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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, November 25, 2003, at 12 noon.

Senate

MONDAY, NOVEMBER 24, 2003

The Senate met at 9 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, Who gives to us the swift and solemn trust of life, since we know not what a day will bring forth, we lift our hearts to You for wisdom and guidance. Take us above those habits that keep us from Your purposes and make us worthy stewards of Your world. Help us to make a real difference in these momentous times, improving the lives of humanity. Bless the Members of this body. May they remember to give You their burdens. Give them confidence that You will take care of each challenge. Keep these gifted leaders from slipping and falling. And force the enemies of freedom to retreat. Lord, let Your truth march on. Keep watch over this land we love, for You are the Lord Almighty. We pray this in Your triumphant Name. Amen.

NOTICE

If the 108th Congress, 1st Session, adjourns sine die on or before November 25, 2003, a final issue of the Congressional Record for the 108th Congress, 1st Session, will be published on Monday, December 15, 2003, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–410A of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 12, 2003. The final issue will be dated Monday, December 15, 2003, and will be delivered on Tuesday, December 16, 2003.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at ''Record@Sec.Senate.gov''.

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By order of the Joint Committee on Printing.

ROBERT W. NEY, *Chairman.*

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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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.

The PRESIDENT pro tempore. Does the Senator from Iowa seek recognition?

Mr. GRASSLEY. Mr. President, I was told we should report the bill first, and then I will make my statement.

RESERVATION OF LEADER TIME

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

MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 1, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 1, an act to amend Title XVIII of the Social Security Act to provide for a voluntary prescription drug benefit under the Medicare Program and to strengthen and improve the Medicare Program, and for other purposes.

The PRESIDENT pro tempore. Under the previous order, the time until 12:30 shall be equally divided between the chairman of the Finance Committee or his designee and the Democratic leader or his designee, with the last 10 minutes prior to the vote to be allocated between the Democratic leader for 5 minutes to be followed by the majority leader for the final 5 minutes.

The Senator from Iowa.

SCHEDULE

Mr. GRASSLEY. Mr. President, I would like to state the plan for today. Under the previous order, the cloture vote will occur today at 12:30. The debate time until that vote is limited, and Members will only be allocated short debate times. The cloture vote on the conference report will be the first vote of the day. It is the leader's hope and expectation that cloture will be successful. Once cloture is invoked, the leader hopes we will be able to proceed to a vote on the passage of the Medicare prescription drug bill in very short order after that.

On our side, we are obviously going to start with the Senator from New Hampshire. But since the time is very tight, probably most Members would be limited to 5 minutes or less, beyond that of Senator GREGG. I would like to make sure people are very orderly as they come over here and ask me for time. I cannot speak for the Democratic side, but for the Republican side, it is very essential for people to be here and be ready to speak.

Does the Democratic whip wish to be recognized?

Mr. REID. Yes, if my distinguished friend will yield.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, we have, on this side, a number of people who wish to speak. It is my understanding, to make this debate fair, that on this side the time will be given to those who are opposed to cloture being invoked. So the people who speak on this side will be opposed to cloture. I want all the people who have asked for time on this side to understand that. And we are—this is just for Democrats—we are going to give 9 minutes to the following Senators, and in no necessary order. Whoever is here can speak. They should all be alerted that if there are quorum calls, they are going to lose time. So, Mr. President, I would, on our side, grant 9 minutes to Senators AKAKA, LAUTENBERG, KERRY, LIEBERMAN, DODD, CLINTON, MIKULSKI, PRYOR, KENNEDY, with KENNEDY to have the last time before the Democratic leader speaks, closing the debate.

Now, again, I want to tell those listening, this side is for those who oppose cloture.

Mr. GRASSLEY. Mr. President, could I make an inquiry?

Mr. REID. Yes. And I think it would be better if we alternated back and forth until 12:30.

Mr. GRASSLEY. That is the point I wanted to make.

Mr. FRIST. Mr. President, today we stand on the threshold of a truly historic moment. Not for Republicans. Not for Democrats. Or for the House of Representatives. Or the United States Senate. But, for over 40 million American seniors and individuals with disabilities, who may finally be getting prescription drug coverage under Medicare.

Saturday morning, the House of Representatives passed H.R. 1, the ''Medicare Prescription Drug, Improvement, and Modernization Act of 2003.''

Also Saturday, President Bush called upon the Senate, once again, to finish the job. He urged us to send him legislation that will provide badly needed prescription drugs to seniors.

For years, Congress has debated whether, and how, to provide prescription drug coverage to seniors and to strengthen and improve the Medicare program. Now, it is time for us to Act.

Mr. President, this generation of seniors survived the depression, fought World War II, and helped make the United States into a prosperous and thriving Nation. Time and again, they stepped forward to serve. Now, is the time to fulfill our duty to that great generation. Now is the time to answer their call.

What President Lyndon Johnson said in 1965 still stands:

. . . No longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this . . . country.

Let us not stay that hand of justice now. Let us not turn our back on America's seniors and individuals with disabilities.

There are nearly one quarter of a million seniors in my home State of Tennessee who have no prescription drug coverage. There are millions more across the Nation for whom this legislation, literally, means the difference between life and death. They cannot afford to wait any longer. I have treated thousands of Medicare patients. And I know firsthand that, without Medicare, millions of seniors would not have received needed medical services. Millions more would have faced financial ruin. Medicare has helped save and heal lives.

But this cherished program has failed to keep pace with medical and scientific progress. Prescription drugs are an integral part of modern medicine. They are as important as the surgeon's knife. Yet, they are not part of the Medicare program.

In the nearly four decades since the Medicare program was created, the American medical system has transformed from one focused on treating episodic illness in hospitals to one characterized by an increasing emphasis on managing and preventing chronic disease in outpatient settings with advanced medical technologies and prescription drugs. Life expectancy has increased by nearly ten years. Death rates associated with heart disease have been cut in half, and new treatments and diagnostic tools have improved survival rates for prostate, colon, and breast cancer. Our medical and scientific knowledge and, along with it, our ability to treat illness and disease has improved dramatically over the past four decades. Yet, Medicare itself has not kept pace with these dramatic changes. It has been too inflexible and bureaucratic. Designed for the 1960s health care system, it has been unable to adapt to changing medical practice. Medicare does not provide true preventive coverage, disease management, or protection against catastrophic health care costs.

As a result, we have today glaring and unacceptable gaps in the coverage that is available to seniors and individuals with disabilities—the most obvious of which is the lack of prescription drug coverage.

Over the past three decades, for example, the death rate from atherosclerosis has declined by over 70 percent and deaths from ischemic heart disease have declined more than 6 percent, largely due to the advent of beta blockers and ACE inhibitors. During the same period, death rates from emphysema have dropped nearly 60 percent due to new treatments involving anti-inflammatory medications and bronchodilators.

Today, over 600 medicines are under development to treat or prevent diabetes, cancer, heart disease, stroke, neurological diseases, and other debilitating illness. Nearly 400 drugs have been produced during the past decade alone.

But, under today's Medicare, these drugs simply are not available to seniors.

We must act to ensure that this generation of seniors, and the next, has access to the healing miracles of modern medicine. And we must act to provide our seniors, and the next generation of seniors, with true health care security: quality preventive care, affordable prescription drugs, protection from catastrophic health care costs, better coordinated care, disease management, and access to modern technology.

As voluntary prescription drug coverage the bipartisan bill we are debating today takes a major step in that direction. It devotes $400 billion over the next decade to adding a new, voluntary prescription drug benefit to the Medicare program. And it takes concrete steps to speed less expensive generic drugs to the market to help make prescription drugs more affordable for all Americans.

Within months after this legislation is signed into law, seniors will be able to get a voluntary Medicare-approved prescription drug discount card that will reduce the costs of their drugs by an estimated 10–25 percent. Lower income seniors will get an additional subsidy of $600 on top of these discounts to help them purchase needed medicines. Thus, seniors will get immediate relief even before the comprehensive drug benefit is fully implemented, with additional help for those who need it the most.

Beginning in 2006, seniors will have access to the new drug benefit. Those who wish to add the new prescription drug benefit to their traditional Medicare coverage will have that choice. The new drug benefit is completely voluntary and available to all seniors. Appropriately, it provides the most generous help to lower income seniors and those with catastrophic drug costs.

SUBSTANTIAL ASSISTANCE FOR LOWER INCOME SENIORS

Seniors with incomes below 135 percent of the Federal poverty line ($11,648 for individuals and $14,965 for couples) will pay no premiums, no deductibles, and only a modest co-payment for their comprehensive coverage. Beneficiaries with incomes below 150 percent of poverty ($12,942 for individuals and $16,327 for couples) will pay only a portion of the premium and a $50 deductible. After that, the government will subsidize 85 percent of their drug costs.

In my home State, over 430,000 low income Medicare beneficiaries—nearly half of all beneficiaries in Tennessee—will have exceptional prescription drug coverage under this bipartisan plan. One quarter of a million Tennessee seniors who today have no prescription drug coverage at all will gain access under this proposal, along with millions more across the Nation.

IMPROVEMENTS TO TRADITIONAL MEDICARE

The legislation also strengthens and improves the traditional Medicare Fee for Service program. It adds new preventive coverage for diabetes and cardiovascular disease. For the first time, Medicare will cover initial preventive physical examinations. And this agreement responds to the six percent of seniors with chronic disease who account for about 50 percent of all Medicare spending. The legislation will launch a series of major pilot programs on disease management and quality payment incentives that could result in dramatic improvements in the care of the most ill and the most needy. This will help us better target health care resources to those who require it most.

The legislation also puts in place national standards for electronic prescribing, along with incentives for doctors to fill prescriptions electronically. These reforms should dramatically improve medication therapy management, reduce medical errors, and improve patient safety.

As the Senator from Montana, the Ranking Member of the Senate Finance Committee, has said so eloquently during these past several days, this bill does nothing to destroy the existing Medicare program. In fact, it immensely strenghtnes the traditional Medicare program.

As my colleagues know, this legislation has received broad support from well over 350 organizations, including from the AARP—which represents 35 million seniors. In its letter of endorsement last week, the AARP also makes clear that, at a result of this legislation, ''millions of older Americans and their families will be helped by this legislation.'' In addition, AARP writes: ''The integrity of Medicare will be protected.''

NEW HEALTH CARE CHOICES

Today, most seniors choose to enroll in the traditional Medicare Fee for Service program. But this may not be the best choice for all seniors, and it may not be the choice of all seniors in the future.

There are about five million seniors who are covered by private health plans under the Medicare program today. Beginning immediately, the legislation will strengthen Medicare's local HMO coverage. It will help stabilize and improve the coverage of those five million seniors in the current Medicare+Choice program. As a result, Medicare+Choice will become a more stable, secure, and strong option for those seniors who have already chosen to enroll in coordinated care plans.

This bipartisan plan also provides seniors with even more choices—the choice to enroll in regional preferred provider organizations—or PPOs. The majority of Americans under age 65 get health coverage through PPOs. Most members of Congress, Federal employees, and Federal retirees also get coverage through PPOs. Employees covered by PPOs report high levels of satisfaction with their coverage. PPOs typically provide coverage for preventive care, chronic care management, disease management, and access to a broad range of doctors and hospitals.

Under the bipartisan agreement, seniors will have the opportunity to participate in these innovative plans if they choose.

Moreover, beginning in 2010, we will test on a limited basis whether these private health plans provide higher quality than traditional Medicare. We will also test whether Medicare private health plans are most cost effective than traditional Medicare. All beneficiaries will be protected during this test. And the demonstration cannot be expanded or extended unless Congress acts to do so.

Throughout, seniors will always be able to stay in the traditional Medicare program. And they will have the option of adding prescription drug coverage. Meanwhile, tomorrow's seniors, many of whom are covered through PPOs now, may choose to continue private coverage when they retire. We are looking down the road to prepare for the baby boom population. We need to be ready now, not scrambling when it is too late.

STRENGTHENING HEALTH CARE IN RURAL AMERICA

This bill contains the most sweeping and strong rural provisions ever in a Medicare bill to come before this Congress. It also makes improvements to payments for graduate medical education and takes concrete measures to protect seniors' access to physicians.

For example, hospitals in my home State of Tennessee will receive $655 million under this legislation. Physicians, who otherwise would face real cuts next year of 4.4 percent, would instead see a 1.5 percent payment increase in both 2004 and 2005. I am very proud that the American Hospital Association, the Tennessee Medical Association, the American Hospital Association, the Tennessee Hospital Association, the American Association of Medical Colleges, and the Alliance for Specialty Medicine strongly support this legislation. The bill has also received strong support from the Rural Health Care Association, the Rural Hospital Coalition and the Coalition for Geographic Equity in Medicare.

CONTROLLING PRESCRIPTION DRUG COSTS

Some of my colleagues have said that this legislation does nothing to control prescription drug costs. I respectfully disagree.

First of all, under this bill, seniors will be able to get a drug discount card right away. They will be able to present their Medicare discount card to their pharmacist and receive a 10 to 25 percent cut right off of the top.

This bill also works to contain drug costs before the drugs get to the pharmacist's shelf. It does so in a number of ways. The bill speeds generic drugs to the market. It encourages competition

to lower prices, and it gives the Medicare recipient new power to comparison shop.

