional functions, if any, the mail user is to perform under the agreement.

''(D) The services or benefits the Postal Service is to perform under the agreement.

''(E) The rates and fees payable by the mail user during the term of the agreement.

''(2) AGREEMENTS LESS THAN NATIONAL IN SCOPE.—In the case of a service agreement under this section that is less than national in scope, the information described under paragraph (1) shall also be published by the Postal Service in a manner designed to afford reasonable notice to persons within any geographic area to which such agreement (or any amendment thereto) pertains.

''(e) EQUAL TREATMENT REQUIRED.—If the Postal Service enters into a negotiated service agreement with a mailer under this section, the Postal Service shall make such agreement available to other mailers on the same terms and conditions.

''(f) COMPLAINTS.—Any person who believes that a service agreement under this section is not (or, in the case of a proposed agreement or a proposed amendment to a service agreement under this section, would not be) in conformance with the requirements of this section and regulations thereunder, or who aggrieved by a decision of the Postal Service not to enter into an agreement under this section, may file a complaint with the Postal Regulatory Commission in accordance with section 3662.

''(g) POSTAL REGULATORY COMMISSION ROLE.—

''(1) REGULATIONS.—The Postal Regulatory Commission may promulgate such regulations regarding service agreements as the Commission determines necessary to implement the requirements of this section.

''(2) REVIEW.—The Postal Regulatory Commission may review any agreement or proposed agreement under this section and may suspend, cancel, or prevent such agreement if the Commission finds that the agreement does not meet the requirements of this section or the regulations thereunder.

''(h) INTERPRETATION.—The determination of whether the revenue generated under the agreement meets the requirements of (b)(1)(B) shall be based on the actual contribution of the mail involved, not on the average contribution made by the mail classification most similar to the services performed under the agreement.

''(i) RATE DISCOUNTS.—In the administration of this section, the Postal Regulatory Commission shall not permit rate discounts for additional mail preparation, processing, transportation, or other functions that exceed the costs avoided by the Postal Service by virtue of the additional functions performed by the mailer. Such discounts are allowable only if the Commission has, after notice and opportunity for a public hearing and comment, determined that such discounts are reasonable and equitable and are necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States consistent with the service standards established under section 3691.''.

(b) REPEALED SECTIONS.—Sections 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''§ 3631. Applicability; definitions and updates

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) priority mail;

''(2) expedited mail;

''(3) mailgrams;

''(4) international mail; and

''(5) parcel post,

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

''(b) DEFINITION.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product.

''(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply

with respect to any product then currently in the market-dominant category of mail.

"§ 3632. Action of the Governors

''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

''(b) PROCEDURES.—

''(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

''(2) PUBLICATION.—The Governors shall cause each rate and class decision under this section and the record of the Governors' proceedings in connection with such decision to be published in the Federal Register by such date before the effective date of any new rates or classes as the Governors consider appropriate.

''(c) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of the enactment of this section.

"§ 3633. Provisions applicable to rates for competitive products

''The Postal Regulatory Commission shall, within 180 days after the date of the enactment of this section, promulgate (and may from time to time thereafter revise) regulations—

''(1) to prohibit the subsidization of competitive products by market-dominant products;

''(2) to ensure that each competitive product covers its costs attributable; and

''(3) to ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.''.

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

"§ 3641. Market tests of experimental products

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

''(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

''(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

''(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

''(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

''(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3)(relating to provisions applicable to competitive products collectively).

''(c) NOTICE.—

''(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

''(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

''(B) describing the nature and scope of the market test.

''(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

''(d) DURATION.—

''(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

''(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

''(e) DOLLAR-AMOUNT LIMITATION.—

''(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

''(A) the product is likely to benefit the public and meet an expected demand;

''(B) the product is likely to contribute to the financial stability of the Postal Service; and

''(C) the product is not likely to result in unfair or otherwise inappropriate competition.

''(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails, with respect to any particular product, to meet one or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

''(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

''(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

''(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

"§ 3642. New products and transfers of products between the market-dominant and competitive categories of mail

''(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

''(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

''(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing business to other firms offering similar products. The competitive category of products shall consist of all other products.

''(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

''(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

''(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

''(B) the views of those who use the product involved on the appropriateness of the proposed action; and

''(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

''(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

''(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

''(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the

criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission pursuant to section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

''(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

''(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

''(1) under this subchapter; or

''(2) by or under any other provision of law.''.

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended by striking the heading for subchapter IV and inserting the following:

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''.

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''§ 3651. Annual reports by the Commission

''(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

''(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

''§ 3652. Annual reports to the Commission

''(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex thereto as the Commission may require under subsection (e))—

''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

''(2) which shall, for each market-dominant product provided in such year, provide—

''(A) market information, including mail volumes; and

''(B) measures of the service afforded by the Postal Service in connection with such product, including—

''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

''(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex thereto and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

''(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.

''(1) IN GENERAL.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

''(A) The per-item cost avoided by the Postal Service by virtue of such discount.

''(B) The percentage of such per-item cost avoided that the per-item workshare discount represents.

''(C) The per-item contribution made to institutional costs.

''(2) WORKSHARE DISCOUNT DEFINED.—For purposes of this subsection, the term 'workshare discount' refers to presorting, barcoding, dropshipping, and other similar discounts, as further defined under regulations which the Postal Regulatory Commission shall prescribe.

''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements (including service agreements entered into under section 3623) and experimental products offered through market tests under section 3641 in a year, the Postal Service—

''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

''(2) shall report such data as the Postal Regulatory Commission requires.

''(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

''(e) CONTENT AND FORM OF REPORTS.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating thereto) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

''(A) providing the public with adequate information to assess the lawfulness of rates charged;

''(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

''(C) protecting the confidentiality of commercially sensitive information.

''(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

''(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

''(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

''(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(f) CONFIDENTIAL INFORMATION.—

''(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or pursuant to subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

''(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

''(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

''(1) comprehensive statement under section 2401(e);

''(2) strategic plan under section 2802;

''(3) performance plan under section 2803; and

''(4) program performance reports under section 2804.

''§ 3653. Annual determination of compliance

''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

''(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

''(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take appropriate action in accordance with section 3662.

''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described in paragraphs (1) through (3) of subsection (b)) during the year to which such determination relates.''.

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Interested persons (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believe the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under

any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

''(A) begin proceedings on such complaint; or

''(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed pursuant to an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance. Such action may include ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

''§ 3663. Appellate review

''A person adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

''§ 3664. Enforcement of orders

''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

''CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

''Sec.
''3621. Applicability; definitions.
''3622. Modern rate regulation.
''3623. Service agreements for market-dominant products.
''[3624. Repealed.]
''[3625. Repealed.]
''3626. Reduced Rates.
''3627. Adjusting free rates.
''[3628. Repealed.]
''3629. Reduced rates for voter registration purposes.

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''3631. Applicability; definitions and updates.
''3632. Action of the Governors.
''3633. Provisions applicable to rates for competitive products.
''3634. Assumed Federal income tax on competitive products.

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

''3641. Market tests of experimental products.
''3642. New products and transfers of products between the market-dominant and competitive categories of mail.

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''3651. Annual reports by the Commission.
''3652. Annual reports to the Commission.
''3653. Annual determination of compliance.

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

''3661. Postal Services.
''3662. Rate and service complaints.
''3663. Appellate review.
''3664. Enforcement of orders.

''SUBCHAPTER VI—GENERAL

''3681. Reimbursement.
''3682. Size and weight limits.
''3683. Uniform rates for books; films, other materials.
''3684. Limitations.
''3685. Filing of information relating to periodical publications.
''3686. Change-of-address order involving a commercial mail receiving agency.
''3687. Bonus authority.

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''3691. Establishment of modern service standards.''.

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''§ 3691. Establishment of modern service standards

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 24 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with sections 101 (a) and (b) and 403.

''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

''(1) To increase the value of postal services to both senders and recipients.

''(2) To provide a benchmark for Postal Service performance goals.

''(3) To guarantee Postal Service customers delivery speed and frequency consistent with reasonable rates.

''(c) FACTORS.—In establishing or revising such standards, the Postal Regulatory Commission shall take into account—

''(1) any service standards previously established by the Postal Service;

''(2) the actual level of service Postal Service customers receive;

''(3) customer satisfaction with Postal Service performance;

''(4) mail volume and revenues projected for future years;

''(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

''(6) the current and projected future cost of serving Postal Service customers; and

''(7) the policies of this title as well as such other factors as the Commission determines appropriate.''.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 1 year after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENT.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals; and

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals.

(c) RECOMMENDATIONS.—The Postal Service plan shall include a list of any processing and retail facilities that can be closed or consolidated without hindering the Postal Service's ability to meet established service standards. The recommendations shall be consistent with the provisions in section 101(b) of title 39, United States Code prohibiting the closing of post offices, including post offices in rural areas and small towns, solely because they are not self-sustaining or operate at a deficit.

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include, to the extent possible, plans to provide postal services by other means, including—

(1) vending machines;

(2) the Internet;

(3) Postal Service employees on delivery routes; and

(4) retail facilities in which overhead costs are shared with private businesses and other government agencies.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation or privatization of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERAL.—Before submitting the plan under this section to Congress, the Postal Service shall submit the plan to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan—

(A) is consistent with the continuing obligations of the Postal Service under title 39, United States Code; and

(B) provides for the Postal Service to meet the service standards established under section 3691.

(3) SUBMISSION OF REPORT.—The Postal Service shall submit the report of the Inspector General under this subsection with the

plan submitted to Congress under subsection (a).

(g) RECOMMENDED FACILITY CLOSINGS AND CONSOLIDATIONS.—The list of recommended facility closings and consolidations, including the criteria used for selection, justifications for each recommendation, and any comments received from affected communities, shall be transmitted to the Postal Network Modernization Commission at the same time the Postal Service plan is transmitted to Congress.

(h) CONTINUING RESPONSIBILITIES.—Nothing in this section shall affect the responsibilities of the Postal Service under section 404(b) of title 39, United States Code, with respect to any postal facility by reason of that facility being recommended for closing or consolidation under this section.

SEC. 303. POSTAL NETWORK MODERNIZATION COMMISSION.

(a) ESTABLISHMENT.—There is established an independent commission to be known as the ''Postal Network Modernization Commission''.

(b) DUTIES.—The Commission shall carry out the duties specified in this title.

(c) APPOINTMENT.—

(1) IN GENERAL.—

(A) COMPOSITION.—The Commission shall be composed of 8 members appointed by the President, by and with the advice and consent of the Senate.

(B) LIMITATION ON POLITICAL PARTY MEMBERSHIP.—No more than 4 members of the Commission at any time shall be from the same political party.

(C) EMPLOYEE REPRESENTATION.—One member of the Commission shall be chosen from among persons nominated for such office with the unanimous concurrence of all organizations representing postmasters and all employee organizations described under section 1004(b) of title 39, United States Code.

(D) UNION REPRESENTATION.—One member of the Commission shall be chosen from among persons nominated for such office with the unanimous concurrence of all labor organizations described in section 206(a)(1) of title 39, United States Code.

(2) CHAIRMAN.—At the time the President nominates individuals for appointment to the Commission, the President shall designate one such individual who shall serve as Chairman of the Commission.

(d) MEETINGS.—

(1) OPEN MEETINGS.—Each meeting of the Commission shall be open to the public.

(2) PROCEEDINGS, INFORMATION, AND DELIBERATIONS.—All of the proceedings, information, and deliberation of the Commission shall be open, upon request, to the following:

(A) COMMITTEE ON GOVERNMENTAL AFFAIRS.—The Chairman and the ranking minority party member of the Committee on Governmental Affairs of the Senate, or such other members of the Committee designated by such Chairman or ranking minority party member.

(B) COMMITTEE ON GOVERNMENT REFORM.—The Chairman and the ranking minority party member of the Committee on Government Reform of the House of Representatives, or such other members of the Committee designated by such Chairman or ranking minority party member.

(C) COMMITTEES ON APPROPRIATIONS.—The Chairmen and ranking minority party members of the Subcommittees on Transportation, Treasury, and General Government of the Committees on Appropriations of the Senate and the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

(e) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment.

(f) PAY AND TRAVEL EXPENSES.—

(1) IN GENERAL.—

(A) PAY.—Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(B) PAY FOR CHAIRMAN.—The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) TRAVEL EXPENSES.—Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(g) DIRECTOR OF STAFF.—

(1) APPOINTMENT.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who was not employed by the Postal Service during the 1-year period preceding the date of such appointment.

(2) PAY.—The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(h) STAFF.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) CONDITIONS OF APPOINTMENTS.—The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the highest annual rate of basic pay payable for a position classified at above GS–15 of the General Schedule.

(3) DETAILS.—

(A) IN GENERAL.—Not more than ⅓ of the personnel employed by or detailed to the Commission may be on detail from the Postal Service.

(B) ANALYSTS.—Not more than ⅓ of the professional analysts of the Commission staff may be persons detailed from the Postal Service to the Commission.

(C) LIMITATIONS.—A person may not be detailed from the Postal Service to the Commission if that person participated personally and substantially in any matter within the Postal Service concerning the preparation of recommendations for closures or consolidations of postal facilities. No employee of the Postal Service may—

(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Postal Service to that staff;

(ii) review the preparation of such a report; or

(iii) approve or disapprove such a report.

(4) DETAIL UPON REQUEST.—Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

(5) COMPTROLLER GENERAL ASSISTANCE.—The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(6) LIMITATION ON NUMBER OF STAFF.—There may not be more than 15 persons on the staff at any one time.

(i) OTHER AUTHORITY.—

(1) EXPERTS AND CONSULTANTS.—The Commission may procure by contract, to the extent funds are available, the temporary of intermittent services of experts or consultants under section 3109 of title 5, United States Code.

(2) LEASE OF SPACE.—The Commission may lease space and acquire personal property to the extent funds are available.

(j) FUNDING.—There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

(k) REVIEW OF POSTAL SERVICE RECOMMENDATIONS.—

(1) IN GENERAL.—After receiving the recommendations from the Postal Service under section 302, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath. The hearings shall solicit views from Postal Service customers and employees and community leaders and government officials in the communities affected by the Postal Service's recommendations.

(2) REPORT.—

(A) TRANSMISSION.—The Commission shall, no later than 1 year following receipt of the Postal Service's recommendations under section 302, transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Postal Service, together with the Commission's recommendations for closures and consolidations.

(B) CHANGES IN RECOMMENDATIONS.—In making its recommendations, the Commission may make changes in any of the recommendations made by the Postal Service if the Commission determines that the Postal Service's recommended closings and consolidations would not allow them to meet the service standards established by the Postal Regulatory Commission under section 301.

(3) EXPLANATION.—The Commission shall explain and justify in its report submitted to the President under paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Postal Service under section 302. The Commission shall transmit a copy of such report to the Committee on Governmental Affairs of the Senate, Committee on Government Reform of the House of Representatives and the Subcommittees on Transportation, Treasury, and General Government of the Committees on Appropriations of the Senate and the House of Representatives on the same date on which it transmits its recommendations to the President under paragraph (2).

(4) PROVISION OF INFORMATION.—After transmitting its recommendations, the Commission shall promptly provide, upon request, to any member of Congress information used by the Commission in making its recommendations.

(5) COMPTROLLER GENERAL.—The Comptroller General of the United States shall—

(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Postal Service under section 302; and

(B) not later than 30 days following receipt of the Postal Service's recommendations, transmit to Congress and the Commission a detailed analysis of the Postal Service's recommendations.

(l) REVIEW BY THE PRESIDENT.—

(1) REPORT.—The President shall, no later than 14 days following receipt of the Commission's recommendations, transmit to the Commission and to Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) APPROVAL.—If the President approves all the recommendations, the President shall transmit a copy of such recommendations to Congress, together with a certification of such approval.

(3) DISAPPROVAL.—If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall than transmit to the President, within 30 days, a revised list of recommendations.

(4) APPROVAL AFTER REVISIONS.—If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to Congress, together with a certification of such approval.

SEC. 304. CLOSURE AND CONSOLIDATION OF FACILITIES.

(a) IN GENERAL.—Subject to subsection (b), the Postal Service shall—

(1) close all postal facilities recommended by the Commission in such report transmitted to the Congress by the President under section 303(l);

(2) consolidate all postal facilities recommended for consolidation by the Commission in such report;

(3) initiate all such closures and consolidations no later than 1 year after the date on which the President transmits a report to Congress under section 303(l) containing the recommendations for such closures or consolidations; and

(4) complete all such closures and consolidations no later than the end of the 2-year period beginning on the date on which the President transmits the report under section 303(l) containing the recommendations for such closures and consolidations.

(b) CONGRESSIONAL DISAPPROVAL.—

(1) IN GENERAL.—The Postal Service may not carry out any closure or consolidation recommended by the Commission in a report transmitted from the President under section 303(l) if a joint resolution is enacted, in accordance with section 305, disapproving such recommendations of the Commission before the earlier of—

(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

(B) the adjournment of the Congress sine die for the session during which such report is transmitted.

(2) DAYS OF SESSION.—For purposes of paragraph (1) and subsections (a) and (c) of section 305, the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of a period.

SEC. 305. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT.

(a) TERMS OF THE RESOLUTION.—For purposes of this title, the term ''joint resolution'' means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 303(l), and—

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: ''That Congress disapproves the recommendations of the Postal Facility Closure and Consolidation Commission as submitted by the President on ———'', the blank space being filled in with the appropriate date; and

(3) the title of which is as follows: ''Joint resolution disapproving the recommendations of the Postal Facility Closure and Consolidation Commission.''.

(b) REFERRAL.—A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Government Reform of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Governmental Affairs of the Senate.

(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 303(l), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) CONSIDERATION.—

(1) IN GENERAL.—On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE.—

(1) IN GENERAL.—If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) DISPOSITION OF A RESOLUTION.—Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 306. NONAPPEALIBILITY TO THE POSTAL REGULATORY COMMISSION.

The closing or consolidation of any post office or other postal facility under this title may not be appealed to the Postal Regulatory Commission under the provisions of title 39, United States Code, including section 404(b)(5) of that title.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

''§ 2011. Provisions relating to competitive products

''(a) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

''(1) costs attributable to competitive products; and

''(2) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

For purposes of this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

''(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

''(1) revenues from competitive products;

''(2) amounts received from obligations issued by the Postal Service under subsection (e);

''(3) interest and dividends earned on investments of the Competitive Products Fund; and

''(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

''(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, it may invest such amounts as it considers appropriate in—

''(1) obligations of, or obligations guaranteed by, the Government of the United States; and

''(2) in accordance with regulations which the Secretary of the Treasury shall prescribe (by not later than 12 months after the date of enactment of the Postal Accountability and Enhancement Act), such other obligations or securities as it considers appropriate, with the exception of obligations of or securities in any business entity subject to Postal Service regulations other than those regulations applying to the mailing public generally.

''(d) The Postal Service may, in its sole discretion, provide that moneys of the Competitive Products Fund be deposited in a Federal Reserve bank or a depository for public funds.

''(e)(1) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund, except that the Postal Service may pledge only assets related to the provision of competitive products (as determined under subsection (h) or, for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)), and the revenues and receipts from such products, for the payment of the principal of or interest on such obligations, for the purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve, sinking, and other funds which may be similarly pledged and used, to such extent and in such manner as the Postal Service determines necessary or desirable.

''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with the trustee, if any, under any agreement entered into in connection with the issuance thereof with respect to—

''(A) the establishment of reserve, sinking, and other funds;

''(B) application and use of revenues and receipts of the Competitive Products Fund;

''(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

''(D) such other matters as the Postal Service considers necessary or desirable to enhance the marketability of such obligations.

''(3) Obligations issued by the Postal Service under this subsection—

''(A) may not be purchased by the Secretary of the Treasury;

''(B) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority;

''(C) shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state; and

''(D) notwithstanding the provisions of the Federal Financing Bank Act of 1973 or any other provision of law (except as specifically provided by reference to this subparagraph in a law enacted after this subparagraph takes effect), shall not be eligible for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

''(4)(A) This paragraph applies with respect to the period beginning on the date of the enactment of this paragraph and ending at the close of the 5-year period which begins on the date on which the Postal Service makes its submission under subsection (h)(1).

''(B) During the period described in subparagraph (A), nothing in subparagraph (A) or (D) of paragraph (3) or the last sentence of section 2006(b) shall, with respect to any obligations sought to be issued by the Postal Service under this subsection, be considered to affect such obligations' eligibility for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

''(C) The Federal Financing Bank may elect to purchase such obligations under such terms, including rates of interest, as the Bank and the Postal Service may agree, but at a rate of yield no less than the prevailing yield on outstanding marketable securities of comparable maturity issued by entities with the same credit rating as the rating then most recently obtained by the Postal Service under subparagraph (D), as determined by the Bank.

''(D) In order to be eligible to borrow under this paragraph, the Postal Service shall first obtain a credit rating from a nationally recognized credit rating organization. Such rating—

''(i) shall be determined taking into account only those assets and activities of the Postal Service which are described in section 3634(a)(2) (relating to the Postal Service's assumed taxable income from competitive products); and

''(ii) may, before final rules of the Postal Regulatory Commission under subsection (h) are issued (or deemed to have been issued), be based on the best information available from the Postal Service, including the audited statements required by section 2008(e).

''(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

''(g) A judgment against the Postal Service or the Government of the United States (or settlement of a claim) shall, to the extent that it arises out of activities of the Postal Service in the provision of competitive products, be paid out of the Competitive Products Fund.

''(h)(1) The Postal Service, in consultation with an independent, certified public accounting firm and such other advisors as it considers appropriate, shall develop recommendations regarding—

''(A) the accounting practices and principles that should be followed by the Postal Service with the objectives of identifying the capital and operating costs incurred by the Postal Service in providing competitive products, and preventing the cross-subsidization of such products by market-dominant products; and

''(B) the substantive and procedural rules that should be followed in determining the Postal Service's assumed Federal income tax on competitive products income for any year (within the meaning of section 3634).

Such recommendations shall be submitted to the Postal Regulatory Commission no earlier than 6 months, and no later than 12 months, after the effective date of this section.

''(2)(A) Upon receiving the recommendations of the Postal Service under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

''(B) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

''(i) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

''(ii) provide for the establishment and application of the substantive and procedural rules described in paragraph (1)(B); and

''(iii) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

Final rules under this subparagraph shall be issued not later than 12 months after the date on which the Postal Service makes its submission to the Commission under paragraph (1) (or by such later date as the Commission and the Postal Service may agree to). If final rules are not issued by the Commission by the deadline under the preceding sentence, the recommendations submitted by the Postal Service under paragraph (1) shall be treated as the final rules. The Commission is authorized to promulgate regulations revising such rules.

''(C) Reports described in subparagraph (B)(iii) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires. The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data under such subparagraph whenever it shall appear that—

''(i) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

''(ii) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(D) A copy of each report described in subparagraph (B)(iii) shall also be transmitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

''(i) The Postal Service shall render an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund, in which it shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses. A copy of its then most recent report under this subsection shall be included with any other submission that it is required to make to the Postal Regulatory Commission under section 3652(g).''.

(2) CLERICAL AMENDMENT.—The analysis for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

''2011. Provisions relating to competitive products.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

''(2) 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund and the balance in the Competitive Products Fund,''.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking ''There'' and inserting ''Except as otherwise provided in section 2011, there''.

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (b), by adding at the end the following: ''Nothing in this chapter shall be considered to permit or require the Secretary of the Treasury to purchase any obligations of the Postal Service other than those issued under section 2005.''; and

(B) in subsection (c), by inserting ''under section 2005'' before ''shall be obligations''.

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

''§ 3634. Assumed Federal income tax on competitive products income

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

''(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

''(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

''(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

''(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

''(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

''(1) compute its assumed Federal income tax on competitive products income for such year; and

''(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

''(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.''.

SEC. 403. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

''§ 404a. Specific limitations

''(a) Except as specifically authorized by law, the Postal Service may not:

''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any product or service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

(b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking ''The'' and inserting ''Subject to the provisions of section 404a, the''.

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking ''Without'' and inserting ''Subject to the provisions of section 404a, but otherwise without''.

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

''404a. Specific limitations.''.

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

''(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

''(A) shall be considered to be a 'person', as used in the provisions of law involved; and

''(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

''(2) This subsection applies with respect to—

''(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

''(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

''(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

''(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

''(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

''(i) the antitrust laws (as defined in such subsection); and

''(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

''(2) No damages, interest on damages, costs or attorney's fees may be recovered under the antitrust laws (as so defined) from the Postal Service or any officer or employee thereof acting in an official capacity for any conduct with respect to a product in the market-dominant category of mail.

''(3) This subsection shall not apply with respect to conduct occurring before the date of the enactment of this subsection.

''(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with one of the nationally recognized model building codes and with other applicable nationally recognized codes.

''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

''(i) a copy of such schedule before construction of the building is begun; and

''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

''(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

''(A) Subsection (d) or (e) of this section.

''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

''(C) Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

''(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

''(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

''(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

''(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).''.

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

(a) IN GENERAL.—Section 407 of title 39, United States Code, is amended to read as follows:

''§ 407. International postal arrangements

''(a) It is the policy of the United States—

''(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

''(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

''(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

''(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

''(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services, and shall have the power to conclude treaties, conventions and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

''(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

''(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

''(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

''(C) shall maintain continuing liaison with the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate;

''(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

''(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

''(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

''(c)(1) Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit a decision on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

''(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with a decision of the Commission adopted under paragraph (1), except if, or to the extent, the Secretary determines, by written order, that considerations of foreign policy or national security require modification of the Commission's decision.

''(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that—

''(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be international law; and

''(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

''(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

''(2) For purposes of this subsection, the term 'private company' means a private company substantially owned or controlled by persons who are citizens of the United States.

''(3) In exercising the authority pursuant to subsection (b) to conclude new treaties, conventions and amendments related to international postal services and to renegotiate such treaties, conventions and amendments, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

''(4) The provisions of this subsection shall take effect 6 months after the date of the enactment of this subsection or such earlier date as the Customs Service may determine in writing.''.

(b) EFFECTIVE DATE.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

SEC. 406. CHANGE-OF-ADDRESS ORDER INVOLVING A COMMERCIAL MAIL RECEIVING AGENCY.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by section 204(a)) is amended by striking the heading for subchapter V and inserting the following:

''SUBCHAPTER VI—GENERAL''.

(b) CHANGE-OF-ADDRESS ORDER INVOLVING A COMMERCIAL MAIL RECEIVING AGENCY.—Subchapter VI of chapter 36 of title 39, United States Code (as so redesignated by subsection (a)) is amended by adding at the end the following:

''§ 3686. Change-of-address order involving a commercial mail receiving agency

''(a) For the purpose of this section, the term 'commercial mail receiving agency' or 'CMRA' means a private business that acts as the mail receiving agent for specific clients.

''(b) Upon termination of an agency relationship between an addressee and a commercial mail receiving agency—

''(1) the addressee or, if authorized to do so, the CMRA may file a change-of-address order with the Postal Service with respect to such addressee;

''(2) a change-of-address order so filed shall, to the extent practicable, be given full force and effect; and

''(3) any mail for the addressee that is delivered to the CMRA after the filing of an appropriate order under this subsection shall be subject to subsection (c).

''(c) Mail described in subsection (b)(3) shall, if marked for forwarding and remailed by the CMRA, be forwarded by the Postal Service in the same manner as, and subject to the same terms and conditions (including limitations on the period of time for which a change-of-address order shall be given effect) as apply to, mail forwarded directly by the Postal Service to the addressee.''.

SEC. 407. EXCEPTION FOR COMPETITIVE PRODUCTS.

(a) IN GENERAL.—Section 403(c) of title 39, United States Code, is amended by striking ''user.'' and inserting ''user, except that this subsection shall not apply to competitive products.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services, classifications, rates, and fees, to the extent provided or applicable (as the case may be) on or after the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION REQUIREMENTS FOR GOVERNORS.

(a) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking the fourth sentence and inserting the following: ''The Governors shall represent the public interest generally, and at least 4 of the Governors shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size; for purposes of this sentence, an organization or corporation shall be considered to be of substantial size if it employs at least 50,000 employees. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.''.

(c) RESTRICTION.—Section 202(b) of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

''(2)(A) Notwithstanding any other provision of this section, in the case of the office of the Governor the term of which is the first one scheduled to expire at least 4 months after the date of the enactment of this paragraph—

''(i) such office may not, in the case of any person commencing service after that expiration date, be filled by any person other than an individual chosen from among persons nominated for such office with the unanimous concurrence of all labor organizations described in section 206(a)(1); and

''(ii) instead of the term that would otherwise apply under the first sentence of paragraph (1), the term of any person so appointed to such office shall be 3 years.

''(B) Except as provided in subparagraph (A), an appointment under this paragraph shall be made in conformance with all provisions of this section that would otherwise apply.''.

(d) APPLICABILITY.—The amendment made by subsection (a) shall not affect the appointment or tenure of any person serving as a Governor of the Board of Governors of the United States Postal Service pursuant to an appointment made before the date of the enactment of this Act, or, except as provided in the amendment made by subsection (c), any nomination made before that date; however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of the enactment of this Act.

SEC. 502. OBLIGATIONS.

(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.''.

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—The third sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''$2,000,000,000'' and inserting ''$3,000,000,000''.

(c) INCREASE IN MAXIMUM OUTSTANDING OBLIGATIONS ALLOWABLE.—Paragraph (2) of section 2005(a) of title 39, United States Code, is amended—

(1) by striking ''and'' at the end of subparagraph (B); and

(2) by striking subparagraph (C) and inserting the following:

''(C) $15,000,000,000 for each of fiscal years 1992 through 2002; and

''(D) $25,000,000,000 for fiscal year 2003 and each fiscal year thereafter.''.

(d) LIMITATIONS ON OBLIGATIONS OUTSTANDING.—

(1) IN GENERAL.—Subsection (a) of section 2005 of title 39, United States Code, is amended by adding at the end the following:

''(3) For purposes of applying the respective limitations under this subsection, the aggregate amount of obligations issued by the Postal Service which are outstanding as of any one time, and the net increase in the amount of obligations outstanding issued by the Postal Service for the purpose of capital improvements or for the purpose of defraying operating expenses of the Postal Service in any fiscal year, shall be determined by aggregating the relevant obligations issued by the Postal Service under this section with the relevant obligations issued by the Postal Service under section 2011.''.

(2) CONFORMING AMENDMENT.—The second sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''any such obligations'' and inserting ''obligations issued by the Postal Service which may be''.

(e) AMOUNTS WHICH MAY BE PLEDGED, ETC.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

''(2) Notwithstanding any other provision of this section—

''(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

''(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.''.

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) A letter may also be carried out of the mails when—

''(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

''(2) the letter weighs at least 12½ ounces; or

''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that purport to permit private carriage by suspension of the operation of this section (as then in effect).

''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

''(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;''.

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS, ETC.

(a) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this Act or any amendment made by this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the

United States Postal Service, or any collective bargaining agreement.

(b) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

SEC. 506. BONUS AUTHORITY.

Title 39, United States Code, is amended by adding after section 3686 (as added by section 406(b)) the following:

''§ 3687. Bonus authority

''(a) IN GENERAL.—The Postal Service may establish one or more programs to provide bonuses or other rewards to officers and employees of the Postal Service to achieve the objectives of this chapter.

''(b) WAIVER OF LIMITATION ON COMPENSATION.—

''(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2).

''(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation referred to in paragraph (1)—

''(A) the Postal Service shall make an appropriate request to the Postal Regulatory Commission, in such form and manner as the Commission requires; and

''(B) the Postal Regulatory Commission shall approve any such request if it finds that the program is likely to achieve the objectives of this chapter.