Let's start with the generic drug provisions. In 1984, Congress passed the Hatch-Waxman law to encourage cheaper generic drugs to come onto the market. Under that law, generic competition has flourished. When the law was passed, generics drugs were less than 20 percent of the market. Today, generic drugs represent nearly 50 percent of the entire market.

The Hatch-Waxman Act has been incredibly successful in allowing consumers to get low cost alternatives. But there have been some abuses. Therefore, we are moving to close loopholes in the system through this bill. And the core of the provisions build on the work of Senator GREGG and Senator SCHUMER.

Under the new system, a new drug applicant will receive only one 30-month stay of approval of a generic drug's application. This is a major change. Under the old system, drug companies could receive multiple stays of approval for generic rivals. Now, they will get one stay only.

The agreement takes additional steps to get generic drugs to the market faster—through which patients will get safe, effective, low cost generic drug alternatives to brand name medicines.

That is why this bill is supported by the Generic Pharmaceutical Association and the Coalition for a Competitive Pharmaceutical Market.

the bipartisan Medicare agreement also empowers drug plans to negotiate discounts from drug companies. The Congressional Budget Office says that this approach will enable drug plans to significantly control drug costs for their beneficiaries.

Moreover, the savings they negotiate will not be subject to Federal limits. They will be able to get the lowest prices possible, even if those prices are lower than those negotiated under Medicaid. The Congressional Budget Office has estimated that this provision alone will save $18 billion dollars.

Not only will the Medicare agreement help lower prices, it will help give consumers more information about their medical options. This bill expands Federal research into the comparative effects of different drugs and treatments.

With this new information, seniors will be able to comparison-shop in the medical marketplace, just like they would for any other product or service. Patients and their doctors will be able to compare treatment options and choose the course of action that best addresses their medical needs. And Medicare and health consumers will get better value for their money.

HEALTH SAVINGS ACCOUNTS

I am also very pleased that this legislation will make tax-preferred Health Savings Accounts available to all Americans. HSAs will help control costs over time, and give individuals the ability to better control their health care dollars and health care decisions.

I wish we could have gone even father. I wish we could have added provisions from the House bill that would have allowed individuals to roll over some funds each year from their flexible spending accounts. I also believe we must do more in the coming years to allow individuals to invest funds on a tax-free basis to meet their health care needs in retirement, just as we do with 401(k) plans and Individual Retirement Accounts. I am committed to coming back and addressing these issues in the years ahead.

DEMOGRAPHIC AND STRUCTURAL CHALLENGES

Our first priority must be to provide seniors with health security. But, at the same time, we know that Medicare also faces serious financial and demographic pressures in the coming years. Between now and 2030 the number of seniors will nearly double from 40 million to 77 million; the program's costs will more than double to nearly $450 billion annually, even before we add prescription drug coverage or improve other benefits; the number of taxpayers paying into the system to finance health coverage for seniors will drop from 4 today, to 2.4 by 2030; seniors, who represent 12 percent of the population today, will represent 22 percent of the population in 2030; and one last fact: each senior will be in the Medicare program longer. Life expectancy at age 65 will increase approximately 10 percent over the next 30 years.

The demographic underpinning has been defined: more seniors; each senior living longer; and fewer workers to support each senior.

So, while we need to act to provide prescription drug coverage to seniors, we also need to do so responsibly. This legislation takes an important first step in linking Medicare payments to quality. It also relies on competitive market forces to help control health care spending.

Moreover, for the first time in Medicare's history, we will ask those seniors who can afford to pay more for their coverage, to do so. And we will put in place more accurate and more transparent measurements of Medicare's fiscal strength—as well as special procedures for attempting to better control Medicare spending growth in the future.

These reforms do not go far enough for some of my colleagues. At the same time, they go too far for others. Overall, however, I believe this is a balanced, bipartisan bill that is worthy of the support of the United States Senate.

It is not a perfect bill. But, it is a meaningful step in the right direction. It will provide substantial relief from high prescription drug costs for millions of seniors. It will help rectify payment inequities for rural health care providers. And it will begin to inject into the Medicare program new health care choices and much needed flexibility so that seniors will have the option to choose the kind of health care coverage that best suits their needs.

Today, America is one step closer to being a more caring society for millions of seniors and individuals with disabilities struggling with high prescription drug costs and outdated, often inadequate medical care. Today, we are one step closer to providing real health security to seniors all across the Nation.

As a physician, I have written thousands of prescriptions that I knew would go unfilled because patients could not afford them. With this bill, that will change. As a senator, I have watched as a decades-old Medicare program has operated without flexibility, and without comprehensive and coordinated preventive care, disease management and catastrophic protection against high out-of-pocket medical costs. With this bill, that will change also.

This legislation is historic. By dramatically expanding opportunities for private sector innovation, it offers the possibility of genuine reform that can dramatically improve the quality of care available to seniors. At the same time, the legislation preserves traditional Medicare for those who choose it. It combines the best of the public and private sectors and gives today's seniors innovative health care options and positions Medicare to serve tomorrow's seniors as well.

This legislation is possible because of the work and dedication of every Member. I would like to take a moment to thank those whose commitment was critical to this effort. First and foremost, Chairman CHARLES GRASSLEY and Ranking Member MAX BAUCUS deserve credit. As does Senator JOHN BREAUX who joined me six years ago on the Bipartisan Commission on Medicare and again on this Conference Committee. All Members of the Conference Committee showed a degree of dedication and resolve seldom seen in either Chamber, especially Senators HATCH, NICKLES, and KYL. But we wouldn't have reached this point without building on the strong foundation laid by Members over the last several years, especially Senators SNOWE, JEFFORDS, GREGG, HAGEL, ENSIGN and WYDEN. Finally, the Senate could not have done this alone. The House Leadership, Speaker HASTERT and Leader DELAY, deserve special recognition, as does the Chairman of the Conference, Chairman BILL THOMAS, and the Chairman of the House Energy and Commerce Committee, Chairman BILLY TAUZIN.

In closing, I would like to thank again every member of this body who has worked so hard on this legislation—not just in this year, but in the previous six years of our most recent effort to strengthen and improve Medicare. I urge every Senator to support this bill. I implore every Senator to avoid filibusters and other partisan political maneuvers that threaten the prescription drug coverage, and health

care security, our seniors need and deserve.

I yield the floor.

Mr. GRASSLEY. Mr. President, I yield 15 minutes to the Senator from New Hampshire.

The PRESIDENT pro tempore. The Senator from New Hampshire is recognized for 15 minutes.

Mr. GREGG. I thank the Senator from Iowa.

Mr. President, I rise today to express my concerns about the proposal before us. I think it has to be put in the proper context. This is a $400 billion subsidy over the 10 years that it exists, but over the actuarial life of this program, it is a $7 trillion subsidy—$7 trillion. It is not paid for.

Now, I have heard a number of speakers come to this floor and say this drug benefit is paid for by the senior citizens. Well, unlike the past, where seniors paid into their HI accounts, their health insurance accounts, and paid for their Medicare, that is not the case with this drug benefit. This drug benefit will be paid for essentially by working Americans who are working at the time that the seniors who benefit from the drug benefit receive that benefit.

The real concern arises when the baby boom generation, which is my generation, retires, because at that point we are going to have a massive influx of seniors into our system, and the cost that we—my generation—is going to put on the system is going to be dramatic.

It is so dramatic, in fact, that any child born today in the United States immediately arrives with a debt of $44,000, which is what that child will owe during their working life in order to pay for my and my contemporaries'—baby boomers'—benefits under Medicare, and we are going to take that $44,000 debt, which a child who is born today has, and we are going to add, with this bill, an additional $15,000—an additional $15,000—on top of the $44,000. That is why I have concerns about this bill.

I believe we need a drug benefit for seniors, for low-income seniors who cannot afford the drugs which they are presently receiving. I believe we need a drug benefit which addresses the problem of a senior who ends up, because of their drug costs, being wiped out of all their basic assets; a catastrophic drug benefit, in other words.

But while we move down the road toward that type of a drug benefit, we have to, at the same time, reform the underlying Medicare system so that it is affordable, so that my children and the children of other Members of the baby boom generation do not end up paying so much to support health care for us, the retired, that their lives are depredated, that their quality of life is reduced.

Under the bill before us, unfortunately, although it has an attempt to address the low-income issue, and although it has an attempt to address the catastrophic issue, there is no significant attempt to address the reform issue. So the practical effect of this bill is that it puts in place a massive new benefit without any control over the costs of the underlying Medicare system. And the effect of that is that the children of the seniors of tomorrow—basically, my children and my grandchildren and the children of anybody who was born after 1940—will end up paying a huge amount in order to support us in our retirement.

This bill, put quite simply, is the largest intergenerational tax increase in the history of this country, and it should not be sugarcoated. It is a massive tax increase being placed on working, young Americans and Americans who have not yet been born in order to support a drug benefit for retired Americans and Americans who are about to retire, without any underlying reform to try to control the cost so that tax is not so high that it overwhelms the ability of our children and our children's children to live the quality of life that we have lived.

It seems incredibly unfair for one generation to do this to another generation, for us to use our political clout because we are in office to benefit our generation at the expense of our children and our children's children. Yet that is what, essentially, this bill does. It attempts reform, but it does not accomplish reform. It claims to have, in the year 2010, some sort of competitive model, but the competitive model is PPOs. It says it has cost containment, but it really does not have cost containment at all.

Then, in one of the true ironies of the bill, it takes people who already have private plans which are paid for by the private sector and moves those people into public plans, so we end up paying almost $100 billion to subsidize private plans to stay private. What an outrageous approach. First we produce a plan that is going to cost our children $7 trillion over the next 10 years, and then we say we are going to pay $100 billion to the private sector to keep in place plans which they already plan to keep in place. They call that ''reform.'' Very hard to understand.

The way the drug benefit is structured, utilization is obviously going to go through the roof because there is no incentive for people to be conscientious purchasers; there is simply an incentive to go out and purchase. I suppose that is because this is some sort of drug initiative that makes it more likely drugs will be purchased. But to have no cost incentives in place to control the rate of growth of the drug plan through control utilization is foolish.

There are good parts to the bill. There is the savings account, but that is $6 billion. There is a physician increase payment. That is $6 billion. That is $12 billion over the 10 years. We could have afforded that. There is the rural initiative, $25 billion. That gets you up to $40 billion. That is still only one-tenth of the cost of the whole program. We are spending $400 billion over 10 years to do what the plan has valued at $40 billion of quality.

We could have gotten where we wanted to go if we had put in place a reasonable plan for low-income seniors, put in place a catastrophic plan so seniors would not have their income wiped out, assets wiped out by the cost of drugs, and at the same time put in place significant Medicare reform so that at the end of the day our children would know that, yes, they were going to have to pay more for their parents' drug costs but their parents were going to have to be more conscientious purchasers of health care and the health care system that was delivering those drug benefits to their parents was going to be more efficient and of a higher quality.

But that was not the process developed. The process developed, unfortunately, was developed to get us through the next election, to be able to say in the next election, we put in place a drug benefit at the expense of the children of tomorrow who will find during their working lives they are going to have to now pay $7 trillion of unfunded liability to support a program which has essentially no reform and no cost containment in it and, as a result, as I mentioned before, reflects the single largest tax increase in this country that one generation has put on another generation, a grossly unfair act and one that should embarrass us as a Congress and certainly does not fulfill the obligations we have as parents moving toward retirement.

This bill may well be well intentioned. I happen to think it is politically driven. But in the end, the results will be the same, whether it is well intentioned or politically driven. We will have put on the books a program which is going to cause our children and our children's children to have a lower quality of life than we have had. And we, as the people taking advantage of that program, will have been asked to take no actions that are responsible in the area of containing the costs of our health care delivery system.

As Republicans, we should be affronted by this. It goes against everything our party has always stood for, which is that government should be delivered in a responsible and efficient way—not in a way that simply throws money at an issue for the purposes of political gain. Unfortunately, we have chosen that second path in this bill and in the process we will be passing a tax increase that will cause our children and our children's children to have less of a quality of life than we have had.

I yield back the remainder of my time.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I make an announcement to Democrat Senators. I have spoken and said this time will be set aside for those who are opposed to cloture, but I think that is too restrictive. We want to make sure there is good debate this morning. Some people

have not had an opportunity to speak, so our time will be for those who are opposed to the legislation, the bill itself. They can make up their mind whatever they want to do on cloture.

I ask unanimous consent that the names I read before—Senators AKAKA, LAUTENBERG, DODD, KERRY, LIEBERMAN, CLINTON, MIKULSKI, PRYOR, and KENNEDY—all be allotted 9 minutes, the amount of time on the Democratic side that they would be entitled to, and no more. I ask consent that that order be entered.

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

The Senator from Arkansas.

Mr. PRYOR. Mr. President, I rise today to express my opposition to this bill, a Medicare prescription drug benefit in name only that has very few benefits for the seniors in my State. In June of this year, I voted for a bipartisan Senate bill which, while not perfect, was a good step toward providing our seniors with the prescription drug help they need.

Let us be clear. This legislation does nothing to lower the cost of prescription drugs. The Congressional Budget Office says this legislation will actually cause prescription drug prices to increase by 3.5 percent. Under this legislation, Arkansans will not be able to reimport cheap FDA-approved drugs from other industrialized countries, and this legislation expressly prohibits the Federal Government from negotiating with drug companies to bring down the high cost of prescription drugs.

This means that our seniors will continue to pay more for their prescription drugs than anybody else in the world. It means they will continue to pay much more for their drugs than do our neighbors in Canada.

This means that a woman in America suffering from breast cancer will continue to be charged over $90 a month to take tamoxifen, while the same drug, made by the same company, can be bought in Canada for $22 for a month.

This means that people in my State will continue to pay: 37 percent more for cholesterol controlling Lipitor; 50 percent more for the anti-depressant Paxil, and 58 percent more for the arthritis drug Vioxx.

For the last decade drug spending has been driving up the cost of health care and placing affordable coverage out of reach for many Americans. We finally got our chance to help these seniors by lowering the cost of prescription drugs, but this bill wastes that opportunity.

It is bad enough our seniors are getting gouged by artificially high prices in the United States. I strongly believe we need to fix that. But now, with the passage of this bill, if indeed it passes, we are talking about taxpayers' dollars. Not only is it the right thing to fix it, it is our duty that we fix it.

Under this legislation, thousands of Arkansans will be worse off than when they started. According to the CBO, 2.7 million Americans are expected to lose their retiree health care benefits as a result of this legislation. That includes 19,000 Arkansas seniors. In addition, under this bill, 109,100 Arkansas Medicaid beneficiaries will receive worse coverage than what they get now and they will face considerable new restrictions on the drugs they can take.

Mr. President, 40,750 fewer seniors in Arkansas will qualify for low-income protections against the assets test and lower qualifying income levels. I, for one, do not believe that rural Americans living on a farm should be penalized because they own a tractor or other farm equipment. And 11,020 Medicare beneficiaries will pay more for Part B premiums because of income.

This bill also starts us down the treacherous path to dismantling Medicare as we know it. It takes $12 billion away from Medicare and gives it to private insurers and then forces Medicare to compete with heavily subsidized HMOs.

This allows private insurers to cherry-pick the healthiest and wealthiest people to their plans while leaving the poorest and the sickest in Medicare to pay more in premiums. People need to know that this bill was written to accommodate 400 corporate lobbyists, many of whom work for the pharmaceutical industry. It amazes me that we would seek permission from the pharmaceutical lobby before we would do the right thing for the people we represent. It amazes me even more that 400 lobbyists have more influence over Congress than the 40 million people who are currently enrolled in Medicare.

People need to know that the pharmaceutical industry is going to be handed a taxpayer-subsidized windfall with the passage of this bill. Analysts at Goldman Sachs project the new Medicare benefit could increase industry revenue by 9 percent or about $13 billion a year. And it is no coincidence that as details of this legislation began leaking out, pharmaceutical stock prices have risen steadily. In the last week alone, the value of Pfizer's stock increased by $19 billion.

I direct my colleagues to this bar graph behind me. The large bar represents Pfizer and the $19 billion they have increased in worth over the last week. Now look at the other bar, this little bitty bar, this small bar that you may have to squint and look closely to see because there isn't much there. This bar represents the entirety of the cost savings provisions related to generic drugs and reimportation. Seniors will save over the next 10 years $.06 billion. To reiterate, we have a $19 billion increase in the value of a company over 1 week, and a $.06 billion savings for seniors in the Medicare system over 10 years.

It is very easy to figure out who are the real winners and who are the real losers in this bill. Let me say in conclusion, there are some people in this body who believe we need this bill right now because the seniors have been waiting such a long time. They have. But from the seniors I have talked to personally when I was home in Little Rock over the weekend, to the hundreds who have called my office in the last week, they don't just want to get it done. They want us to get it done right. There is a big difference in just getting this bill done and getting it done right.

They want more than hollow promises that this legislation offers. My plea is simple: Let's get it right so that our seniors can finally have a real benefit. The bill we are voting on today will wind up doing more harm than good.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield 5 minutes to the Senator from Wyoming. I urge people who are proponents of this bill and want me to yield them time to be here. When there is not anybody here, I will use some of that time, but I am very glad to quit and put my statements in the RECORD to accommodate my colleagues. It is just a case of if we don't want to waste any of this valuable time, get over here.

Mr. REID. Mr. President, if the Senator will yield, I would say the same thing. We have a long list of people who have said they want to come. When our time is called and we are not here, that time will run off of our time. So the 9 minutes people have, that time will be limited. If people come and want extra time, I would have to object to protect other Senators.

The PRESIDENT pro tempore. The Senator from Wyoming is recognized for 5 minutes.

Mr. THOMAS. Mr. President, first let me thank the chairman of the committee who has worked so hard in bringing this proposal to the Senate floor. Not only has this been a part of his activity lately, but also the Energy bill. The Senator from Iowa deserves a great deal of support for what he has done.

I am very pleased to support this first real opportunity that we have had to modernize and strengthen Medicare, the first time in over 30 years. I am a little surprised at how negative some of our friends are in terms of being able to take this opportunity. Nobody suggests everything is perfect in this bill, but there is a lot of good in this bill. It is our opportunity to move forward and put in a program for the future.

Congress has no greater domestic challenge than strengthening and modernizing the Medicare Program and providing seniors with access to prescription drugs. Remember that the House and the Senate both passed a Medicare prescription drug bill earlier this year. It has taken Congress years to get to this point. This bill is not perfect, but I don't think we should miss this opportunity to take some good steps in bringing Medicare into line with modern medical practices. We can't allow the opportunity to pass

that will give us a chance to provide seniors with prescription drug access. We can't let that slip through our fingers because of partisan politics. Access to new technologies in Medicare currently takes an act of Congress. That is no way to run a program that cares for our elderly. We need to have a modern program in place. We need to improve the quality of care for our sickest seniors and ensure they have access to appropriate medications.

The current Medicare Program is outdated and inefficient. There is absolutely no effort to coordinate care for seniors with chronic illnesses with the most expensive prescription drug needs. Over 90 percent of Medicare dollars are spent caring for folks who have already gotten sick, the most expensive type of care. We only spend 10 percent of Medicare dollars on preventive medicine. We need to focus on those folks as 6 percent of the seniors account for 55 percent of Medicare costs.

Private plans are already making progress in implementing coordinated care programs. Medicare needs to catch up. This is our opportunity to not only allow for that but to provide for that.

It doesn't make sense that Medicare today will pay for extended hospital stays for ulcer surgery at a cost of about $28,000 per patient but will not pay for drugs that eliminate the cause of ulcers, drugs that cost about $500 a year. Another example how out of step with modern medicine Medicare has become is that it will pay many of the costs to treat a stroke which can be as high as $100,000. Yet Medicare does not cover blood thinning drugs that could prevent strokes that cost less than $1,000 a year.

We need to strengthen the Medicare Program and provide seniors with the ability to choose the type of health care plan that fits their individual needs, protections against catastrophic health costs, and assistance in purchasing necessary prescription drugs. We also have to ensure rural seniors have access to the same choices as urban seniors. The Federal Employees Health Benefits Plan has proven to be a good model for giving folks the same health plan choices no matter where they live. I plan to monitor the implementation of the new Medicare Advantage plans, PPOs, to ensure that rural seniors have access to the same type of choices as urban seniors. While it is true this bill currently fits within the $400 billion that has been set aside in the budget for Medicare, we all have concerns that it will cost more money than we anticipate.

It is important that we monitor spending carefully or we will be placing a huge burden on our children and grandchildren. There are specific cost containment provisions that do the following: Trustees are required to notify Congress when general revenues are used to fund 45 percent of the Medicare Program. If this situation is reported 2 years in a row, it is called Medicare funding warning. After a Medicare funding warning is issued, the President must submit a proposal to respond within 15 days of submitting his budget. An expedited legislative process is then laid out.

So it has taken years for Congress to agree to spend this $400 billion in Medicare. It could easily take another decade for Congress to learn how to control Medicare spending.

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. GRASSLEY. Mr. President, I yield the Senator 3 more minutes.

The PRESIDENT pro tempore. The Senator is recognized for 3 more minutes.

Mr. THOMAS. Mr. President, I thank the chairman. As I said, I happen to be cochair of the Senate rural health caucus. We have worked on provider equity issues for a very long time. We have introduced over time several pieces of legislation with our rural colleagues that comprehensively address the payment disparity in the Medicare Program for rural providers, hospitals, physicians, ambulances, home health agencies, and rural health clinics.

The majority of our health care plan has been incorporated into this Medicare prescription drug plan that is now before us, thanks very much to the chairman and ranking member. I am extremely pleased with the rural health provisions and thank Senator GRASSLEY and Senator BAUCUS for their work. The rural hospital provisions in the Senate Medicare bill will make the equalization of the standardized amount permanent to hospitals; it will equalize Medicare disproportionate share payments. These payments assist hospitals where a large number of uninsured patients show up; it will lower the labor-related share from 71 to 62 percent.

Hospitals with fewer than 800 annual discharges will receive a 25-percent increase. It strengthens the Critical Access Hospital Program. In my State, for instance, many of the small towns cannot afford full-service hospitals, and we are moving toward critical access. This does a great deal with that issue.

The bill provides flexibility within the 25-bed limit for acute care and swing beds.

Not only is this a general movement forward with regard to Medicare and pharmaceuticals, but it does level the playing field for urban and rural areas.

I ask my colleagues to keep the big picture in mind as we debate this legislation. Seniors need assistance with prescription drugs now. Also, our rural health care delivery system cannot afford to wait for Congress any longer.

This bill is not perfect. No one said it is. We have concerns about the cost, but as I stated, we have plans to monitor the PPOs, to monitor the costs, to ensure seniors in rural areas have choices.

I do not believe we can walk away from the opportunity that is now on the table and its importance to seniors and providers. For these reasons, I strongly support the proposal before us.

I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Massachusetts.

Mr. KERRY. I thank the Chair.

Mr. President, the real test of this bill, in the final analysis, is what it is really going to do for the senior population of the country. I know the arguments have been made forcefully that it is going to take $400 billion and give seniors something. But the test is not whether we are going to give them something, the test is whether or not we are going to do more harm than good.

I believe when we measure the overall impact of this legislation on seniors and on the overall Medicare system, the bottom line is this does more harm than good. That is why I believe the Senate should stop the bill where it is.

Obviously, we would like to pass a prescription drug benefit. All of us want that. This bill could be better. It could be better by being closer to what was sent out of the Senate which had the support of my colleague, Senator KENNEDY, and others because it did more good than harm. But this bill moves in the wrong direction because while it was in the conference with the House, it was loaded up with major giveaways to the drug companies, insurance companies, and has put some measures in such as the restraint on the ability of the Federal Government to even negotiate for bulk purchases and thereby lower costs, which is an extraordinary reduction in the ability of the Government to try to constrain the costs overall of prescription drugs.

These are the reasons I think this bill does more harm than good:

No. 1, the prescription drug benefit for many is not affordable, it is not comprehensive, and it is not guaranteed. There are holes in coverage and complex rules. The coverage gaps remain too high, and seniors are still charged premiums even after their benefits shut down in the so-called donut hole.

Seniors are not assured a Government fallback plan with a set national premium. So if there are places where you don't have HMOs or there are other problems, they are going to have increases in their premiums under Medicare. It seems we ought to have a fallback with some sort of fixed price that will be affordable. At least 3 million seniors are projected to lose their gold-plated retiree prescription drug plan and be forced into a lesser benefit under the Medicare plan.

The bill fails to adequately fix protections for low-income seniors and people with disabilities who currently rely on both Medicare and Medicaid for their coverage. That could cause as many as 6 million people to pay more money for fewer benefits.

For seniors who think this bill is only designed to give them new benefits, they are going to be shocked to

find that this legislation actually raises $25 billion in new revenue directly out of the pockets of senior citizens by increasing the costs for traditional Medicare coverage of doctor and hospital visits.

They will also be surprised to find out that while we are in such a rush to pass this bill, the benefit is not actually going to come to them until 2006. In the meantime, seniors get a disingenuous discount card. Most of them have four or five of the cards today anyway with the same amount of reduction, and it will give them no more discount than any of those handful of cards available to them in the marketplace now.

The question ought to be asked: Why are we not beginning a Medicare prescription drug benefit until 2006? It took 11 months to put the entire Medicare Program in place. Are we telling seniors we can't, in the age of computers, put a prescription drug benefit in place in a matter of months? Why 2006?

We all understand why. It has to do with the private companies and their taking time to ramp up, the amount of money they are going to get, and the unaffordability today.

One of the biggest failures of this bill is its silence on controlling the rising prices of prescription drugs. Without an effective means to restrain double-digit drug price increases, this bill does nothing to protect seniors from ever-growing out-of-pocket costs. When they are pushed off Medicare into HMOs and the HMOs raise the prices, seniors are going to be screaming about the increased cost of prescription drugs.

This bill prohibits the Government, as I mentioned earlier, from using its bulk purchasing power to negotiate volume discounts for Medicare prescription drugs. That doesn't make sense. In the State of Maine, they have done that with good results. It is interesting, they were taken to the Supreme Court and challenged in their right to do that, and the Supreme Court upheld their right to do that. As a consequence, they are able to provide more affordable prescription drugs to their citizens.

This bill is more about shifting medical costs to beneficiaries than actually reining in prescription drug costs.

In the name of private competition and to prevent the Federal Government from running the program, the Republicans came up with an unprecedented $12 billion slush fund to entice private plans to participate in this risky market. On top of giving them extra payments to participate, the bill does nothing to require that those private plans operate efficiently.