''(3) REVOCATION AUTHORITY.—If the Postal Regulatory Commission finds that a program previously approved under paragraph (2) is not achieving the objectives of this chapter, the Commission may revoke or suspend the authority of the Postal Service to continue such program until such time as appropriate corrective measures have, in the judgment of the Commission, been taken.

''(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

''(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (a)(2);

''(2) the amount of the bonus or other reward; and

''(3) the amount by which the limitation referred to in subsection (a)(2) was exceeded as a result of such bonus or other reward.''.

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

''CHAPTER 5—POSTAL REGULATORY COMMISSION

''Sec.
''501. Establishment.
''502. Commissioners.
''503. Rules; regulations; procedures.
''504. Administration.

''§ 501. Establishment

''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

''§ 502. Commissioners

''(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

''(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

''(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

''(f) The Commissioners shall serve for terms of 6 years.'';

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602; and

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)).

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) pursuant to an appointment made before the date of the enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

''5. Postal Regulatory Commission .. 501''

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

''(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

''(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title—

''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

''(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

''(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission pursuant to a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

''(2) No officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

''(A) use such information for purposes other than the purposes for which it is supplied; or

''(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

''(3) Paragraph (2) shall not prevent information from being furnished under any process of discovery established under this title in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for any information furnished under the preceding sentence.''.

SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

''(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.''.

(b) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.''.

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is

amended by striking the first sentence and inserting the following: ''The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated pursuant to section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated pursuant to section 8G(f) of the Inspector General Act of 1978.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503–504 (as so redesignated by section 601), 1001, 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking ''Postal Rate Office'' and inserting ''Postal Regulatory Commission''.

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

TITLE VII—INSPECTORS GENERAL

SEC. 701. INSPECTOR GENERAL OF THE POSTAL REGULATORY COMMISSION.

(a) IN GENERAL.—Paragraph (2) of section 8G(a) of the Inspector General Act of 1978 is amended by inserting ''the Postal Regulatory Commission,'' after ''the United States International Trade Commission,''.

(b) ADMINISTRATION.—Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding after subsection (g) (as added by section 602) the following:

''(h)(1) Notwithstanding any other provision of this title or of the Inspector General Act of 1978, the authority to select, appoint, and employ officers and employees of the Office of Inspector General of the Postal Regulatory Commission, and to obtain any temporary or intermittent services of experts or consultants (or an organization of experts or consultants) for such Office, shall reside with the Inspector General of the Postal Regulatory Commission.

''(2) Except as provided in paragraph (1), any exercise of authority under this subsection shall, to the extent practicable, be in conformance with the applicable laws and regulations that govern selections, appointments and employment, and the obtaining of any such temporary or intermittent services, within the Postal Regulatory Commission.''.

(c) DEADLINE.—No later than 180 days after the date of the enactment of this Act—

(1) the first Inspector General of the Postal Regulatory Commission shall be appointed; and

(2) the Office of Inspector General of the Postal Regulatory Commission shall be established.

SEC. 702. INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE TO BE APPOINTED BY THE PRESIDENT.

(a) DEFINITIONAL AMENDMENTS TO THE INSPECTOR GENERAL ACT OF 1978.—Section 11 of the Inspector General Act of 1978 is amended—

(1) in paragraph (1)—

(A) by striking ''and'' before ''the chief executive officer of the Resolution Trust Corporation'';

(B) by striking ''and'' before ''the Chairperson of the Federal Deposit Insurance Corporation''; and

(C) by inserting ''the Postmaster General;'' after ''Social Security Administration;''; and

(2) in paragraph (2)—

(A) by striking ''or'' before ''the Veterans' Administration''; and

(B) by inserting ''the United States Postal Service,'' after ''Social Security Administration,''.

(b) SPECIAL PROVISIONS CONCERNING THE UNITED STATES POSTAL SERVICE.—The Inspector General Act of 1978 is amended—

(1) by redesignating sections 8G (as amended by section 701(a)), 8H, and 8I as sections 8H through 8J, respectively; and

(2) by inserting after section 8F the following:

''SPECIAL PROVISIONS CONCERNING THE UNITED STATES POSTAL SERVICE

''SEC. 8G. (a) Notwithstanding the last two sentences of section 3(a), the Inspector General of the United States Postal Service shall report to and be under the general supervision of the Postmaster General, but shall not report to, or be subject to supervision by, any other officer or employee of the United States Postal Service or its Board of Governors. No such officer or employee (including the Postmaster General) or member of such Board shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

''(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

''(c) Any report required to be transmitted by the Postmaster General to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the 7-day period specified under such section, to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate.

''(d) Notwithstanding any provision of paragraph (7) or (8) of section 6(a), the Inspector General of the United States Postal Service may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the United States Postal Service.

''(e) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.

''(f) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.

''(g) As used in this section, 'Board of Governors' and 'Board' each has the meaning given it by section 102 of title 39, United States Code.''.

(c) AUDITS OF THE POSTAL SERVICE.—

(1) AUDITS.—Subsection (e) of section 2008 of title 39, United States Code, is amended to read as follows:

''(e)(1) At least once each year beginning with the fiscal year commencing after the date of the enactment of the Postal Accountability and Enhancement Act, the financial statements of the Postal Service (including those used in determining and establishing postal rates) shall be audited by the Inspector General or by an independent external auditor selected by the Inspector General.

''(2) Audits under this section shall be conducted in accordance with applicable generally accepted government auditing standards.

''(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the Postmaster General.''.

(2) RESULTS OF INSPECTOR GENERAL'S AUDIT TO BE INCLUDED IN ANNUAL REPORT.—Section 2402 of title 39, United States Code, is amended by inserting after the first sentence the following: ''Each report under this section shall include, for the most recent fiscal year for which a report under section 2008(e) is available (unless previously transmitted under the following sentence), a copy of such report.''.

(3) COORDINATION PROVISIONS.—Section 2008(d) of title 39, United States Code, is amended—

(A) by striking ''(d) Nothing'' and inserting ''(d)(1) Except as provided in paragraph (2), nothing''; and

(B) by adding at the end the following:

''(2) An audit or report under paragraph (1) may not be obtained without the prior written approval of the Inspector General.''.

(4) SAVINGS PROVISION.—For purposes of any fiscal year preceding the first fiscal year commencing after the date of the enactment of this Act, the provisions of title 39, United States Code, shall be applied as if the amendments made by this subsection had never been enacted.

(d) REPORTS.—Section 3013 of title 39, United States Code, is amended by striking ''Postmaster General'' each place it appears and inserting ''Chief Postal Inspector''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) RELATING TO THE INSPECTOR GENERAL ACT OF 1978.—(A) Subsection (a) of section 8H of the Inspector General Act of 1978 (as amended by section 701(a) and redesignated by subsection (b) of this section) is further amended—

(i) in paragraph (2) by striking ''the Postal Regulatory Commission, and the United States Postal Service;'' and inserting ''and the Postal Regulatory Commission;'' and

(ii) in paragraph (4) by striking ''except that'' and all that follows through ''Code);'' and inserting ''except that, with respect to the National Science Foundation, such term means the National Science Board;''.

(B)(i) Subsection (f) of section 8H of such Act (as so redesignated) is repealed.

(ii) Subsection (c) of section 8H of such Act (as so redesignated) is amended by striking ''Except as provided under subsection (f) of this section, the'' and inserting ''The''.

(C) Section 8J of such Act (as so redesignated) is amended—

(i) by striking all after ''8D,'' and before ''of this Act'' and inserting '' 8E, 8F, 8G, or 8I''; and

(ii) by striking ''8G(a)'' and inserting ''8H(a)''.

(2) RELATING TO TITLE 39, UNITED STATES CODE.—(A) Subsection (e) of section 202 of title 39, United States Code, is repealed.

(B) Paragraph (4) of section 102 of such title 39 (as amended by section 101) is amended to read as follows:

''(4) 'Inspector General' means the Inspector General of the United States Postal Service, appointed under section 3(a) of the Inspector General Act of 1978;''.

(C) The first sentence of section 1003(a) of such title 39 is amended by striking ''chapters 2 and 12 of this title, section 8G of the Inspector General Act of 1978, or other provision of law,'' and inserting ''chapter 2 or 12 of this title, subsection (b) or (c) of section 1003 of this title, or any other provision of law,''.

(D) Section 1003(b) of such title 39 is amended by striking ''respective'' and inserting ''other''.

(E) Section 1003(c) of such title 39 is amended by striking ''included'' and inserting ''includes''.

(3) RELATING TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—Section 304C(b)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254d(b)(1)) is amended by striking ''8G'' and inserting ''8H''.

(4) RELATING TO THE ENERGY POLICY ACT OF 1992.—Section 160(a) of the Energy Policy Act of 1992 (42 U.S.C. 8262f(a)) is amended (in the matter before paragraph (1)) by striking all that follows ''(5 U.S.C. App.)'' and before ''shall—''.

(f) EFFECTIVE DATE; ELIGIBILITY OF PRIOR INSPECTOR GENERAL.—

(1) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B) or subsection (c), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(B) SPECIAL RULES.—

(i) IN GENERAL.—If the position of Inspector General of the United States Postal Service is occupied on the date of enactment of this Act (other than by an individual serving due to a vacancy arising in that position before the expiration of his or her predecessor's term), then, for purposes of the period beginning on such date of enactment and ending on January 5, 2004, or, if earlier, the date on which such individual ceases to serve in that position, title 39, United States Code, and the Inspector General Act of 1978 shall be applied as if the amendments made by this section had not been enacted, except—

(I) for those made by subsections (c) and (d); and

(II) as provided in clause (ii).

(ii) AUTHORIZATION OF APPROPRIATIONS.—

(I) IN GENERAL.—Notwithstanding any other provision of this paragraph, subsection (f) of section 8G of the Inspector General Act of 1978 (as amended by this section) shall be effective for purposes of fiscal years beginning on or after October 1, 2002.

(II) SAVINGS PROVISION.—For purposes of the fiscal year ending on September 30, 2002, funding for the Office of Inspector General of the United States Postal Service shall be made available in the same manner as if this Act had never been enacted.

(2) ELIGIBILITY OF PRIOR INSPECTOR GENERAL.—Nothing in this Act shall prevent any individual who has served as Inspector General of the United States Postal Service at any time before the date of the enactment of this Act from being appointed to that position pursuant to the amendments made by this section.

TITLE VIII—EVALUATIONS

SEC. 801. DEFINITION.

For purposes of this title, the term ''Board of Governors'' has the meaning given such term by section 102 of title 39, United States Code.

SEC. 802. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 5 years, submit a report to the President and the Congress concerning—

(1) the operation of the amendments made by the Postal Accountability and Enhancement Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review such report and to submit written comments thereon. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

(c) SPECIFIC INFORMATION REQUIRED.—The Postal Regulatory Commission shall include, as part of at least its first report under subsection (a), the following:

(1) COST-COVERAGE REQUIREMENT RELATING TO COMPETITIVE PRODUCTS COLLECTIVELY.—With respect to section 3633 of title 39, United States Code (as amended by this Act)—

(A) a description of how such section has operated; and

(B) recommendations as to whether or not such section should remain in effect and, if so, any suggestions as to how it might be improved.

(2) COMPETITIVE PRODUCTS FUND.—With respect to the Postal Service Competitive Products Fund (under section 2011 of title 39, United States Code, as amended by section 401), in consultation with the Secretary of the Treasury—

(A) a description of how such Fund has operated;

(B) any suggestions as to how the operation of such Fund might be improved; and

(C) a description and assessment of alternative accounting or financing mechanisms that might be used to achieve the objectives of such Fund.

(3) ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS FUND.—With respect to section 3634 of title 39, United States Code (as amended by this Act), in consultation with the Secretary of the Treasury—

(A) a description of how such section has operated; and

(B) recommendations as to whether or not such section should remain in effect and, if so, any suggestions as to how it might be improved.

SEC. 803. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, within 1 year after the date of the enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to products of the United States Postal Service in the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

SEC. 804. GREATER DIVERSITY IN POSTAL SERVICE EXECUTIVE AND ADMINISTRATIVE SCHEDULE MANAGEMENT POSITIONS.

(a) STUDY.—The Board of Governors shall study and, within 1 year after the date of the enactment of this Act, submit to the President and Congress a report concerning the extent to which women and minorities are represented in supervisory and management positions within the United States Postal Service. Any data included in the report shall be presented in the aggregate and by pay level.

(b) PERFORMANCE EVALUATIONS.—The United States Postal Service shall, as soon as practicable, take such measures as may be necessary to ensure that, for purposes of conducting performance appraisals of supervisory or managerial employees, appropriate consideration shall be given to meeting affirmative action goals, achieving equal employment opportunity requirements, and implementation of plans designed to achieve greater diversity in the workforce.

SEC. 805. CONTRACTS WITH WOMEN, MINORITIES, AND SMALL BUSINESSES.

The Board of Governors shall study and, within 1 year after the date of the enactment of this Act, submit to the President and the Congress a report concerning the number and value of contracts and subcontracts the Postal Service has entered into with women, minorities, and small businesses.

SEC. 806. RATES FOR PERIODICALS.

(a) IN GENERAL.—The United States Postal Service, acting jointly with the Postal Regulatory Commission and the General Accounting Office, shall study and submit to the President and Congress a report concerning—

(1) the quality, accuracy, and completeness of the information used by the Postal Service in determining the direct and indirect postal costs attributable to periodicals; and

(2) any opportunities that might exist for improving efficiencies in the collection, handling, transportation, or delivery of periodicals by the Postal Service, including any pricing incentives for mailers that might be appropriate.

(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative action or legislation that might be appropriate.

SEC. 807. ASSESSMENT OF CERTAIN RATE DEFICIENCIES.

(a) IN GENERAL.—Within 12 months after the date of the enactment of this Act, the Office of Inspector General of the United States Postal Service shall study and submit to the President, the Congress, and the United States Postal Service, a report concerning the administration of section 3626(k) of title 39, United States Code.

(b) SPECIFIC REQUIREMENTS.—The study and report shall specifically address the adequacy and fairness of the process by which assessments under section 3626(k) of title 39, United States Code, are determined and appealable, including—

(1) whether the Postal Regulatory Commission or any other body outside the Postal Service should be assigned a role; and

(2) whether a statute of limitations should be established for the commencement of proceedings by the Postal Service thereunder.

TITLE IX—MISCELLANEOUS; TECHNICAL AND CONFORMING AMENDMENTS

SEC. 901. EMPLOYMENT OF POSTAL POLICE OFFICERS.

Section 404 of title 39, United States Code, as amended by sections 102 and 908(f), is further amended by adding at the end the following:

''(f)(1) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or 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 cited in paragraph (2), and, as to such property, the Postmaster General (or his designee) may take any action that the Administrator of General Services (or his designee) may take under section 2 or 3 of such Act, attaching thereto penalties under the authority and within the limits provided in section 4 of such Act.

''(2) The Act cited in this paragraph is the Act of June 1, 1948 (62 Stat. 281), commonly known as the 'Protection of Public Property Act'.''.

SEC. 902. DATE OF POSTMARK TO BE TREATED AS DATE OF APPEAL IN CONNECTION WITH THE CLOSING OR CONSOLIDATION OF POST OFFICES.

(a) IN GENERAL.—Section 404(b) of title 39, United States Code, is amended by adding at the end the following:

''(6) For purposes of paragraph (5), any appeal received by the Commission shall—

''(A) if sent to the Commission through the mails, be considered to have been received on the date of the Postal Service postmark on the envelope or other cover in which such appeal is mailed; or

''(B) if otherwise lawfully delivered to the Commission, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission).''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall apply with respect to any determination to close or consolidate a post office which is first made available, in accordance with paragraph (3) of section 404(b) of title 39, United States Code, after the end of the 3-month period beginning on the date of the enactment of this Act.

SEC. 903. PROVISIONS RELATING TO BENEFITS UNDER CHAPTER 81 OF TITLE 5, UNITED STATES CODE, FOR OFFICERS AND EMPLOYEES OF THE FORMER POST OFFICE DEPARTMENT.

(a) IN GENERAL.—Section 8 of the Postal Reorganization Act (39 U.S.C. 1001 note) is amended by inserting ''(a)'' after ''8.'' and by adding at the end the following:

''(b) For purposes of chapter 81 of title 5, United States Code, the Postal Service shall, with respect to any individual receiving benefits under such chapter as an officer or employee of the former Post Office Department, have the same authorities and responsibilities as it has with respect to an officer or employee of the Postal Service receiving such benefits.''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on October 1, 2001.

SEC. 904. OBSOLETE PROVISIONS.

(a) REPEAL.—

(1) IN GENERAL.—Chapter 52 of title 39, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—(A) Section 5005(a) of title 39, United States Code, is amended—

(i) by striking paragraph (1), and by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively; and

(ii) in paragraph (3) (as so designated by clause (i)) by striking ''(as defined in section 5201(6) of this title)''.

(B) Section 5005(b) of such title 39 is amended by striking ''(a)(4)'' each place it appears and inserting ''(a)(3)''.

(C) Section 5005(c) of such title 39 is amended by striking ''by carrier or person under subsection (a)(1) of this section, by contract under subsection (a)(4) of this section, or'' and inserting ''by contract under subsection (a)(3) of this section or''.

(b) ELIMINATING RESTRICTION ON LENGTH OF CONTRACTS.—(1) Section 5005(b)(1) of title 39, United States Code, is amended by striking ''(or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years)'' and inserting ''(or such length of time as may be determined by the Postal Service to be advisable or appropriate)''.

(2) Section 5402(c) of such title 39 is amended by striking ''for a period of not more than 4 years''.

(3) Section 5605 of such title 39 is amended by striking ''for periods of not in excess of 4 years''.

(c) CLERICAL AMENDMENT.—The analysis for part V of title 39, United States Code, is amended by repealing the item relating to chapter 52.

SEC. 905. EXPANDED CONTRACTING AUTHORITY.

(a) AMENDMENT TO TITLE 39, UNITED STATES CODE.—

(1) CONTRACTS WITH AIR CARRIERS.—Subsection (d) of section 5402 of title 39, United States Code, is amended to read as follows:

''(d)(1) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate air transportation, including the rates therefor, either through negotiations or competitive bidding.

''(2) Notwithstanding subsections (a) through (c), the Postal Service may contract with any air carrier or foreign air carrier for the transportation of mail by aircraft in foreign air transportation, including the rates therefor, either through negotiations or competitive bidding, except that—

''(A) any such contract may be awarded only to (i) an air carrier holding a certificate required by section 41101 of title 49 or an exemption therefrom issued by the Secretary of Transportation, (ii) a foreign air carrier holding a permit required by section 41301 of title 49 or an exemption therefrom issued by the Secretary of Transportation, or (iii) a combination of such air carriers or foreign air carriers (or both);

''(B) mail transported under any such contract shall not be subject to any duty-to-carry requirement imposed by any provision of subtitle VII of title 49 or by any certificate, permit, or corresponding exemption authority issued by the Secretary of Transportation under that subtitle;

''(C) every contract that the Postal Service awards to a foreign air carrier under this paragraph shall be subject to the continuing requirement that air carriers shall be afforded the same opportunity to carry the mail of the country to and from which the mail is transported and the flag country of the foreign air carrier, if different, as the Postal Service has afforded the foreign air carrier; and

''(D) the Postmaster General shall consult with the Secretary of Defense concerning actions that affect the carriage of military mail transported in foreign air transportation.

''(3) Paragraph (2) shall not be interpreted as suspending or otherwise diminishing the authority of the Secretary of Transportation under section 41310 of title 49.''.

(2) DEFINITIONS.—Subsection (e) of section 5402 of title 39, United States Code, is amended to read as follows:

''(e) For purposes of this section, the terms 'air carrier', 'air transportation', 'foreign air carrier', 'foreign air transportation', 'interstate air transportation', and 'mail' shall have the meanings given such terms in section 40102 of title 49.''.

(b) AMENDMENTS TO TITLE 49, UNITED STATES CODE.—

(1) AUTHORITY OF POSTAL SERVICE TO PROVIDE FOR INTERSTATE AIR TRANSPORTATION OF MAIL.—Section 41901(a) of title 49, United States Code, is amended to read as follows:

''(a) TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in air transportation under this chapter and under chapter 54 of title 39.''.

(2) SCHEDULES FOR CERTAIN TRANSPORTATION OF MAIL.—Section 41902(b)(1) of title 49, United States Code, is amended by inserting before the semicolon at the end the following: ''(other than foreign air transportation of mail)''.

(3) PRICES FOR FOREIGN TRANSPORTATION OF MAIL.—Section 41907 of title 49, United States Code, is amended—

(A) by striking ''(a) LIMITATIONS.—''; and

(B) by striking subsection (b).

(4) CONFORMING AMENDMENTS.—Sections 41107, 41901(b)(1), 41902(a), 41903(a), and 41903(b) of title 49, United States Code, are amended by striking ''in foreign air transportation or''.

SEC. 906. INVESTMENTS.

Subsection (c) of section 2003 of title 39, United States Code, is amended—

(1) by striking ''(c) If'' and inserting ''(c)(1) Except as provided in paragraph (2), if''; and

(2) by adding at the end the following:

''(2)(A) Nothing in this section shall be considered to authorize any investment in any obligations or securities of a commercial entity.

''(B) For purposes of this paragraph, the term 'commercial entity' means any corporation, company, association, partnership, joint stock company, firm, society, or other similar entity, as further defined under regulations prescribed by the Postal Regulatory Commission.''.

SEC. 907. REPEAL OF SECTION 5403.

(a) IN GENERAL.—Section 5403 of title 39, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The analysis for chapter 54 of title 39, United States Code, is amended by repealing the item relating to section 5403.

SEC. 908. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REDUCED RATES.—Section 3626 of title 39, United States Code, is amended—

(1) in subsection (a)—

(A) by striking all before paragraph (4) and inserting the following:

''(a)(1) Except as otherwise provided in this section, rates of postage for a class of mail

or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in accordance with section 3622.

''(2) For the purpose of this subsection, the term 'regular-rate category' means any class of mail or kind of mailer, other than a class or kind referred to in section 2401(c).''; and

(B) by redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively;

(2) in subsection (g) by adding at the end the following:

''(3) For purposes of this section and former section 4358(a) through (c) of this title, those copies of an issue of a publication entered within the county in which it is published, but distributed outside such county on postal carrier routes originating in the county of publication, shall be treated as if they were distributed within the county of publication.

''(4)(A) In the case of an issue of a publication, any number of copies of which are mailed at the rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title, any copies of such issue which are distributed outside the county of publication (excluding any copies subject to paragraph (3)) shall be subject to rates of postage provided for under this paragraph.

''(B) The rates of postage applicable to mail under this paragraph shall be established in accordance with section 3622.

''(C) This paragraph shall not apply with respect to an issue of a publication unless the total paid circulation of such issue outside the county of publication (not counting recipients of copies subject to paragraph (3)) is less than 5,000.'';

(3) in subsection (j)(1)(D)—

(A) by striking ''and'' at the end of subclause (I); and

(B) by adding after subclause (II) the following:

''(III) clause (i) shall not apply to space advertising in mail matter that otherwise qualifies for rates under former section 4452(b) or 4452(c) of this title, and satisfies the content requirements established by the Postal Service for periodical publications.''; and

(4) by adding at the end the following:

''(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5).''.

(b) REIMBURSEMENT.—Section 3681 of title 39, United States Code, is amended by striking ''section 3628'' and inserting ''sections 3662 through 3664''.

(c) SIZE AND WEIGHT LIMITS.—Section 3682 of title 39, United States Code, is amended to read as follows:

''§ 3682. Size and weight limits

''The Postal Service may establish size and weight limitations for mail matter in the market-dominant category of mail consistent with regulations the Postal Regulatory Commission may prescribe under section 3622. The Postal Service may establish size and weight limitations for mail matter in the competitive category of mail consistent with its authority under section 3632.''.

(d) REVENUE FOREGONE, ETC.—Title 39, United States Code, is amended—

(1) in section 503 (as so redesignated by section 601) by striking ''this chapter.'' and inserting ''this title.''; and

(2) in section 2401(d) by inserting ''(as last in effect before enactment of the Postal Accountability and Enhancement Act)'' after ''3626(a)'' and after ''3626(a)(3)(B)(ii)''.

(e) APPROPRIATIONS AND REPORTING REQUIREMENTS.—

(1) APPROPRIATIONS.—Subsection (e) of section 2401 of title 39, United States Code, is amended—

(A) by striking ''Committee on Post Office and Civil Service'' each place it appears and inserting ''Committee on Government Reform''; and

(B) by striking ''Not later than March 15 of each year,'' and inserting ''Each year,''.

(2) REPORTING REQUIREMENTS.—Sections 2803(a) and 2804(a) of title 39, United States Code, are amended by striking ''2401(g)'' and inserting ''2401(e)''.

(f) AUTHORITY TO FIX RATES AND CLASSES GENERALLY; REQUIREMENT RELATING TO LETTERS SEALED AGAINST INSPECTION.—Section 404 of title 39, United States Code (as amended by section 102) is further amended by redesignating subsections (b) and (c) as subsections (d) and (e), respectively, and by inserting after subsection (a) the following:

''(b) Except as otherwise provided, the Governors are authorized to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage and fees for postal services in accordance with the provisions of chapter 36. Postal rates and fees shall be reasonable and equitable and sufficient to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

''(c) The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service. No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee.''.

(g) LIMITATIONS.—Section 3684 of title 39, United States Code, is amended by striking all that follows ''any provision'' and inserting ''of this title.''.

(h) MISCELLANEOUS.—Title 39, United States Code, is amended—

(1) in section 410(b), by moving the left margin of paragraph (10) 2 ems to the left;

(2) in section 1005(d)(2)—

(A) by striking ''subsection (g) of section 5532,''; and

(B) by striking ''8344,'' and inserting ''8344'';

(3) in the analysis for part III, by striking the item relating to chapter 28 and inserting the following:

''28. Strategic Planning and Performance Management ..... 2801'';

(4) in subsections (h)(2) and (i)(2) of section 3001, by moving the left margin of subparagraph (C) of each 2 ems to the left;

(5) in section 3005(a)—

(A) in the matter before paragraph (1), by striking all that follows ''nonmailable'' and precedes ''(h),'' and inserting ''under section 3001(d),''; and

(B) in the sentence following paragraph (3), by striking all that follows ''nonmailable'' and precedes ''(h),'' and inserting ''under such section 3001(d),'';

(6) in section 3210(a)(6)(C), by striking the matter after ''if such mass mailing'' and before ''than 60 days'' and inserting ''is postmarked fewer'';

(7) in section 3626(a), by moving the left margin of paragraphs (3), (5), and (6) (as so redesignated by subsection (a)(1)(B), and including each subparagraph thereunder (if any)) 2 ems to the left;

(8) by striking the heading for section 3627 and inserting the following:

''§ 3627. Adjusting free rates''

; and

(9) in section 5402(g)(1), by moving the left margin of subparagraph (D) (including each clause thereunder) 2 ems to the left.

By Mr. LEAHY (for himself, Mr. DASCHLE, Mr. KENNEDY, Mr. FEINGOLD, and Mr. BINGAMAN):

S. 1286. A bill to combat nursing home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Madam President, today I am introducing the Seniors Safety Act of 2003, a bill to protect older Americans from crime. I am pleased to have Senators DASCHLE, KENNEDY, FEINGOLD, and BINGAMAN as cosponsors for this anti-crime bill.

The Seniors Safety Act is a comprehensive bill that addresses the most prevalent crimes perpetrated against seniors, including health care fraud, nursing home abuse, telemarketing fraud—and bribery, graft and fraud in pension and employee benefit plans. In addition, this legislation would help seniors obtain restitution if their pension plans are defrauded.

Older Americans are the most rapidly growing population group in our society, making them an even more attractive target for criminals. The Department of Health and Human Services has predicted that the number of older Americans will grow from 13 percent of the U.S. population in 2000 to 20 percent by 2030. In Vermont, seniors comprise about 12 percent of the population, a number that is expected to increase to 20 percent by 2025.

Crime against seniors has remained stubbornly resistant over the last decade. According to a 2000 Justice Department study, more than 90 percent of crimes committed against older Americans were property crimes, with theft the most common. As our Nation addressed our violent crime problem, we did not take a comprehensive approach to deterring the crimes that so affect the elderly, like telemarketing fraud, health care fraud, and pension fraud. The Seniors Safety Act provides such a comprehensive approach, and I urge the Senate to pass it.

The Seniors Safety Act instructs the U.S. Sentencing Commission to review current sentencing guidelines and, if appropriate, amend the guidelines to include the age of a crime victim as a criteria for determining whether a sentencing enhancement is proper. The bill also requires the Commission to review sentencing guidelines for health care benefit fraud, increases statutory penalties both for fraud resulting in serious injury or death and for bribery

and graft in connection with employee benefit plans, and increases criminal and civil penalties for defrauding pension plans.

Telemarketing fraud is one crime that disproportionately harms Americans over age 50. The Seniors Safety Act seeks to fight the perpetrators of fraud—schemes that often succeed in swindling seniors of their life savings. Some of these schemes are directed from outside the United States, making criminal prosecution more difficult.

The Act would provide the Attorney General with a new and substantial tool to prevent telemarketing fraud the power to block or terminate service to telephone facilities that are being used to defraud innocent people. The Justice Department could use this authority to disrupt telemarketing fraud schemes directed from foreign sources by cutting off the swindlers' telephone service. Even if the criminals acquire a new telephone number, temporary interruptions will prevent some seniors from being victimized.

The bill also establishes a ''Better Business Bureau''-style clearinghouse at the Federal Trade Commission to provide seniors, their families, and others who may be concerned about a telemarketer with information about prior law enforcement actions against the particular company. In addition, the FTC would refer seniors and other consumers who believe they have been swindled to the appropriate law enforcement authorities.

Criminal activity that undermines the safety and integrity of pension plans and health benefit programs threatens all Americans, but most especially those seniors who have relied on promised benefits in planning their retirements. Seniors who have worked faithfully and honestly for years should not reach their retirement years only to find that the funds they relied upon were stolen.

The Seniors Safety Act would add to the arsenal that federal prosecutors can draw upon to prevent and punish fraud against retirement plans. Specifically, the Act would create new criminal and civil penalties for defrauding pension plans or obtaining money or property from such plans by means of false or fraudulent pretenses. In addition, the Act would enhance penalties for bribery and graft in connection with employee benefit plans. The only people enjoying the benefits of pension plans should be the people who have worked hard to fund those plans, not crooks who get the money by fraud.

Health care spending consists of about 15 percent of the gross national product, or more than $1 trillion each year. Estimated losses due to fraud and abuse are astronomical. A December 1998 report by the National Institute of Justice, NIJ, states that these losses ''may exceed 10 percent of annual health care spending, or $100 billion per year.''

As more health care claims are processed electronically, more sophisticated computer-generated fraud schemes are surfacing. Some of these schemes generate thousands of false claims designed to pass through automated claims processing to payment, and result in the theft of millions of dollars from federal and private health care programs. Fraud against Medicare, Medicaid and private health plans increases the financial burden on taxpayers and beneficiaries alike. In addition, some forms of fraud may result in inadequate medical care, harming patients' health as well. Unfortunately, the NIJ reports that many health care fraud schemes ''deliberately target vulnerable populations, such as the elderly or Alzheimer's patients, who are less willing or able to complain or alert law enforcement.''

We saw a dramatic increase in criminal convictions for health care fraud cases during the 1990s. These cases included convictions for submitting false claims to Medicare, Medicaid, and private insurance plans; fraudulent billings by foreign doctors; and needless prescriptions for durable medical equipment by doctors in exchange for kickbacks from manufacturers.

We can and must do more. The Seniors Safety Act would allow the Attorney General to bring injunctive actions to stop false claims and illegal kickback schemes involving federal health care programs. The bill would also provide law enforcement authorities with additional investigatory tools to uncover, investigate, and prosecute health care offenses in both criminal and civil proceedings.