The Medicare Program in its entirety now spends only 2 percent of its total expenditures on administration. By contrast, many of the health plans in the private market often commit as much as 15 to 20 percent of their expenditures to administration. So every dollar that goes to administrative costs is a dollar not available to improve benefits for Medicare beneficiaries. Smart stewards of taxpayer funds ought to demand that private plans be more efficient if they want to participate.

So this bill is not just about adding a prescription drug benefit to Medicare, it is also a bill that represents an ideological excess by some who want to force the traditional Medicare Program down the path to privatization.

Under this bill, 7 million seniors will be given this choice: pay more for Medicare and get forced into an HMO, give up on choosing your own doctor and hospital or watch your bills skyrocket. This so-called premium support provision is, in my judgment, irresponsible and unfair.

The so-called cost containment provisions add insult to injury. By essentially placing a cap on future Medicare spending, this bill is going to attempt to force future Congresses to reconcile Medicare spending growth by cutting benefits, raising premiums, or increasing the payroll tax. I think that is unacceptable.

In addition, this bill squanders another $6 billion on tax breaks for wealthy people, and that is going to have an impact in harming Medicare. The reason is that when a tax-free, high-deductible, catastrophic health policy, known as a health savings account, is created, it is principally going to be used by those who have the money who can afford it. The result is it is going to undermine traditional Medicare by cherry-picking the healthiest people and the wealthiest seniors out of the risk pool, thereby raising premiums by as much as 60 percent for those who are left behind.

In the end, we have to ask ourselves who wins and who loses in this bill. I think I have shown how seniors lose. So who wins? Well, insurance companies, pharmaceutical companies, lobbyists, and special interests of every stripe: A $125 billion to $139 billion bonanza, and the stock market confirms it. My hope is we will go back to the table and come up with a measure closer to what the Senate originally did.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, it is my privilege to give 5 minutes to the Senator from Montana, Mr. BAUCUS, whose cooperation with me and, hopefully, my cooperation with him has made this bipartisan agreement on Medicare possible to bring about what we need to do for seniors.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. BAUCUS. Mr. President, with all due respect, while listening to some speakers, including the previous speaker, I would ask what bill they have been reading. It seems that they are referring to a bill which is not the conference report before us today. They are discussing problems that might occur in the future. But the problems described are based on some other bill, not the bill before us, not the conference report.

The fact is that this legislation provides $400 billion for seniors. That is a $400 billion entitlement for U.S. seniors that they do not have today. I think we owe it to our American seniors to give them this $400 billion new entitlement for drug benefits. We are on the brink. We are close to passing it.

In each of the last several years, we have come close but we were not able to finish the job. I do not think we are going to have this opportunity again. I do not think the Budget Committee is going to set aside $400 billion again, particularly with the increasing budget deficits and current account deficits. We will not have this opportunity again.

This is a good bill. No bill is perfect. We are 535 Members of Congress. There are 535 people who have to work together to get something passed. This product before us today reflect this reality. It is $400 billion for seniors.

It is also much closer to the Senate bill than the House bill. I hear complaints that the conference report is not nearly as good as the Senate bill. These critics have not read the conference report. The conference report is better than the Senate bill in many respects. For example, dual eligibles. The conference report covers low-income dual eligibles through Medicare. I think most Senators agree this is a better policy than what was in the Senate bill.

We also have a solid fallback. It is wrong when Senators say there is no guaranteed prescription drug benefit to seniors. It is guaranteed in this bill. Fee for service is held harmless in this bill in all respects. So a senior can always get a standard prescription drug benefit under this bill. Whether one takes it from a PDP, a private drug plan, a PPO, or the fallback, this benefit is guaranteed for all seniors. Seniors will get their prescription drug benefits in this bill. It is guaranteed.

As I mentioned earlier, this benefit is an entitlement. It is a $400 billion entitlement expansion we have tried to pass in past years but are only able to get passed now.

I have heard some Senators claim that this is not the Senate bill because it contains something called premium support, and it has a so-called slush fund. Let me remind Senators, the so-called premium support is extremely watered down from what was in the House bill. It is time limited to 6 years. Only six cities will be demonstration projects. Low-income seniors in each of those six cities will be held harmless. They get full protection. In addition, the premiums for those who are not low income are limited to a 5 percent change. Fee for service Medicare is held harmless in all respects in those six cities where there may be a demonstration project. They are held harmless in all respects, except the

Part B premium may go up by no more than 5 percent. Any other change in these demonstration areas has to be enacted by Congress—enacted by to Congress to extend, enacted by Congress to expand, enacted by Congress to change.

What has happened in the past when we have had these demos? They have been repealed. They have not been extended. In 1997, Congress set up premium support demonstration projects. Congress then rushed in to repeal them as quickly as they possibly could. They were gone. The same will happen here. Do my colleagues know why? Because the dollars provided to private plans in the premium support demonstration areas will be much less than in other parts in the country. The private plans will not be able to survive.

Mark my word, those plans, those physicians, and those providers in the demonstration MSAs are going to come to Congress and ask us to repeal it.

Regarding this so-called $14 billion slush fund, $12 billion was in the Senate bill, which seventy-six Senators voted for. This is just $2 million more, and it does not come out of the $400 billion for drug benefits. That $400 billion for drug benefits is still there, but the conference report does have $2 billion more than the Senate bill, for which 76 Senators voted.

To close, I will return to my main point. This is a very good bill. We have the opportunity now to provide prescription drug benefits for seniors. We are not going to have this opportunity in the future. Beneficiaries have waited a long time for this benefit. This bill is much closer to the Senate bill than it is to the House bill. If we do not pass this now, I must ask you, what are we going to tell our seniors when they say to us, Mr. Senator, Ms. Senator, you told us you were going to give us prescription drug benefits but you found some reason to say no and you voted against it and did not give it to us; why did you give us the help you promised?

We have an obligation to help our seniors pass this legislation.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise to talk about the bill before us.

When the Senate first voted on a prescription drug benefit for seniors back in June I offered an amendment. My amendment was simple. I proposed that we give seniors a prescription drug benefit sooner rather than later. But that amendment was voted down by the Republican majority.

So now, under this conference report, the drug coverage doesn't start until January 2006 23 months from now. Yes, 2006.

So why so long? One clue is illustrated on this chart. Notice that Election Day is 11 months from now. And notice that the prolonged effective date for the drug benefit is conveniently well past election day.

I would like to remind my colleagues that the original Medicare plan was signed into law by President Johnson on July 30, 1965 and 11 months later July 1, 1966—all the people who were eligible for the program were enrolled in the program.

The entire system was created from scratch in 11 months.

I know the President is desperate to take credit for passing a prescription drug bill when he faces voters next year. But he does not want the many shortcomings in this plan to be fully evident to seniors until well after the election. My Republican friends are hoping that seniors won't find out what they don't get from this legislation until it is too late. It is almost a cruel joke.

When a prescription drug benefit is signed into law, all of our offices will be flooded with calls by seniors asking a simple question: ''How can I sign up for this benefit?'' They will have seen President Bush sign a bill with great fanfare, and they will have seen many Members of Congress crowding the stage with him, and everyone will say ''we have put a prescription drug benefit in place.''

And when seniors call to find out how soon they can receive the benefit, we will have to tell them ''2006.'' Sorry, President Bush's 2003 Medicare Prescription Drug plan will not start until 2006.

No one wants to provide a real Medicare prescription drug benefit to seniors more than the Democrats. After all, Democrats created Medicare, and we have protected it for decades.

Everyone knows that Republicans resisted the creation of Medicare and have opposed it ever since. It wasn't too long ago that former House Speaker Newt Gingrich expressed his desire to see Medicare ''wither on the vine.''

Well, the bill before us today is the first major step toward the disintegration of Medicare as we know it.

In reality, this bill isn't as much a benefit for seniors as it is a big benefit for HMOs and other private sector special interests who want to tear the Medicare program to pieces.

So, what is it specifically that the President is afraid seniors will find out before 2006?

Is the President afraid that seniors will realize they are going to pay at least $810 before they break even and get any benefit from this plan?

For many seniors that is more money than they spend on prescription drugs right now. Up to 30 percent of beneficiaries would pay more for enrolling in the plan than they would receive in actual benefits.

Is the President worried that seniors are going to discover that there is a huge gap in coverage?

Under this plan, a senior will pay a premium estimated at $35 a month, a $250 deductible, and 25 percent coinsurance payments until reaching $2,250 in drug expenses. What happens then? Seniors get no coverage. You heard me correctly nothing, zero.

That is right. At that point, seniors will continue to pay their premiums but they will also pay 100 percent of their drug costs. Only until they have reached the catastrophic limit of $5,100 in drug costs does any benefit return. And by that time, seniors will have incurred $3,600 in out-of-pocket spending. This is called the ''hole in the doughnut'' and it sure doesn't sound like such a good deal to me.

And remember that nowhere in this bill does it say that the premium is only $35. It could be significantly higher. The $35 figure is an estimate. We all know how good this administration has been at making estimates.

Is the President afraid that seniors will figure all this out? You bet he is.

Seniors deserve a much better program than what the Senate is considering right now, and they certainly deserve it before 2006.

There are some who will say we must have this gap in coverage because we only have $400 billion to work with. Well, I say if there are insufficient funds in the budget to give seniors real drug coverage, then it is the result of choices made by the President and his party. They chose to provide a massive tax cut to the wealthy the people who need it least and they chose it at the expense of Medicare.

What else is in this bill that the Republican's don't want seniors to find out about until 2006?

This bill will effectively destroy the Medicare program that has worked for almost 40 years. That is right. Say goodbye to Medicare as we know it.

This bill does not expand Medicare; it opens the door for HMOs to take over the program. And that means that seniors will be at the mercy of these HMOs. And as everyone knows, HMOs will not pay for all prescription drugs.

Under this bill, seniors will be limited to the prescription drugs covered by their drug plan or HMO. In order to keep costs down, these drug plans and HMOs will use something called a ''formulary.'' A formulary is a list of drugs that are covered under the health plan. If a particular drug is not on the formulary then it is not covered.

That means that after a senior has paid her premium and her deductible if she needs a certain medication not on the list used by her drug plan or HMO, then she will pay 100 percent of the cost of that medication.

Where is the benefit in that?

Mr. President, this bill goes to great lengths to prop up and protect HMOs at the expense of seniors. Included in this bill is something called the ''Stabilization Fund.'' It should be called the ''HMO Slush Fund.'' This fund is designed to ensure that HMOs succeed by offering artificially lower premiums and better benefits than traditional Medicare. This bill hands over $12 billion of taxpayer money for this effort.

This is $12 billion that could be used to close the coverage gap or lower the deductible but our Republican friends have made a choice to create a $12 billion slush fund for the insurance industry.

I want to spend a few minutes talking about the overall impact of this bill on seniors in the State I represent—New Jersey.

The most important reason why I am voting against this bill is because I am convinced that more seniors in my State will be hurt by this legislation than helped.

There are approximately 1.1 million seniors in New Jersey.

Currently 430,000 New Jersey retirees receive prescription drug coverage from their former employers. Because this bill provides a disincentive to employers to continue offering coverage to retirees, over 90,000 seniors in New Jersey will lose their existing drug coverage, which often offers more generous benefits.

This bill is also going to make poor seniors in my State worse off. In New Jersey, Medicaid covers the drug costs for seniors up to 100 percent of the federal poverty level. That is an income of approximately $9,000 a year for an individual or $12,000 a year for a couple.

In New Jersey, low-income seniors currently on Medicaid have access to whatever drugs they need and they don't have any co-pay for their prescriptions. Under this bill, however, they will now pay $1 per prescription for generic drugs and $3 per prescription for brand name drugs.

Low-income seniors tend to be in worse health and, as a result, they have higher annual drug spending. A senior with an annual income of $7,000 or $8,000 simply doesn't have the discretionary income to shell out $15 or $20 or $25 for the prescriptions that he or she may need.

That may not sound like a lot of money to my colleagues, but for low-income Americans, it can force them to choose between buying medication and buying food or buying medication and keeping the heat turned on in the winter.

Mr. President, this bill represents an enormous opportunity squandered. We had a real chance to do something right here. We had $400 billion to improve the lives of 34 million seniors, 14 million of whom don't have any prescription drug coverage right now. Frankly, we blew it.

When I look at this bill, I see a bill that makes seniors in New Jersey worse off.

I see a bill that makes poor seniors worse off.

I see a bill that takes away choices from seniors.

I see a bill that wastes taxpayer money on a slush fund for HMOs.

I see a bill that ''hides the ball'' until 2006.

And I see a bill that I cannot, in good conscience, support.

I yield the floor.

Mr. GRASSLEY. Mr. President, let me inquire of the Democrats. Could we have a Democrat speak?

Mr. REID. Senator AKAKA is here and raring to go.

Mr. GRASSLEY. Thank you very much.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise today to express my opposition to the conference report for H.R. 1, the Medicare Prescription Drug and Modernization Act of 2003.