In addition, whistle-blowers who tip off law enforcement officers about health care fraud would be authorized under the Seniors Safety Act to seek court permission to review information obtained by the government to enhance their assistance in False Claims Act lawsuits. Such qui tam, or whistleblower, suits have dramatically enhanced the government's ability to uncover health care fraud. The Act would allow whistle-blowers and their qui tam suits to become even more effective.

Finally, the Act would extend antifraud and anti-kickback safeguards to the Federal Employees Health Benefits program. These are all important steps that will help cut down on the enormous health care fraud losses.

As life expectancies continue to increase, long-term care planning specialists estimate that over 40 percent of those turning 65 eventually will need nursing home care, and that 20 percent of those seniors will spend five years or more in homes. Indeed, many of us already have experienced having our parents, family members or other loved ones spend time in a nursing home. We owe it to them and to ourselves to give the residents of nursing homes the best and safest care they can get.

The Justice Department has cited egregious examples of nursing homes that pocketed Medicare funds instead of providing residents with adequate care. In one case, five patients died as a result of the inadequate provision of nutrition, wound care and diabetes management by three Pennsylvania nursing homes. Yet another death occurred when a patient, who was unable to speak, was placed in a scalding tub of 138-degree water.

This Act provides additional peace of mind to nursing home residents and their families by providing federal law enforcement with the authority to investigate and prosecute operators of nursing homes for willfully engaging in patterns of health and safety violations in the care of nursing home residents. The Act also protects whistle-blowers from retaliation for reporting such violations.

This title of the Seniors Safety Act would authorize the Attorney General to use forfeited funds to pay restitution to victims of fraudulent activity, and authorize the courts to require the forfeiture of proceeds from retirement-related offenses. In addition, it would exempt false claims actions from being stayed in bankruptcy proceedings and ensure that debts due to the United States from false claims actions are not dischargeable in bankruptcy.

We all deserve to age with dignity and free of the threat of abuse or fraud. No one can guarantee that this will happen, but the Senior Safety Act can be a powerful new tool to help crack down on those who prey upon older Americans. This effort is about all of us and our families.

These are problems that have persisted too long. It is past the time for the Senate to act. I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1286

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Seniors Safety Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—COMBATING CRIMES AGAINST SENIORS

Sec. 101. Enhanced sentencing penalties based on age of victim.
Sec. 102. Study and report on health care fraud sentences.
Sec. 103. Increased penalties for fraud resulting in serious injury or death.
Sec. 104. Safeguarding pension plans from fraud and theft.
Sec. 105. Additional civil penalties for defrauding pension plans.
Sec. 106. Punishing bribery and graft in connection with employee benefit plans.

TITLE II—PREVENTING TELEMARKETING FRAUD

Sec. 201. Centralized complaint and consumer education service for victims of telemarketing fraud.
Sec. 202. Blocking of telemarketing scams.

TITLE III—PREVENTING HEALTH CARE FRAUD
Sec. 301. Injunctive authority relating to false claims and illegal kickback schemes involving Federal health care programs.
Sec. 302. Authorized investigative demand procedures.
Sec. 303. Extending antifraud safeguards to the Federal employee health benefits program.
Sec. 304. Grand jury disclosure.
Sec. 305. Increasing the effectiveness of civil investigative demands in false claims investigations.
TITLE IV—PROTECTING RESIDENTS OF NURSING HOMES
Sec. 401. Short title.
Sec. 402. Nursing home resident protection.
TITLE V—PROTECTING THE RIGHTS OF ELDERLY CRIME VICTIMS
Sec. 501. Use of forfeited funds to pay restitution to crime victims and regulatory agencies.
Sec. 502. Victim restitution.
Sec. 503. Bankruptcy proceedings not used to shield illegal gains from false claims.
Sec. 504. Forfeiture for retirement offenses.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) The number of older Americans is rapidly growing in the United States. According to the 2000 census, 21 percent of the United States population is 55 years of age or older.

(2) In 1997, 7 percent of victims of serious violent crime were 50 years of age or older.

(3) In 1997, 17.7 percent of murder victims were 55 years of age or older.

(4) According to the Department of Justice, persons 65 years of age and older experienced approximately 2,700,000 crimes a year between 1992 and 1997.

(5) Older victims of violent crime are almost twice as likely as younger victims to be raped, robbed, or assaulted at or in their own homes.

(6) Approximately half of all Americans who are 50 years of age or older are afraid to walk alone at night in their own neighborhoods.

(7) Seniors over 50 years of age reportedly account for 37 percent of the estimated $40,000,000,000 in losses each year due to telemarketing fraud.

(8) A 1996 American Association of Retired Persons survey of people 50 years of age and older showed that 57 percent were likely to receive calls from telemarketers at least once a week.

(9) In 1998, Congress enacted legislation to provide for increased penalties for telemarketing fraud that targets seniors.

(10) It has been estimated that—

(A) approximately 43 percent of persons turning 65 years of age can expect to spend some time in a long-term care facility; and

(B) approximately 20 percent can expect to spend 5 years or more in a such a facility.

(11) In 1997, approximately $82,800,000,000 was spent on nursing home care in the United States and over half of this amount was spent by the Medicaid and Medicare programs.

(12) Losses to fraud and abuse in health care reportedly cost the United States an estimated $100,000,000,000 in 1996.

(13) The Inspector General for the Department of Health and Human Services has estimated that about $12,600,000,000 in improper Medicare benefit payments, due to inadvertent mistake, fraud, and abuse were made during fiscal year 1998.

(14) Incidents of health care fraud and abuse remain common despite awareness of the problem.

(b) PURPOSES.—The purposes of this Act are to—

(1) combat nursing home fraud and abuse;

(2) enhance safeguards for pension plans and health care programs;

(3) develop strategies for preventing and punishing crimes that target or otherwise disproportionately affect seniors by collecting appropriate data—

(A) to measure the extent of crimes committed against seniors; and

(B) to determine the extent of domestic and elder abuse of seniors; and

(4) prevent and deter criminal activity, such as telemarketing fraud, that results in economic and physical harm against seniors, and ensure appropriate restitution.

SEC. 3. DEFINITIONS.

In this Act:

(1) CRIME.—The term ''crime'' means any criminal offense under Federal or State law.

(2) NURSING HOME.—The term ''nursing home'' means any institution or residential care facility defined as such for licensing purposes under State law, or if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary of Health and Human Services, pursuant to section 1908(e) of the Social Security Act (42 U.S.C. 1396g(e)).

(3) SENIOR.—The term ''senior'' means an individual who is more than 55 years of age.

TITLE I—COMBATING CRIMES AGAINST SENIORS

SEC. 101. ENHANCED SENTENCING PENALTIES BASED ON AGE OF VICTIM.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission (referred to in this section as the ''Commission'') shall review and, if appropriate, amend section 3A1.1(a) of the Federal sentencing guidelines to include the age of a crime victim as one of the criteria for determining whether the application of a sentencing enhancement is appropriate.

(b) REQUIREMENTS.—In carrying out this section, the Commission shall—

(1) ensure that the Federal sentencing guidelines and the policy statements of the Commission reflect the serious economic and physical harms associated with criminal activity targeted at seniors due to their particular vulnerability;

(2) consider providing increased penalties for persons convicted of offenses in which the victim was a senior in appropriate circumstances;

(3) consult with individuals or groups representing seniors, law enforcement agencies, victims organizations, and the Federal judiciary as part of the review described in subsection (a);

(4) ensure reasonable consistency with other Federal sentencing guidelines and directives;

(5) account for any aggravating or mitigating circumstances that may justify exceptions, including circumstances for which the Federal sentencing guidelines provide sentencing enhancements;

(6) make any necessary conforming changes to the Federal sentencing guidelines; and

(7) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

(c) REPORT.—Not later than December 31, 2004, the Commission shall submit to Congress a report on issues relating to the age of crime victims, which shall include—

(1) an explanation of any changes to sentencing policy made by the Commission under this section; and

(2) any recommendations of the Commission for retention or modification of penalty levels, including statutory penalty levels, for offenses involving seniors.

SEC. 102. STUDY AND REPORT ON HEALTH CARE FRAUD SENTENCES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission (referred to in this section as the ''Commission'') shall review and, if appropriate, amend the Federal sentencing guidelines and the policy statements of the Commission with respect to persons convicted of offenses involving fraud in connection with a health care benefit program (as defined in section 24(b) of title 18, United States Code).

(b) REQUIREMENTS.—In carrying out this section, the Commission shall—

(1) ensure that the Federal sentencing guidelines and the policy statements of the Commission reflect the serious harms associated with health care fraud and the need for aggressive and appropriate law enforcement action to prevent such fraud;

(2) consider providing increased penalties for persons convicted of health care fraud in appropriate circumstances;

(3) consult with individuals or groups representing victims of health care fraud, law enforcement agencies, the health care industry, and the Federal judiciary as part of the review described in subsection (a);

(4) ensure reasonable consistency with other Federal sentencing guidelines and directives;

(5) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the Federal sentencing guidelines provide sentencing enhancements;

(6) make any necessary conforming changes to the Federal sentencing guidelines; and

(7) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) REPORT.—Not later than December 31, 2004, the Commission shall submit to Congress a report on issues relating to offenses described in subsection (a), which shall include—

(1) an explanation of any changes to sentencing policy made by the Commission under this section; and

(2) any recommendations of the Commission for retention or modification of penalty levels, including statutory penalty levels, for those offenses.

SEC. 103. INCREASED PENALTIES FOR FRAUD RESULTING IN SERIOUS INJURY OR DEATH.

Sections 1341 and 1343 of title 18, United States Code, are each amended by inserting before the last sentence the following: ''If the violation results in serious bodily injury (as defined in section 1365), such person shall be fined under this title, imprisoned not more than 20 years, or both, and if the violation results in death, such person shall be fined under this title, imprisoned for any term of years or life, or both.''.

SEC. 104. SAFEGUARDING PENSION PLANS FROM FRAUD AND THEFT.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1351. Fraud in relation to retirement arrangements

''(a) DEFINITION.—

''(1) RETIREMENT ARRANGEMENT.—In this section, the term 'retirement arrangement' means—

''(A) any employee pension benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974;

''(B) any qualified retirement plan within the meaning of section 4974(c) of the Internal Revenue Code of 1986;

''(C) any medical savings account described in section 220 of the Internal Revenue Code of 1986; or

''(D) a fund established within the Thrift Savings Fund by the Federal Retirement Thrift Investment Board pursuant to subchapter III of chapter 84 of title 5.

''(2) CERTAIN ARRANGEMENTS INCLUDED.—The term 'retirement arrangement' shall include any arrangement that has been represented to be an arrangement described in any subparagraph of paragraph (1) (whether or not so described).

''(3) EXCEPTION FOR GOVERNMENTAL PLAN.—Except as provided in paragraph (1)(D), the term 'retirement arrangement' shall not include any governmental plan (as defined in section 3(32) of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32))).

''(b) PROHIBITION AND PENALTIES.—Whoever executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any retirement arrangement or other person in connection with the establishment or maintenance of a retirement arrangement; or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any retirement arrangement or other person in connection with the establishment or maintenance of a retirement arrangement;

shall be fined under this title, imprisoned not more than 10 years, or both.

''(c) ENFORCEMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), the Attorney General may investigate any violation of, and otherwise enforce, this section.

''(2) EFFECT ON OTHER AUTHORITY.—Nothing in this subsection may be construed to preclude the Secretary of Labor or the head of any other appropriate Federal agency from investigating a violation of this section in relation to a retirement arrangement subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or any other provision of Federal law.''.

(b) TECHNICAL AMENDMENT.—Section 24(a)(1) of title 18, United States Code, is amended by inserting ''1351,'' after ''1347,''.

(c) CONFORMING AMENDMENT.—The analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1351. Fraud in relation to retirement arrangements.''.

SEC. 105. ADDITIONAL CIVIL PENALTIES FOR DEFRAUDING PENSION PLANS.

(a) IN GENERAL.—

(1) ACTION BY ATTORNEY GENERAL.—Except as provided in subsection (b)—

(A) the Attorney General may bring a civil action in the appropriate district court of the United States against any person who engages in conduct constituting an offense under section 1351 of title 18, United States Code, or conspiracy to violate such section 1351; and

(B) upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty in an amount equal to the greatest of—

(i) the amount of pecuniary gain to that person;

(ii) the amount of pecuniary loss sustained by the victim; or

(iii) not more than—

(I) $50,000 for each such violation in the case of an individual; or

(II) $100,000 for each such violation in the case of a person other than an individual.

(2) NO EFFECT ON OTHER REMEDIES.—The imposition of a civil penalty under this subsection does not preclude any other statutory, common law, or administrative remedy available by law to the United States or any other person.

(b) EXCEPTION.—No civil penalty may be imposed pursuant to subsection (a) with respect to conduct involving a retirement arrangement that—

(1) is an employee pension benefit plan subject to title I of the Employee Retirement Income Security Act of 1974; and

(2) for which the civil penalties may be imposed under section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132).

(c) DETERMINATION OF PENALTY AMOUNT.—In determining the amount of the penalty under subsection (a), the district court may consider the effect of the penalty on the violator or other person's ability to—

(1) restore all losses to the victims; or

(2) provide other relief ordered in another civil or criminal prosecution related to such conduct, including any penalty or tax imposed on the violator or other person pursuant to the Internal Revenue Code of 1986.

SEC. 106. PUNISHING BRIBERY AND GRAFT IN CONNECTION WITH EMPLOYEE BENEFIT PLANS.

(a) IN GENERAL.—Section 1954 of title 18, United States Code, is amended to read as follows:

''§ 1954. Bribery and graft in connection with employee benefit plans

''(a) DEFINITIONS.—In this section—

''(1) the term 'employee benefit plan' means any employee welfare benefit plan or employee pension benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974;

''(2) the terms 'employee organization', 'administrator', and 'employee benefit plan sponsor' mean any employee organization, administrator, or plan sponsor, as defined in title I of the Employment Retirement Income Security Act of 1974; and

''(3) the term 'applicable person' means—

''(A) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan;

''(B) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan;

''(C) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan;

''(D) a person who, or an officer, counsel, agent, or employee of an organization that, provides benefit plan services to such plan; or

''(E) a person with actual or apparent influence or decisionmaking authority in regard to such plan.

''(b) BRIBERY AND GRAFT.—Whoever—

''(1) being an applicable person, receives or agrees to receive or solicits, any fee, kickback, commission, gift, loan, money, or thing of value, personally or for any other person, because of or with the intent to be corruptly influenced with respect to any action, decision, or duty of that applicable person relating to any question or matter concerning an employee benefit plan;

''(2) directly or indirectly, gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value, to any applicable person, because of or with the intent to be corruptly influenced with respect to any action, decision, or duty of that applicable person relating to any question or matter concerning an employee benefit plan; or

''(3) attempts to give, accept, or receive any thing of value with the intent to be corruptly influenced in violation of this section;

shall be fined under this title, imprisoned not more than 5 years, or both.

''(c) EXCEPTIONS.—Nothing in this section may be construed to apply to any—

''(1) payment to, or acceptance by, any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as an applicable person; or

''(2) payment to, or acceptance in good faith by, any employee benefit plan sponsor, or person acting on behalf of the sponsor, of anything of value relating to the decision or action of the sponsor to establish, terminate, or modify the governing instruments of an employee benefit plan in a manner that does not violate—

''(A) title I of the Employee Retirement Income Security Act of 1974;

''(B) any regulation or order promulgated under title I of the Employee Retirement Income Security Act of 1974; or

''(C) any other provision of law governing the plan.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 95 of title 18, United States Code, is amended by striking the item relating to section 1954 and inserting the following:

''1954. Bribery and graft in connection with employee benefit plans.''.

TITLE II—PREVENTING TELEMARKETING FRAUD

SEC. 201. CENTRALIZED COMPLAINT AND CONSUMER EDUCATION SERVICE FOR VICTIMS OF TELEMARKETING FRAUD.

(a) CENTRALIZED SERVICE.—

(1) REQUIREMENT.—The Federal Trade Commission shall, after consultation with the Attorney General, establish procedures to—

(A) log the receipt of complaints by individuals who claim that they have been the victim of fraud in connection with the conduct of telemarketing (as that term is defined in section 2325 of title 18, United States Code, as amended by section 202(a) of this Act);

(B) provide to individuals described in subparagraph (A), and to any other persons, if requested, information on telemarketing fraud, including—

(i) general information on telemarketing fraud, including descriptions of the most common telemarketing fraud schemes;

(ii) information on means of referring complaints on telemarketing fraud to appropriate law enforcement agencies, including the Director of the Federal Bureau of Investigation, the attorneys general of the States, and the national toll-free telephone number on telemarketing fraud established by the Attorney General; and

(iii) information, if available, on any record of civil or criminal law enforcement action for telemarketing fraud against a particular company for which a specific request has been made; and

(C) refer complaints described in subparagraph (A), as appropriate, to law enforcement authorities, including State consumer protection agencies or entities, for potential action.

(2) COMMENCEMENT.—The Federal Trade Commission shall commence carrying out the service not later than 1 year after the date of enactment of this Act.

(b) FRAUD CONVICTION DATA.—

(1) ENTRY OF INFORMATION ON CONVICTIONS INTO FTC DATABASE.—The Attorney General shall provide information on the corporations and companies that are the subject of civil or criminal law enforcement action for telemarketing fraud under Federal and State

law to the Federal Trade Commission in such electronic format as will enable the Federal Trade Commission to automatically enter the information into a database maintained in accordance with subsection (a).

(2) INFORMATION.—The information described in paragraph (1) shall include a description of the type and method of the fraud scheme that prompted the law enforcement action against each such corporation or company.

(3) USE OF DATABASE.—The Attorney General shall make information in the database available to the Federal Trade Commission for purposes of providing information as part of the service under subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 202. BLOCKING OF TELEMARKETING SCAMS.

(a) EXPANSION OF SCOPE OF TELEMARKETING FRAUD SUBJECT TO ENHANCED CRIMINAL PENALTIES.—Section 2325(1) of title 18, United States Code, is amended by striking ''telephone calls'' and inserting ''wire communications utilizing a telephone service''.

(b) BLOCKING OR TERMINATION OF TELEPHONE SERVICE ASSOCIATED WITH TELEMARKETING FRAUD.—

(1) IN GENERAL.—Chapter 113A of title 18, United States Code, is amended by adding at the end the following:

''§ 2328. Blocking or termination of telephone service

''(a) DEFINITIONS.—In this section:

''(1) REASONABLE NOTICE TO THE SUBSCRIBER.—

''(A) IN GENERAL.—The term 'reasonable notice to the subscriber', in the case of a subscriber of a common carrier, means any information necessary to provide notice to the subscriber that—

''(i) the wire communications facilities furnished by the common carrier may not be used for the purpose of transmitting, receiving, forwarding, or delivering a wire communication in interstate or foreign commerce for the purpose of executing any scheme or artifice to defraud in connection with the conduct of telemarketing; and

''(ii) such use constitutes sufficient grounds for the immediate discontinuance or refusal of the leasing, furnishing, or maintaining of the facilities to or for the subscriber.

''(B) INCLUDED MATTER.—The term includes any tariff filed by the common carrier with the Federal Communications Commission that contains the information specified in subparagraph (A).

''(2) WIRE COMMUNICATION.—The term 'wire communication' has the same meaning given that term in section 2510(1).

''(3) WIRE COMMUNICATIONS FACILITY.—The term 'wire communications facility' means any facility (including instrumentalities, personnel, and services) used by a common carrier for purposes of the transmission, receipt, forwarding, or delivery of wire communications.

''(b) BLOCKING OR TERMINATING TELEPHONE SERVICE.—If a common carrier subject to the jurisdiction of the Federal Communications Commission is notified in writing by the Attorney General, acting within the jurisdiction of the Attorney General, that any wire communications facility furnished by that common carrier is being used or will be used by a subscriber for the purpose of transmitting or receiving a wire communication in interstate or foreign commerce for the purpose of executing any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, in connection with the conduct of telemarketing, the common carrier shall discontinue or refuse the leasing, furnishing, or maintaining of the facility to or for the subscriber after reasonable notice to the subscriber.

''(c) PROHIBITION ON DAMAGES.—No damages, penalty, or forfeiture, whether civil or criminal, shall be found or imposed against any common carrier for any act done by the common carrier in compliance with a notice received from the Attorney General under this section.

''(d) RELIEF.—

''(1) IN GENERAL.—Nothing in this section may be construed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court, that—

''(A) the leasing, furnishing, or maintaining of a facility should not be discontinued or refused under this section; or

''(B) the leasing, furnishing, or maintaining of a facility that has been so discontinued or refused should be restored.

''(2) SUPPORTING INFORMATION.—In any action brought under this subsection, the court may direct that the Attorney General present evidence in support of the notice made under subsection (b) to which such action relates.''.

(2) CONFORMING AMENDMENT.—The analysis for chapter 113A of title 18, United States Code, is amended by adding at the end the following:

''2328. Blocking or termination of telephone service.''.

TITLE III—PREVENTING HEALTH CARE FRAUD

SEC. 301. INJUNCTIVE AUTHORITY RELATING TO FALSE CLAIMS AND ILLEGAL KICKBACK SCHEMES INVOLVING FEDERAL HEALTH CARE PROGRAMS.

(a) IN GENERAL.—Section 1345(a) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking '', or'' and inserting a semicolon;

(B) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(D) committing or about to commit an offense under section 1128B of the Social Security Act (42 U.S.C. 1320a–7b);''; and

(2) in paragraph (2), by inserting ''a violation of paragraph (1)(D),'' before ''a banking''.

(b) CIVIL ACTIONS.—

(1) IN GENERAL.—Section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended by adding at the end the following:

''(g) CIVIL ACTIONS.—

''(1) IN GENERAL.—The Attorney General may bring an action in the appropriate district court of the United States to impose upon any person who carries out any activity in violation of this section with respect to a Federal health care program a civil penalty of not more than $50,000 for each such violation, or damages of 3 times the total remuneration offered, paid, solicited, or received, whichever is greater.

''(2) EXISTENCE OF VIOLATION.—A violation exists under paragraph (1) if 1 or more purposes of the remuneration is unlawful, and the damages shall be the full amount of such remuneration.

''(3) PROCEDURES.—An action under paragraph (1) shall be governed by—

''(A) the procedures with regard to subpoenas, statutes of limitations, standards of proof, and collateral estoppel set forth in section 3731 of title 31, United States Code; and

''(B) the Federal Rules of Civil Procedure.

''(4) NO EFFECT ON OTHER REMEDIES.—Nothing in this section may be construed to affect the availability of any other criminal or civil remedy.

''(h) INJUNCTIVE RELIEF.—The Attorney General may commence a civil action in an appropriate district court of the United States to enjoin a violation of this section, as provided in section 1345 of title 18, United States Code.''.

(2) CONFORMING AMENDMENT.—The heading of section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended by inserting ''AND CIVIL'' after ''CRIMINAL''.

SEC. 302. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.

Section 3486 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting '', or any allegation of fraud or false claims (whether criminal or civil) in connection with a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f))),'' after ''Federal health care offense'' each place it appears; and

(2) by adding at the end the following:

''(f) PRIVACY PROTECTION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), any record (including any book, paper, document, electronic medium, or other object or tangible thing) produced pursuant to a subpoena issued under this section that contains personally identifiable health information may not be disclosed to any person, except pursuant to a court order under subsection (e)(1).

''(2) EXCEPTIONS.—A record described in paragraph (1) may be disclosed—

''(A) to an attorney for the Government for use in the performance of the official duty of the attorney (including presentation to a Federal grand jury);

''(B) to government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the Government to assist an attorney for the Government in the performance of the official duty of that attorney to enforce Federal criminal law;

''(C) as directed by a court preliminarily to, or in connection with, a judicial proceeding;

''(D) as permitted by a court at the request of a defendant in an administrative, civil, or criminal action brought by the United States, upon a showing that grounds may exist for a motion to exclude evidence obtained under this section; or

''(E) at the request of an attorney for the Government, upon a showing that such matters may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such law.

''(3) MANNER OF COURT ORDERED DISCLOSURES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if a court orders the disclosure of any record described in paragraph (1), the disclosure—

''(i) shall be made in such manner, at such time, and under such conditions as the court may direct; and

''(ii) shall be undertaken in a manner that preserves the confidentiality and privacy of individuals who are the subject of the record.

''(B) EXCEPTION.—If disclosure is required by the nature of the proceedings, the attorney for the Government shall request that the presiding judicial or administrative officer enter an order limiting the disclosure of the record to the maximum extent practicable, including redacting the personally identifiable health information from publicly disclosed or filed pleadings or records.

''(4) DESTRUCTION OF RECORDS.—Any record described in paragraph (1), and all copies of that record, in whatever form (including electronic), shall be destroyed not later than 90 days after the date on which the record is produced, unless otherwise ordered by a

court of competent jurisdiction, upon a showing of good cause.

''(5) EFFECT OF VIOLATION.—Any person who knowingly fails to comply with this subsection may be punished as in contempt of court.

''(g) PERSONALLY IDENTIFIABLE HEALTH INFORMATION DEFINED.—In this section, the term 'personally identifiable health information' means any information, including genetic information, demographic information, and tissue samples collected from an individual, whether oral or recorded in any form or medium, that—

''(1) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and

''(2) either—

''(A) identifies an individual; or

''(B) with respect to which there is a reasonable basis to believe that the information can be used to identify an individual.''.

SEC. 303. EXTENDING ANTIFRAUD SAFEGUARDS TO THE FEDERAL EMPLOYEE HEALTH BENEFITS PROGRAM.

Section 1128B(f)(1) of the Social Security Act (42 U.S.C. 1320a–7b(f)(1)) is amended by striking ''(other than the health insurance program under chapter 89 of title 5, United States Code)''.

SEC. 304. GRAND JURY DISCLOSURE.

Section 3322 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

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

''(c) GRAND JURY DISCLOSURE.—Subject to section 3486(f), upon ex parte motion of an attorney for the Government showing that a disclosure in accordance with that subsection would be of assistance to enforce any provision of Federal law, a court may direct the disclosure of any matter occurring before a grand jury during an investigation of a Federal health care offense (as defined in section 24(a) of this title) to an attorney for the Government to use in any investigation or civil proceeding relating to fraud or false claims in connection with a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f))).''.

SEC. 305. INCREASING THE EFFECTIVENESS OF CIVIL INVESTIGATIVE DEMANDS IN FALSE CLAIMS INVESTIGATIONS.

Section 3733 of title 31, United States Code, is amended—

(1) in subsection (a)(1), in the second sentence, by inserting '', except to the Deputy Attorney General or to an Assistant Attorney General'' before the period at the end; and

(2) in subsection (i)(2)(C), by adding at the end the following: ''Disclosure of information to a person who brings a civil action under section 3730, or the counsel of that person, shall be allowed only upon application to a United States district court showing that such disclosure would assist the Department of Justice in carrying out its statutory responsibilities.''.

TITLE IV—PROTECTING RESIDENTS OF NURSING HOMES

SEC. 401. SHORT TITLE.

This title may be cited as the ''Nursing Home Resident Protection Act of 2002''.

SEC. 402. NURSING HOME RESIDENT PROTECTION.

(a) PROTECTION OF RESIDENTS IN NURSING HOMES AND OTHER RESIDENTIAL HEALTH CARE FACILITIES.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1352. Pattern of violations resulting in harm to residents of nursing homes and related facilities

''(a) DEFINITIONS.—In this section:

''(1) ENTITY.—The term 'entity' means—

''(A) any residential health care facility (including facilities that do not exclusively provide residential health care services);

''(B) any entity that manages a residential health care facility; or

''(C) any entity that owns, directly or indirectly, a controlling interest or a 50 percent or greater interest in 1 or more residential health care facilities including States, localities, and political subdivisions thereof.

''(2) FEDERAL HEALTH CARE PROGRAM.—The term 'Federal health care program' has the same meaning given that term in section 1128B(f) of the Social Security Act.

''(3) PATTERN OF VIOLATIONS.—The term 'pattern of violations' means multiple violations of a single Federal or State law, regulation, or rule or single violations of multiple Federal or State laws, regulations, or rules, that are widespread, systemic, repeated, similar in nature, or result from a policy or practice.

''(4) RESIDENTIAL HEALTH CARE FACILITY.—The term 'residential health care facility' means any facility (including any facility that does not exclusively provide residential health care services), including skilled and unskilled nursing facilities and mental health and mental retardation facilities, that—

''(A) receives Federal funds, directly from the Federal Government or indirectly from a third party on contract with or receiving a grant or other monies from the Federal Government, to provide health care; or

''(B) provides health care services in a residential setting and, in any calendar year in which a violation occurs, is the recipient of benefits or payments in excess of $10,000 from a Federal health care program.

''(5) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

''(b) PROHIBITION AND PENALTIES.—Whoever knowingly and willfully engages in a pattern of violations that affects the health, safety, or care of individuals residing in a residential health care facility or facilities, and that results in significant physical or mental harm to 1 or more of such residents, shall be punished as provided in section 1347, except that any organization shall be fined not more than $2,000,000 per residential health care facility.

''(c) CIVIL PROVISIONS.—

''(1) IN GENERAL.—The Attorney General may bring an action in a district court of the United States to impose on any individual or entity that engages in a pattern of violations that affects the health, safety, or care of individuals residing in a residential health care facility, and that results in physical or mental harm to 1 or more such residents—

''(A) a civil penalty; or

''(B) in the case of—

''(i) an individual (other than an owner, operator, officer, or manager of such a residential health care facility), not more than $10,000;

''(ii) an individual who is an owner, operator, officer, or manager of such a residential health care facility, not more than $100,000 for each separate facility involved in the pattern of violations under this section;

''(iii) a residential health care facility, not more than $1,000,000 for each pattern of violations; or

''(iv) an entity, not more than $1,000,000 for each separate residential health care facility involved in the pattern of violations owned or managed by that entity.

''(2) OTHER APPROPRIATE RELIEF.—If the Attorney General has reason to believe that an individual or entity is engaging in or is about to engage in a pattern of violations that would affect the health, safety, or care of individuals residing in a residential health care facility, and that results in or has the potential to result in physical or mental harm to 1 or more such residents, the Attorney General may petition an appropriate district court of the United States for appropriate equitable and declaratory relief to eliminate the pattern of violations.

''(3) PROCEDURES.—In any action under this subsection—

''(A) a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States;

''(B) the action may not be brought more than 6 years after the date on which the violation occurred;

''(C) the United States shall be required to prove each charge by a preponderance of the evidence;

''(D) the civil investigative demand procedures set forth in the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.) and regulations promulgated pursuant to that Act shall apply to any investigation; and

''(E) the filing or resolution of a matter shall not preclude any other remedy that is available to the United States or any other person.

''(d) PROHIBITION AGAINST RETALIATION.—Any person who is the subject of retaliation, either directly or indirectly, for reporting a condition that may constitute grounds for relief under this section may bring an action in an appropriate district court of the United States for damages, attorneys' fees, and other relief.''.

(b) AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.—Section 3486(a)(1) of title 18, United States Code, as amended by section 302 of this Act, is amended by inserting '', act or activity involving section 1352 of this title'' after ''Federal health care offense''.

(c) CONFORMING AMENDMENT.—The analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1352. Pattern of violations resulting in harm to residents of nursing homes and related facilities.''.

TITLE V—PROTECTING THE RIGHTS OF ELDERLY CRIME VICTIMS

SEC. 501. USE OF FORFEITED FUNDS TO PAY RESTITUTION TO CRIME VICTIMS AND REGULATORY AGENCIES.