For far too long Medicare has lacked a prescription drug benefit. The lack of this benefit has been the gaping hole in the Medicare safety net. I have consistently supported efforts to establish a meaningful Medicare prescription drug benefit. I supported S. 1, the Prescription Drug and Medicare Improvement Act of 2003, because it would have been an important step forward in meeting the prescription drug needs of seniors. I am extremely disappointed that instead of making improvements in the Senate-passed bill, the conference report is now a false promise to our seniors. Mr. President, the conference report contains too many flaws to warrant passage. The conference report lacks appropriate prescription drug coverage for seniors. Indeed, many seniors will be worse off under this proposal. The conference report also weakens the existing Medicare entitlement program.

The prescription drug coverage in this legislation is simply not comprehensive enough. Too small an allowance is provided within the legislation to establish a meaningful prescription drug benefit for seniors. Instead of reducing the size of the coverage gap, the conference report would require that seniors pay for all of their drug costs after their total drug spending reaches $2,250. Despite continuing to pay their premiums, they will not receive any additional support until they spend about $5,000. This gap is about twice as large as the gap that was contained in the Senate-passed bill. Why should seniors have to continue to pay premiums when they do not receive any benefits if they are in the gap? This coverage gap must be filled.

Mr. President, for too many seniors in Hawaii and across the nation, prescription drug coverage will be worse under the provisions in the conference report. Seniors who are currently provided prescription drugs through their state's Medicaid programs will have federally mandated copayments imposed on them. For example, Hawaii's seniors who have incomes of less than 100 percent of the poverty level and obtain their medications through Hawaii's Medicaid program will be worse off under this plan. They will now have to pay copayments to get their prescription medication. Hawaii's seniors are not alone. The Center for Budget and Policy Priorities believes that most of the 6.4 million individuals that have dual eligibility for Medicare and Medicaid will be charged more under the conference agreement for medication than under existing law.

I am afraid that too many low-income seniors will not be able to afford even these meager copayments. Those who cannot meet these copayments will be denied access to the medications they are currently being provided. Again, they will go without the treatment they need. In addition, the financial burden that the conference report places on states may lead to a reduction in other Medicaid services that states will no longer be able to afford, because of the substantial share of prescription drug costs that states will have to pay the federal government for seniors who are eligible for Medicare and Medicaid.

Mr. President, I am also concerned about the millions of retirees that will lose their existing coverage. We have seen over the past few years that there has been a disturbing trend of reducing benefits for retirees. Creating this voluntary benefit will only accelerate this trend. The intent of the legislation is to expand prescription drug coverage for seniors, not merely to shift the financial burden of existing coverage to the federal government. Many seniors will be forced to rely on Medicare, which will provide a less generous benefit than what they currently enjoy. It is estimated that 17,850 Medicare beneficiaries in my home state of Hawaii will lose their retiree health benefits as a result of the enactment of this legislation. If Medicare beneficiaries lose their employer-based coverage, they may have to pay more for a Medicare drug benefit that provides less comprehensive coverage. Despite the subsidies included in the conference report to encourage the continuation of existing coverage, it is estimated that approximately 2.5 million people will lose their coverage.

Mr. President, I along with Senators WARNER, ALLEN, MIKULSKI, SARBANES, JOHNSON, and CORZINE requested that the conferees include our bill, S. 1369, in the conference report to ensure that present and future federal retirees receive the same level of prescription drug coverage. The government's Federal Employee Health Benefit (FEHBP) program for its employees and retirees stands as a model for all employer-sponsored health care plans. Our legislation would protect prescription drug benefits for federal retirees by ensuring parity for these benefits with other FEHBP subscribers. The other body approved companion legislation, H.R. 2631, on July 8, 2003. While the Medicare reform bill includes subsidies and tax credits to employers who retain existing drug benefits for their retirees, such incentives provide no guarantee of the FEHBP drug benefit for the government's own annuitants. If FEHBP is the model for this reform, the federal government must not drop or reduce drug benefits for retired FEHBP enrollees. Our legislation sends a message to other employer-sponsored plans that the federal government stands behind its commitment to retired workers. I will continue to work to bring about the enactment of this bill.

Mr. President, the cost containment provisions in the legislation provide a fast-track legislative process to cut Medicare benefits if general revenue funding for the entire Medicare program exceeds 45 percent. This arbitrary process is included while more meaningful provisions to control the costs of prescription drugs were left out. The conference report prevents the federal government from using the bargaining power of 40 million senior citizens to

bring down the cost of prescription drugs for the Medicare program.

Mr. President, the conference report weakens Medicare. It imposes means tests for Medicare Part B premiums and for low-income subsidies for the prescription drug benefit. This is the beginning of the end of Medicare being as a universal benefit. This is the first step towards means testing other parts of the existing Medicare program. Means tests place greater burdens on seniors. They also create administrative difficulties for the Centers for Medicare and Medicaid Services.

Even more objectionable is the assets test used to determine the low-income subsidies for the prescription drug benefit. The assets test is completely unrealistic. According to Families USA, the assets test will deny subsidies to 2.8 million very low-income seniors if they have even a small amount of assets. For example, the assets test disqualifies people who have household goods and personal effects worth more than $2,000. Medicare is an entitlement and participants should not be subjected to these demeaning means tests. Additional assistance should not be denied because they happen to have set money aside for future expenses.

Mr. President, this legislation also threatens existing Medicare benefits because it includes billions of dollars for subsidies for private plans. This increases premiums for seniors, raises government costs for health care, and damages the solvency of the Medicare trust fund.

Mr. President, I also want to express my disappointment that language similar to an amendment that I had offered, which was accepted as part of the manager's package for S. 1, was not included in the conference report. While I thank Chairman GRASSLEY and ranking member BAUCUS for their assistance with this provision, it was not included in the conference report. My amendment would have allowed my home state of Hawaii to benefit from the increase in Medicaid disproportionate share hospital (DSH) payments included in the bill. Medicaid DSH payments are designed to provide additional support to hospitals that treat large numbers of Medicaid and uninsured patients. The Balanced Budget Act of 1997 (BBA) created specific DSH allotments for each state based on their actual DSH expenditures for fiscal year 1995. In 1994, the State of Hawaii implemented the QUEST demonstration program that was designed to reduce the number of uninsured and improve access to health care. The prior Medicaid DSH program was incorporated into QUEST. As a result of the demonstration program, Hawaii did not have DSH expenditures in 1995 and was not provided a DSH allotment.

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 made further changes to the DSH program, which included the establishment of a floor for DSH allotments. However, states without allotments were again left out. Other states that have obtained waivers similar to Hawaii's waiver have retained their DSH allotments. Only two states, Hawaii and Tennessee, do not have DSH allotments.

The conference report provides that states without DSH allotments could receive additional assistance if their waiver was terminated or removed. While this may possibly benefit Tennessee, this language will prevent Hawaii from obtaining any additional Medicaid DSH support that is included in this bill. The conference report includes an additional $6.35 billion in Medicaid DSH relief to the states. Hawaii does not receive any of these funds. Hawaii's hospitals are struggling to meet the healthcare needs of the uninsured. Hawaii cannot continue to be left out. Additional DSH payments would help Hawaii hospitals to meet the rising health care needs of our communities and reinforce our health care safety net. All fifty states need to have access to this additional Medicaid DSH support. I will continue to work to correct this inequity.

Mr. President, as I said at the start of my remarks, this legislation is a false promise. Even if this conference report is enacted, we will need to enact follow up legislation to address the flaws in the bill. We will also have to repeal several of the provisions that weaken the existing Medicare program. Many have said this is an important step forward in the Medicare program. I disagree. This conference report takes too many elderly Americans backwards in terms of their benefits to constitute forward progress or forward thinking. Many people, particularly seniors, will eventually come to the conclusion that I have reached on the legislation and Congress will regret this rush to judgment. After reviewing the provisions in this legislation, I am disappointed that this bill is a false promise that undermines the existing Medicare program. Thank you, Mr. President.

Mr. GRASSLEY. I yield myself 30 seconds, before I yield to the Senator from Maine 7 minutes, for just a little bit of history and to applaud the Senator from Maine.

She was active in this issue of Medicare prescription drugs a long time before I was. But on July 25, 2001, we held our first meeting of what was called the tripartisan group. She was obviously part of that tripartisan group along with Senators HATCH, JEFFORDS, BREAUX, and GRASSLEY.

I remember that meeting we had. The AARP sent us a birthday cake with a pie-shaped piece cut out of it. Their admonition to the tripartisan group was: Fill in the missing piece. The missing piece of Medicare was prescription drugs.

The Senator from Maine has been very aggressive since July 25 in various ways, helping us fill in that piece of the pie. On August 1 of that year, we held a news conference, all five of us, announcing our plans for doing that. We have not exactly come out where we were a year ago. We probably have come out a lot better with the legislation we have before us. But regardless, the Senator from Maine was in on the ground floor, a long time before I was, on that issue.

I yield to the Senator from Maine 7 minutes.

Ms. SNOWE. Mr. President, I thank the chairman for his most gracious remarks. As I said on Saturday, without his considerable efforts, determination, leadership, and willingness to work across party lines, we would not be where we are today. I want to congratulate him and commend him for the enormous leadership and support he has given to this issue as the chairman of the committee and throughout this process that has obviously been a difficult one.

I had the opportunity on Saturday to elaborate on my views with respect to this conference report. I think we are on a precipice of opportunity and ushering in a new era in the Medicare Program. While this conference report does not rise to the level of everyone's aspirations and expectations when it comes to prescription drugs, I think we have to understand that this report was melding some very disparate views in very disparate bills. We must, in the final analysis, measure these results for the millions of seniors who will benefit against the benchmark of the stagnation of the status quo.

The question is whether the status quo was preferable. Someone said you may have to fight a battle more than once to win it. We know how many battles we have fought on this issue over the last 5 or 6 years. How many more battles and how many more years will have to go by and at whose expense? I think we know at whose expense. It will be at the expense of the 10 million seniors who do not have prescription drug coverage currently. It will be at the expense of the 14 million seniors who are under the 150 percent of poverty level, who will now get a very generous level of support and subsidy to finance this most vital drug coverage.

This conference report embraces many of the critical benchmarks that we had established previously, the ones to which Chairman GRASSLEY was referring with respect to the tripartisan bill that should have passed last year, a year ago. I was urging the Senate to pass that legislation. We lamented the loss of that opportunity, but that time has passed.

The Senate-passed bill was something we all preferred; there is no question about it. But I think we also understand the nature of conference committees. The key point to remember about this conference report is that it embraces the critical benchmarks and principles that we all championed: The prescription drug benefit would be universal, it would be voluntary, it would be permanent, it would be comprehensive, it would be affordable, there would be equal benefits across all

plans, there would be a Government fallback to ensure that every senior, regardless of where they live in America, would have access to affordable drug coverage, and we would target the most assistance to those most in need.

While this is not everything it could be or should be, we have to measure the results against the status quo.

I would like to focus for a few moments on one of the issues that has been talked about consistently and understandably so, the privatization of Medicare. There is no question that I certainly would not support anything that would lead to the privatization of Medicare. In fact, the Senate-passed bill had nothing in the feature of a premium support proposal. Now we have to discuss what is before the conference and what has actually changed from what was in the House-passed legislation. I think it is critical that we understand the differences in what is included in this conference report. The House-passed bill sought to provide for an open-ended, permanent nationwide privatization of Medicare through an untested and untried approach known as the premium support proposal. It is certainly no secret that I was totally opposed to that approach, as well as many of us here in the Senate. But it is also critical to know what is now being applied in this conference report, and there should be no mistake that this conference report puts an end to that proposal. It puts an end to that effort to privatize.

I certainly would have said the privatization approach in the House bill could have led us down the path of what the program of health care looked like prior to 1965 when Medicare was created, which was a patchwork delivery of health care to seniors in America. We don't want to go back to that; that would be a retreat. The House approach would have wild fluctuations in premiums, as we saw in the charts that were issued by CMS within the Department of Health and Human Services. There would be wild fluctuations not only between States but within States and even within congressional districts.

In response to that concern, I and 43 of my colleagues wrote a letter saying that it would be totally unacceptable—not only the open-ended, permanent nationwide system that the House-passed bill included but also even the narrowed-down version of a demonstration program that would have captured 10 million seniors. That was unacceptable.

I want to make clear where we are today. We have eliminated the whole approach of the House. Now, what is in this conference report as shown in this chart here today is one Federal demonstration program. That is what it is all about. Where the effort once centered on an open-ended national program that would have ultimately ended up in the wholesale undermining and destabilization of the Medicare Program, we now have a pared back demonstration project that would be limited to 46 metropolitan statistical areas; that certain criteria will be included which will determine those areas; but according to the Congressional Budget Office, based on that criteria that, in fact, it would not include more than 650,000 to 1 million seniors.

What we were talking about originally in the House-passed bill was a nationwide program, but we are now back to a pared-down demonstration project, and we include criteria that would limit the size of the demonstration project to 650,000 to 1 million, according to the Congressional Budget Office.

Also, there is protection for low income. Where the original proposal by the House had no protection for low income under 150 percent of poverty level, now they are protected as well. They will not be included in this demonstration project.

It is very important to understand some of those changes.

In addition, this program sunsets in 2016. It doesn't start until 2010. We obviously have time between now and then after passage of the legislation to address any further concerns. But we move the date from 2008 to 2010. There is an ending date—a sunset of 2016. No extensions are allowed without new legislative action.

There are six MSAs with criteria that I mentioned earlier. Now we are not talking about open-ended, nationwide; we are not talking about even 10 million seniors. We are talking about 650,000 to 1 million.