Section 981(e) of title 18, United States Code, is amended—

(1) in each of paragraphs (3), (4), and (5), by striking ''in the case of property referred to in subsection (a)(1)(C),'' and inserting ''in the case of property forfeited in connection with an offense resulting in a pecuniary loss to a financial institution or regulatory agency,''; and

(2) in paragraph (7), by striking ''In the case of property referred to in subsection (a)(1)(D)'' and inserting ''in the case of property forfeited in connection with an offense relating to the sale of assets acquired or held by any Federal financial institution or regulatory agency, or person appointed by such agency, as receiver, conservator, or liquidating agent for a financial institution''.

SEC. 502. VICTIM RESTITUTION.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding at the end the following:

''(r) VICTIM RESTITUTION.—

''(1) SATISFACTION OF ORDER OF RESTITUTION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a defendant may not use property subject to forfeiture under this section to satisfy an order of restitution.

''(B) EXCEPTION.—If there are 1 or more identifiable victims entitled to restitution from a defendant, and the defendant has no assets other than the property subject to forfeiture with which to pay restitution to the victim or victims, the attorney for the Government may move to dismiss a forfeiture allegation against the defendant before entry of a judgment of forfeiture in order to allow the property to be used by the defendant to pay restitution in whatever manner the court determines to be appropriate if the court grants the motion. In granting a motion under this subparagraph, the court shall include a provision ensuring that costs associated with the identification, seizure, management, and disposition of the property are recovered by the United States.

''(2) RESTORATION OF FORFEITED PROPERTY.—

''(A) IN GENERAL.—If an order of forfeiture is entered pursuant to this section and the defendant has no assets other than the forfeited property to pay restitution to 1 or more identifiable victims who are entitled to restitution, the Government shall restore the forfeited property to the victims pursuant to subsection (i)(1) once the ancillary proceeding under subsection (n) has been completed and the costs of the forfeiture action have been deducted.

''(B) DISTRIBUTION OF PROPERTY.—On a motion of the attorney for the Government, the court may enter any order necessary to facilitate the distribution of any property restored under this paragraph.

''(3) VICTIM DEFINED.—In this subsection, the term 'victim'—

''(A) means a person other than a person with a legal right, title, or interest in the forfeited property sufficient to satisfy the standing requirements of subsection (n)(2) who may be entitled to restitution from the forfeited funds pursuant to section 9.8 of part 9 of title 28, Code of Federal Regulations (or any successor to that regulation); and

''(B) includes any person who is the victim of the offense giving rise to the forfeiture, or of any offense that was part of the same scheme, conspiracy, or pattern of criminal activity, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity.''.

SEC. 503. BANKRUPTCY PROCEEDINGS NOT USED TO SHIELD ILLEGAL GAINS FROM FALSE CLAIMS.

(a) CERTAIN ACTIONS NOT STAYED BY BANKRUPTCY PROCEEDINGS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the commencement or continuation of an action under section 3729 of title 31, United States Code, does not operate as a stay under section 105(a) or 362(a)(1) of title 11, United States Code.

(2) CONFORMING AMENDMENT.—Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (17), by striking ''or'' at the end;

(B) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(19) the commencement or continuation of an action under section 3729 of title 31.''.

(b) CERTAIN DEBTS NOT DISCHARGEABLE IN BANKRUPTCY.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) does not discharge a debtor from a debt owed for violating section 3729 of title 31.''.

(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED FINAL.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''§ 111. False claims

''No transfer on account of a debt owed to the United States for violating section 3729 of title 31, or under a compromise order or other agreement resolving such a debt may be avoided under section 544, 545, 547, 548, 549, 553(b), or 742(a).''.

(2) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''111. False claims.''.

SEC. 504. FORFEITURE FOR RETIREMENT OFFENSES.

(a) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by adding at the end the following:

''(9) CRIMINAL FORFEITURE.—

''(A) IN GENERAL.—The court, in imposing a sentence on a person convicted of a retirement offense, shall order the person to forfeit property, real or personal, that constitutes or that is derived, directly or indirectly, from proceeds traceable to the commission of the offense.

''(B) RETIREMENT OFFENSE DEFINED.—In this paragraph, if a violation, conspiracy, or solicitation relates to a retirement arrangement (as defined in section 1351 of title 18, United States Code), the term 'retirement offense' means a violation of—

''(i) section 664, 1001, 1027, 1341, 1343, 1351, 1951, 1952, or 1954 of title 18, United States Code; or

''(ii) section 411, 501, or 511 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111, 1131, 1141).''.

(b) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

''(I) Any property, real or personal, that constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of, criminal conspiracy to violate, or solicitation to commit a crime of violence involving, a retirement offense (as defined in section 982(a)(9)(B)).''.

By Mr. DOMENICI:

S. 1287. A bill to amend section 502(a)(5) of the Higher Education Act of 1965 regarding the definition of a Hispanic-serving institution; to the Committee on Health, Education, Labor, and Pensions.

Mr. DOMENICI. Madam President, I rise today to introduce a bill that will amend Title V of the Higher Education Act. Specifically, this bill will eliminate the ''50 percent'' low-income assurance constraint currently required for Hispanic Serving Institutions to be eligible for grants under Title V of the Higher Education Act.

Title V of the Higher Education Act is the primary vehicle used to target urgently needed funds to Hispanic Serving Institutions so that they can strengthen and expand their institutional capacity. Grants under this section can be used by higher education institutions to improve academic quality, institutional management, and financial stability. These grants are essential to institutions that provide and increase the number of educational opportunities available to Hispanic students.

Under current guidelines, in order to qualify for a grant under Title V, an institution must have at least 25 percent full time, Hispanic undergraduate student enrollment, and not less than 50 percent of its Hispanic student population must be low income. Title V grants are awarded for 5 years, with a minimum two year wait out period after the termination of a grant period before eligibility to apply for another grant. During fiscal year 2002, 191 institutions were awarded grants.

Title V's current ''50 percent'' low-income assurance requirement is an unnecessary bureaucratic regulation that constrains Hispanic Serving Institutions abilities to implement programs designed to provide long range solutions to Hispanic higher education challenges. Currently, there are no government authorized means to collect student financial data, and, although some information can be extrapolated from student financial aid forms, it is not enough information to complete the Title V forms.

The bill I am introducing today will improve the HSI eligibility requirements by allowing applicants for Title V funding to satisfy the 50 percent low-income Hispanic student population criterion with appropriate evidence of student eligibility for Title IV, need-based, aid. The revised Title V section will retain the requirement that to be eligible for title V funds, an institution must have an enrollment of needy students. However, rather than conditioning grant qualification upon the cumbersome requirement that institutions prove 50 percent of their Hispanic students are low income, it will allow institutions to qualify for Title V money if 50 percent of the students are receiving need-based assistance under title IV or a substantial percentage of the students are receiving Pell Grants.

The Higher Education Act of 1965 was signed into law for the purpose of increasing access to higher education for all citizens of the United States and of strengthening the capacity of higher education institutions to better serve their communities. The reauthorization of the Higher Education Act during the 108th Congress presents a powerful opportunity for the nation to address the higher education needs of the nation's Hispanic-Serving Institutions, which serve the largest concentrations of Hispanic higher education students in the United States.

Hispanic Serving Institutions provide the quality education essential to full participation in today's society. Many students in my home state of New Mexico have benefited from the academic excellence that Hispanic Serving Institutions seek to provide. Title V grants are intended to provide assistance to these less advantaged, developing institutions. However, by convoluting the application process, Congress is preventing these institutions from applying for grants and obstructing their development.

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

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

S. 1287

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

SECTION 1. DEFINITION OF A HISPANIC-SERVING INSTITUTION.

Section 502(a)(5) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5)) is amended—

(1) in subparagraph (A), by inserting ''and'' after the semicolon;

(2) in subparagraph (B), by striking ''; and'' and inserting a period; and

(3) by striking subparagraph (C).

By Mr. CHAMBLISS (for himself and Mr. MILLER):

S. 1288. A bill to amend title XVIII of the Social Security Act to exclude brachytherapy devices from the prospective payment system for outpatient hospital services under the medicare program; to the Committee on Finance.

Mr. CHAMBLISS. Madam President, I rise today to introduce legislation, along with my colleague Senator MILLER of Georgia, that would amend the Medicare portion of the Social Security Act to exclude brachytherapy devices from the prospective payment system for outpatient hospital services under the Medicare Program. Currently, the number of devices reimbursed by Medicare is one set number and non-specific to the prostate cancer patient.

Prostate cancer accounts for 43 percent of all cancers found in men—more than triple the rate of lung cancer. The American Cancer Society estimates that nearly 221,000 men in the United States will be diagnosed with prostate cancer in 2003 and approximately 27,000 of these men will die as a result. The American Cancer Society also estimates that about 5,700 men diagnosed will be from Georgia and nearly 700 of them may die. This legislation will help some of these men fight and survive this indiscriminate killer. Over 130,000 men and their sons nationwide have been treated with brachytherapy Theraseeds to date.

Brachytherapy is an important form of radiation treatment for prostate cancer in which radioactive ''seeds'' are implanted into the patient. While there are several ways to treat prostate cancer, patients need the freedom to choose the treatment that best suits them and their situation. Tremendous variations exist that may effect the clinical requirements for cancer patients using brachytherapy theraseeds, including variations in the types of radioactive isotopes, as well as the number and radioactive intensity of the seeds. The brachytherapy community indicates that these variations result in considerable differences in total brachytherapy costs among patients, varying from several hundred dollars to over $10,000 per patient. Prostate brachytherapy is different from many other clinical interventions because of the dramatic variability in the type, number and radioactivity of brachytherapy seeds needed to treat each patient. This variability is due to differences in the clinical presentation from patient to patient, including the type, staging, and size of a patient's cancer. This variability also results in a broad range of costs per patient. This legislation will allow a more fair reimbursement for physicians who are using brachytherapy to treat prostate cancer patients. This bill will also allow Medicare patients to receive another type of therapy when making decisions and dealing with the reality of being diagnosed with prostate cancer.

I encourage all of my colleagues to support this piece of legislation so that men suffering with prostate cancer will have more coverage under Medicare should they choose brachytherapy for their treatment.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 174—DESIGNATING THURSDAY, NOVEMBER 20, 2003, AS ''FEED AMERICA THURSDAY''

Mr. HATCH submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 174

Whereas Thanksgiving Day celebrates the spirit of selfless giving and an appreciation for family and friends;

Whereas the spirit of Thanksgiving Day is a virtue upon which our Nation was founded;

Whereas 33,000,000 Americans, including 13,000,000 children, continue to live in households that do not have an adequate supply of food;

Whereas almost 3,000,000 of those children experience hunger; and

Whereas selfless sacrifice breeds a genuine spirit of Thanksgiving, both affirming and restoring fundamental principles in our society: Now, therefore, be it

Resolved, That the Senate

(1) designates Thursday, November 20, 2003, as ''Feed America Thursday''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to sacrifice 2 meals on Thursday, November 20, 2003, and to donate the money that they would have spent on food to a religious or charitable organization of their choice for the purpose of feeding the hungry.

SENATE RESOLUTION 175—DESIGNATING THE MONTH OF OCTOBER 2003, AS ''FAMILY HISTORY MONTH''

Mr. HATCH submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 175

Whereas it is the family, striving for a future of opportunity and hope, that reflects our Nation's belief in community, stability, and love;

Whereas the family remains an institution of promise, reliance, and encouragement;

Whereas we look to the family as an unwavering symbol of constancy that will help us discover a future of prosperity, promise, and potential;

Whereas within our Nation's libraries and archives lie the treasured records that detail the history of our Nation, our States, our communities, and our citizens;

Whereas individuals from across our Nation and across the world have embarked on a genealogical journey by discovering who their ancestors were and how various forces shaped their past;

Whereas an ever-growing number in our Nation and in other nations are collecting, preserving, and sharing genealogies, personal documents, and memorabilia that detail the life and times of families around the world;

Whereas 54,000,000 individuals belong to a family where someone in the family has used the Internet to research their family history;

Whereas individuals from across our Nation and across the world continue to research their family heritage and its impact upon the history of our Nation and the world;

Whereas approximately 60 percent of Americans have expressed an interest in tracing their family history;

Whereas the study of family history gives individuals a sense of their heritage and a sense of responsibility in carrying out a legacy that their ancestors began;

Whereas as individuals learn about their ancestors who worked so hard and sacrificed so much, their commitment to honor their ancestors' memory by doing good is increased;

Whereas interest in our personal family history transcends all cultural and religious affiliations;

Whereas to encourage family history research, education, and the sharing of knowledge is to renew the commitment to the concept of home and family; and

Whereas the involvement of National, State, and local officials in promoting genealogy and in facilitating access to family history records in archives and libraries are important factors in the successful perception of nationwide camaraderie, support, and participation: Now, therefore, be it

Resolved, That the Senate—

(1) designates the month of October 2003, as ''Family History Month''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

AMENDMENTS SUBMITTED & PROPOSED

SA 929. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table.

SA 930. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1, supra; which was ordered to lie on the table.

SA 931. Ms. STABENOW (for herself, Mrs. BOXER, Mr. GRAHAM, of Florida, Mr. ROCKEFELLER, Mr. HARKIN, Ms. CANTWELL, Mr. KERRY, Mr. BINGAMAN, Mr. REED, Mrs. CLINTON, Ms. MIKULSKI, Mr. LEVIN, Mr. KOHL, Mr. DODD, Mr. LIEBERMAN, Mr. REID, Mr. DAYTON, and Mr. JOHNSON) proposed an amendment to the bill S. 1, supra.

SA 932. Mr. ENZI (for himself and Mr. PRYOR) proposed an amendment to the bill S. 1, supra.

SA 933. Mr. BINGAMAN proposed an amendment to the bill S. 1, supra.

SA 934. Mrs. LINCOLN submitted an amendment intended to be proposed by her to the bill S. 1, supra; which was ordered to lie on the table.

SA 935. Mrs. LINCOLN submitted an amendment intended to be proposed by her to the bill S. 1, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 929. Mr. NELSON of Nebraska submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the Medicare program, to provide prescription drug coverage under the Medicare program, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VI, insert the following:

SEC. ___. MEDICARE BENEFICIARY ACCESS TO REHABILITATION FACILITIES.

(a) DEFINITIONS OF REHABILITATION HOSPITAL; REHABILITATION UNIT.—Section 1886(j)(42 U.S.C. 1395ww(j)) is amended by adding at the end the following new subsection:

''(8) DEFINITIONS OF REHABILITATION HOSPITAL; REHABILITATION UNIT.—

''(A) IN GENERAL.—The Secretary shall by regulation define the terms 'rehabilitation hospital' and 'rehabilitation unit' in a manner fully consistent with all the rehabilitation impairment categories (except miscellaneous) used to classify patients into case-mix groups pursuant to paragraph (2).

''(B) PERIODIC UPDATE REQUIRED.—The Secretary shall update the regulations promulgated under subparagraph (A) periodically to ensure that such definitions remain fully consistent with the rehabilitation impairment categories used to classify patients into case-mix groups pursuant to paragraph (2).''.

(b) PROHIBITION ON RETROACTIVE ENFORCEMENT.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not seek to recoup any overpayment, take any enforcement action, or impose any sanction or penalty, with respect to a rehabilitation hospital, or a converted rehabilitation unit, (as such terms are defined for purposes of the medicare program under title XVIII of the Social Security Act) insofar as such overpayment, enforcement action, sanction or penalty, is for failure to satisfy the requirement of section 412.23(b)(2) of title 42, Code of Federal Regulations, that 75 percent of the patients of the rehabilitation hospital or converted rehabilitation unit are in 1 or more of 10 listed treatment categories (commonly referred to as the ''75 Percent Rule'').

SA 930. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the Medicare program, to provide prescription drug coverage under the Medicare program, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title IV, add the following:

SEC. ___. FREEZING INDIRECT MEDICAL EDUCATION (IME) ADJUSTMENT PERCENTAGE AT 6.5 PERCENT.

(a) IN GENERAL.—Section 1886(d)(5)(B)(ii)(42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(1) in subclause (V), by inserting ''and'' at the end; and

(2) by striking subclauses (VI) and (VII) and inserting the following new subclause:

''(VI) on or after October 1, 2001, 'c' is equal to 1.6.''.

(b) CONFORMING AMENDMENT RELATING TO DETERMINATION OF STANDARDIZED AMOUNT.—Section 1886(d)(2)(C)(i) (42 U.S.C. 1395ww(d)(2)(C)(i)) is amended—

(1) by striking ''1999 or'' and inserting ''1999,''; and

(2) by inserting '', or the Prescription Drug and Medicare Improvement Act of 2003'' after ''2000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after October 1, 2002.

SA 931. Ms. STABENOW (for herself, Mrs. BOXER, Mr. GRAHAM of Florida, Mr. ROCKEFELLER, Mr. HARKIN, Ms. CANTWELL, Mr. KERRY, Mr. BINGAMAN, Mr. REED, Mrs. CLINTON, Ms. MIKULSKI, Mr. LEVIN, Mr. KOHL, Mr. DODD, Mr. LIEBERMAN, Mr. REID, Mr. DAYTON, and Mr. JOHNSON) proposed an amendment to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; as follows:

''(e) MEDICARE GUARANTEED OPTION.—

''(1) ACCESS.—

''(A) IN GENERAL.—The Administrator shall enter into a contract with an entity in each area (established under section 1860D–10) to provide eligible beneficiaries enrolled under this part (and not, except for an MSA plan or a private fee-for-service plan that does not provide qualified prescription drug coverage, enrolled in a MedicareAdvantage plan) and residing in the area with standard prescription drug coverage (including access to negotiated prices for such beneficiaries pursuant to section 1860D–6(e)). An entity may be awarded a contract for more than 1 area but the Administrator may enter into only 1 such contract in each such area.

''(B) ENTITY REQUIRED TO MEET BENEFICIARY PROTECTION AND OTHER REQUIREMENTS.—An entity with a contract under subparagraph (A) shall meet the requirements described in section 1860D–5 and such other requirements determined appropriate by the Administrator.

''(C) COMPETITIVE PROCEDURES.—Competitive procedures (as defined in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5))) shall be used to enter into a contract under subparagraph (A).

''(D) SAME TIMEFRAME AS MEDICARE PRESCRIPTION DRUG PLANS.—The Administrator shall apply similar timeframes for the submission of bids and entering into to contracts under this subsection as the Administrator applies to Medicare Prescription Drug plans.

''(2) MONTHLY BENEFICIARY OBLIGATION FOR ENROLLMENT.—In the case of an eligible beneficiary receiving access to qualified prescription drug coverage through enrollment with an entity with a contract under paragraph (1)(A), the monthly beneficiary obligation of such beneficiary for such enrollment shall be an amount equal to the applicable percent (as determined under section 1860D–17(c) before any adjustment under paragraph (2) of such section) of the monthly national average premium (as computed under section 1860D–15 before any adjustment under subsection (b) of such section) for the year.

''(3) PAYMENTS UNDER THE CONTRACT.—

''(A) IN GENERAL.—A contract entered into under paragraph (1)(A) shall provide for—

''(i) payment for the negotiated costs of covered drugs provided to eligible beneficiaries enrolled with the entity; and

''(ii) payment of prescription management fees that are tied to performance requirements established by the Administrator for the management, administration, and delivery of the benefits under the contract.

''(B) PERFORMANCE REQUIREMENTS.—The performance requirements established by the Administrator pursuant to subparagraph (A)(ii) shall include the following:

''(i) The entity contains costs to the Prescription Drug Account and to eligible beneficiaries enrolled under this part and with the entity.

''(ii) The entity provides such beneficiaries with quality clinical care.

''(iii) The entity provides such beneficiaries with quality services.

''(C) ENTITY ONLY AT RISK TO THE EXTENT OF THE FEES TIED TO PERFORMANCE REQUIREMENTS.—An entity with a contract under paragraph (1)(A) shall only be at risk for the provision of benefits under the contract to the extent that the management fees paid to the entity are tied to performance requirements under subparagraph (A)(ii).

''(4) TERM OF CONTRACT.—A contract entered into under paragraph (1)(A) shall be for a period of at least 2 years but not more than 5 years.

''(5) NO EFFECT ON ACCESS REQUIREMENTS.—The contract entered into under subparagraph (1)(A) shall be in addition to the plans required under subsection (d)(1).

''(6) AUTHORITY TO PREVENT INCREASED COSTS.—If the Administrator determines that Federal payments made with respect to eligible beneficiaries enrolled in a contract under paragraph (1)(A) exceed on average the Federal payments made with respect to eligible beneficiaries enrolled in a Medicare Prescription Drug plan or a MedicareAdvantage plan (with respect to qualified prescription drug coverage), the Administrator may adjust the requirements or payments under such a contract to eliminate such excess.

SA 932. Mr. ENZI (for himself and Mr. PRYOR) proposed an amendment to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the Medicare program, to provide prescription drug coverage under the Medicare program, and for other purposes; as follows:

On page 57, between lines 21 and 22, insert the following:

''(3) DISCLOSURE.—The eligible entity offering a Medicare Prescription Drug plan and the MedicareAdvantage organization offering a MedicareAdvantage plan shall disclose to the Administrator (in a manner specified by the Administrator) the extent to which discounts, direct or indirect subsidies, rebates, or other price concessions or direct or indirect remunerations made available to the entity or organization by a manufacturer are passed through to enrollees through pharmacies and other dispensers or otherwise. The provisions of section 1927(b)(3)(D) shall apply to information disclosed to the Administrator under this paragraph in the same manner as such provisions apply to information disclosed under such section.

''(4) AUDITS AND REPORTS.—To protect against fraud and abuse and to ensure proper disclosures and accounting under this part, in addition to any protections against fraud and abuse provided under section 1860D–7(f)(1), the Administrator may periodically audit the financial statements and records of an eligible entity offering a Medicare Prescription Drug plan and a MedicareAdvantage organization offering a MedicareAdvantage plan.

On page 37, between lines 20 and 21, insert the following:

''(C) LEVEL PLAYING FIELD.—An eligible entity offering a Medicare Prescription Drug plan shall permit enrollees to receive benefits (which may include a 90-day supply of drugs or biologicals) through a community pharmacy, rather than through mail order, with any differential in cost paid by such enrollees.

''(D) PARTICIPATING PHARMACIES NOT REQUIRED TO ACCEPT INSURANCE RISK.—An eligible entity offering a Medicare Prescription

Drug plan may not require participating pharmacies to accept insurance risk as a condition of participation.

SA 933. Mr. BINGAMAN proposed an amendment to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the Medicare program, to provide prescription drug coverage under the Medicare program, and for other purposes; as follows:

On page 120, between lines 16 and 17, insert the following:

''(I) ELIMINATION OF APPLICATION OF ASSET TEST.—With respect to eligibility determinations for premium and cost-sharing subsidies under this section made on or after October 1, 2008, such determinations shall be made without regard to subparagraph (C) of section 1905(p)(1) (to the extent a State, as of such date, has not already eliminated the application of such subparagraph).

SA 934. Mrs. LINCOLN submitted an amendment intended to be proposed by her to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the Medicare program, to provide prescription drug coverage under the Medicare program, and for other purposes; which was ordered to lie on the table; as follows:

On page 9, line 7, insert ''(including syringes, and necessary medical supplies associated with the administration of insulin, as defined by the Administrator)'' before the semicolon.

On page 170, line 10, insert ''(including syringes, and necessary medical supplies associated with the administration of insulin, as defined by the Secretary)'' before the comma.

SA 935. Mrs. LINCOLN submitted an amendment intended to be proposed by her to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the Medicare program, to provide prescription drug coverage under the Medicare program, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 410 and insert the following:

SEC. 410. EXCEPTION TO INITIAL RESIDENCY PERIOD FOR GERIATRIC RESIDENCY OR FELLOWSHIP PROGRAMS.

(a) CLARIFICATION OF CONGRESSIONAL INTENT.—Congress intended section 1886(h)(5)(F)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)(ii)), as added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), to provide an exception to the initial residency period for geriatric residency or fellowship programs such that, where a particular approved geriatric training program requires a resident to complete 2 years of training to initially become board eligible in the geriatric specialty, the 2 years spent in the geriatric training program are treated as part of the resident's initial residency period, but are not counted against any limitation on the initial residency period.

(b) INTERIM FINAL REGULATORY AUTHORITY AND EFFECTIVE DATE.—The Secretary shall promulgate interim final regulations consistent with the congressional intent expressed in this section after notice and pending opportunity for public comment to be effective for cost reporting periods beginning on or after October 1, 2003.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Wednesday, June 18, 2003. The purpose of this meeting will be to discuss the nomination of Thomas Dorr to be Under Secretary of Agriculture for Rural Development.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on June 18, 2003, at 10:00 a.m., to conduct an oversight hearing on ''Review of the New Basel Capital Accord.''

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on June 18, 2003, at 2:00 p.m., to conduct a mark-up of ''The Check Truncation Act of 2003'' and of ''S. 498, the Rev. Joseph A. De Laine Congressional Gold Medal Bill.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 18, 2003, at 2:30 p.m. to hold a hearing on A Review of the Development of Democracy in Burma.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 18, 2003, at 4:00 p.m. to hold a Nomination hearing.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, June 18, 2003 at 9:30 a.m. in SD–342 to consider the nominations of Fern Flanagan Saddler to be an Associate Judge, Superior Court of the District of Columbia; Judith Nan Macaluso to be an Associate Judge, Superior Court of the District of Columbia (new position created by District of Columbia Family Court Act of 2002); J. Michael Ryan to be an Associate Judge, Superior Court of the District of Columbia (new position created by District of Columbia Family Court Act of 2002); and Jerry S. Byrd to be an Associate Judge, Superior Court of the District of Columbia (new position created by District of Columbia Family Court Act of 2002).

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Employment, Safety, and Training be authorized to meet for a hearing on ''Reauthorization of the Workforce Investment Act'' during the session of the Senate on Wednesday, June 18, 2003 at 10:00 a.m. in SD–430.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, June 18, 2003, at 10:00 a.m. in Room 485 of the Russell Senate Office Building to conduct a HEARING on Native American Sacred Places.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, June 18, 2003 at 2:30 p.m. to hold a closed business meeting.

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

SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND CONSUMER RIGHTS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights be authorized to meet to conduct a hearing on ''The NewsCorp/DirecTV Deal: The Marriage of Content and Global Distribution'' on Wednesday, June 18, 2003, at 2:30 p.m. in Room 226 of the Dirksen Senate Office building.

Tentative Witness List

Panel I: Mr. Rupert Murdoch, Chairman and CEO, News Corporation; Mr. Eddy Hartenstein, Chairman and CEO, DirecTV; Mr. Gene Kimmelman, Director, Consumer Union, Washington, DC; Mr. Robert Miron, Chairman and CEO, Advance/Newhouse Communications; Mr. Scott Cleland, CEO, The Precursor Group, Washington, DC.

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

PRIVILEGE OF THE FLOOR

Ms. STABENOW. Mr. President, I ask unanimous consent that Oliver Kim, a fellow in my office, be granted floor privileges during the consideration of S. 1.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. GRASSLEY. On the Executive Calendar, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's calendar: Calendar No. 228 and the two military promotions reported by the Armed Services Committee during today's session.

I further ask unanimous consent that the nominations be confirmed en bloc, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

DEPARTMENT OF JUSTICE

Richard James O'Connell, of Arkansas, to be United States Marshal for the Western District of Arkansas for the term of four years.

ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. William S. Wallace, 0000

NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be admiral

Adm. Edmund P. Giambastiani, Jr., 0000

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

STRENGTHEN AMERICORPS PROGRAM ACT

Mr. GRASSLEY. Madam President, in regard to S. 1276, I ask unanimous consent that the Senate immediately proceed to this bill, which was introduced earlier today and is being held at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1276) to improve the manner in which the Corporation for National and Community Service approves, and records obligations relating to, national service positions.

There being no objection, the Senate proceeded to consider the bill.

Mr. BOND. Madam President, I rise today to support legislation that will strengthen the Corporation for National and Community Service's AmeriCorps program. The Strengthen AmeriCorps Program Act of 2003 is a bipartisan bill that I introduce with my colleague and good friend, Senator BARBARA MIKULSKI, and a number of my other colleagues. As the ranking member and chair of the Corporation's appropriations committee and members of the authorizing committee, Senator MIKULSKI and I believe that this bill will not only address the Corporation's accounting problems, but more importantly, it will protect and expand volunteer service opportunities across our Nation.

Many of my colleagues have heard from their constituents and the media in recent weeks about the potential cuts to the AmeriCorps program. This bill addresses those concerns and the long-standing concerns about the management and financial problems of the Corporation by creating a budgeting mechanism that ensures the Corporation has the funds needed to pay educational awards. Under our bill, the Corporation would be able to enroll about 50,000 AmeriCorps members, without the need for additional funds.

As many of my colleagues know, the President has asked every American to volunteer in their communities and has made the AmeriCorps program a central vehicle in meeting volunteer needs. I support the President's call to service and if harnessed in the right fashion, the AmeriCorps program can play an important and effective role in improving the lives of many Americans and communities it serves.

The Corporation, unfortunately, has been plagued by significant and long-standing management problems that have been neglected for several years. One notable result of this neglect has been the inappropriate and illegal practice of enrolling more AmeriCorps members than the Corporation had budgeted. According to the Corporation's Inspector General, the number of approved AmeriCorps volunteer positions for program years 2000, 2001, and 2002, were approximately 59,000, 61,000, and 67,000, respectively, even though its budget estimates were based on enrollment levels that were around 50,000. Last year, the Corporation over-enrolled the AmeriCorps program by more than 20,000. Fortunately, the VA-HUD and Independent Agencies Appropriations Subcommittees were able to provide $43 million more than requested in the fiscal year 2003 appropriations bill to meet the needs of these members and more. Because of continued poor budgeting practices, the VA-HUD Subcommittee also approved another $64 million in a deficiency appropriation in the fiscal year 2003 supplemental appropriations to cover additional shortfalls.

When the over-enrollment problem first surfaced, I immediately asked the General Accounting Office and the Corporation's Inspector General to review the accounting practices of the Corporation and its internal controls to determine the causes of this problem. Further, I asked the GAO's Comptroller General to review the Corporation's underlying statute to determine whether the Corporation's practices complied with this law and other fiscal laws such as the Antideficiency Act.

Both the GAO and the IG found that the Corporation did not comply with the law by incorrectly recording its funding obligations. In a statement for the record for the VA-HUD and Independent Agencies Appropriations Subcommittee hearing on April 10, 2003, GAO identified several factors that led to the Corporation's incorrect accounting practice. The factors included inappropriate obligation practices, little or no communication among key Corporation executives, too much flexibility given to grantees regarding enrollments, and unreliable data on the number of AmeriCorps participants.

The GAO also found that the Corporation was not following the law in recording its legal liabilities. The GAO's finding is described in the Comptroller General's two legal opinions that were issued on April 9, 2003—B–300480, and June 6, 2003—B–300480.2. The first opinion concluded that the Corporation incurs a legal liability for the award of educational benefits of AmeriCorps participants when it enters into a grant agreement. At the time it enters a grant agreement, the Corporation approves a specified number of new participants in the AmeriCorps program. By this action:

the Corporation incurs a legal duty that once fully matured, by action of the grantee and participants outside the Corporation's control, will require the Corporation to pay education benefits to qualified participants from the National Service Trust.

The Comptroller General opinion further states that as:

the Corporation incurs an obligation for education benefits, it must record the obligation against the budget authority available in the Trust.

In other words, to ensure compliance with the law, the Corporation must record and track its obligations based on the value of the educational award multiplied by all approved positions.

We understand that recording obligations based on the approved level of AmeriCorps members in the program does not reflect the true performance of the program. We know from historical data that not all AmeriCorps volunteers successfully complete service. We also know that not all AmeriCorps members who successfully complete service use their educational award benefit. Accordingly, this bill recognizes the realities of the AmeriCorps program and allows the Corporation to maximize the number of AmeriCorps that can participate in the program.