As far as any premium fluctuations, it is limited to 5 percent. Without the compounding, that would have had the net effect of having a 30-percent increase over 6 years. Now that would be phased in.

I should also mention that this demonstration project is phased in starting in 2010. It is not totally in place until 2015 and 2016. In 2016, it ends. Even with the 5 percent, it will be phased in over 4 years. It represents 5 percent each year. We have made substantial changes. It is a wholesale change of what was in the House proposal.

This is a limited Federal demonstration program that allows for the testing of perhaps new ideas. But nothing can be implemented—nothing can be done—until the Congress would want to address those issues based on the results from that demonstration project.

That is very important for Members of this Senate to understand in terms of the differences in scope, size, implementation effect, and what it would do to the underlying program.

Finally, one other additional point with respect to this demonstration project:

Also in this legislation we terminated the financial incentives that are offered to private plans participating in the demonstration when it begins in 2010. I think we have to understand what the true facts are.

This demonstration project will not undermine the underlying traditional Medicare Program as we know it. Obviously, it would be preferable not to have it in this legislation, but this is the essence of a compromise that is before us, and it is very limited in terms of size and scope.

I think it is important for Members of the Senate to realize that.

In the final analysis, I think we cannot lose this opportunity. This is an idea whose time has not only come, but it is long overdue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I yield myself 9 minutes.

Mr. President, let me commend the Senator from Iowa, the Senator from Louisiana, the Senator from Montana, and others who have worked on this so very hard. I want to express my gratitude to them for spending so much time on this issue.

Let me also briefly thank my own staff. I am not a member of the Finance Committee. But this issue transcends committees. This is legislation that all of us have a deep interest in. I thank Jim Fenton and Ben Berwick of my staff for the tremendous effort and time they have put in.

I spoke at some length on Friday about this issue. Let me divide the issue very quickly.

A prescription drugs benefit, I think, would pass 100 to 0. If we had a vote on the prescription drug benefit—you would hear speeches that it didn't go far enough and concerns about the donut hole and whether or not 150 percent of poverty was the right margin to be drawn—but I suspect all Members in the final analysis would support the initiation of a prescription drug benefit on the assumption that we would work to improve it in the years ahead.

If I were voting on that issue alone, I would stand here and raise concerns about matters included in that provision, but it would have my wholehearted support as a long overdue proposition. I won't dwell on that aspect of the legislation here this morning.

The second piece of this bill, however, is one that causes me concern. This second piece is more difficult to understand, it is less clear than just $400 billion for prescription drugs. The second part of this bill is a major change in Medicare. The program has been around for 38 years and is currently serving 41 million Americans. It is probably the most successful and the most wildly supported Federal program of the 20th century. I can't think of any program, except Social Security, which has been so widely supported. We are about to take that program which has worked so tremendously well, and I think disadvantage it significantly. Let me explain briefly why.

The sponsors of the legislation say they are not forcing seniors out of traditional Medicare. They claim they are simply creating competition as a result of offering seniors a choice. Let us talk about this so-called ''competition.''

Private plans under this bill will be reimbursed at a higher rate than traditional Medicare—9 percent higher. On top of that, this bill also makes available $12 billion in a slush fund to be used to lure private plans into the market on a corporate subsidy. You get a 9 percent differential and $12 billion. That is what you get to compete with Medicare. You do not have to have a Ph.D. in math or a Ph.D. in business law to understand that kind of an advantage certainly is not what I call a level playing field. It is not competition, it is a rigged game. The bill stacks the deck against traditional Medicaid and the effects are self-perpetuating. Traditional Medicare grows weaker, private plans grow stronger, forcing more beneficiaries out of the traditional programs and into the open arms of HMOs.

It is easy to get bogged down in the complexities of this bill. Let me state it simply: The weakening of the traditional Medicare Program caused by this bill will force seniors to pay more and face the prospect of fewer benefits.

Remember, Medicare initially said whether you are wealthier and healthier or poorer and sicker, we all work together. Now we are splitting off the wealthier and healthier and leaving the sicker and poorer on the side.

This bill will actually mean less choice, in many ways, for seniors. Seniors like the traditional Medicare Program precisely because it offers choice, the very thing the supporters of this bill claim to be providing. Under the current system, seniors have a choice of doctors. But that choice would soon disappear with a rise in private managed care plans.

I hope this prediction is wrong but I am fearful it is right. If this prediction is wrong, it most likely means seniors have elected not to move into private plans and HMOs will leave the market in many areas, as we have seen in the past with the Medicare+Choice plan, taking $12 billion with them that might have been used to reduce the cost of prescription drugs rather than provide a subsidy for the private plans to compete with Medicare.

Even more ironic is that this highly unfair system is being championed by self-proclaimed champions of free enterprise. This bill gives $12 billion to HMOs to unfairly compete and it does nothing to control drug prices. In fact, it actually prevents the Medicare Program from negotiating lower drug prices. Under law, Medicare is prevented from using its purchasing power to negotiate with drug companies for lower prices. What is wrong with letting free enterprise work here in order to lower drug prices?

If Medicare is so in need of reform, why in this bill are we subsidizing private companies and not allowing the Medicare beneficiaries to compete for lower drug prices? The reason is simple: The champions of free enterprise know that private plans cannot compete with traditional Medicare on a level playing field. The subsidies are necessary because Medicare is actually more efficient. Medicare delivers services at a lower cost.

In 2010, a provision included in this bill will go into effect that begins an experiment with our Nation's seniors. Why we are taking our seniors, the most vulnerable, and turning them into guinea pigs for an experiment is beyond me. That is what we are beginning to do. Given the unlevel playing field I have described, such a competition would further disadvantage the traditional Medicare Program.

The bill writes into it right now a cap of 5 percent premium increases for each year in regions effected by this premium support experiment. The bill anticipates premium increases even before we have tried the program, and they are going to take 6 million seniors and throw them into an experiment, a pilot program, the outcome of which has already been determined by the bill's authors when they talk of a cap at a 5 percent premium increase. How is Medicare going to compete then? The outcome is predetermined, forcing those seniors into a disadvantaged program. The weaker and the poorer and the sicker seniors will end up paying more or having benefits cut.

I am afraid we can only conclude one thing: The architects of the bill, with all due respect, spend billions of dollars not to reform Medicare, but to dismantle it. It puts patients out there to wither on the vine, as Newt Gingrich said 8 years ago. If the man who wanted that embraces this legislation, that could mean one of two things: Either his opinion has changed or this legislation really is intended to end Medicare. I submit that I see no evidence his opinion has changed.

We set out to add a prescription drug benefit to Medicare. I applaud that. We could have had a bipartisan bill that did just that. It could have been approved by this Chamber overwhelmingly. But instead, we are being asked to vote on a wolf in sheep's clothing.

The second part of the bill, the changes in Medicare that will effect 41 million seniors, two-thirds of whom make less than $80,000 and above $13,470, for those in that category, this bill offers disturbing alternatives.

For those reasons, I urge that when the cloture vote occurs, Members vote against it. We can do better. I applaud the efforts made, but we can do better on this legislation than we have done.

I don't believe I used all 9 minutes, but others have gone over 9 minute. I yield back my time for those on the Democratic side who would like to be heard on the legislation.

Mr. GRASSLEY. I yield 5 minutes to the Senator from Arkansas. If there is no one on the other side to speak, I can give the Senator a little bit more.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mrs. LINCOLN. Mr. President, I rise to speak about the Medicare prescription drug coverage conference report before the Senate today.

I do strongly believe this is a historic opportunity. I believe we should not let it pass by. This proposal represents a $400 billion expansion of the Medicare Program, the largest expansion of Medicare since it was created nearly 40 years ago.

While I intend to support this measure, I think what is most important at this juncture is to be honest with the American people. For me, it means being honest particularly with the people of Arkansas and the Arkansas seniors. This bill cannot be and will not be all things to all people. The bill will not provide free drugs for everyone. Some seniors, because we have talked about this for so long, have come to their own conclusion that what we were trying to get was free drugs for all seniors in this country.

I have to remind people we are in debt in our country up to our eyeballs, as far as the eye can see. We did not have an opportunity to provide free prescription drugs to all seniors in this country. Therefore, we have to do the best we can do right now with what we have. I am not pleased about the debt. I didn't support the last tax bill and I am scared to death of the debt we are creating for my twin boys who are 7 years old right now.

The fact is, in this year's budget we have $400 billion dedicated to American seniors. We have to do the best job we can to make that productive for them in this current circumstance because next year and the year after that, it will not be there; we will still be in debt up to our eyeballs.

We have a tremendous amount to do. This bill starts that. It is unfortunate the issue of adding a prescription drug benefit to Medicare has become so politicized. Several Democratic conferees, many of them experts on this issue in their very own right, were not permitted the opportunity to negotiate the final bill. They were conferees in name only. I join them in their frustration and how they feel. They have a right to be angry. It was wrong and unjust. They were prohibited from being part of this very important conference. This bill would have been better had they been involved.

Despite the flaws in this legislation and the partisan process we witnessed over the last few months, Democrats and seniors should be pleased that many of the principles we fought for are contained in this bill.

Is this the bill I would have written? Absolutely not. But there are components in this bill that are productive and move us forward. On behalf of our seniors, we must seize that opportunity.

The bill before the Senate today will provide all of the 453,438 Medicare beneficiaries in Arkansas with access to a Medicare prescription drug benefit for the first time in the history of the Medicare Program. Every senior will have access to a drug benefit to help them with the extraordinary cost of prescription drugs. Extraordinary.

Again, it is not all things to all people. If you find yourself in a position where you are well off and you do not have a lot of prescription drug costs, there may not be in here the most advantageous drug program for you, but for the sickest and the neediest of this country we have come a long way in this bill.

While the benefit is somewhat meager, I am confident we will improve on it in the future for those who maybe do not get the best return from this package. But this bill targets the sickest and the neediest of seniors, those with the highest drug costs and those who are in the lowest income category.

Because of the $400 billion limitation, that is where we have gone. When fiscal times improve, we should eliminate the gap in coverage. I am concerned about those seniors who will be hit with the gap in coverage and have to continue to pay their premiums. But the point is, every senior in Medicare in Arkansas will be able to choose to enroll in a new voluntary drug benefit while staying in the traditional Medicare Program. This is a huge victory. Seniors will not have to leave the Medicare they love to get a prescription drug benefit.

That is because the bill contains a fallback plan—a Government guaranteed plan or safety net—that will provide drug coverage should private, drug-only plans not come into their area.

We in Arkansas know a lot about that. We have seen what happens when Medicare+Choice comes in.

I am concerned that the fallback provision in this bill is not as strong as that which was passed in the Senate bill because it allows one prescription plan and one integrated plan to provide the drug benefit instead of two prescription plans.

I intend to work with my colleagues to fix this flaw before the drug benefit is enacted. I am glad that the conference agreement requires a national fallback contract, so that the Government fallback will always be there when necessary.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GRASSLEY. I yield the Senator 1 additional minute.

The PRESIDING OFFICER. The Senator is recognized for 1 additional minute.

Mrs. LINCOLN. I thank the Senator from Iowa.

Mr. President, I have a lot more to say, and I hope I will have an opportunity to do it at some point.

I think the most important point to be made today is to talk about those who will be served. Over 170,700 beneficiaries in Arkansas will pay no premium for their prescription drug coverage and a nominal copay of no more than $2 for generic drugs and $5 for brand name drugs. They also will not have a gap in their drug coverage.

We are addressing some of the neediest individuals in our country at this juncture. Over 40,200 additional seniors in Arkansas will qualify for reduced premiums, lower deductibles and coinsurance, and no gaps in their drug coverage. All told, over 40 percent—over 40 percent—of Medicare beneficiaries in Arkansas will receive the much-needed special help.

This low-income assistance is of special importance to Arkansas' older women. Medicare seniors are disproportionately women and disproportionately poor, and will be served well by this special assistance.

There is much I would have done to strengthen the low-income provisions, such as not having an assets test for everyone and ensuring that Medicare could wrap around the cost-sharing requirements in the Medicare bill and that Medicaid could pay for prescription drugs not on the private plan's formulary.

I fought to include a new benefit providing screening for diabetes. The new diabetes screening benefit will help with the fact that approximately one third of the 7 million seniors with diabetes—or 2.3 million people—are undiagnosed.

They simply do not know that they have this very serious condition—a condition whose complications include heart disease, stroke, vision loss and blindness, amputations, and kidney disease.

This bill takes a number of steps to protect seniors' access to community pharmacies.

I worked hard to ensure that private PBMs must disclose any price concessions made available by manufacturers, that the Secretary of Health and Human Services has the authority to audit the financial statements and records of plans to ensure that they are complying with these disclosure requirements, and that the Federal Trade Commission study whether the PBMs that own their own mail order pharmacies have created higher drug prices for consumers.

In addition, private plans must allow any willing pharmacist to be a provider under its plan. And for the first time, local pharmacists will be allowed to offer 90-day prescriptions just like mail-order pharmacists.

These provisions are vital to rural hospitals, physicians, ambulance providers, home health providers, and rural health clinics in Arkansas. I have worked with my colleagues for a number of years on these provisions, and long-sought rural equity is finally achieved.

This bill also contains several good additions to the traditional Medicare Program that seeks to improve the health and well-being of seniors.