In short, the bill allows the Corporation to fund AmeriCorps grants based on estimates of the number of members who will likely complete and use their education award. Further, the bill requires an annual actuarial audit of the National Service Trust to ensure that the Federal Government is able to

meet its liabilities. The bill also requires the chief executive officer to certify that the Corporation has properly recorded and tracked its obligations.

To ensure that the AmeriCorps program is accountable to the taxpayer and its volunteers, it is our expectation that the Corporation will use conservative assumptions in developing its funding formula. This especially is important since the Corporation has repeatedly failed to meet funding obligations resulting in actions by the Congress to provide additional funding, including a deficiency appropriation. While the program has been in place for about 10 years, there is little data on the performance of the program. Until there is reliable data, I strongly believe that the Corporation should assume a 100 percent enrollment rate for every volunteer slot approved in the grant agreements. I also believe that the Corporation should assume at least an 80 percent earnings rate for the program and at least an 80 percent education award usage rate. Further, because of poor data, the bill requires a central reserve fund to give the Corporation an extra cushion in case the actual usage rate exceeds the assumptions used in the formula.

It is my hope that we can pass this legislation as quickly as possible. This legislation provides clarification for the Corporation in determining grant award allocations to its grantees and the states. Without this legislation, uncertainty and disagreement will delay and limit the enrollment of AmeriCorps volunteers. Considering the demand and the need for this program, we cannot afford to wait.

We designed this legislation with input from the administration. I think it is a reasonable and fair approach to address this issue. It mitigates harm to AmeriCorps programs in a manner that will ensure accountability and fiscal integrity in the programs. Keeping in mind the problems identified by the auditors, which led to the enrollment freeze last November, we designed this legislation to ensure that we do not repeat those past mistakes. The enrollment freeze was an unfortunate but avoidable mistake if the Corporation had properly managed and monitored its programs.

Finally, we need to put these enrollment issues behind us. This program has had a difficult and star-crossed history, and it is unfortunate that we are here in June revisiting the implementation of the program to ensure both accountability and credibility. We need to ensure that the State and local programs are meeting both program requirements and community needs.

Before closing, I want to raise a technical issue regarding the enrollment cap of 50,000 AmeriCorps members. The Corporation enrolls members based on full-time equivalent or FTE levels since some AmeriCorps members serve part-time and others serve full-time. The cap should be based on FTE levels so that it is consistent with normal AmeriCorps business practices.

I urge my colleagues to support this legislation and pass it as quickly as possible. Senator MIKULSKI and I have tried to construct this bill in a thoughtful and fair manner to address the concerns about the program. This bill ensures that volunteers across this Nation and the taxpayers will have confidence in the AmeriCorps program.

Mr. KENNEDY. Madam President, it is a privilege to join my colleagues Senator MIKULSKI and Senator BOND on this legislation to head off the cuts in AmeriCorps announced this week that will be so devastating to so many Americorps programs in so many States.

Our bill directs the Corporation for National Service to calculate membership by a reasonable formula, and ensure that every person who commits to a year of service to their community in AmeriCorps will receive the education award.

The fiscal mismanagement at the Corporation is a serious continuing problem, but State and local programs should not have to pay for those mistakes by slashing their programs. Today, we take the first step in preserving service opportunities for this year and the future. We will continue to do all we can to increase the funds available, so that programs do not suffer because the Corporation over-enrolled 20,000 members last year. That over-enrollment is a clear signal that Americorps is reviving the spirit of volunteerism in our country and we should make these opportunities available for people of all ages to serve their communities. In this struggling economy, too many after-school and summer school programs are being cut back, and health clinics and food kitchens are serving more people than ever. AmeriCorps helps these programs help others.

I commend Senator MIKULSKI and Senator BOND for their impressive bipartisan leadership on this issue, and I urge the Senate to join us in maintaining these successful programs.

Mr. GRASSLEY. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1276) was read the third time and passed, as follows:

S. 1276

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 ''Strengthen AmeriCorps Program Act''.

SEC. 2. PROCESS OF APPROVAL OF NATIONAL SERVICE POSITIONS.

(a) DEFINITIONS.—In this Act, the terms ''approved national service position'' and ''Corporation'' have the meanings given the terms in section 101 of the National and Community Service Act of 1990 (42 U.S.C. 12511).

(b) TIMING AND RECORDING REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding subtitles C and D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq., 12601 et seq.), and any other provision of law, in approving a position as an approved national service position, the Corporation—

(A) shall approve the position at the time the Corporation—

(i) enters into an enforceable agreement with an individual participant to serve in a program carried out under subtitle E of title I of that Act (42 U.S.C. 12611 et seq.) or title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.); or

(ii) except as provided in clause (i), awards a grant to (or enters into a contract or cooperative agreement with) an entity to carry out a program for which such a position may be approved under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573); and

(B) shall record as an obligation an estimate of the net present value of the national service educational award associated with the position, based on a formula that takes into consideration historical rates of enrollment in such a program, and of earning and using national service educational awards for such a program.

(2) FORMULA.—In determining the formula described in paragraph (1)(B), the Corporation shall consult with the Director of the Congressional Budget Office.

(3) CERTIFICATION REPORT.—The Chief Executive Officer of the Corporation shall annually prepare and submit to Congress a report that contains a certification that the Corporation is in compliance with the requirements of paragraph (1).

(4) APPROVAL.—The requirements of this subsection shall apply to each approved national service position that the Corporation approves—

(A) during fiscal year 2003 (before or after the date of enactment of this Act); and

(B) during any subsequent fiscal year.

(c) RESERVE ACCOUNT.—

(1) ESTABLISHMENT AND CONTENTS.—

(A) ESTABLISHMENT.—Notwithstanding subtitles C and D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq., 12601 et seq.), and any other provision of law, within the National Service Trust established under section 145 of the National and Community Service Act of 1990 (42 U.S.C. 12601), the Corporation shall establish a reserve account.

(B) CONTENTS.—To ensure the availability of adequate funds to support the awards of approved national service positions for each fiscal year, the Corporation shall place in the account—

(i) during fiscal year 2003, a portion of the funds that were appropriated for fiscal year 2003 or a previous fiscal year under section 501(a)(2) (42 U.S.C. 12681(a)(2)), were made available to carry out subtitle C or D of title I of that Act, and remain available; and

(ii) during fiscal year 2004 or a subsequent fiscal year, a portion of the funds that were appropriated for that fiscal year under section 501(a)(2) and were made available to carry out subtitle C or D of title I of that Act.

(2) OBLIGATION.—The Corporation shall not obligate the funds in the reserve account until the Corporation—

(A) determines that the funds will not be needed for the payment of national service educational awards associated with previously approved national service positions; or

(B) obligates the funds for the payment of such awards for such previously approved national service positions.

(d) AUDITS.—The accounts of the Corporation relating to the appropriated funds for approved national service positions, and the records demonstrating the manner in which the Corporation has recorded estimates described in subsection (b)(1)(B) as obligations, shall be audited annually by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States in accordance with generally accepted auditing standards. A report containing the results of each such independent audit shall be included in the annual report required by subsection (b)(3).

(e) AVAILABILITY OF AMOUNTS.—Except as provided in subsection (c), all amounts included in the National Service Trust under paragraphs (1), (2), and (3) of section 145(a) of the National and Community Service Act of 1990 (42 U.S.C. 12601(a)) shall be available for payments of national service educational awards under section 148 of that Act (42 U.S.C. 12604).

ORDERS FOR THURSDAY, JUNE 19, 2003

Mr. GRASSLEY. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Thursday, June 19. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time of the two leaders be reserved for their use later in the day, and the Senate resume at that point consideration of S. 1, the prescription drug benefits bill.

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

PROGRAM

Mr. GRASSLEY. For the information of all Senators, then, the Senate will resume consideration of the bill now before the Senate, S. 1, the prescription drug benefits bill. There are two amendments currently pending to the bill. One is the Enzi amendment relating to disclosure and the other is Senator BINGAMAN's amendment regarding asset tests. These amendments are being reviewed and it is the leader's hope we will be able to set votes in relation to these amendments sometime tomorrow.

As mentioned earlier, we have now begun the amendment process and I hope we will continue to make progress on the bill each day until we are done with it, and the chairman and ranking member will be working together to try to get Senators in a queue to offer amendments.

Rollcall votes will occur throughout the day during Thursday's session of the Senate.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. GRASSLEY. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 5:38 p.m., adjourned until Thursday, June 19, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 18, 2003:

THE JUDICIARY

ROGER W. TITUS, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, VICE MARVIN J. GARBIS, RETIRED.

FEDERAL HOUSING FINANCE BOARD

ALICIA R. CASTANEDA, OF THE DISTRICT OF COLUMBIA, TO BE A DIRECTOR OF THE FEDERAL HOUSING FINANCE BOARD FOR A TERM EXPIRING FEBRUARY 27, 2004, VICE J. TIMOTHY O'NEILL, TERM EXPIRED.

ALICIA R. CASTANEDA, OF THE DISTRICT OF COLUMBIA, TO BE A DIRECTOR OF THE FEDERAL HOUSING FINANCE BOARD FOR A TERM EXPIRING FEBRUARY 27, 2011. (REAPPOINTMENT)

IN THE AIR FORCE

THE FOLLOWING NAMED UNITED STATES AIR FORCE OFFICER FOR REAPPOINTMENT AS THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10 U.S.C., SECTIONS 601 AND 152:

To be general

GEN. RICHARD B. MYERS, 0000

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. ROBERT P. MEYER JR., 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. JOHN P. ABIZAID, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. BRYAN D. BROWN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. DAN K. MCNEILL, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. WILLIAM G. BOYKIN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. CLAUDE V. CHRISTIANSON, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED MARINE CORPS OFFICER FOR REAPPOINTMENT AS THE VICE CHAIRMAN OF THE JOINT CHIEFS OF STAFF AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601 AND 154:

To be general

GEN. PETER PACE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ROBERT R. BLACKMAN JR., 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

LINSLY G. M. BROWN, 0000
DAWN E. CUTLER, 0000
GREGORY P. GEISEN, 0000
RONALD L. HILL, 0000
JOSEPH S. NAVRATIL, 0000
DENISE M. SHOREY, 0000

CONFIRMATIONS

Executive Nomination Confirmed by the Senate June 18, 2003:

DEPARTMENT OF JUSTICE

RICHARD JAMES O'CONNELL, OF ARKANSAS, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF ARKANSAS FOR THE TERM OF FOUR YEARS.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

to be lieutenant general

LT. GEN. WILLIAM S. WALLACE

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

to be admiral

ADM. EDMUND P. GIAMBASTIANI, JR.

EXTENSIONS OF REMARKS

TRIBUTE TO MARGO FENSTERMAKER OF JEROME, MICHIGAN, EXCEPTIONAL TEACHER

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. SMITH of Michigan. Mr. Speaker, education is the key for our Nation's future prosperity and security. The formidable responsibility of molding and inspiring young minds to the avenues of hope, opportunity and achievement rests partly in the hands of our teachers. Today I would like to recognize a teacher from Jerome, MI, that most influenced and motivated exceptional students in academics and leadership that were winners of the LeGrand Smith scholarship.

Margo Fenstermaker teaches English at Hanover Horton High School in Horton, MI. She is credited for instilling in students an enthusiasm for the subject and for life itself. In one student's own words, ''Mrs. Fenstermaker is an inspiring, encouraging and optimistic woman who instills a sense of respect for others.'' The respect and gratitude of her students speaks well of Mrs. Fenstermaker's ability to challenge young minds to stretch the mental muscles and strive to achieve the best that is in them.

Mrs. Fenstermaker's excellence in teaching challenges and inspires students to move beyond the teen-age tendency toward surface study and encourage deeper thought and connections to the real world. No profession is more important in its influence and daily interaction with the future leaders of our community and our country, and Margo Fentersmaker's impact on her students is certainly deserving of recognition.

On behalf of the Congress of the United States of America, I am proud to extend our highest praise to Mrs. Margo Fenstermaker as a master teacher. We thank her for her continuing dedication to teaching and her willingness and ability to challenge and inspire students for leadership and success.

PERSONAL EXPLANATION

HON. CHRIS BELL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. BELL. Mr. Speaker, on rollcall No. 276, I was unavoidably detained in the air. Had I been present, I would have voted ''yea.''

RECOGNIZING PHI MU ALPHA SINFONIA

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. BURGESS. Mr. Speaker, I rise today to recognize the Phi Mu Alpha Sinfonia Fraternity, one of the most distinguished music fraternities in the nation, as they gather in Washington for their triennial convention. Founded in 1898 at the New England Conservatory of Music in Boston, Massachusetts, there are currently 212 collegiate chapters, colonies, and alumni associations in the United States.

The President of Phi Mu Alpha Fraternity, Dr. Darhyl Ramsey, is a distinguished citizen of the twenty-sixth District of Texas, and I congratulate him on his leadership of this prominent and effective music organization. Dedicated to the development of musicians as well as to the music itself, Phi Mu Alpha Sinfonia Fraternity has significantly furthered the education and advancement of music in the United States of America.

Once again, I articulate my gratitude to Phi Mu Alpha Fraternity and to Dr. Ramsey for their dedication to the music of our nation.

DISCHARGE PETITION ON H.R. 303

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. FARR. Mr. Speaker, on June 17, I signed onto the discharge petition H.R. 303, and I rise today to express my continued support of the efforts to release this bill from committee. Concurrent receipt is an issue that warrants the attention of this House, the Senate and the President of the United States.

Currently, veterans who have served our country nobly and suffered a service-connected disability receive a retirement check reduced by the amount of their disability compensation. With that reduction, the disability compensation becomes negated as it simply fills the hole left by the federal government in the veterans' retirement checks. American men and women who served in our Armed Services need not be slighted anymore after putting their lives in harm's way for the survival of this great democracy. This discharge petition will draw out those that believe the codes of valor and honor outrank fiscal tightfistedness.

By releasing H.R. 303 from committee and allowing debate on the bill, we can begin to address the issue of concurrent receipt. The bill was introduced with bipartisan support, but the discharge petition lacks that same support. You and I both know, Mr. Speaker, that there are bills introduced everyday that are never intended to reach the House floor. This should not be one of those bills. This should not be one of those issues.

In these times when we ask so much of our military community, the women and men of our Armed Forces need our help. The rising costs of prescription drugs and VA enrollment fees and a struggling economy only hamper the efforts of our veterans trying to continue their lives in the nation they spent their careers defending. Disabled veterans have paid their price, and I would urge this body to not make them pay twice.

TRIBUTE TO JUDY LOWE

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MORAN of Virginia. Mr. Speaker, I rise today to pay tribute to a leader and a friend in my district who has shown what one person can achieve through selfless dedication to her community. Judy Lowe, of Alexandria, Virginia, is an inspiration to all of us who wish to better the lives of the people around us.

This year, Judy was recognized by the Alexandria Commission on Women by honoring her with the Marguerite Payez Award. This lifetime achievement award is given to a woman who has devoted her life to benefit the City of Alexandria. I can not think of a person more deserving of this than Judy.

Judy Lowe has served as the ''Mayor'' of Del Ray, a working class and diverse section of the City of Alexandria where I have spent most of my adult life. She has worked tirelessly to improve the Del Ray area through her volunteer work. Her service on the civic association executive board for 10 years helped shape Del Ray into the vibrant neighborhood that we know today. Judy authored the community newsletter during her time bringing the news to her friends and neighbors in a way that pulled the community together.

''Art on the Avenue'' is one of the most impressive and valuable events that the City of Alexandria hosts, and it would never have been possible without the assistance and dedication of Judy. This annual event helps showcase the diversity of the city through multicultural art and music. Judy has ensured that this event improves each year and she should be commended for her commitment to showcasing the arts of our area.

Judy's involvement in a range of civic activities in Alexandria has endeared her to countless individuals and organizations throughout the area. Her passion for her community has never faded and she has always been one of the first people to step up and volunteer for an activity or an event.

Most importantly, Judy Lowe is a true leader whose magnanimous spirit is infectious. The words most often used to describe Judy are cheerful, dedicated, and role model. She is known not only for her dedication to Alexandria, but also her devotion to the Washington Redskins. She is the only person I know to wear black after every game the Redskins

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

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

lose or to drive a maroon vehicle made to look like a Redskins helmet. She is passionate about everything in her life and we should all be fortunate to have a tenth of the energy she exerts.

Judy Lowe is the kind of person that makes our civil society function in a truly ''all-American way''. She spent her professional career in service to her country with the Department of Defense. She will continue to serve our society in every positive way for the rest of what I trust will be a very long life.

TRIBUTE TO MR. JOHN IRELAN OF PITTSFORD, MICHIGAN, EXCEPTIONAL TEACHER

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. SMITH of Michigan. Mr. Speaker, education is the key for our Nation's future prosperity and security. The formidable responsibility of molding and inspiring young minds to the avenues of hope, opportunity and achievement rests partly in the hands of our teachers. Today I would like to recognize a teacher from Pittsford, Michigan that most influenced and motivated exceptional students in academics and leadership that were winners of the LeGrand Smith scholarship.

Mr. John Irelan teaches social studies at Pittsford High School in Pittsford, Michigan. He is credited for instilling in students an enthusiasm for the subject and for life itself. In one student's own words, ''Mr. Irelan is not the type of teacher to sit in the lounge during his free time; he is in his room or the hallway to have contact with the students. As my psychology, sociology, economics and government teacher, he always relates course material to 'real-life' situations.'' The respect and gratitude of his students speaks well of Mr. Irelan's ability to challenge young minds to stretch the mental muscles and strive to achieve the best that is in them.

John Irelan's excellence in teaching challenges and inspires students to move beyond the teen-age tendency toward surface study and encourage deeper thought and connections to the real world. No profession is more important in its influence and daily interaction with the future leaders of our community and our country, and Mr. John Irelan's impact on his students is certainly deserving of recognition.

On behalf of the Congress of the United States of America, I am proud to extend our highest praise to Mr. John Irelan as a master teacher. We thank him for his continuing dedication to teaching and his willingness and ability to challenge and inspire students for leadership and success.

PERSONAL EXPLANATION

HON. CHRIS BELL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. BELL. Mr. Speaker, on rollcall No. 277, I was unavoidably detained in the air. Had I been present, I would have voted ''yea.''

HONORING MR. MIKE BROWN

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. BURGESS. Mr. Speaker, I rise today to recognize Mr. Mike Brown of Flower Mound, Texas for his peer-recognized honor of ''Outstanding Young Bandmaster in Texas.''

Mr. Brown has succeeded in music education for four notable years at Flower Mound High School, and previously for six years at Lewisville High School. He currently holds the illustrious position of Chairman of the Fine Arts Department at Flower Mound High School. With a promising career before him and his dedicated colleagues behind him, Mr. Brown will afford the students of Flower Mound High School a tremendous opportunity to learn from a truly distinguished talent.

Once again, I articulate my sincere congratulations to Mr. Brown for his dedication to music education and for his commitment to fostering the musical gifts of the youth of North Texas.

HAPPY 80TH BIRTHDAY, BERT MUHLY

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. FARR. Mr. Speaker, I rise today to honor the 80th birthday of the legendary Bert Muhly. Bert is the quintessential professorial type of guy: articulate, caring and wonderful in his style and manner. It is safe to say that Santa Cruz, California would not be the Santa Cruz it is without the Herculean efforts and goodwill of Bert.

His fingerprints are all around Santa Cruz. As a member of the Santa Cruz City Council, his activities have included the following: member of the State Democratic Central Committee; Co-chair of the California 16th Senatorial District Committee; and Santa Cruz County Chair. He has also contributed to presidential, gubernatorial and congressional campaigns, such as those of yours truly.

Bert and his family are well-fed people because they host more issue-oriented, potluck dinners than any other family I know. He always has a place for you at his table to talk about issues such as global warming, social injustice, globalization and corporate imperialism. I don't believe that anyone in Santa Cruz County has housed, clothed and fed more Democrats than Bert, and on his birthday, that total will only continue to rise.

Bert is the personification of the phrase ''think globally, act locally.'' He believes firmly in the effectiveness of petitioning government when a citizen wants to register a complaint with local elected officials. He has made Santa Cruz a sanctuary for the establishment of sanctuaries and has filed more petitions to the local, State and Federal governments than is humanly imaginable. They probably had to build an extra wing onto the Library of Congress simply to accommodate his prodigious works. While a voluminous petitioner, Bert is also a fantastic and extensive speaker. When Bert was mayor of Santa Cruz, the clerk of the city council changed the meeting's ''minutes'' to ''hours.'' A humble man, he always downplays the fact that he was mayor by saying that ''half the people on Pacific Avenue Mall are former mayors.''

But his efforts have never been confined to Santa Cruz, and he has accumulated a generous amount of frequent flyer miles traveling back and forth from Central and South America. Bert has not been elected governor of California yet, but he certainly is a viable candidate in Nicaragua, El Salvador and Colombia. He has devoted an enormous amount of time spreading his own and America's goodwill to the impoverished and less fortunate, and without a doubt, he has changed the lives of many.

An incredible wit and humor, Bert has been the smiles and strength behind the voice of the good fight in Santa Cruz for many years, and he has taken that fight to other countries. On behalf of this House, I wish Bert Muhly a happy birthday: a scholar, a father, a husband, a visionary, a friend and always young at heart.

HONORING COLONEL THOMAS ASHMAN

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MORAN of Virginia. Mr. Speaker, I rise today to honor one of my constituents, Colonel Thomas Ashman in recognition of his thirty years of distinguished service to the United States.

After receiving a Bachelor of Science degree in Chemical Engineering from the University of Akron in Ohio, Thomas Ashman was commissioned into the United States Air Force through the Reserve Training Corps in 1973. He was first assigned to McChord Air Force Base in Washington as Chief, Base Fuels Management Branch. In 1976, his service took him to Korea, and in 1977 he transferred to Andrews Air Force Base where his responsibilities included support for the Presidential fleet.

Through his initiative, Col. Ashman developed the petroleum engineering program for the Air Force Institute of Technology in 1979. After receiving his Master of Science degree from the University of Texas, Austin in 1981, he was assigned to the Defense Fuels Supply Center in Cameron Station, Virginia. During his tenure, in what is now known as the Defense Energy Support Center, Col. Ashman served as the Quality Assurance Officer for crude oil purchases supporting the United States Strategic Petroleum Reserve, and then as Center Programs Officer, among other positions.

In 1984, Col. Ashman was sent to the United States Pacific Command and served as the Chief, Sub-Area Petroleum Office within Headquarters United States Forces Korea. Due to his expertise, in 1986 he was selected for the Office of the Secretary of Defense, Energy Directorate, Professional Enhancement Program. A year later, Col. Ashman served as Chief, Allied Supply and Energy Assessment for the United States Air Force Combat Operations Staff, then as Supply Management Staff Officer within the Directorate of Logistics,

Headquarters United States Air Force, and finally, as Joint Staff Officer, Logistics Directorate, Joint Staff.

Col. Ashman served in several other capacities before beginning his duties at the Defense Logistics Agency in 1998, first as Chief, Customer Interface Support Group, and then as Deputy Executive Director for Acquisition, Technical, and Supply prior to assuming his final position, Acting Executive Director for Acquisition, Technical and Supply Directorate.

In recognition of his service in the Air Force and to his country, Col. Ashman earned the Defense Meritorious Service Medal, the Meritorious Service Medal, the Joint Service Commendation Medal, and the Air Force Commendation Medal. On June 30th, Col. Ashman will retire after thirty years of dedicated and exemplary service. On behalf of our nation, I thank Col. Thomas Ashman for all that he has accomplished, and wish him well in his future endeavors.

TRIBUTE TO MR. CARL NOVAK OF TECUMSEH, MI, EXCEPTIONAL TEACHER

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. SMITH of Michigan. Mr. Speaker, education is the key for our Nation's future prosperity and security. The formidable responsibility of molding and inspiring young minds to the avenues of hope, opportunity and achievement rests partly in the hands of our teachers. Today I would like to recognize a teacher from Tecumseh, Michigan that most influenced and motivated exceptional students in academics and leadership that were winners of the LeGrand Smith scholarship.

Mr. Carl Novak teaches mathematics at Tecumseh High School. He is credited for instilling in students an enthusiasm for mathematics. In one student's own words, ''Mr. Novak has continually challenged me to do my best throughout high school. His vast knowledge of mathematics, and his dedication to family and community displayed positive character and professionalism.'' The respect and gratitude of his students speaks well of Mr. Novak's ability to challenge young minds to stretch the mental muscles and strive to achieve the best that is in them.

Mr. Novak's excellence in teaching challenges and inspires students to move beyond the teen-age tendency toward surface study and encourage deeper thought and connections to the real world. No profession is more important in its influence and daily interaction with the future leaders of our community and our country, and Carl Novak's impact on his students is certainly deserving of recognition.

On behalf of the Congress of the United States of America, I am proud to extend our highest praise to Mr. Carl Novak as a master teacher. We thank him for his continuing dedication to teaching and his willingness and ability to challenge and inspire students for leadership and success.

PERSONAL EXPLANATION

HON. CHRIS BELL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. BELL. Mr. Speaker, on rollcall No. 278, I was unavoidably detained in the air. Had I been present, I would have voted ''yea.''

RECOGNIZING MR. CHRISTOPHER HANSEN

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. PALLONE. Mr. Speaker, I rise today to laud the accomplishments of one of my constituents, Mr. Christopher Hansen. Mr. Hansen, is a resident of Neptune City, New Jersey and is this year's recipient of the United States Small Business Administration's Home-based Business Advocate of the Year Award. Mr. Hansen is being presented with this honor for his outstanding advocacy work on behalf of New Jersey's 750,000 self-employed, home based, business owners.

This award is given to an individual who has experienced the rewards and difficulties of home-based businesses and has volunteered to improve the climate for home-based businesses. In my mind, there is no individual more deserving of this award then Mr. Hansen. Over the past few years, Mr. Hansen has volunteered an infinite amount of time and energy to improve the conditions for home-based businesses.

Christopher Hansen has proven himself to be one of the nations leading supporters of home-based business. In 1995, Mr. Hansen founded the Home Based Business Council, a not-for-profit corporation of which he currently serves as President. He decided to start the organization because of an unfair law that was passed in 1992 that drove elected officials with home based businesses out of office by making a majority of those businesses illegal. Mr. Hansen saw a problem with this and decided to act. Mr. Hansen started to gather supporters together to discuss the suppression of home-based businesses. His actions soon attracted both local and national media attention.

The following year Mr. Hansen co-founded the New Jersey Partnership for Work at Home to educate elected and appointed leaders about the changing nature of the homebased business economy. As part of his voluntary leadership, Mr. Hansen authored a comprehensive paper on incorporating home-based businesses into the community. He has since written numerous articles that have appeared in national publications and those of the New Jersey Conference of Mayors and League of Municipalities.

Over the past few years, Mr. Hansen has tirelessly fought against the outmoded notion that home based businesses harm communities. It is because of individuals like him that nearly 25 million families throughout the country are able to create income from self-employed work at home. Mr. Hansen continues to achieve immeasurable accomplishments in advancing home-based businesses and is a tremendous asset to the small business community. Mr. Speaker, for those reasons, I wish Mr. Hansen continued success and ask that my colleagues join me in honoring him.

TRIBUTE TO MR. CRAIG BOOHER OF JACKSON, MICHIGAN, EXCEPTIONAL TEACHER

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. SMITH of Michigan. Mr. Speaker, education is the key for our Nation's future prosperity and security. The formidable responsibility of molding and inspiring young minds to the avenues of hope, opportunity and achievement rests partly in the hands of our teachers. Today I would like to recognize a teacher from Jackson, Michigan and most influenced and motivated exceptional students in academics and leadership that were winners of the LeGrand Smith scholarship.

Mr. Craig Booher teaches history at Napoleon High School in Napoleon, Michigan. He is credited for instilling in students an enthusiasm for the subject and for life itself. In one student's own words, ''Mr. Booher is very passionate and knowledgeable about history. When he teaches, he is full of energy and it makes us eager to learn.'' The respect and gratitude of his students speaks well of Mr. Booher's ability to challenge young minds to stretch the mental muscles and strive to achieve the best that is in them.

Craig Booher's excellence in teaching challenges and inspires students to move beyond the teen-age tendency toward surface study and encourage deeper thought and connections to the real world. No profession is more important in its influence and daily interaction with the future leaders of our community and our country, and Mr. Craig Booher's impact on his students is certainly deserving of recognition.

On behalf of the Congress of the United States of America, I am proud to extend our highest praise to Mr. Craig Booher as a master teacher. We thank him for his continuing dedication to teaching and his willingness and ability to challenge and inspire students for leadership and success.

TRIBUTE TO ALAN BRAY

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. ANDREWS. Mr. Speaker, I rise to recognize Alan Bray.

Alan Bray is well known throughout Maine as a talented artist who is able to capture the beauty of Maine in his paintings. Alan's art has been enjoyed by so many who appreciate his amazing works. He has studied art around the world and earned his degree in Italy. He has had his artwork displayed at museums in New York City and reviewed in some of the finest publications. He has been to the great bay of San Francisco and to the shores of Florida, yet Alan always chooses to return to that place from which he came.

Perhaps Alan Bray's greatest works, however, lie not within his art but within his soul. You see, Alan comes from Sangerville, a small town in central Maine where the people do not always enjoy many of the every-day advantages as those of us who have the opportunity to live in more populous and prosperous areas. Closing Mills, unemployment and lower wages place a strain on families and communities, but Alan Bray is a community's strength.

Alan has given his time and his talents to the local college, where he passes on his vast knowledge of art and artistic methods to students eager to absorb it, but who would otherwise be without the opportunity to learn from such life experiences. He has lead the effort to revive the local Grange, once a meeting place for farmers in the surrounding communities to discuss means to deliver their crops to the cities and ensure their earning a fair wage for their long, hard hours of work. Today, the Sangerville Grange is a center of culture and draws musical talent, poets, speakers and others with so much to offer and to teach, much as the town of Collingswood in my district has the Scottish Rite. Like the Rite, the Grange has become widely known for drawing some of the finest talent and sharpest minds to deliver music, art and culture to the small community of good, descent people who so deserve the wonderful offerings a civilized society has to give. It is a result of the vision, character and hard work of Alan Bray.

Alan is now being recognized as a recipient of the Jefferson Award, a prestigious award that honors community service and cooperative spirit, and he is here in Washington today to humbly accept that award for his good works, his good deeds, but mainly, for the good his good deeds, but mainly for the good content of his character. Alan Bray embodies the spirit of returning to one's community a hundred fold that which you have gained from it, and of unpaid public service that is an essential part of the spirit of America. He is a ray of hope to some who are in need of hope; a beacon of light to others who struggle to find their way, and a modern visionary of what otherwise ordinary people can do to make extraordinary things come to be. Congratulations, Alan. Your community, your state, and indeed your nation, thank you.

RECOGNIZING THE ACHIEVEMENTS OF PAXON HIGH SCHOOL IN JACKSONVILLE, FLORIDA

HON. ANDER CRENSHAW

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. CRENSHAW. Mr. Speaker, I would like to take this opportunity to recognize the school administrators, teachers, and students at Paxon High School in Jacksonville, Florida for their outstanding achievement in providing, guiding, and demonstrating a quality education.

Paxon High School was recently highlighted by Newsweek magazine (The Best 100 High Schools in America, May 26, 2003), as the third best school in the nation, as measured by the Challenge Index. This index takes the number of Advanced Placement or International Baccalaureate tests taken by all of the students at a school in 2002 and divides them by the number of graduating seniors.

The editors of Newsweek said they used participation in the Advanced Placement or International Baccalaureate tests as benchmarks because ''these tests are more likely to stretch young minds—which should be the fundamental purpose of education.''

Paxon High School is clearly providing the curricula, support, and leadership in learning that is so very important to our young people.

Mr. Speaker, I ask you and my other distinguished colleagues to join me in applauding Paxon High School and all of those schools that strive to prepare their students for higher education and thusly, a higher quality of life. Moreover, I would like to commend the school administrators, superintendents, teachers, and all of the students who have committed themselves to a quality education. As John F. Kennedy once stated, leadership and learning are indispensable to each other.

It is my privilege to recognize Paxon High School for its outstanding achievements.

THE ASSOCIATION OF AMERICANS RESIDENT OVERSEAS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. TOWNS. Mr. Speaker, today I rise to recognize the contributions made by Association of Americans Resident Overseas (AARO) in defending and promoting, the interests of overseas American before the U.S. Congress and presidential administrations during its thirty-year history.

I want to specifically commend AARO for promoting improvements in American nationality laws which would have taken the citizenship of children of one American parent away from them, for seeking tax equity for Americans working abroad, for working to reconcile social security laws by international agreement for US citizens working abroad, and for securing voting rights for US citizens abroad in Federal elections.

On June 20, 2003, AARO's will celebrate its Thirtieth Birthday.

Mr. Speaker, the leaders of AARO throughout the years have worked hard to represent and advocate for Americans living overseas. As such, this organization is worthy of receiving our recognition today.

TRIBUTE TO MR. ANDY BROWN OF HILLSDALE, MICHIGAN, EXCEPTIONAL TEACHER

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. SMITH of Michigan. Mr. Speaker, education is the key for our Nation's future prosperity and security. The formidable responsibility of molding and inspiring young minds to the avenues of hope, opportunity and achievement rests partly in the hands of our teachers. Today I would like to recognize a teacher from Hillsdale, Michigan who most influenced and motivated exceptional students in academics and leadership who were winners of the LeGrand Smith scholarship.

Mr. Andy Brown teaches Advanced Reading, Writing and Research at Camden-Frontier High School in Camden, Michigan. He is credited for instilling in students an enthusiasm for the subject and for life itself. In one student's own words, ''Mr. Brown has taught me the English language and how to convey my thoughts in an organized, precise way. He encouraged me to go after my dreams and accomplish my goals.'' The respect and gratitude of his students speaks well of Mr. Brown's ability to challenge young minds to stretch the mental muscles and strive to achieve the best that is in them.

Andy Brown's excellence in teaching challenges and inspires students to move beyond the teen-age tendency toward surface study and encourage deeper thought and connections to the real world. No profession is more important in its influence and daily interaction with the future leaders of our community and our country, and Mr. Andy Brown's impact on his students is certainly deserving of recognition.

On behalf of the Congress of the United States of America, I am proud to extend our highest praise to Mr. Andy Brown as a master teacher. We thank him for his continuing dedication to teaching and his willingness and ability to challenge and inspire students for leadership and success.

HONORING KATHERINE DUNHAM ON THE OCCASION OF HER 94TH BIRTHDAY

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. COSTELLO. Mr. Speaker, I rise today to take this opportunity to pay tribute to Katherine Dunham on the occasion of her 94th birthday.

Born in Joliet, Illinois, on June 22, 1910, Katherine Dunham became interested in dance at an early age. While a student at the University of Chicago, she formed a dance group that performed in concert at the Chicago World's Fair in 1934 and with the Chicago Civic Opera in 1935–36.

With a bachelor's degree in anthropology, she soon undertook field studies in the Caribbean and in Brazil. By the time she received her M.A. from the University of Chicago, she had acquired a vast knowledge of the dances and rituals of the black peoples of tropical America. (She later took a Ph.D. in anthropology.)

In 1938, she joined the Federal Theatre Project in Chicago and composed a ballet, L'Ag'Ya, based on Caribbean dance. In 1940, she formed an all-black company, which began touring extensively by 1943. Tropics (choreographed 1937) and Le Jazz Hot (1938) were among the earliest of many works based on her research.

Katherine Dunham is noted for her innovative interpretations of primitive, ritualistic, and ethnic dances and her tracing the roots of black culture. Many of her students, trained in her studios in Chicago and New York City, have become prominent in the field of modern dance. She also choreographed for Broadway

stage productions and opera—including Aida (1963) for the New York Metropolitan Opera. She also choreographed and starred in dance sequences in such films as Carnival of Rhythm (1942), Stormy Weather (1943), and Casbah (1947).

Dunham also conducted special projects for Chicago black high school students. She served as the artistic and technical director (1966–67) to the president of Senegal and artist-in-residence, and later professor, at Southern Illinois University, Edwardsville, and director of Southern Illinois' Performing Arts Training Centre and Dynamic Museum in East St. Louis, Ill.

Dunham's writings, sometimes published under the pseudonym Kaye Dunn, include Katherine Dunham's Journey to Accompong (1946), an account of her anthropological studies in Jamaica; A Touch of Innocence (1959), an autobiography; and Island Possessed (1969), as well as several articles for popular and scholarly journals.

Except for a brief appearance in 1965, Dunham has not performed regularly since 1962 and has concentrated on her choreography. One of her major works was the choreographing and directing of Scott Joplin's opera Treemonisha in 1972. When she dissolved her company in 1965 to become advisor to the cultural ministry of Senegal she returned to the United States in 1967.

She left the conventional dance world of New York that year to live and work in East St. Louis at an inner-city branch of the Southern Illinois University, running a school attached to the University and working with neighborhood and youth groups.

The living Dunham tradition has persisted. She is considered a woman far ahead of her time. She considers her technique ''a way of life.'' The classes at her Manhattan school—attended by many artists, including Marlon Brando and Eartha Kitt, during the 1940s and the 1950s, were noted for their liberating influence.

Her master of body movement was considered ''phenomenal.'' She was hailed for her smooth and fluent choreography and dominated a stage with what has been described as ''an unmitigating radiant force providing beauty with a feminine touch full of variety and nuance.'' Otherwise known as the Dunham Technique, which is still practiced today.

Mr. Speaker, I ask my colleagues to join me in honoring Katherine Dunham on the occasion of her 94th birthday. Katherine's lifetime of experiences and her contribution to the world of dance is an invaluable resource to not only the people of East St. Louis but to the world.

RELATING TO CONSIDERATION OF SENATE AMENDMENTS TO H.R. 1308, TAX RELIEF, SIMPLIFICATION, AND EQUITY ACT OF 2003

SPEECH OF

HON. RON KIND

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 12, 2003

Mr. KIND. Mr. Speaker, I rise today in reluctant opposition to the rule providing for consideration of H.R. 1308, the Relief for Working Families Tax Act. Today, we have the opportunity to help 6.5 million working families with 11.9 million children while maintaining fiscal responsibility. However, the Majority does not wish to do that. Rather, they would prefer to pass an $82 billion tax package without any provisions to offset the cost. The Senate overwhelmingly passed a $9.8 billion tax package that would immediately benefit our children and not increase the deficit; we must do the same.

The federal deficit has now exceeded $400 billion for 2003, a new record, and is approaching $500 billion for 2004. Yet, the Majority wants to borrow another $82 billion. In a time of exploding budget deficits as far as the eye can see, we cannot pass a plan that will further compromise our economy. It is imperative that we put money back in the hands of working Americans to create jobs and build a strong future. The bill before us today, however, only serves to further weaken our economy and burden our children.

The child tax credit legislation passed by the Senate on June 5th, 2003 extends relief to families making between $10,500 and $26,625, who were left out of the Majority's irresponsible tax package we recently considered. Just examine the facts: one in six families would gain from the child credit refund increase; in my home state of Wisconsin alone, 11 percent of families would benefit. In thirteen States, at least 20 percent of families would be helped. In addition, the legislation passed by the Senate would provide benefits for the children of the brave men and women of our Armed Services. However, the House Majority is offering a partisan obstruction impairing our ability to help these children, by adding $70 billion worth of additional tax cuts.

In conclusion, I urge my colleagues to oppose this rule and bring up the legislation the Senate passed so we can get it to the President's desk by this weekend. We must not let the Majority solve a $3.5 billion dilemma with an even greater $82 billion dilemma. It is evident that this plan creates more harm than good; it not only increases the budget deficit of today, but also increases the debt of the future. Thus, for a better today and a brighter tomorrow, I firmly oppose this bill and encourage my colleagues to oppose it with me.

A TRIBUTE TO AL DAVIS

SPEECH OF

HON. JOHN M. SPRATT, JR.

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 10, 2003

Mr. SPRATT. Mr. Speaker, last month a trusted and respected employee of the Ways and Means Committee named Al Davis died of complications resulting from a tragic traffic accident and I want to offer my sincere condolences to his family and loved ones. Al was a kind, caring, and generous man who was dedicated to the public good—a rare commodity in this body today.

As many of my colleagues have said on many occasions, Al Davis was a tremendous asset to the Democratic Members of the Ways and Means Committee. Moreover, many of my colleagues who are not on the Ways and Means Committee benefited from his expertise—even if they didn't know it as his handiwork. This is because Al was the person behind the summaries and one-pagers that often helped members understand very complex tax and budget legislation. On numerous occasions I needed to consult with Al in order to produce documents that would help me understand arcane budget principles and make sense of Federal budget projections.

As members of the Committee knew, Al was a dedicated public servant who will not soon be forgotten. The Ways and Means Committee and this Congress as a whole will suffer without his presence. Al Davis will truly be missed by all of us.

TRIBUTE TO JODY OWENS OF BATTLE CREEK, MICHIGAN, EXCEPTIONAL TEACHER

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. SMITH of Michigan. Mr. Speaker, education is the key for our Nation's future prosperity and security. The formidable responsibility of molding and inspiring young minds to the avenues of hope, opportunity and achievement rests partly in the hands of our teachers. Today I would like to recognize a teacher from Battle Creek, Michigan that most influenced and motivated exceptional students in academics and leadership that were winners of the LeGrand Smith scholarship.

Mrs. Jody Owens teaches English at Athens High School in Athens, Michigan. She is credited for instilling in students an enthusiasm for the subject and for life itself. In one student's own words, ''Mrs. Owens works to bring out the best in everyone. She also has the kindest heart I have ever known.'' The respect and gratitude of her students speaks well of Mrs. Owen's ability to challenge young minds to stretch the mental muscles and strive to achieve the best that is in them.

Mrs. Owen's excellence in teaching challenges and inspires students to move beyond the teen-age tendency toward surface study and encourage deeper thought and connections to the real world. No profession is more important in its influence and daily interaction with the future leaders of our community and our country, and Jody Owen's impact on her students is certainly deserving of recognition.

On behalf of the Congress of the United States of America, I am proud to extend our highest praise to Mrs. Jody Owens as a master teacher. We thank her for her continuing dedication to teaching and her willingness and ability to challenge and inspire students for leadership and success.

A PROCLAMATION RECOGNIZING MARTHA MOORE

HON. ROBERT W. NEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. NEY. Mr. Speaker, Whereas, Martha Moore has served as a State central committee member in the Republican Party since 1950; and

Whereas, Martha Moore is the longest serving state central committee member in Republican Party history; and

Whereas, Martha Moore has been a Republican National Committee member since 1968; and

Whereas, Martha Moore served as the vice chairwoman of Ohio's Republican Party; and

Whereas, Martha Moore was unanimously elected vice chairwoman emeritus by Ohio's Republican Party;

Therefore, I join with the residents of the entire 18th Congressional District of Ohio in honoring and congratulating Martha Moore for her commitment and selfless service to the Grand Old Party.

IN RECOGNITION OF JAMES MATLACK

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. FILNER. Mr. Speaker and colleagues, I would like to take this opportunity to recognize and congratulate James Matlack upon the occasion of his retirement as Director of the Washington, DC Office for the American Friends Service Committee (AFSC). He will be honored at a reception on Wednesday, June 25th.

James was born into a Quaker family in Moorestown, New Jersey and attended Quaker schools there and in Westtown, Pennsylvania, an early influence that led to his work at AFSC. He received his Bachelors Degree from Princeton University, his Masters Degree as a Fulbright Scholar at Oxford University in England, and his Ph.D. at Yale University where he was a Danforth Fellow and a Woodrow Wilson Scholar.

He held a number of academic positions before joining AFSC. I first met James when he was on the faculty at Cornell University in the late 1960s. At the University of Massachusetts in Amherst, he served as the Master/Director of the Southwest Residential College. Later, he joined the faculty at Hampshire College, also in Amherst, while he was working as Executive Assistant to the President and Secretary of the Board of Trustees.

Before joining the AFSC staff, James spent two terms on their National Board of Directors in the position of Vice Chairman of the Board. He was also Presiding Clerk of the Nationwide Peace Education Committee. In 1979, he was a member of the AFSC delegation to Vietnam and Cambodia, the first Western group to visit Phnom Penh after the fall of the Khmer Rouge. James has been a worldwide traveler on behalf of the work of AFSC, with trips to the Middle East six times, to Central America three times, and to Mexico.

In 1983, he became Director of the AFSC Washington office. In this position, he has worked on a wide range of AFSC domestic and international issues, involving government officials, diplomats, policy experts, the news media, and like-minded advocacy groups.

James also has served on the Board of Trustees of Sidwell Friends School in Washington, DC.

Upon his retirement, he is joined in celebrating his accomplishments by his wife, his three children, and five grandchildren. His dedication and commitment to the work of the American Friends Service Committee have been monumental, and he will be missed.

My sincere thanks and best wishes go to my friend, James Matlack. He has been a tireless advocate for peace, human rights, and civil liberties. He was one lobbyist that I and many of my colleagues heartily welcomed in our offices!

BRUCE WOODBURY POST OFFICE BUILDING

SPEECH OF

HON. SHELLEY BERKLEY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 16, 2003

Ms. BERKLEY. Mr. Speaker, I rise today in support of H.R. 2254, a bill to name a Boulder City, Nevada Post Office for Mr. Bruce Woodbury in honor of Mr. Woodbury's public service to both his hometown of Boulder City and the entire Las Vegas Valley.

Bruce is a native of Las Vegas, growing up in the Valley and graduating from Las Vegas High School. He ventured away from Nevada to attend the University of Utah and Stanford School of Law, but returned to his home state to begin his family and career. He is a father and grandfather and has dedicated more than two decades of his career to public service.

Bruce has served as a member of the Clark County Commission since 1981. For the last 17 years, he has served on the Regional Transportation Commission of Southern Nevada during a time when Clark County continues to be among the fastest growing counties in the country. Bruce has been instrumental in planning for this tremendous growth, including advocating for the construction of the Las Vegas Beltway and working for two decades to secure funding for the monorail that will soon carry millions of passengers each year.

Bruce has dedicated himself to many community organizations, providing leadership for the Children's Museum, the Nevada Special Olympics, the Boulder City Chamber of Commerce, the Henderson Chamber of Commerce and the American Red Cross to name a few.

Bruce Woodbury's talents, vision, integrity, and energy have made a lasting, positive impact on the Las Vegas Valley and its residents. I am proud to call him a friend and I am equally delighted to support legislation to name the Bruce Woodbury Post Office in Boulder City, Nevada.

PERSONAL EXPLANATION

HON. MARIO DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MARIO DIAZ-BALART of Florida. Mr. Speaker, unfortunately, I was unavoidably detained in a meeting during rollcall votes 282 and 283. S. 342 and S. Con. Res. 43 are important pieces of legislation that I strongly support. Had I been present for the vote, I would have voted ''yes'' on rollcall vote 282 and rollcall vote 283.

RECOGNIZING THE 150TH ANNIVERSARY OF CASSIA MOUNT HEROB LODGE NO. 273

HON. JIM GERLACH

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. GERLACH. Mr. Speaker, I rise today to honor Cassia Mount Horeb Lodge #273 of Ardmore, Pennsylvania on their 150th anniversary. Cassia Lodge has the distinction of being the first permanent establishment of Freemasonry in what is now known as the ''Main Line.'' Since their founding, the Masons of Lodge 273 have made invaluable contributions to their community and to Pennsylvania.

Faith, honor, integrity, responsibility for one's actions, the absolute right to intellectual and spiritual freedom and self-control are the Masons' core values and principles. After the first Grand Lodge was founded in England in 1717, Masonry's rich history was solidified in America by such patriots as Benjamin Franklin, George Washington, Paul Revere, and John Hancock. Many would argue that the Masons and Masonry played a significant role in the Revolutionary War and an even more important part in the Constitutional Convention. For 150 years, the Masons of Cassia Mount Horeb Lodge have worked to maintain this tradition and standard of excellence while producing many prestigious community and professional leaders of their own.

The members of Cassia Mount Horeb Lodge have been proven and active leaders in our community, providing a wide range of services to a wide range of people. They have hosted numerous Sunday school groups, one of which went on to found St. Mary's Church, which is now located just across the street from the Lodge. On another occasion, they opened their doors to the students of a neighboring school when their schoolhouse suffered severe damage from a fire. Acts of kindness and compassion like these have been commonplace in the history of Cassia Lodge and I am sure that they will continue to be an exemplary organization for years to come.

Mr. Speaker, the Masons of Cassia Mount Horeb Lodge have served as a model for all Masons for 150 years. Their commitment to God and country, emboldened by their brotherhood, has set a high standard for all Masonic lodges.

ACCOUNTANT, COMPLIANCE, AND ENFORCEMENT STAFFING ACT OF 2003

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. TOM DAVIS of Virginia. Madam Speaker, I rise in support of H.R. 658, the ''Accountant, Compliance and Enforcement Staffing Act of 2003,'' which was introduced by Chairman Richard Baker of the Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises in February of this year. The legislation would grant the Securities and Exchange Commission the flexibility to circumvent current federal hiring procedures in hiring accountants, economists and compliance examiners at the Commission.

The legislation being considered today is identical to the provision granting hiring flexibilities for the Securities and Exchange Commission that was considered and approved by the Government Reform Committee on May 7 as part of H.R. 1836, the Civil Service and National Security Personnel Improvement Act. The Government Reform Committee and the Financial Services Committee worked together with the Securities and Exchange Commission to craft this important legislation that should help to resolve some of the staffing shortages facing the Commission at a time when oversight of the financial markets is essential to restoring public confidence in the economy.

One of my goals as chairman of the committee with jurisdiction over federal civil service policy is to reform agency hiring processes government-wide. However, in considering some of the immediate challenges and staff shortages facing the Commission, I felt it was important to address their situation immediately, and then begin to focus on the rest of the federal government.

I urge my colleagues to support this legislation and I look forward to working with them in the future as we move toward comprehensive reform of federal hiring procedures.

REMEMBERING J. ROY MARTIN, JR.

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. WILSON of South Carolina. Mr. Speaker, I want to express my deepest sympathies for the family of J. Roy Martin who passed away May 30, 2003.

Roy was a true South Carolinian and will be greatly missed. He was also a great American, a man who served valiantly in World War II. Roy was a jumpmaster during the invasion of Normandy and fought in most major battle areas in Europe.

I believe the memory of Roy is best told by his son, Allen, who gave the following speech at his father's funeral:

First, my thanks to each of you for coming and being a part of my dad's life. And thanks for your comfort and support to my dad and my family during these last difficult months. The caretakers at Anderson Hospital and Hospice of the Upstate will have our lasting gratitude.

America has lost a brave and courageous patriot. My family has lost a constant and steadfast anchor. Many of you have lost a trusted and faithful friend.

Dad was an original member of 101st Airborne Division of the U. S. Army, better known as the Screaming Eagles. He volunteered for extended active duty and volunteered to be a paratrooper. Parachuting was in its infancy. Dad participated in the first divisional drops and the first night drops, all in preparation for the invasion of Normandy.

His division was shipped to Liverpool, England on a voyage that took 43 days, part of which was on the HMS Strathnauer where 5,800 men were packed on a ship equipped to hold 300.

The months preceding June 6, 1944 were spent in England preparing for the invasion. Dad and the 101st left England at 10:30 PM June 5th, the night before D-Day. Each man was required to take six boxes of food, a gas mask, ammunition, a folding stock, a 30 caliber carbine, knives, a main parachute, and a reserve parachute. Each man was so heavy he could not get in the plane without assistance and once in the plane could not stand up without assistance. It was my privilege a few years ago to help Dad write his memoirs for the New Orleans D-Day reunion and the following are some excerpts.

Dad writes, ''After we were in the plane the motor was started and I, as a jumpmaster, was standing in the door. As we taxied up the taxi-way, I saw Gen, Eisenhower, with several of his staff, in an open touring car parked by the runway as we were moving out. It was very encouraging to see that he placed this much interest in our unit and our mission. I learned later that his air advisor, Marshal Lee Mallory, had advised him, that he should not use airborne troops in this operation, that they would suffer 85 percent casualties. It must have been a great burden on Gen. Eisenhower to see us take off and know that most of us would not come back.

Dad was the fifth of hundreds of planes to take off. He writes, ''I was able to look and see that navigation lights of the many planes behind us. There were so many lights it looked like a mammoth Christmas tree.

Dad was always a navigator and as he stood in the door, his confidence was shaken because he could see that his plane was off course, as they came over the French Coast. The planes altitude lowered and they could see the Germans running their guns and begin firing with planes crashing, burning and exploding in the fights behind him.

He jumped knowing that he would not land in his designated zone. It seemed to him that almost as soon as his chute opened he was plunging through the tops of an apple orchard. He gathered his men and approached a French farmhouse. Dad had taken French in Boys High School eight years earlier. Much to his surprise he was able to recall enough French to convince the farmer to lead his men in the direction of their mission, which were the gun emplacements that dominated Utah Beach. They soon came upon several battalion and regimental officers who were more senior to Dad. Dad then went to the back of the line. After only another mile or so, the Germans opened fire with machine guns and the French farmer and most of his men were killed. Dad was able to crawl to a depression and meet the first of so many dead Americans that he saw in the war. One, a lieutenant and a recent graduate of West Point named Ebberly, had been shot through the head in almost the exact same position he had previously occupied. He made his way through dead bodies to a house on the side of the road completely filled with wounded and dead soldiers. He proceeded across the bridge and saw the ditches on both sides filled with dead soldiers. From this point, to the point where he reached the gun emplacements, he has no memory—not even the tremendous bombardments that preceded the beach landings. It was one of many lapses of memory that I can only conclude was his way of dealing with the horror.

The week after D-Day was another lapse in memory but Dad writes, ''. . . D-Day was only the beginning. My battalion, my division and I participated in every single major battle in the European theater. We were in the airborne operation in Holland and in Bastogne during the time it was surrendered. And during it all I was never wounded and never missed a day of combat. I have always wondered why this happened since it was almost unique and virtually all of my friends were either killed or wounded . . .''

He continues, ''We were in France for approximately six weeks. I wore the same clothes the entire time we were there.'' Upon return to England, I pulled off my clothes, ''. . . and when I did so, the floor around me turned white by the skin I had shed into the clothes. And I took my pants and literally stood them up in the corner of the room.''

Dad ends his memoirs with this, ''After the initial days following D-Day, I never really expected to live through the war.'' ''. . . there was no such thing as a safe job in a parachute unit.'' ''The following September when we jumped in Holland, I was a Junior Captain in the battalion, three days later I was the only Captain left. And the entire battalion staff except the battalion commander had been killed or wounded. And the battalion commander was then the regimental commander because most of the regimental staff, including the regimental commander, had been killed or wounded. The only reasons that I am alive today are simply a matter of pure luck and the grace of God.''

Throughout my life dad spoke very little about WWII. It is my conclusion that it was too horrific for him to recall. He was also a man who showed almost no emotion. Prior to the last few days, the only time I ever saw him cry, and then only briefly, was when my older brother Jim was killed. I believe that Dad left most of his emotions on the European continent and as a result of his experience there became an individual totally dedicated to the substantive. He did not tolerate small talk, he had little time for recreation, and he was totally involved in the serious not the sublime. He believed it was an honor and a duty to serve his country and that he owed his country, his country did not owe him.

He was amazingly devoted to his family, not only to Mom and to us, but also to his brothers, sisters, aunts, uncles, and cousins, which was a challenge in the enormous family to which he belonged. Where his father was one of eleven children and his mother was one of 21 children. And he made no distinctions between laws, stepchildren, and adoption. Once you entered his family, he was totally devoted to you and would never let you down.

Dad felt the greatest obligation of a parent was to raise independent children. He never rewarded us for good grades nor punished us for bad grades. He always told us that the grades we made affected us not him. He instilled in us a desire to strive for the best.

He believed in the worth of every individual. He taught us that we were no better or no worse than anyone else and that everyone was put on this earth for a purpose. He was very much a Baptist believing that one's faith walk was an individual journey, not a corporate journey. He instructed us from and early age that as much as he might wish he could get us to heaven, it was a decision for me to make and no one could make it for me. He was a stern disciplinarian. He definitely believed in the axiom, 'spare the rod, spoil the child,' except when it came to Louis.

He was a great believer in free markets and encouraged people to go into business for themselves. Just as his father before him had encouraged his siblings to form their own business, so too did Dad try to help his siblings in starting their own businesses. He, like our President, was a compassionate conservative.

He believed everyone should contribute to his or her community. He taught Sunday school for years, played in the Anderson Symphony Orchestra, was a life-long member of the Rotary Club, and served for many years in the Chamber of Commerce and the Anderson Memorial Hospital Board.

My father was blunt and plainly spoken. He had not time for small talk. He battled depression for years. But he was a great man. I never stopped learning from him and God should be prepared for some pointed questions from this guy.

I am sure Dad and the Lord are having some serious conversations. A few days ago one of the nurses commented on what a good job the Lord had done with him. He quickly corrected her by saying the Lord and me—don't give the Lord all the credit.

Dad was often difficult and he knew it. He gave Mom a plaque of appreciation on their 55th anniversary to honor her for putting up with him for 55 years. He was resentful for what his cancer had done to him. Many of you, in recent months, tried unsuccessfully to see him. Your attempts were appreciated even when unsuccessful.

We thank each one of you here for being a part of his incredible life. We hope you will find guidance in so many of the things he stood for and we hope you will go from this place loving your family and committed to making this world a better place for future generations.

THE PASSING OF EUGENE A. GILMER

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. CONYERS. Mr. Speaker, with great sorrow, I call to the attention of the House, the passing of one of Michigan's great educators, Eugene A. Gilmer. His family has lost a loving, devoted husband, and father; I have lost a dear friend and constant inspiration; Detroit has lost a giant.

Eugene Gilmer left us on June 13, 2003, at the age of 79. He had compiled an outstanding career as an educator and community activist. After serving with great distinction overseas in the Army during World War II, he graduated from Wayne State University. Determined to overcome racial bias in hiring educators, Eugene drove a bus until he won a teaching position. After that, there was no holding back his talent, his dedication and his spirited drive.

In addition to his commitment to educating Detroit's youth, Eugene was equally dedicated to the preservation and appreciation of African American history. While serving as principal at the Sampson Elementary and Fitzgerald Elementary Schools, he played a key role in the founding and funding of the Charles H. Wright Museum of African American History and then served on its Board of Directors. Over the years, the Wright Museum became one of the Nation's leading institutions preserving an appreciation of the tribulations, as well as the contributions of African Americans.

It is now commonplace for public officials to pledge allegiance to slogans like ''quality education for all'' and ''no child left behind.'' Decades before these principles became popular sound bites, however, they were the cornerstones of Eugene's educational philosophy and his professional goals.

Eugene never lowered his standards of excellence, nor accepted excuses for students who failed to achieve their potential. At the same time, he knew better than most that education was the essential ladder of higher aspirations. He firmly held that ladder and showed generations of students how to climb it.

His wisdom, guidance and leadership enriched the lives not only of thousands of students, but also of countless Michigan teachers and educational administrators. While Eugene would not compromise the principles that informed his career, he applied them with compassion and gentleness, in equal measure.

Eugene's total commitment to the improvement of education in Metropolitan Detroit flourished against the larger landscape of his social activism, and participation in the political process. He regarded both as the higher calling of a citizen and thought of neither as a nuisance or as simply an avenue for self-promotion. Detroit residents from all walks of life knew this about Eugene, and loved him for it.

Our thoughts are with his family: with Margaret Gilmer, his beloved wife of 56 years; his daughter, Crystal; his son, Eugene; his eight grandchildren, and his three great-grandchildren.

Eugene Gilmer contributed immeasurably to his fellow human beings. He will be sorely missed. I salute his memory.

PERSONAL EXPLANATION

HON. GEORGE R. NETHERCUTT, JR.

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. NETHERCUTT. Mr. Speaker, on Tuesday, June 17, 2003. I missed three votes due to my sons high school graduation. Had I been present I would have voted YES on:

Roll Call Vote #279—H. Res. 276—Ordering the previous question on waiving points of order against the conference report to accompany S. 342 to amend the Child Abuse Prevention and Treatment Act to make improvements to and reauthorize programs under the Act, and for other purposes.

Roll Call Vote #280—H. Res. 171—Commending the University of Minnesota Duluth Bulldogs for winning the NCAA 2003 National Collegiate Women's Ice Hockey Championship.

Roll Call Vote #281—H.R. 658—The Accountant, Compliance, and Enforcement Act.

TRIBUTE TO BRIGADIER GENERAL RANDY TIESZEN, USA

HON. TERRY EVERETT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. EVERETT. Mr. Speaker, it's my privilege to pay tribute today to an outstanding Army officer who is retiring this month. Brigadier General Randy Tieszen has served in various positions of responsibility throughout his 31 years of service in the United States military culminating as the Deputy Commanding General of the U.S. Army Aviation Center at Fort Rucker, Alabama, in my congressional district.

Upon his arrival at Fort Rucker on August 7, 2001, Brigadier General Tieszen immediately immersed himself in planning, developing and resourcing Flight School XXI, the keystone of Army Aviation transformation and divesture of legacy aircraft.

The Flight School XXI program will send more qualified aviators to the field units to form their war-time mission, enhancing the effectiveness of our nation's defense and the ability of the Army to act as the vanguard of freedom. His actions have ensured that Army Aviation is ready to meet any challenges laid before it.

Brigadier General Tieszen and his wife, Kathy, have been active and highly regarded members of the local community who are leaving a lasting legacy of civic involvement and a wide circle of friends who will miss them both.

I am pleased to count myself as one of Brigadier General Tieszen's friends and, on behalf of the Congress of the United States and the people of Alabama, wish him well in the next stage of life's journey.

IN TRIBUTE TO THE CITY OF MOUNT VERNON

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. ENGEL. Mr. Speaker, we celebrate the 150th anniversary of Mount Vernon, which officially started as a village in 1853 made up from five farms, but grew into perhaps the most densely populated city in the State of New York.

It started as a fulfillment of that most typical of American dreams: home ownership. John Stevens, a merchant tailor from New York City, formed the Industrial Home Association to become the Village of Mount Vernon. When the IHA membership reached 1,000 dues payers, 1,017 to be exact, they bought the land of five farms consisting of some 369 acres at about $205 dollars an acre.

Originally a part of the Town of Eastchester, the Village of Mount Vernon grew over the next four decades and in 1892 was chartered under the laws of the State of New York as an incorporated city.

It grew by welcoming Baptists, Methodists, Dutch Reformed, and Catholic groups, as well as any others willing to settle there and contribute to the community. It has become a thriving community growing and flourishing in the shadow of New York City.

John Stevens helped to initiate the dream that Mount Vernon has become and one that will continue to develop and prosper through the industry and vision of the people who inhabit this charming and wonderful city.