Among the provisions that I fought to include is my demonstration program on chronic care management that will help determine the healthy outcomes that result when a geriatrician is paid appropriately for caring for a patient with multiple chronic conditions.

I also fought to include coverage for insulin syringes. Roughly 40 percent of the senior population with diabetes—or 1.8 million seniors—use syringes to inject insulin into their bodies to control their diabetes every day.

Without coverage, syringe purchases—which can be especially expensive for seniors on fixed incomes—would not count towards cost-sharing and yearly maximum out-of-pocket expenses.

The low-income assistance in the Senate bill was much more generous. It helped 3 million more seniors. And I pledge to these seniors that I will continue to work on strengthening these provisions in the future.

I am pleased that the conference agreement provides financial incentives for employers to continue offering prescription drug coverage for their retirees.

I have received many calls this week from constituents who want to ensure they don't lose the health coverage they worked for their entire lives. It is frustrating that employers are already dropping retiree health coverage.

So I am glad this bill provides tax incentives to employers and unions so they don't drop drug coverage. Employer groups have told me that this bill will actually encourage them to retain rather than drop coverage in the future.

This bill also creates the most comprehensive rural package we've seen in years. By significantly decreasing or eliminating the disparities in Medicare payments that exist between rural and urban health care providers, seniors in rural areas will have better access to the care they need.

To conclude, we must seize this opportunity before it is too late. This is not the bill I would have written, but it is a step forward.

Yesterday, I talked with Cecil Malone, the president of the Arkansas AARP. We both agree that this moment must not be wasted. We must act now to get a benefit started. Once it is there, it can only get better.

I promise the seniors of Arkansas that I will work day in and day out to make this prescription drug plan better.

I will also work to preserve and protect the Medicare Program so it can continue to be a safety net for all those who are uninsurable in the private market—millions of seniors, individuals with disabilities, and people with kidney failure.

The Medicare Program has prevented these most vulnerable individuals from being uninsured. We must remember the Medicare Program's origins and mission as we proceed—and do no harm to it.

Finally, Mr. President, I thank Finance Chairman GRASSLEY, Ranking Member BAUCUS, Senator BREAUX, and the members of their staffs who worked so hard over the last several months to bring us to this historical moment.

This bill also ensures that seniors have convenient access to pharmacies

by adopting the same standard that TRICARE uses to determine access.

The bill also includes my provision to waive temporarily the late enrollment penalty for military retirees and their spouses who sign up for Medicare Part B and to permit year-round enrollment so that retirees can access the new benefits immediately.

I am glad that this bill takes some steps to contain the skyrocketing price of prescription drugs. One provision in the bill would help bring generic drugs to the market faster, and another provision would give the Government authority to create a system for the importation of drugs from Canada by pharmacists, wholesalers, and individuals once safety standards are met.

I have long supported drug reimportation but both the Clinton and Bush administrations have refused to implement drug reimportation authorized by Congress, citing concerns about drug safety.

I am glad this bill directs the Secretary of Health and Human Services to conduct a comprehensive study that identifies current problems with implementing the current reimportation law we already have on the books so Congress can enact a law that will allow reimportation to go forward.

Mr. President, there is a lot to be talked about here. I hope we will continue to work together to improve upon the shortcomings in this legislation as we work to see it implemented to make it a better program for current and future beneficiaries of the Medicare Program.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, this could and should be a day of common purpose, a day in which we are united, not divided, behind a vital and big goal; that is, giving senior Americans, who have worked their whole lives, access to the prescription drugs they need to stay alive and well. This is a promise that Presidents and Members of Congress of both parties have made and failed to keep for years and years and years.

Since the vast majority of us agree on the outlines of a solution, we had the opportunity, and I believe the responsibility, to finally make good on those years of rhetoric and deliver a solid and sensible prescription drug benefit plan under Medicare.

Instead, this President and this Congress have rushed into this opening and have stuffed what was once a decent bill—the one that passed the Senate overwhelmingly earlier in the year—with irresponsible and hurtful ideas that, rather than strengthening Medicare, weaken it and that, rather than just offering prescription drug benefits to millions of seniors who need it, reduce the benefits that millions of seniors have today. It has given with one hand and taken with another.

So instead of being a day of common purpose, which we had here on the Senate floor when we passed a prescription drug benefit bill just a few months ago, this is a day of all too common partisan politics, ideological politics that has divided this Congress, diminished this Government, degraded our democracy, and, ultimately, disserves our people. It did not need to be this way.

Everybody knows what the problem is, and just about everybody agrees that it is serious. We live in the wealthiest and most advanced country in the world. Yet millions of our seniors have a health care plan that excludes what is now an essential component of modern medical treatment; that is, prescription drug benefits. It is a little like having a car warranty that covers everything but the engine.

America can do better. That is why I supported the landmark bill that overwhelmingly passed the Senate in July. Thanks to bipartisan leadership, we crafted a compromise that could have made a good downpayment for America's elderly. It was not perfect, but it was a good head start, a good start forward. Not everyone in my party supported that agreement. But I believed, despite its flaws, it was a necessary and worthy first step.

But a funny thing—or, rather, a bad thing—happened to that bill on the way to the conference. That solid, bipartisan bill was taken over by ideologues and others determined to stuff it full of pet, partisan projects that really end up hurting millions of seniors, lessening the coverage they have now, and threatening Medicare.

Unfortunately, the special interests were in the room and too many of our Democratic colleagues were out of the room. They used this bill as a vehicle for pushing into law a long list of things that had nothing to do with the basic goal, which was to provide prescription drug benefits under Medicare. In fact, this bill takes us two steps back for every one step forward. That is why I am opposing it.

Has the tone in Washington changed? Well, it has. It is more bitter than ever, more self-serving than ever, less constructive than ever. And I am afraid no simple prescription can cure the tone I am talking about; only real bipartisan leadership can.

As one who supported the original Senate version of the bill, I am not only disappointed at this outcome, I must say I am furious at it, furious because millions of seniors, desperate for the relief, have found their plight exploited, not alleviated.

I did not rush to this judgment. I wanted to support a solution. When the outlines of the bill began to emerge last week, I saw some provisions that I liked and some that troubled me. I wanted to fix them. I spoke to people on both sides. I made suggestions to the conferees about changes that might be made. But no changes were made. So, ultimately, I have no choice but to oppose this bill.

Let me just cite briefly some of the most significant provisions that I believe are wrong with the bill.

First, it would make millions of low-income seniors pay more for the drugs they are currently getting under Medicaid and give them a more narrow choice of drugs that will be covered. So it takes billions, in the so-called wrap-around coverage that Medicaid would provide, from seniors for their drug benefits and gives those billions to HMOs to subsidize them as they move toward privatization of Medicare.

Second, it includes up to $16 billion in cuts for cancer care. Let me repeat that: $16 billion in cuts for cancer care. I have been hearing for months now from cancer patients and oncologists, cancer doctors, worried that this exactly might happen.

Third, it will spend billions of dollars by expressly prohibiting the Federal Government from negotiating the best possible price for prescription drugs.

Fourth, driven only—I would say primarily—by ideology, but because it is against all the evidence of what works, this bill will commit us to an overpriced version of privatized Medicare that would actually drive up costs for taxpayers, not lower them, and jeopardize the stability of the Medicare Program, which is one of the best programs the Government has provided seniors in America in the last century.

The fact is, Medicare as we know it is more efficient, more affordable, than the privatized version that is part of this bill.

In recent years, here are the facts: Costs per covered person have risen almost 10 percent for private insurers providing Medicare coverage or the Medicare substitute while Medicare has been able to limit those increases in costs to just over 4 percent. That means Medicare has been twice as good at holding down costs as the private insurance substitute. So why are we subsidizing, at greater cost, that alternative?

The array of people opposing this bill is broad. One group is the Democratic Leadership Council, sort of ''mother church'' of the moderate Democrats. The DLC referred to this bill as ''Medimess.''

Two points I want to make briefly. It says the bill misses a chance to reform the medical payment system to focus it on paying for quality care, not just care for our seniors. And, second, given limited funds, the DLC argues that the bill should have targeted and exclusively done this for the lowest income seniors and those seniors with the highest drug costs. Unfortunately, it did a lot more than that.

I have been moved in recent days by the complaints from cancer patients and AIDS patients and their families and advocates and psychiatric patients and their families and advocates who are convinced that the restricted list of drugs covered by Medicare, the so-called formulary—restricted as compared to what they are receiving now under Medicaid or under their retirement plans—will limit, ultimately, the lifespan of themselves or their loved ones.

The American people know, as I have heard their calls, that something is wrong with the bill that promises instant relief but does not help a single senior really until 2006.

Would you buy a drug with that kind of lag time? In fairness, there is at least one good thing to say about that delay. It means that when another President comes to occupy the Oval Office early in 2005, he can set about fixing the bill, if it passes before it goes into effect.

The proponents of this Medicare prescription drug bill have, in my opinion, tampered with America's seniors.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LIEBERMAN. I ask unanimous consent for the 1 minute that Senator DODD did not use. He delegated me to have that minute.

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

Mr. LIEBERMAN. Proponents of this prescription drug bill have tampered with America's seniors. They have broken the seal on the compromise we had reached over the summer, emptied the contents of the legislative bottle, slipped in what I believe are a couple of poison pills, and put it back on the shelf for us to buy. America's seniors are not buying it. They know what is in the bottle. We shouldn't buy it either. I cannot and will not vote for this bill. I urge my colleagues to do the same.

I yield the floor.

THE MEDICARE PRESCRIPTION DRUG LEGISLATION

Mr. FEINGOLD. Mr. President, I cannot, in good conscience, vote for cloture and I intend to vote against this bill. With reservation, I voted in the favor of the Senate Medicare prescription drug bill. I felt the Senate bill, though flawed, brought us closer to offering seniors the universal prescription drug benefit that they needed and deserved. My hope was that the problems in the bill could be fixed in conference. The bill that has emerged from the House-Senate conference, however, does too much harm to the overall Medicare program.

We need to modernize Medicare by providing beneficiaries with a prescription drug benefit. But just because we need a bill creating a Medicare prescription drug benefit, does not mean we need this bill. I believe that this bill provides little help for Medicare beneficiaries and takes too many risks with the overall Medicare program, and I am not willing to take those risks.

One of the things that I am most concerned about with respect to this bill is the lack of true cost containment. If we are to ensure that Medicare remains solvent in the years to come, especially after adding a new $400 billion prescription drug benefit, we need to make sure that we take strong measures to keep the cost of Medicare down. This is especially important given the number of baby-boomers who will soon be enrolling in Medicare. Although this bill came in under the budgeted $400 billion, because it fails to make any real effort to bring down the skyrocketing prices of prescription drugs, the true cost of this bill is likely to surpass what has been budgeted for it. This is fiscally irresponsible, and we cannot put Medicare in financial jeopardy by ignoring the impact of rising health care costs on the overall Medicare program.

I am also greatly concerned by the efforts included in this bill to make Medicare a private, managed care program. This bill includes $12 billion in additional subsidies to encourage private insurance companies to offer managed care plans under Medicare. The bill also includes a demonstration project, which could affect up to 25 percent of Medicare beneficiaries, that may cause them to pay more in premiums, should they decide to stay in traditional Medicare. Those who cannot afford these higher premiums will be forced to choose a private plan, which may limit their access and choice of doctors and other providers. Seniors should not be forced to enroll in private plans simply because they cannot pay more to stay in traditional Medicare.

One of my greatest concerns is how this bill will impact Wisconsinites. While providing, at best, a minimal prescription drug benefit for some, the bill will make others worse off than they currently are. It is estimated that, because of this bill, 60,000 retirees in Wisconsin will lose the health insurance they currently have from their employers. Over 110,000 of poor, disabled or elderly Wisconsinites who currently pay nothing for their prescription drugs will now face increased payments for their prescription drugs because of this bill. This bill will also drive up costs for the State, in a time of fiscal crisis, because Wisconsin will lose its ability to negotiate drug costs and will face increased administrative costs.

There are some who will benefit because of this bill. Due to subsidies, the tilted playing field toward private insurance plans, and the lack of any cost containment on prescription drug prices, this bill will be a windfall for pharmaceutical and insurance companies. All we have to do is take a look at how the stocks of pharmaceutical companies and insurance companies soared recently in response to this bill. While these selected industries will profit, however, retirees and many low-income Medicare beneficiaries will suffer.

I am truly disappointed that I cannot support this bill, because there are some good things about it. I am pleased that the provisions that will bring us closer to having fairness in the Medicare reimbursement system were included in the final conference report. I have fought for a fairer share of Medicare dollars for states like Wisconsin for years. I am proud to have authored the amendment that passed in the Budget Committee earlier this year, which helped make the inclusion of Medicare fairness provisions in this bill possible. These particular provisions will help reduce the gross inequity in the division of Medicare dollars across the country.

But, on balance, I cannot vote for this bill because of the negative impact it will have on the Medicare program. The harm this bill does to Medicare and those who depend on it outweighs the benefits. Instead of working to privatize Medicare, Congress needs to go back to the drawing board and create a real Medicare prescription drug benefit without undermining the Medicare system itself.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield 6 minutes to Senator BREAUX.

The PRESIDING OFFICER. The Senator is recognized for 6 minutes.