RECOGNITION OF WORLD REFUGEE DAY

HON. MARK GREEN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. GREEN of Wisconsin. Mr. Speaker, I stand today to recognize World Refugee Day, declared on June 20, 2000 and every year thereafter by a special UN General Assembly Resolution. Whereas it is unquestionable that the new democratically-elected government in Kenya is a positive step forward for Africa, I want to also affirm the generosity of Kenya toward refugees and asylum-seekers. Statistics show that approximately 20,000 new refugees and asylum-seekers fled to Kenya during 2002 from Sudan, Ethiopia, Eritrea, Somalia,

Somaliland, the Democratic Republic of Congo, Uganda, Rwanda, Burundi and Djibouti. While we recognize that there are ongoing peace efforts in a number of these countries that will hopefully allow these refugees to repatriate in safety and dignity—the resolution of all the conflicts that have driven these refugees to flee may not be resolved in the near future, and Kenya may continue to be called upon to assist. We in the Congress acknowledge this generosity and sacrifice, and commend the Kenyan people for their efforts to help those in need.

CELEBRATING THE 100TH BIRTHDAY OF ELSIE BOYD

HON. JUDY BIGGERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mrs. BIGGERT. Mr. Speaker, in 1903, the first airplane took flight at Kitty Hawk in North Carolina. In that same year, the life of a constituent in my congressional district, Elsie Boyd, also took flight—and is still going strong a full 100 years later.

I proudly rise to join with the many people from my district who will help celebrate Elsie's 100th birthday on June 24.

Friends and family who know and love Elsie understand what keeps her going strong—and I do mean strong.

Elsie owns and lives in her own condominium.

She is active with the Methodist Church women and helps with neighborhood rummage sales.

She drives herself around town in a 1988 Chevy Nova and reads at least two hours each night—I hear she loves English history and any and every biography about Queen Victoria and Great Britain's royal families.

Simply put, Elsie is one of those people who lives life to the fullest, always views the glass as half full and turns the tables on the most difficult trials life has to offer.

According to her daughter Edie Boyd, ''mom always looks at the positive side of life. That is why she is so successful and independent.''

Mr. Speaker, one of the things that I find to be the most inspiring about her life is the path she took to achieve professional success. After her paternal grandmother pulled the plug on high school and declared that her help was needed around the house, Elsie decided to earn her diploma by taking night courses—no small task for a young woman in the early part of the 20th century.

Fluent in German, Elsie moved on to spend many years as a legal secretary, including some time spent abroad and working on the private legal affairs of Judge Henry Homer, who later became Governor of Illinois.

Next week, Elsie will celebrate 100 years of life with an immediate family that includes three daughters, six grandchildren and eleven great-grandchildren. Needless to say, the family cherishes each and every moment of time spent with her.

Orville and Wilbur Wright set the stage for 100 years of aviation breakthroughs. In her own way, Elsie spent much the same amount of time accomplishing great things and inspiring others by always concentrating on the sunny side of life. Congratulations Elsie—you are a wonderful example and a wonderful person.

PRAISING SOUTH CAROLINA BLACK HALL OF FAME INDUCTEES

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. WILSON of South Carolina. Mr. Speaker, this Friday I will have the distinct privilege of attending the 13th Annual South Carolina Black Hall of Fame induction ceremony in Columbia, SC. Ten South Carolinians will be inducted this year. Below is a list of the inductees:

The late Ethel Martin Bolden, a pioneer librarian; retired U.S. Army Col. John Theodore Bowden, Jr., a former professor of military science at South Carolina State University; Dr. Agnes Hildebrand Wilson Burgess, a distinguished Sumter educator; Dr. Alma Wallace Byrd, Benedict College professor and former state legislator; Charlie Mae Cromartie, former health care professional and businesswoman; Jim French, editor of The Charleston Chronicle; Lottie Gibson, a Greenville civil rights activist; the late Esau Jenkins, a John's Island civil right's activist; the late Rev. Dr. Westerberry Homer Neal, Sr., pastor of seven Midlands area churches; and Geraldine Pierce Zimmerman, 92-year-old Orangeburg community activist.

Ethel Bolden worked in Richland County public schools for 39 years and established the first black elementary school library at Waverly Elementary School. She also served at W.A. Perry Junior High School, and because of her competence and interpersonal skills, she successfully integrated the faculty at Dreher High School. She was a trustee of Richland County Public Library and worked tirelessly for construction of the modern library downtown, which opened in 1993. She passed away in October 2002.

Col. John Bowden began his military career in 1960 after completing the ROTC program at South Carolina State University. In 1983, he returned to the campus as commanding officer of the ROTC. Under his command, the unit became one of the best in the nation, supplying more commissioned officers to the U.S. Army than any other in the state or nation. He retired from the military in 1986 and since has worked in administrative positions at S.C. State, Voorhees College and Claflin University.

Dr. Agnes Burgess was the first black to be named Teacher of the Year in South Carolina and came out on top as a National Honor Roll Teacher in 1969. She taught French and journalism at Lincoln High School and served as advisor to the newspaper, which won 13 consecutive first-place ratings in the Scholastic Press Association competition. Also, she was the first black ever to be elected president of the South Carolina Education Association. In 1975, she joined the faculty at the University of South Carolina's College of Education and served as director of the Center for Community Education until her retirement in 1979.

Dr. Alma Byrd has served as a member of the Richland District #1 School Board and was a state legislator from 1991–1999. She was instrumental in placing the portraits of several noted black South Carolinians in the State House. She was a founding member of the James R. Clark Sickle Cell Anemia Foundation and long-time president of the Columbia section of the National Council of Negro Women.

Charlie Cromartie was head evening nurse at Columbia Hospital prior to becoming owner/manager of Cromartie Enterprises. Her community service include being an advocate of Richland School District One board of Education, member of the League of Women Voters, poll manager of Ward 9, and past illustrious commandress of Cairo Temple No. 123. For more than 50 years, she has held leadership positions in Bishops Memorial A.M.E. Church.

Jim French established The Charleston Chronicle in 1971, six months after retiring as a U.S. Navy chief journalist with 26 years of service. He was a photo-journalist for the Navy's All Hands magazine. He was the first military reporter assigned to the Mekong Delta of Vietnam with the U.S. Army's 9th Infantry Division, and was station manager for radio and television stations on naval bases in Spain, Cuba and Puerto Rico. His weekly columns in The Chronicle challenge blacks to stand up and demand their rights as American citizens. He and his newspaper have received numerous awards from organizations in the Lowcountry.

Lottie Gibson has been a spokesperson for black and poor people in the Piedmont area for more than three decades. She is a member of Greenville County Council and was in the forefront May 17 when 5,000 supporters of the NAACP held a protest rally against the council for refusing to approve her proposal for an official paid holiday to honor Dr. Martin Luther King, Jr.

Esau Jenkins was a successful farmer and businesswoman who made an indelible mark as a crusader on behalf of poor black citizens of the Sea Islands from the 1940s until his death in 1972. His first project consisted of purchasing a bus to transport island children to public schools in Charleston. In 1948, he organized the Progressive Club to help educate adults who wanted to read the Bible, newspapers and the section of the state constitution required of those who wished to register to vote. In the 1950's, he worked with noted human rights activists Septima Pointstett Clark and Bernice Robinson to establish citizenship schools on John's Island, Wadmalaw Island and Edisto Island. And during the 1960s he continued to develop social, economic and political programs under the umbrella of the Citizens Committee of Charleston.

Rev. Dr. Westerberry Neal, a Hopkins native, was a pastor for nearly 60 years and public school teacher for 35 years. He was affectionately known as ''Mr. Baptist of South Carolina.'' He was a trustee of Morris College in Sumter for 50 years and chairman for 35 years—the longest record of any chairman of an institution of higher learning in the state and nation. Additionally, he served on the board of directors of Victory Saving Bank for 28 years and was chairman for 15 years. Dr. Neal passed away on March 4, 2003 at the age of 94.

Geraldine Zimmerman helped her hometown become a better place by serving as a volunteer with many organizations, including the United Way, American Red Cross, Salvation Army, Orangeburg Literacy Association,

the NAACP, and Church Women United. In the 1960's, she worked successfully to get recreational facilities for black youth. She also led a group of concerned citizens in the restoration of a 100-year-old cemetery that is now on the National Register of Historic Places. In recognition of her many achievements, the City of Orangeburg selected her as a Citizen of the Year and has erected a community center in her honor.

I ask all of my colleagues to join me in thanking these ten individuals for their dedicated service to their communities and for their prime examples of leadership to our youth.

HONORING ELISE COGORNO

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. ROTHMAN. Mr. Speaker, I rise today to pay tribute to Elise Cogorno, who after devoting 34 years of her life to teaching and inspiring public school students in New Jersey, is retiring this month. Whether in her role as one of the Nation's most esteemed Spanish teachers, or as an active leader in extracurricular activities for students, or as a volunteer in community programs, Elise Cogorno has been a remarkable and committed role model to thousands of children.

Born Elise Braunschweiger in 1946, her childhood was spent in Hillside, New Jersey. She and her family then moved to Morristown, New Jersey, where she attended high school. After receiving her education from Montclair State University, Elise Cogorno spent her entire 34 years of teaching in Teaneck, New Jersey—first in Thomas Jefferson Junior High School, and later at Teaneck High School. As an extraordinarily gifted teacher, Elise Cogorno motivated her students through creativity, humor, and enthusiasm. Her love for teaching generated a love for learning among her students.

I urge my colleagues to join me in saluting one of our Nation's finest teachers, Elise Cogorno, whose outstanding teaching abilities helped and inspired thousands of New Jersey students. Elise Cogorno's successful teaching career has proved invaluable for countless New Jersey students. She truly represents the best of New Jersey.

THE ASBESTOS CLAIMS TAX FAIRNESS ACT

HON. MAC COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. COLLINS. Mr. Speaker, I rise to introduce the Asbestos Claims Tax Fairness Act. Asbestos liability issues have reached crisis stage. The costs of the current and potential lawsuits filed against these companies by claimants are staggering. More than 200,000 tort claims regarding exposure to asbestos are pending today, and more than 50,000 new claims are being filed each year.

Many former manufacturers of asbestos stopped using and distributing asbestos long before 1986. However, most of these companies or their corporate descendants, are bankrupt or nearing bankruptcy. As a result, asbestos liabilities are being shouldered alone by the dwindling number of former asbestos manufacturers and distributors that remain in business. This spiraling cycle into bankruptcy means asbestos victims are faced with the decreasing likelihood that they will be compensated for their injuries in the future.

In the 107th Congress, along with more than 125 of our colleagues, my colleague from Georgia and I introduced tax legislation that would help provide compensation to victims of asbestos and help companies beset by asbestos liabilities to continue as viable employers. That bill, H.R. 1412, was the continuation of efforts begun in the 106th Congress. Since the beginning of that effort, the plight for victims has worsened and the economic viability of those entities responsible for meeting those obligations has deteriorated significantly.

Today I again introduce a bill that will help to ensure that there are funds available to pay victims of asbestos exposure.

The legislation has two components. First, it would increase the amount of resources available to pay injured asbestos victims by exempting from federal tax settlement funds established to pay asbestos victims. Hundreds of thousands of individuals rely on these funds for compensation. Under current law, these funds are taxed at the top income tax rate of 35–percent rate.

Second, the legislation would ease tax-law limitations on asbestos defendants who are emerging from bankruptcy. More than 60 companies currently paying asbestos victims have been forced into bankruptcy. Our legislation would exempt these companies from certain tax-law rules that limit use of a bankrupt company's tax assets. This relief would be provided only in situations where the company's restructuring in bankruptcy results in the company continuing as a going concern.

Mr. Speaker, the legislation I am introducing today is not intended to solve all of the problems caused by the asbestos crisis. But these measures will help companies emerge as soon as possible from bankruptcy, minimizing the potential for job losses in the economy and reducing the risk of lost benefits to asbestos claimants. I urge my colleagues to join me in this effort.

IN MEMORY OF MICHAEL ROBERTS AND THOSE WHO PAID THE ULTIMATE SACRIFICE IN VIETNAM

HON. CHARLES W. "CHIP" PICKERING

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. PICKERING. Mr. Speaker, I come before the House to remember one of Mississippi's native sons who paid the ultimate sacrifice during the Vietnam War, and returns to us just this year for his proper internment at Arlington National Cemetery.

This week, the brothers and sisters of Michael L. Roberts, a U.S. Navy Petty Officer from Purvis, Mississippi, will travel to Washington, DC to lay their missing brother to rest. He and eight of his colleagues on a secret reconnaissance mission in 1968 crashed and died in the Laotian jungle. Their mission had been to drop sensors designed to detect enemy movements in our struggle with communist North Vietnam.

Their Navy OP–2E Neptune aircraft took off from Thailand on January 11, 1968, but never returned. Two weeks later an Air Force air crew photographed what appeared to be the crash site, but enemy activity in the area prevented a recovery operation. Between 1993 and 2002, six US-Laotian investigation teams interviewed villagers in the surrounding area, gathered aircraft debris and surveyed the purported crash site scattered on two ledges of Phou Louang Mountain in Khammouan Province.

Then during a 1996 visit, team members recovered identification cards for several crew members as well as human remains. Recovery missions in 2001 and 2002 yielded additional remains, as well as identification of other crew members.

Michael Roberts was a graduate of Purvis High School and Pearl River Junior College. Out of college, he enlisted in the Navy. He was twenty-four years old when his mission went missing.

In addition to Michael Roberts, his eight friends and companions were Navy Commander Delbert Olson of Casselton, North Dakota; Lieutenants Denis Anderson of Hope, Kansas, Arthur Buck of Sandusky, Ohio, and Philip Stevens of Twin Lake, Michigan; and Petty Officers Richard Mancini of Amsterdam, New York, Donald Thoresen and Kenneth Widon of Detroit, Michigan and Gale Siow of Huntington Park, California.

More than 1,900 Americans are still missing in action from the Vietnam War. While we mourn their losses, there is some joy that the families of these nine men can finally experience closure of this thirty-five year old wound.

For over two centuries, the Territory and State of Mississippi has paid the price of freedom with the blood of our sons and daughters. Whether their sacrifice still remains hidden in a foreign land, or they rest in a small country churchyard, or they are honored in our country's national cemetery, we will always remember them—we will always honor them—we will continue to fight for the dreams they gave their very lives to secure for us and future generations. Thank you, Mr. Speaker.

TRIBUTE TO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

HON. CORRINE BROWN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Ms. CORRINE BROWN of Florida. Mr. Speaker, it is with great pride that I rise today to pay special tribute to the Lawyers' Committee for Civil Rights Under Law for their great work in promoting civil rights and equal justice.

The Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy, to involve the private bar in providing legal services to address racial discrimination. The establishment of the Committee sought to fulfill the expectation of America's leaders that the private bar become an active force in the continuing struggles for

equal opportunity and racial equality. The principal mission is to secure, through the rule of law, equal justice under law.

The Committee's major objective is to use the skills and resources of the bar to obtain equal opportunity for minorities by addressing factors that contribute to racial justice and economic opportunity. Given our nation's history of racial discrimination, segregation, and the de facto inequities that persist, the Lawyers' Committee's primary focus is to represent the interest of African Americans in particular, other racial and ethnic minorities, and other victims of discrimination, where doing so can help to secure justice for all racial and ethnic minorities.

The Lawyers' Committee implements its mission and objectives by marshaling the pro bono resources of the bar for litigation, public policy advocacy, and other forms of service by lawyers to the cause of civil rights.

For decades, the Committee has made a lasting impact on civil rights in America. The Lawyers' Committee has continually pressed forth its mission to mobilize the bar in upholding the principles of equal opportunity and racial equality as the standards by which the integrity of American democracy is judged.

This year the Lawyers' Committee celebrates it's 40th Anniversary. In celebration, the Lawyers' Committee is convening a major symposium, The Quest for Equal Justice: Advancing a Dynamic Civil Rights Agenda for Our Times—July 18 to 19 at the International Trade Center in Washington, DC. Distinguished participants will examine the progress that has been achieved and the many outstanding challenges presented by the persistence of racial, ethnic, gender and other forms of discrimination. The symposium hopes to address critical civil rights issues in the opening decades of the twenty-first century.

Mr. Speaker, at a time when we face the imminent danger of once again losing much of what has been gained in the national journey to equal rights it is critical that the Lawyers' Committee be given proper commendation for their continued hard work and dedication to civil rights. So, I ask my colleagues to join me in paying special tribute to The Lawyers' Committee for Civil Rights Under Law. We wish them all the best as we acknowledge all of their accomplishments.

TRIBUTE TO BILL WERNER

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, I would like to take a moment to honor an outstanding American from my district. Bill Werner is a real estate broker from Alamosa, Colorado who loves his country and understands that the freedoms we enjoy in this country come with a price. Bill also knows that, just as great nations must lead during difficult times, so too must great citizens. I am pleased to recognize Bill before this body of Congress as a citizen of character.

Bill's son, Billy, helped keep America safe and free by serving as a paramedic with the 3rd Infantry in the Iraq conflict. This fact made it particularly difficult for Bill to watch war protestors march past his Main Street office. Rather than watch in silence, Bill decided to give the ''silent majority'' of Alamosans who support our troops a chance to be heard. Bill organized a parade that included a police honor guard, veterans groups and other citizens who wanted to take part. Our troops deserve to know that our country is behind them and that they will not be forgotten.

Bill followed the parade by collecting books and candy for U.S. troops in Iraq at his real estate office. He will distribute these goods to the Red Cross who will then dispense them to the troops. Bill hopes that the parade along with the gifts will show that Alamosa is a patriotic town, one where the citizens support the troops that protect their freedom.

Mr. Speaker, it would have been easier to not get involved, but Bill Werner had the courage and conviction to stand up for what he knew was right, and I applaud him for that. It is people like Bill who have helped make America great, and I am proud to tell his story before this body of Congress today. Thank you, Bill, your support and optimistic enthusiasm provide an example for us all.

TRIBUTE TO MARGARET YOUMANS

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, I would like to pay tribute today to the memory of a remarkable woman from my district. Margaret Youmans, who passed away recently at the age of 104, was the oldest resident of Gunnison County in Western Colorado, with a life spanning parts of three centuries.

Born in 1898, Margaret was the second of eight children born to Lake City businessman Charles Mendenhall and his wife Manetta. Margaret graduated from high school in 1918 and began a career as a teacher. Eight years later she was elected as a write-in candidate for Superintendent of the Hinsdale County Schools. Margaret also worked as a cook and for a newspaper, spending more than 60 years on a ranch, growing nearly everything her family ate.

Mr. Speaker, Margaret was a tough, self-reliant, and determined woman who attributed her long life to her love of family, good genetics, and plenty of good, hard work. Her ''can-do'' attitude exemplified the qualities that helped make this nation great, and I am honored to pay tribute to her memory here today.

TRIBUTE TO TOM PEIRCE

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, it is with a solemn heart that I rise before this body of Congress today to recognize the life and passing of Tom Peirce of Aspen, Colorado. Tom recently left us after a battle with cancer. As his family and friends mourn their loss, I think it is fitting to remember a few of Tom's contributions to the Aspen community.

Tom lived in Aspen nearly his entire life. After graduating from Aspen High School and Colorado State University, he formed a travel company that focused on natural history and cultural trips. Although he traveled extensively, Tom loved Aspen and gave back to the community. Six years ago, Tom joined the board of the Aspen Center for Environmental Studies, and, before his health failed, launched a bid for the Aspen City Council.

Mr. Speaker, I am proud to recognize the life and selfless dedication Tom Peirce demonstrated throughout his life. People like Tom who get involved in the community, create jobs, and work to improve our government, are the bedrock of this great nation. Tom is survived by his father Everett, sister Melanie, and brother Fred, and our thoughts are with them during this difficult time. Tom will be missed by his family, friends, and the many people in the Roaring Fork Valley who knew him.

TRIBUTE TO THE PEOPLE OF BAYAUD INDUSTRIES

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, I would like to take this opportunity to honor a group of people who create hope and opportunity for those who are challenged with disabilities. The people of Bayaud Industries have helped the mentally ill and disabled find meaningful work in my home state of Colorado since 1969.

By providing jobs for people with disabilities, the people of Bayaud reach out to a group with the highest unemployment rate in the country. Bayaud is funded under the government's JWOD program to identify jobs for some 300 people a year who might otherwise not be able to find work. They do this by partnering with public and private organizations, from Coors to the EPA, helping numerous Coloradans lead more meaningful and productive lives. In addition to this, the people of Bayaud help a number of their employees move on to private sector jobs every year.

Mr. Speaker, it is my privilege to pay tribute to the people of Bayaud Industries and their work under the JWOD program. By giving the disabled a hand up instead of a handout, they help numerous people realize the satisfaction that comes with meaningful employment. I commend their efforts to serve Colorado's disabled community.

TRIBUTE TO ELLA MOON

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, I rise before this body of Congress today to pay tribute to Ella Moon of Fruita, Colorado. Ella Moon is the person behind Moon Farm, a remarkable place where thousands of kids have gone to play and learn for nearly four decades.

It all began in 1954 when Ella and Wallace Moon moved from Utah to an old hog farm in Western Colorado. Their children needed something to do during the summer so they built a tree house. The following summer, the

kids built a small one-room schoolhouse. As the years rolled on, the ideas kept coming, and eventually the property included homes resembling those in Italy, Mexico, Japan, and the Middle East. A log cabin, Pyramid, and a Viking ship went up too.

Soon people the Moons had never met were stopping by to enjoy the buildings and have picnics on their lawn. The Moons embraced these visitors, offering pony rides and a petting zoo, which included a llama, peacocks and other animals. Visiting children learned Indian dances, performed in talent shows, and listened to Ella's riveting stories.

Mr. Speaker, it gives me great joy to recognize Ella Moon. Although Ella is now 85 years old, she still plays with the kids, tells them stories, and teaches them lessons they can use in real life. Ella has helped create a unique place where children can play, learn, and grow. I thank Ella for her many contributions to her community.

TRIBUTE TO ALICE DRAKE

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, it is with profound sadness that I rise before this body of Congress today to recognize the life and passing of Alice Drake of Pueblo, Colorado. Alice left us recently after a prolific life that spanned 107 years. Her sense of humor and determined approach defined her life and made a strong impact upon the Pueblo community.

A descendant of German parents, Alice was born in Phillips County, Kansas, where she developed a strong work ethic on her parent's 360-acre farm. Throughout her life, Alice used her strength to aid others—protecting her younger brother on the way home from school and assuming the household responsibilities when her mother sadly passed away. Alice was also notorious for her adventurous spirit, learning to bowl in her 80s, riding on a motorcycle for the first time in her 90s, and developing a reputation wherever she went for her renowned pool playing abilities.

Mr. Speaker, individuals like Alice provided the spirit and strength of character that made this nation great. While she will be dearly missed, Alice's spirit will live on through the lives of those whom she has touched. I extend my deepest sympathies to Alice's family and friends during this difficult time.

TRIBUTE TO JEFF BARTLESON

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, it is with great pride that I rise before this body of Congress to pay tribute to Jeff Bartleson of Pueblo, Colorado, who has faithfully and unselfishly served the needs of Coloradans for many years. Jeff has contributed to the quality of life in Colorado in many significant ways and I am proud to highlight his accomplishments before this body of Congress.

Throughout his life, Jeff has exhibited the virtues of compassion, self-determination, self-sacrifice, and hard work that have made this country great. In his capacity as a foster parent, Jeff has helped several youth in the region through his work with the Young Life Association and the El Pueblo Boys and Girls Ranch. His service and dedication to the needs of his community have increased progressively over time. He has been instrumental in the foundation and development of the Interfaith Hospitality Network, one of Pueblo's newest self-help organizations, and he is currently serving as the second president of its board.

Mr. Speaker, I am deeply honored to pay tribute to Jeff Bartleson for the various ways in which he has brought strength and joy to the people of Colorado. Despite his achievements, Jeff has remained humble and continued with his selfless work. For this great work on behalf of the citizens of Colorado, I commend him before this body of Congress and this nation. Jeff, all the best to you now and in the future.

TRIBUTE TO TOM SHARP

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, I would like to take this opportunity to recognize Tom Sharp, a helicopter pilot from Telluride, Colorado and thank him for the contributions he has made to local search and rescue efforts. Tom recently risked his life and his helicopter to save two avalanche victims trapped on a steep slope near Telluride Ski Area, and today I would like to honor his service before this body of Congress and this nation.

Tom has been a pilot with Helitrax, a heliski guide service, for over twelve years. When he was called to assist in the rescue of two skiers caught in an avalanche, he immediately responded along with two Helitrax guides, braving a dangerous landing near one of the injured skiers before picking up more rescuers and dropping off more medical supplies. Then Tom made a daring attempt to reach the other skier, flying close to dangerous jagged rock in spite of unpredictable afternoon winds. Though he was unsuccessful, Tom and his fellow rescuers dropped supplies to the stranded skier that allowed him to climb out of the couloir and communicate with rescuers.

Mr. Speaker, pilots with the expertise and skill of Tom Sharp are crucial to successful search and rescue operations, and it is a great privilege to honor Tom here today. His years of experience and his willingness to take risks are a tremendous asset to the citizens of Telluride and to all of Colorado.

TRIBUTE TO CHARLES LEINBERGER

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, it is with great sadness that I recognize the passing of Charles Leinberger of Pueblo, Colorado. Charlie, as he was known, served his country faithfully as a Marine in the Second World War, where he received the Purple Heart. He also served Pueblo for many years as an Ambassador for the Greater Pueblo Chamber of Commerce. I would like to take this time to pay tribute to the honorable contributions Charlie made in defense of our freedoms and his involvement in the Pueblo Community.

Only recently, Charlie was honored by the Chamber of Commerce for almost fifty years of work on behalf of that organization. His energy and skill in developing the Chamber of Commerce will be missed sorely by those he has left behind to continue his work. In addition to his labor on behalf of the Chamber, Charlie also volunteered with numerous community organizations in Pueblo, bringing his vitality and dedication to a number of worthy causes in his community. Charlie's life, his patriotism and his altruism will continue to inspire the Pueblo community for years to come.

Mr. Speaker, although it is with sorrow that I stand before you here recognizing the passing of Charles Leinberger, I take solace in the knowledge that his legacy and example will continue to make my state and this country a better place to live. Charles' life and deeds are examples to us all and it is fitting that I recognize them before this body of Congress and this nation. My prayers go out to Charlie's family and friends in this difficult time.

TRIBUTE TO THE ENSTROM FAMILY

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 2003

Mr. MCINNIS. Mr. Speaker, I am honored to stand before this body of Congress and this nation to pay tribute to the Enstrom family of Grand Junction, Colorado. The Enstroms own and operate Enstrom's Candies, one of the premier candy manufacturers in the United States. For many years, the Enstroms have worked hard to produce high quality candy, earning a reputation as a valuable member of Colorado's business community. Under the leadership of Chet Enstrom, the family has strived to serve not only their customers but the state of Colorado as well.

Chet Enstrom began his career at the age of 14, working in a Colorado Springs ice cream shop. It was there that Chet learned about making quality candy, a craft he would later perfect in the basement of his home. He gave a small amount of his now famous ''almond toffee'' to family and friends, who encouraged Chet to open what became Enstrom's Candies. The quality of the candy was evident to all of Enstrom's many customers, ensuring that the company has enjoyed many years of success.

Chet worked hard to keep the business in family hands and there have now been three generations of Enstroms involved in its operation. In 1965, Chet passed the company on to his son Emil and his daughter-in-law Mary. By 1979 Enstrom's Candies was producing over 65,000 pounds of candy every year.

The third generation of Enstroms operates the company today. The ''Candy Kitchen'' in Grand Junction is run by Chet's granddaughter Jamee and her husband Doug. Their

Denver retail stores are operated by Chet's grandson Rick and his wife Linda. Together the Enstroms still focus on the family values of hard work and dedication that have made the company successful for so many years.

Mr. Speaker, Enstrom's Candies has provided Colorado with high quality confections and dedicated service for over 40 years. The Enstrom family has worked hard to keep the business in family hands, providing numerous jobs to the surrounding community. Enstrom's Candies is truly a Colorado icon and I congratulate them on 43 years of service.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, June 19, 2003 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JUNE 20

9:30 a.m.
Armed Services
To hold closed hearings to examine Iraqi reconstruction and humanitarian activities.
SR–222

JUNE 24

9:30 a.m.
Environment and Public Works
Fisheries, Wildlife, and Water Subcommittee
To hold hearings to examine implementation of the National Marine Fisheries Service's 2000 Biological Opinion for listed anadromous fish regarding operation of the Federal Columbia River Power System.
SD–406

Governmental Affairs
To hold hearings to examine the cost of federal health programs by curing diabetes.
SD–342

10 a.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine bus rapid transit and other bus service innovations.
SD–538

Energy and Natural Resources
To hold hearings to examine changes over time in the relationship between the Department of Energy and its predecessors and contractors operating DOE laboratories and sites to determine if these changes have affected the ability of scientists and engineers to respond to national missions.
SD–366

Governmental Affairs
To hold hearings to examine controlling the cost of Federal Health Programs by curing diabetes, focusing on a case study.
SH–216

Judiciary
To hold hearings to examine the nominations of Samuel Der-Yeghiayan, to be United States District Judge for the Northern District of Illinois, Allyson K. Duncan, of North Carolina, to be United States Circuit Judge for the Fourth Circuit, Louise W. Flanagan, to be United States District Judge for the Eastern District of North Carolina, Lonny R. Suko, to be United States District Judge for the Eastern District of Washington, Earl Leroy Yeakel III, to be United States District Judge for the Western District of Texas, and Karen P. Tandy, of Virginia, to be Administrator of Drug Enforcement, and Christopher A. Wray, of Georgia, to be an Assistant Attorney General, both of the Department of Justice.
SD–226

2:30 p.m.
Judiciary
Antitrust, Competition Policy and Consumer Rights Subcommittee
To hold hearings to examine how to preserve and protect media competition in the marketplace.
SD–226

Foreign Relations
European Affairs Subcommittee
To hold hearings to examine U.S. relations with respect to a changing Europe, focusing on differing views on technology issues.
SD–419

Armed Services
Personnel Subcommittee
Health, Education, Labor, and Pensions
Children and Families Subcommittee
To hold joint hearings to examine support for military families.
SD–106

Veterans' Affairs
To hold hearings on proposed legislation relating to VA-provided health care services, including S. 613, to authorize the Secretary of Veterans Affairs to construct, lease, or modify major medical facilities at the site of the former Fitzsimons Army Medical Center, Aurora, Colorado, S. 615, to name the Department of Veterans Affairs outpatient clinic in Horsham, Pennsylvania, as the ''Victor J. Saracini Department of Veterans Affairs Outpatient Clinic'', S. 1144, to name the health care facility of the Department of Veterans Affairs located at 820 South Damen Avenue in Chicago, Illinois, as the ''Jesse Brown Department of Veterans Affairs Medical Center'', S. 1153, to amend title 38, United States Code, to permit medicare-eligible veterans to receive an out- patient medication benefit, to provide that certain veterans who receive such benefit are not otherwise eligible for medical care and services from the Department of Veterans Affairs, S. 1156, to amend title 38, United States Code, to improve and enhance the provision of long-term health care for veterans by the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and S. 1213, to amend title 38, United States Code, to enhance the ability of the Department of Veterans Affairs to improve benefits for Filipino veterans of World War II and survivors of such veterans.
SR–418

JUNE 25

9:30 a.m.
Environment and Public Works
Fisheries, Wildlife, and Water Subcommittee
To hold oversight hearings to examine the consulting process required by Section 7 of the Endangered Species Act.
SD–406

Foreign Relations
To hold hearings to examine the implementation of African Growth and Opportunity Act (P.L. 106-200).
SD–419

Governmental Affairs
To hold hearings to examine the nomination of Joshua B. Bolten, of the District of Columbia, to be Director of the Office of Management and Budget.
SD–342

10 a.m.
Energy and Natural Resources
Business meeting to consider pending calendar business.
SD–366

Health, Education, Labor, and Pensions
Business meeting to consider S. 1248, to reauthorize the Individuals with Disabilities Education Act, and pending nominations.
SD–430

Judiciary
To hold oversight hearings to examine the Department of Justice Inspector General's Report on the 9/11 detainees.
SD–226

2 p.m.
Banking, Housing, and Urban Affairs
Economic Policy Subcommittee
To hold oversight hearings to examine certain measures to strengthen the economic situation in rural America.
SD–538

Judiciary
To hold hearings to examine the nominations of Allyson K. Duncan, of North Carolina, to be United States Circuit Judge for the Fourth Circuit, and Louise W. Flanagan, to be United States District Judge for the Eastern District of North Carolina.
SD–215

Foreign Relations
Near Eastern and South Asian Affairs Subcommittee
Judiciary
Constitution, Civil Rights and Property Rights Subcommittee
To hold joint hearings to examine constitutionalism, human rights, and the Rule of Law in Iraq.
SD–226

2:30 p.m.
Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold oversight hearings to examine grazing programs of the Bureau of Land Management and the Forest Service, focusing on grazing permit renewal, BLM's potential changes to grazing regulations, range monitoring, drought, and other grazing issues.
SD–366

JUNE 26

9 a.m.
Agriculture, Nutrition, and Forestry
To hold hearings to examine H.R. 1904, to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape.
SR–328A

9:30 a.m.
Commerce, Science, and Transportation
Business meeting to consider S. 1218, to provide for Presidential support and

coordination of interagency ocean science programs and development and coordination of a comprehensive and integrated United States research and monitoring program, proposed legislation authorizing funds for National Highway Traffic Safety Administration, proposed legislation authorizing funds for the Federal Motor Carrier Safety Administration, and proposed legislation authorizing funds for recreational boating safety programs.
SR–253

Governmental Affairs
To hold hearings to examine the need for Federal real property reform, focusing on deteriorating buildings and wasted opportunities.
SD–342

Governmental Affairs
To hold hearings to examine federal real property reform.
SD–342

10:30 a.m.
Indian Affairs
Business meeting to consider pending calendar business.
SR–485

2 p.m.
Foreign Relations
To hold hearings to examine the Department of State's Office of Children's Issues, focusing on responding to international parental abduction.
SD–106

JULY 9

10 a.m.
Indian Affairs
To hold oversight hearings to examine the Indian Gaming Regulatory Act.
SD–106

JULY 16

10 a.m.
Indian Affairs
To hold hearings to examine S. 556, to amend the Indian Health Care Improvement Act to revise and extend that Act.
SR–485

JULY 23

10 a.m.
Indian Affairs
To hold hearings to examine S. 556, to amend the Indian Health Care Improvement Act to revise and extend that Act.
SR–485

Judiciary
To hold oversight hearings to examine certain pending matters.
SD–226

JULY 30

10 a.m.
Indian Affairs
To hold hearings to examine S. 578, to amend the Homeland Security Act of 2002 to include Indian tribes among the entities consulted with respect to activities carried out by the Secretary of Homeland Security.
SR–485

POSTPONEMENTS

JUNE 24

10 a.m.
Health, Education, Labor, and Pensions
Substance Abuse and Mental Health Services Subcommittee
To hold hearings to examine proposed legislation authorizing funds for the Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.
SD–430

Daily Digest

HIGHLIGHTS

The House passed H.R. 8, Death Tax Repeal Permanency Act.

Senate

Chamber Action

Routine Proceedings, pages S8009–S8165

Measures Introduced: Thirteen bills and two resolutions were introduced, as follows: S. 1276–1288, and S. Res. 174–175. **Page S8125**

Measures Reported:

Report to accompany S. 163, to reauthorize the United States Institute for Environmental Conflict Resolution. (S. Rept. No. 108–74)

S. 285, to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, with an amendment in the nature of a substitute. (S. Rept. No. 108–75)

S. 558, to elevate the position of Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretary for Indian Health. (S. Rept. No. 108–76)

S. 1023, to increase the annual salaries of justices and judges of the United States, with amendments. **Page S8125**

Measure Passed:

Strengthen AmeriCorps Program Act: Senate passed S. 1276, to improve the manner in which the Corporation for National and Community Service approves, and records obligations relating to, national service positions. **Pages S8163–65**

Prescription Drug and Medicare Improvement Act: Senate continued consideration of S. 1, to amend title XVIII of the Social Security Act to make improvements in the Medicare program, to provide prescription drug coverage under the Medicare program, after taking action on the following amendments proposed thereto: **Pages S8013–S8116**

Rejected:

By 37 yeas to 58 nays (Vote No. 227), Stabenow Amendment No. 931, to require that the Medicare plan, to be known as the Medicare Guaranteed Option, be available to all eligible beneficiaries in every year. **Pages S8089–S8105, S8108–09**

Pending:

Enzi/Reed Amendment No. 932, to improve disclosure requirements and to increase beneficiary choices. **Pages S8105–08, S8109–11**

Bingaman Amendment No. 933, to eliminate the application of an asset test for purposes of eligibility for premium and cost-sharing subsidies for low-income beneficiaries. **Pages S8111–16**

A unanimous-consent agreement was reached providing for further consideration of the bill at 9:30 a.m., on Thursday, June 19, 2003. **Page S8165**

During consideration of this measure today, the following also occurred:

The Committee amendment in the nature of a substitute was modified. **Pages S8020–88**

Senator Nickles submitted revisions to H. Con. Res. 95 (Congressional Budget Resolution for Fiscal Year 2004), pursuant to 401, Medicare Reserve Fund Adjustment. **Page S8118**

Tax Relief, Simplification and Equity Act: Senate disagreed to House amendments to Senate amendments to H.R. 1308, to amend the Internal Revenue Code of 1986 to accelerate the increase in the refundability of the child tax credit, agreed to the House request for a conference on the disagreeing votes of the two Houses, and the Chair was authorized to appoint the following conferees on the part of the Senate: Senators Grassley, Nickels, Lott, Baucus, and Lincoln. **Page S8013**

Nominations Confirmed: Senate confirmed the following nominations:

Richard James O'Connell, of Arkansas, to be United States Marshal for the Western District of Arkansas for the term of four years.

1 Army nomination in the rank of general.

1 Navy nomination in the rank of admiral.

Pages S8163, S8165

Nominations Received: Senate received the following nominations:

Roger W. Titus, of Maryland, to be United States District Judge for the District of Maryland.

Alicia R. Castaneda, of the District of Columbia, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2004.

Alicia R. Castaneda, of the District of Columbia, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2011. (Reappointment)

2 Air Force nominations in the rank of general.

5 Army nominations in the rank of general.

2 Marine Corps nominations in the rank of general.

A routine list in the Navy. **Page S8165**

Messages From the House: **Page S8124**

Measures Referred: **Page S8124**

Measures Held at Desk: **Page S8124**

Executive Communications: **Pages S8124–25**

Executive Reports of Committees: **Page S8125**

Additional Cosponsors: **Pages S8125–27**

Statements on Introduced Bills/Resolutions: **Pages S8127–60**

Additional Statements: **Pages S8122–24**

Amendments Submitted: **Pages S8160–62**

Authority for Committees to Meet: **Page S8162**

Privilege of the Floor: **Pages S8162–63**

Record Votes: One record vote was taken today. (Total—227) **Pages S8108–09**

Adjournment: Senate met at 9:30 a.m., and adjourned at 5:38 p.m., until 9:30 a.m., on Thursday, June 19, 2003. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S8165.)

Committee Meetings

(Committees not listed did not meet)

BUSINESS MEETING

Committee on Agriculture, Nutrition, and Forestry: Committee ordered favorably reported the nominations of Thomas C. Dorr, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation, and to be Under Secretary of Agriculture for Rural Development.

BUSINESS MEETING

Committee on Armed Services: Committee ordered favorably reported the nominations of Admiral Edmund P. Giambastiani, Jr., USN, to be Admiral, and Lieutenant General William S. Wallace, USA, to be Lieutenant General.

BASEL CAPITAL ACCORD

Committee on Banking, Housing, and Urban Affairs: Committee concluded hearings to examine the New Basel Capital Accord, a proposal issued by the Basel Committee on Banking Supervision to make final modifications for a new capital adequacy framework, focusing on proposed changes to the current capital regime and possible effects on the amount of risk-based capital banks are required to hold, on the risk management techniques they employ, and on the domestic and international competitive landscapes, after receiving testimony from Roger W. Ferguson, Jr., Vice Chairman, Board of Governors of the Federal Reserve System; James E. Gilleran, Director, Office of Thrift Supervision, and John D. Hawke, Jr., Comptroller of the Currency, Administrator of National Banks, both of the Department of the Treasury; Donald E. Powell, Chairman, Federal Deposit Insurance Corporation; Edward I. Altman, New York University Leonard N. Stern School of Business, and D. Wilson Ervin, Credit Suisse First Boston, on behalf of the Financial Services Roundtable, both of New York, New York; Micah S. Green, Bond Market Association, and Karen Shaw Petrou, Federal Financial Analytics, Inc., both of Washington, D.C.; Maurice H. Hartigan II, Risk Management Association, Philadelphia, Pennsylvania; and Kevin M. Blakely, Keycorp, Sydney, Australia.

BUSINESS MEETINGS

Committee on Banking, Housing, and Urban Affairs: Committee ordered favorably reported the following bills:

S. 498, to authorize the President to posthumously award a gold medal on behalf of Congress to Joseph A. De Laine in recognition of his contributions to the Nation; and

An original bill to facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system.

BURMA

Committee on Foreign Relations: Subcommittee on East Asian and Pacific Affairs concluded hearings to examine the development of democracy in Burma, focusing on the political situation, independent news and information, institution-building programs, and the protection of Burmese Refugees in Thailand, and S. 1182, to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, after receiving testimony from Senator

McConnell; Lorne W. Craner, Assistant Secretary of State for Democracy, Human Rights and Labor; Kenneth Rogers, Indiana University, Bloomington; U. Aung Din, Free Burma Coalition, Brian Joseph, National Endowment for Democracy, and Veronika A. Martin, Refugees International, all of Washington, D.C.; and Kevin M. Burke, American Apparel and Footwear Association, Arlington, Virginia.

NOMINATIONS

Committee on Foreign Relations: Committee concluded hearings to examine the nominations of Robert W. Fitts, of New Hampshire, to be Ambassador to Papua New Guinea, Solomon Islands and Vanuatu, and Greta N. Morris, of California, to be Ambassador to the Marshall Islands, after each nominee testified and answered questions in their own behalf.

NOMINATIONS

Committee on Foreign Relations: Committee concluded hearings to examine the nominations of John E. Herbst, of Virginia, to be Ambassador to Ukraine, Tracey Ann Jacobson, of the District of Columbia, to be Ambassador to Turkmenistan, and George A. Krol, of New Jersey, to be Ambassador to Belarus, after each nominee testified and answered questions in their own behalf.

NOMINATIONS

Committee on Governmental Affairs: Committee concluded hearings on the nominations of Fern Flanagan Saddler, Judith Nan Macaluso, Joseph Michael Francis Ryan III, and Jerry Stewart Byrd, each to be an Associate Judge of the Superior Court of the District of Columbia, after the nominees, who were introduced by District of Columbia Delegate Eleanor Holmes Norton, testified and answered questions on their own behalf.

AUTHORIZATION—WORKFORCE INVESTMENT ACT

Committee on Health, Education, Labor, and Pensions: Subcommittee on Employment, Safety and Training concluded hearings on proposed legislation authorizing funds for programs of the Workforce Investment Act, after receiving testimony from Sigurd R. Nilsen, Director, Education, Workforce, and Income Security Issues, General Accounting Office; James N. Ellenberger, Virginia Employment Commission, Richmond; Charles Ware, Wyoming Workforce Development Council, Cheyenne; Curtis C. Austin, Workforce Florida, Inc., Tallahassee; Michael H. Kennedy, Pacific Mountain Workforce Development Council, Lacey, Washington; and Michael E. Smeltzer, Manufacturers' Association of South Central Pennsylvania, York.

NATIVE AMERICAN SACRED PLACES

Committee on Indian Affairs: Committee concluded hearings to examine federal efforts to ensure access to and protection of Native American sacred sites, including the establishment of a sacred sites protection policy, after receiving testimony from William D. Bettenberg, Director, Office of Policy Analysis, Department of the Interior; Suzan Shown Harjo, Morning Star Institute, Washington, D.C.; Charmaine White Face, Defenders of the Black Hills, Rapid City, South Dakota; Joyce Bear, Muscogee (Creek) Nation, Okmulgee, Oklahoma; Gene Preston, Pit River Tribal Council, Burney, California; Steve Brady, Sr., Northern Cheyenne Crazy Dogs Society, Lame Deer, Montana, on behalf of the Medicine Wheel Coalition for Sacred Sites of North America.

NEWS CORPORATION/DIRECTV DEAL

Committee on the Judiciary: Subcommittee on Antitrust, Competition Policy and Consumer Rights concluded hearings to examine the NewsCorp/DirecTV deal, focusing on global distribution, and possible effects on prices paid by consumers for pay television and choice and variety of programming, after receiving testimony from K. Rupert Murdoch, News Corporation, and Scott Cleland, Precursor Group, both of New York, New York; Eddy W. Hartenstein, DIRECTV, Inc., Los Angeles, California; Gene Kimmelman, Consumers Union, Washington, D.C.; and Robert Miron, Advance/Newhouse Communications, Syracuse, New York.

BUSINESS MEETING

Select Committee on Intelligence: Committee ordered favorably reported the nomination of Frank Libutti, of New York, to be Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security.

House of Representatives

Chamber Action

Measures Introduced: 15 public bills, H.R. 2501–2515; and 1 resolution, H. Con. Res. 222, were introduced. **Pages H5550–51**

Additional Cosponsors: **Pages H5551–52**

Reports Filed: Reports were filed today as follows:

H. Res. 283, providing for consideration of the bill (H.R. 660) to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees (H. Rept. 108–160);

H. Con. Res. 21, commemorating the Bicentennial of the Louisiana Purchase (H. Rept. 108–161);

H.R. 1772, to improve small business advocacy, amended (H. Rept. 108–162); and

H.R. 2417, to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, amended (H. Rept. 108–163). **Page H5550**

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Ose to act as Speaker Pro Tempore for today. **Page H5471**

Guest Chaplain: The prayer was offered by the guest Chaplain, Rev. Timothy Smith, Chaplain, Sun Health Hospice of Sun City, Arizona. **Page H5471**

Journal: Agreed to the Speaker's approval of the Journal of Tuesday, June 17 by recorded vote of 365 ayes to 59 noes with 1 voting "present", Roll No. 286. **Pages H5471, H5491–92**

Death Tax Repeal Permanency Act: The House passed H.R. 8, to make the repeal of the estate tax permanent by recorded vote of 264 ayes to 163 noes, Roll No. 288. **Pages H5492–H5514**

By a yea-and-nay vote of 188 yeas to 239 nays, Roll No. 287, rejected the Pomeroy amendment in the nature of a substitute that sought to restore the estate tax, limit its applicability to estates of over $3 million, and include provisions on the maximum estate tax rate, phaseout of graduated rates and unified credit, and valuation rules for certain transfers of nonbusiness assets. **Pages H5502–13**

H. Res. 281, the rule that provided for consideration of the bill was agreed to by recorded vote of 230 ayes to 199 noes, Roll No. 285. Earlier agreed to order the previous question by yea-and-nay vote of 227 yeas to 200 nays, Roll No. 284. **Pages H5475–91, H5491**

Taxpayer Protection and IRS Accountability Act: The House completed general debate on H.R. 1528, to amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service. Pursuant to the earlier order of the House, The Chair announced that consideration will resume on Thursday, June 19. **Pages H5514–35**

Pursuant to the rule, the amendment by the Committee on Ways and Means printed in the bill (H. Rept. 108–61) and modified by the amendment printed in part A of H. Rept. 108–159 was considered as adopted.

H. Res. 282, the rule that provided for consideration of the bill was agreed to by voice vote. **Pages H5474–75**

Further Consideration of Taxpayer Protection and IRS Accountability Act: Earlier agreed by unanimous consent that during consideration of H.R. 1528, Taxpayer Protection and IRS Accountability Act, pursuant to H. Res. 282, notwithstanding the ordering of the previous question, it may be in order at any time for the Chair to postpone further consideration of the bill until a later time to be designated by the Speaker. **Page H5514**

Commission on Security and Cooperation In Europe: The Chair announced the Speaker's appointment of Representative Smith of New Jersey as acting Chairman, and Representatives Wolf, Pitts, Aderholt, Northup, Cardin, Slaughter, and Hastings of Florida to the Commission on Security and Cooperation In Europe. **Page H5549**

Quorum Calls—Votes: Two yea-and-nay votes and three recorded votes developed during the proceedings of the House today and appear on pages H5490–91, H5491, H5491–92, H5512–13, and H5513–14. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 6:33 p.m.

Committee Meetings

MULTILATERAL AND BILATERAL AGRICULTURAL TRADE NEGOTIATIONS REVIEW

Committee on Agriculture: Held a hearing to review multilateral and bilateral agricultural trade negotiations. Testimony was heard from public witnesses.

COMMERCE, JUSTICE, STATE, JUDICIARY AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Commerce, Justice, State, Judiciary and Related Agencies held a hearing on FBI Reorganization. Testimony was heard from Robert Mueller, Director, FBI, Department of Justice; David M. Walker, Comptroller General, GAO; and public witnesses.

DEFENSE APPROPRIATIONS

Committee on Appropriations: Subcommittee on Defense met in executive session and approved for full Committee action the Defense appropriations for fiscal year 2004.

INTERIOR AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Interior and Related Agencies approved for full Committee action the Interior and Related Agencies appropriations for fiscal year 2004.

WORLDWIDE U.S. MILITARY COMMITMENTS

Committee on Armed Services: Held a hearing on worldwide U.S. military commitments. Testimony was heard from the following officials of the Department of Defense: Paul D. Wolfowitz, Deputy Secretary; and Gen. Peter Pace, USMC, Vice Chairman, Joint Chiefs of Staff.

FEDERAL MANDATORY PROGRAMS—WASTE, FRAUD AND ABUSE

Committee on the Budget: Held a hearing on Waste, Fraud and Abuse in Federal Mandatory Programs. Testimony was heard from David M. Walker, Comptroller General, GAO; and a public witness.

SCHOOL READINESS ACT

Committee on Education and the Workforce: Began markup of H.R. 2210, School Readiness Act of 2003.

Will continue tomorrow.

MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT

Committee on Energy and Commerce: Began markup of H.R. 2473, Medicare Prescription Drug and Modernization Act of 2003.

Will continue tomorrow.

MUTUAL FUNDS INTEGRITY AND FEE TRANSPARENCY ACT

Committee on Financial Services: Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing on H.R. 2420, Mutual Funds Integrity and Fee Transparency Act of 2003. Testimony was heard from Paul F. Roye, Director, Division of Investment Management, SEC; Richard J. Hillman, Director, Financial Markets and Community Investment, GAO; and public witnesses.

U.S. PARTICIPATION—INTERNATIONAL DEVELOPMENT ASSOCIATION, ASIAN DEVELOPMENT FUND AND AFRICAN DEVELOPMENT FUND

Committee on Financial Services: Subcommittee on Domestic and International Monetary Policy, Trade, and Technology approved for full Committee action H.R. 2243, to provide for the participation of the United States in the thirteenth replenishment of the resources of the International Development Association, the seventh replenishment of the resources of the Asian Development Fund, and the ninth replenishment of the resources of the African Development Fund.

VISA REVOCATIONS

Committee on Government Reform: Subcommittee on National Security, Emerging Threats and International Relations held a hearing on " Visa Revocations: Catching the Terrorists Among Us." Testimony was heard from Jess T. Ford, Director, International Affairs and Trade Division, GAO; Catherine Barry, Managing Director, Office of Visa Services, Bureau of Consular Affairs, Department of State; the following officials of the Department of Homeland Security: Jayson P. Ahern, Assistant Commissioner, Office of Field Operations, Bureau of Customs and Border Protection; and Charles H. Demore, Interim Assistant Director, Investigations, Bureau of Immigration and Customs Enforcement; and Steven C. McCraw, Inspector-Deputy Assistant Director of Intelligence, FBI, Department of Justice.

COMPACTS OF FREE ASSOCIATION WITH MICRONESIA AND THE MARSHALL REAUTHORIZING

Committee on International Relations: Subcommittee on East Asia and the Pacific held a hearing on Reauthorizing the Compacts of Free Association with Micronesia and the Marshall Islands. Testimony was heard from Albert V. Short, Director, Office of Compact Negotiations, Department of State; David B. Cohen, Deputy Assistant Secretary, Insular Affairs, Department of the Interior; and Susan S. Westin, Managing Director, International Affairs and Trade, GAO.

MISCELLANEOUS MEASURES

Committee on Resources: Held a hearing on the following bills: H.R. 884, Western Shoshone Claims Distribution Act; and H.R. 1409, Eastern Band of

Cherokee Indians Land Exchange Act of 2003. Testimony was heard from Michael D. Olsen, Counselor to the Assistant Secretary, Indian Affairs, Department of the Interior; and public witnesses.

SMALL BUSINESS HEALTH FAIRNESS ACT

Committee on Rules: Granted, by a vote of 6 to 3, a modified closed rule providing 1 hour of debate in the House on H.R. 660, Small Business Health Fairness Act. The rule waives all points of order against consideration of the bill. The rule provides that the amendment recommended by the Committee on Education and the Workforce now printed in the bill shall be considered as adopted. The rule makes in order the amendment printed in the Rules Committee report accompanying the resolution, if offered by Representative Kind of Wisconsin or his designee, which shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in the report. Finally, the rule provides one motion to recommit with or without instructions.

WHITE-COLLAR JOBS GLOBALIZATION

Committee on Small Business: Held a hearing on the Globalization of White-Collar Jobs: Can America Lose These Jobs and Still Prosper? Testimony was heard from Representative Johnson of Connecticut; Bruce P. Mehlman, Assistant Secretary, Technology Policy, Department of Commerce; and public witnesses.

MISCELLANEOUS MEASURES; ECONOMIC DEVELOPMENT ADMINISTRATION REAUTHORIZATION

Committee on Transportation and Infrastructure: Subcommittee on Economic Development, Public Buildings and Emergency Management approved for full Committee action, as amended, the following bills: H.R. 141, SouthEast Crescent Authority Act of 2003; H.R. 1071, Southwest Regional Border Authority Act; H.R. 1572, to designate the historic Federal District Court Building located at 100 North Palafox Street in Pensacola, Florida, as the "Winston E. Arnow Federal Building;" and H.R. 1668, to designate the United States courthouse located at 101 North Fifth Street in Muskogee, Oklahoma, as the "Ed Edmondson United States Courthouse."

The Subcommittee also approved for full Committee action the Economic Development Administration Reauthorization.

NATIONWIDE RESEARCH PROGRAMS—VA's HUMAN SUBJECT PROTECTIONS

Committee on Veterans' Affairs: Subcommittee on Oversight and Investigations held a hearing to assess the Department of Veterans Affairs management of the human subject protections maintained in its nationwide research programs. Testimony was heard from Cynthia Bascetta, Director, Veterans' Health and Benefits Issues, GAO; Robert H. Boswell, M.D., Under Secretary, Health, Department of Veterans Affairs.

IRAQ WMD

Permanent Select Committee on Intelligence: Met in executive session to hold a hearing on Iraq WMD. Testimony was heard from departmental witnesses.

Hearings continue tomorrow.

COUNTERPROLIFERATION AND COUNTERNARCOTICS

Permanent Select Committee on Intelligence: Subcommittee on Intelligence Policy and National Security met in executive session to receive a briefing on Counterproliferation and Counternarcotics. The Subcommittee was briefed by departmental witnesses.

TERRORIST FINANCING

Permanent Select Committee on Intelligence: Subcommittee on Terrorism and Homeland Security met in executive session to hold a hearing on Terrorist Financing. Testimony was heard from departmental witnesses.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D593)*

H.R. 192, to amend the Microenterprise for Self-Reliance Act of 2000 and the Foreign Assistance Act of 1961 to increase assistance for the poorest people in developing countries under microenterprise assistance programs under those Acts. Signed on June 17, 2003. (Public Law 108–31)

S. 273, to provide for the expeditious completion of the acquisition of land owned by the State of Wyoming within the boundaries of Grand Teton National Park. Signed on June 17, 2003. (Public Law 108–32)

COMMITTEE MEETINGS FOR THURSDAY, JUNE 19, 2003

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Banking, Housing, and Urban Affairs: to hold hearings to examine the growing problem of identity theft and its relationship to the Fair Credit Report Act, 10 a.m., SD–538.

Committee on Commerce, Science, and Transportation: business meeting to consider S. 865, to amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users, S. 1234, to reauthorize the Federal Trade Commission, S. 1244, to authorize appropriations for the Federal Maritime Commission for fiscal years 2004 and 2005, S. 247, to reauthorize the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, S. 1106, to establish National Standards for Fishing Quota Systems, S. 861, to authorize the acquisition of interests in undeveloped coastal areas in order to better ensure their protection from development, S. 1152, to reauthorize the United States Fire Administration, S. 189, to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet, S. 1046, to amend the Communications Act of 1934 to preserve localism, to foster and promote the diversity of television programming, to foster and promote competition, and to prevent excessive concentration of ownership of the nation's television broadcast stations, and the nomination of Annette Sandberg, of Washington, to be Administrator of the Federal Motor Carrier Safety Administration, Department of Transportation, and other pending calendar business, 9:30 a.m., SR–253.

Committee on Governmental Affairs: to hold hearings to examine the Union Labor Life Insurance Company (ULLICO) policy on investment decisions and stock value, focusing on allegations of self-dealing and breaches of fiduciary duty involving certain board members profiting from sales of company stock, 10 a.m., SD–342.

Committee on Health, Education, Labor, and Pensions: to hold hearings to examine teacher union scandals, focusing on closing the gaps in union member protections, 10:15 a.m., SD–430.

Committee on the Judiciary: business meeting to consider S. 724, to amend title 18, United States Code, to exempt certain rocket propellants from prohibitions under that title on explosive materials, S. 1125, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, S. 1233, to authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center, S.J. Res. 1, proposing an amendment to the Constitution of the United States to protect the rights of crime victims, and the nominations of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit, and Diane M. Stuart, of Utah, to be Director of the Violence Against Women Office, Department of Justice, 9:30 a.m., SH–216.

Select Committee on Intelligence: to hold closed hearings to examine certain intelligence matters, 2:30 p.m., SH–219.

Full Committee, to hold closed hearings to examine certain intelligence matters, 2:30 p.m., SH–219.

House

Committee on Agriculture, Subcommittee on General Farm Commodities and Risk Management, hearing to review of the Commodity Futures Modernization Act, 10 a.m., 1300 Longworth.

Committee on Appropriations, Subcommittee on Legislative, to mark up appropriations for fiscal year 2004, 9:30 a.m., H–144 Capitol.

Subcommittee on Labor, Health and Human Services, Education and Related Agencies, to mark up appropriations for fiscal year 2004, 10 a.m., 2358 Rayburn.

Committee on Education and the Workforce, to continue markup of H.R. 2210, School Readiness Act of 2003, 9:30 a.m., 2175 Rayburn.

Subcommittee on Select Education, hearing on ''International Programs in Higher Education and Questions of Bias,'' 1 p.m., 2175 Rayburn.

Committee on Energy and Commerce, to continue markup of H.R. 2743, Medicare Prescription Drug and Modernization Act of 2003, 10 a.m., 2123 Rayburn.

Committee on Financial Services, Subcommittee on Financial Institutions and Consumer credit, hearing entitled ''The New Basel Accord—In Search of a Unified U.S. Position,'' 10 a.m., 2128 Rayburn.

Subcommittee on Housing and Community Opportunity, hearing entitled ''Rural Housing in America,'' 2 p.m., 2128 Rayburn.

Committee on Government Reform, to consider the following: a Report—A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records; H.R. 2396, to designate the facility of the United States Postal Service located at 1210 Highland Avenue in Duarte, California as the ''Francisco A. Martinez Flores Post Office,'' H.R. 1761, to designate the facility of the United States Postal Service located at 9350 East Corporate Hill Drive in Wichita, Kansas, as the ''Garner E. Shriver Post Office Building''; H.R. 2249, Postmasters Equity Act of 2003; H.R. 2328, to designate the facility of the Postal Service located at 2001 East Willard Street in Philadelphia, Pennsylvania, as the ''Robert A. Borski Post Office Building''; H. Con. Res. 6, supporting the goals and ideals of Chronic Obstructive Pulmonary Disease Awareness Month; H. Con. Res. 208, Supporting the National Men's Health Week; and H. Res. 240, expressing the sense of the House of Representatives that there should be established a National Community Health Center Week to raise awareness of health services provided by community, migrant, public housing, and homeless health centers; followed by a hearing on ''The Next Step in the Investigation of the Use of Informants by the Department of Justice,'' 9:30 a.m., 2154 Rayburn.

Committee on International Relations, hearing on U.S. Policy in Afghanistan: Current Issues in Reconstruction, 10:30 a.m., 2172 Rayburn.

Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, hearing on H.R. 339, Personal Responsibility in Food Consumption Act, 10 a.m., 2141 Rayburn.

Subcommittee on Immigration, Border Security, and Claims, oversight hearing on "The Issuance, Acceptance, and Reliability of Consular Identification Cards," 2 p.m., 2237 Rayburn.

Committee on Resources, Subcommittee on Energy and Mineral Resources, oversight hearing on the Domestic Natural Gas Supply Shortage, 10 a.m., 1324 Longworth.

Subcommittee on Forests and Forest Health and the Subcommittee on Fisheries Conservation, Wildlife and Oceans, joint hearing on the following bills: H.R. 2057, Chronic Wasting Disease Support for States Act of 2003; and H.R. 2416, to provide for the protection of paleontological resources on Federal lands, 10 a.m., 1334 Longworth.

Subcommittee on Forests and Forest Health, hearing on the following bills: H.R. 511, Mount Naomi Wilderness Boundary Adjustment Act; H.R. 708, to require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes; H.R. 1038, Public Lands Fire Regulations Enforcement Act of 2003; and H.R. 1651, Sierra National Forest Land Exchange Act of 2003, following joint hearing, 1334 Longworth.

Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, oversight hearing on the Need to Update Water Quality Standards to Improve Clean Water Act Programs, 10 a.m., 2167 Rayburn.

Committee on Ways and Means, to mark up H.R. 2351, Health Savings Account Availability Act, 10 a.m., 1100 Longworth.

Subcommittee on Oversight and the Subcommittee on Human Resources, joint hearing on unemployment fraud and abuse, following full Committee markup, 1100 Longworth.

Subcommittee on Select Revenue Measures, hearing on S Corporation Reforms, following full Committee markup, B–318 Rayburn.

Permanent Select Committee on Ingtelligence, executive, to continue hearings on Iraq WMD, 2 p.m., H–405 Capitol.

Subcommittee on Human Intelligence, Analysis and Counterintelligence, executive, briefing on Counterintelligence Issues, 10:30 a.m., H–405 Capitol.

Subcommittee on Intelligence Policy and National Security, executive, briefing on Global Intelligence Update, 9 a.m., H–405 Capitol.

Select Committee on Homeland Security, hearing entitled "Response to Terrorism: How is DHS Improving Our Capabilities?" 1 p.m., 2318 Rayburn.

Next Meeting of the **SENATE**

9:30 a.m., Thursday, June 19

Senate Chamber

Program for Thursday: Senate will continue consideration of S. 1, to amend title XVIII of the Social Security Act to make improvements in the Medicare program, to provide prescription drug coverage under the Medicare program.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

10 a.m., Thursday, June 19

House Chamber

Program for Thursday: Complete consideration of H.R. 1528, Taxpayer Protection and IRS Accountability Act (modified closed rule, one hour of general debate); and

Consideration of H.R. 660, Small Business Health Fairness Act (modified closed rule, one hour of general debate).

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