Mr. BREAUX. Mr. President, I thank the chairman of the committee.

We have now come to the time of decision with regard to whether we are going to have the capacity to, in fact, reach a compromise on one of the great issues of the day; that is, whether the Congress has the political courage and political will to set aside partisan differences and to allow both sides to come together and reach agreement. We can argue about which party benefits from a Medicare reform bill and which party will suffer, but the real issue is not whether the Democratic Party or the Republican Party wins or whether the President gets to sign a bill that reforms Medicare in the Rose Garden. The real question before this institution on both sides of the aisle should be whether for once we can come together and craft a piece of legislation that creates a program that is substantially better than the 40 million seniors currently have under Medicare.

When Medicare was created in 1965, it was bipartisan. It was a change. Some say we should not change Medicare. I would argue that Democrats have never feared change. In 1935, when we wrote the Social Security Program under Franklin Roosevelt's leadership, Democrats changed the status quo. When we led in 1965 the effort to provide medical assistance for our Nation's seniors, we challenged the status quo. We stood up for change and created a new program. Today, over 38 years later, we have the opportunity to once again change a program which has served seniors well but not nearly as well as they deserve. Democrats should not fear that type of change.

Medicare today, on average, does not cover 47 percent of the average senior's health care costs in this country. Not one of us in this institution—our employees, Members of Congress—has health care insurance that is that deficient in what it does not cover. Forty-seven percent of those costs have to be borne by the senior citizen individually or, if they do not have enough money, by their children or their grandchildren or, if they become so poor,

they are put into the State Medicare Program for the poorest of the poor. That is unacceptable. That is not in keeping with the greatness of this Nation, to have a health care program for seniors that is that deficient.

This institution cannot let the perfect be the enemy of the good. This bill is not perfect, but this bill is good. We cannot let political pundits on both sides of the aisle who try to dictate what our choices are say, well, let's pass a Republican-only bill so that we can blame the failure of its passing on the Democrats. Neither can we allow Democratic political pundits to say to us we should not pass this bill for the reason that it would allow the President of the United States to sign it in the Rose Garden and that would be a political benefit for him.

If we cannot take good legislation and pass it and both claim credit for it, then, quite frankly, we should be doing something else. Good government is good politics. This is good government. This is a good bill.

There are two different approaches to solving health care. Some of my friends on the Republican side would say: The Government should have nothing to do with it. The private sector should do everything, keep the Government out of it, and we can design a program with the free enterprise system that will work just fine.

Unfortunately, there are some on my side who would say: No, the Government has to do everything. Government would have to do it all. The private sector cannot be involved at all.

Both of those approaches are incorrect. The best way to solve health care problems is to do what this bill does; that is, to combine the best of what government can do with the best of what the private sector can do and come up with legislation that says: Yes, the Federal Government can supervise it but not micromanage it. Yes, the Federal Government can help pay for it through the tax system—and this bill does that—but the private sector needs to be involved as well. The private sector can bring about innovation. They can come up with new ideas and new concepts faster than we can in the Congress and in the Federal bureaucracies here in Washington. The private sector can bring about a degree of competition which is sorely lacking under the current micromanaged system with 133,000 pages of rules and regulations. That does not allow innovation or competition. That is one of the reasons the program as we know it today, as good as it is, can be made a lot better.

The issue for our Nation's seniors is not just living longer lives; it is also about living better lives. For the first time, seniors will know that when they need prescription drugs, they will be available. Four hundred billion dollars will set up a structure where they will have insurance that covers prescription drugs, just as in 1965 when we made changes that said the Federal Government will help provide insurance to cover hospitalization, we said that for the first time the Federal Government will help with a program that will provide insurance coverage for doctors.

This is a good program. We should not fear change. This is a major step in the right direction.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Maryland.

Ms. MIKULSKI. Good morning, Mr. President. I ask unanimous consent to use such time as necessary to complete my statement.

The PRESIDING OFFICER. The Senator is recognized for up to 9 minutes.

Ms. MIKULSKI. Mr. President, this was a day I had always looked forward to, a day where the Senate would be voting on a prescription drug benefit. I have devoted my life to the advocacy of senior citizens and to standing up for ordinary people to make sure they could make sure that government was on their side when they needed it, when they were at risk. But today I come to this vote with indeed a heavy heart.

The bill the Senate is voting on today is a hollow promise for a prescription drug benefit for seniors. This bill talks big but delivers small. It promises prescription drugs to seniors yet it will create a skimpy benefit for the middle class, cause 2.7 million seniors who already have drug coverage from their employer to lose their coverage, set up the stage to force seniors into HMOs which means seniors could lose the doctors of their own choosing, provides lavish subsidies to insurance companies, creates tax dodges for those making over $250,000, while doing absolutely nothing to stop the soaring cost of prescription drugs.

When I voted for a bill in June, it was a modest but genuine bipartisan effort. I believed it was a start. For years Congress had talked about Medicare. But talk, talk, talk; when all was said and done, more got said than got done. And you can't talk your way out of diabetes; you need insulin. You can't talk your way out of high cholesterol; you need Lipitor. So I thought Congress should move on. But when I voted for the bill, I said that was as far as I would go. I said when the plan came back, if it helped the insurance companies instead of seniors, goodbye to my vote. I said if it increases costs for seniors, say goodbye to my vote. And if it limits benefits, say goodbye to my vote. On all three of these points, this bill falls and fails.

I am going to say that people who say this is a first step—well, it is a step in the wrong direction. If you take the wrong step, you can fall flat on your face. Some believe it is the best we can do. I don't believe that. I believe we can do better, we can do better now, and we can do better next week. We are 45 weeks away from adjourning from this Congress. We have 45 weeks to do a bill that will benefit seniors, protect seniors, protect the integrity of the Federal budget and be able to get the job done.

Seniors don't do better under this bill. It is skimpy. You have a premium of $420 a year, a deductible of $250. You pay $670 a year. When I sat and figured it out, you have to spend $1,000 to get $1,000 worth of drugs. Let me tell you what bothers me also. When you spend up to a drug cost of $2,250, then the Government says the gap between $2,250 and $5,100—your Government says we cannot afford to help you. That is a $2,850 coverage gap. This is while you are going to continue to pay your premiums. You keep on buying your drugs. Your Government says it cannot help you. While you are paying that premium and paying for your drugs, the Government will keep paying those HMOs. This bill leaves too many seniors in the coverage gap.

In my home State, 200,000 people will fall in this coverage gap. Some call it a donut. I call it a poison pill.

I have looked at what it means for those who already have prescription drug benefits. I truly believe that 400,000 Marylanders will be at risk from losing their private plans—whether it is from a Government employer or a private sector employer. I am talking about factory workers and teachers. I am talking about secretaries and firefighters. This bill could dilute or even destroy these benefits over a lifetime.

Often, workers took these benefits instead of pay raises. They chose the promise of a secure health retirement instead of increased pay. I am very concerned that they could lose their benefit. Employers are already being crushed under the weight of health care costs.

In 1998, 48 percent had prescription drug benefits, and now only 28 percent have those employer-sponsored health care coverage. Now, why is this a problem also?

The other very troubling provision in this bill is it has an absolute prohibition on allowing the Government to use its buying power to negotiate lower prices. This bill does nothing to save money on drug costs. In fact, it does the opposite. This bill prohibits the Government from negotiating lower prices. Page 54 of this bill—read it.

But, we already do it. I am the ranking member on the VA–HUD Appropriations Committee. I know what the VA does. The VA uses its buying power to negotiate with drug companies for lower prices. That means we get a 25-percent reduction. It is not price control. It doesn't shackle innovation. It is good management. By the VA negotiating those prices, it is good for the VA to be able to afford to provide drugs, and it is good for the veteran to be able to afford to buy their drugs. Why can't we do this everywhere?

I will tell you, while we give these subsidies, while we have the skimpy benefit, it provides lavish benefits to insurance companies and HMOs; $12 billion in subsidies to private insurance plans to subsidize their participation, forcing them into HMOs in the future—$12 billion. What is the consequence? It

means if you are forced into an HMO, you are going to lose your doctor. You will get the doctor that a bureaucrat tells you you should have rather than the doctor you want to have.

It also creates tax dodges for those making over $250,000, the so-called health savings account—another $6 billion, which they should be paying taxes on. But oh, no, it is one more gimmick, a tax dodge. If you take that $12 billion plus the $6 billion, it would give us $18 billion to close the coverage gap. Instead, we have tax dodges and bonuses to insurance companies rather than a better benefit for the seniors.

I know what some seniors are asking: BARB, why are you going to vote against this bill? I need help now. I need a prescription drug coverage now.

Senior citizens in Maryland have told me that they don't even buy green bananas. They don't want to wait. I want to ease your worry about prescription drug costs. I want to give you something real. For the next 2 years, all you are going to get is a 15-percent discount card, while insurance companies and HMOs are going to get $12 billion from the Government, and there will be this tax dodge for those making over $250,000.

To the seniors of Maryland, I am going to vote against this bill. I am not voting against you. I am voting for you so that you have the benefit that you need. We have an affordable program for the U.S. Government. We can hold our heads up high, but know that when my name is called, I am going to vote no on this bill and, yes, that we can do it better, and we can do it better tomorrow.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, on our side, I think the time we have allocated—we have a little time left, is that true?

The PRESIDING OFFICER. Forty minutes.

Mr. REID. I have allocated a lot of that time. I ask unanimous consent that Senator EDWARDS be given 3 minutes under our control.

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

Who yields time?

The Senator from Wyoming.

Mr. THOMAS. I yield 5 minutes to the Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I rise in support of this conference report. I congratulate all those who have worked hard on it. It is a bill on which, I have to admit, I have mixed emotions. There are a lot of things in the bill I like and some things that I don't like.

One of the criticisms I have heard leveled against this bill is that it does harm to those who are in the Medicaid population, the very low-income, under 100 percent of poverty. The interesting thing is that some suggested it does harm because we have made people eligible for Medicaid now eligible for Medicare. Those are the dual eligibles.

One of the reasons we are doing so is because there are many on the other side of the aisle who wanted dual eligibles to be covered under Medicare. The copayment for those dual eligibles is the same as under Medicaid. It is $1 for generics and $3 for name brand drugs. That is hardly a very high cost for prescription drugs. And there are waivers of those copayments for people who are in nursing homes and have other sources of coverage. So what we have done is something that many on the other side wanted us to do, which is take people out of Medicare and put everyone over 65 in one program. That makes some sense, but it is an enormous cost to the Federal Government. We are picking up more of the cost of Medicaid now and that money out of the drug benefit had to come from somewhere.

So I argue that to accomplish one policy goal, we had to give up some subsidies to other seniors. But, clearly, it was a win by many of the Democrats who argued—Senator BAUCUS and others—that they had to have all dual eligibles covered. It is something they wanted. We have done that. I hope we will understand that the reason some of the money has been shifted to lower income was to accomplish what the other side wanted to accomplish.

I also say that, yes, I agree the standard benefit is not the most generous benefit out there. But what everybody here agreed to last year was $350 billion. This year it was $400 billion. I think everybody agreed that $100 billion should be targeted at two groups of people—lower income individuals and high users of drugs. When you do that, and you provide $1 and $3 copays for people over 100 percent of poverty, and up to 150 percent of poverty $3 and $5 copays, what you are talking about is a very expensive program for low-income individuals.

Then, at the other end, you have the catastrophic program that picks up 95 percent of the cost of drugs after $3,600 is spent out of pocket—high users, sick people. We should be helping them with drug costs. When you throw those two pots in, there isn't a lot left for the standard benefit.

It was the idea, I think, that everybody here agrees that we need to focus the $400 billion on those in most need, whether it is need because of sickness or need because of financial condition. This bill does that. I would argue, sure, I think all of us would like to provide a more generous benefit. You have to remember, the rest of the people we are talking about—about 80 percent of them—have prescription drug coverage already. What we are allowing is for a lot of those people to have the drug coverage they have in addition to this being wrapped together to provide a much healthier benefit than just the basic benefit provided under this bill.

Seniors are not going to be just with this plan. In fact, the average senior in this country is going to have a much more enhanced plan available to them than what they have today as a result of this coverage.

I say to my conservative friends who are expressing concern about this bill, the most important thing in this bill, from my perspective, for conservatives is this plan allows for health savings accounts. Fundamentally, what health savings accounts will do is eventually change Medicare—not today, not even 5 or 10 years from now, but over the long term, once health savings accounts become what I believe they will become, which is the method of choice that the vast majority of people in this country will do in the private sector. Health savings accounts affect people under 65, the non-Medicare population. This will be a very popular plan in which millions of Americans will participate, and it will fundamentally change the insurance market in this country.

One thing we have seen from Medicare reform—if you want to call what we have done over the past 40 years Medicare reform—is it follows the private sector. A 1965 Blue Cross plan was the original Medicare bill because that was the standard state of the art in 1965. In the nineties, we changed Medicare to allow for HMOs. Why? Because the private sector adopted HMOs. Now we are doing PPOs. Why? Because the private sector moved from HMOs to PPOs, and in the future we will move to PPOs and health savings accounts in Medicare, and that, I believe, will be the long-term salvation of that program.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Wyoming.

Mr. THOMAS. Mr. President, my understanding is that the Senator from New York will be next. Following that, because we have taken shorter times, we will have two speakers in a row—the Senator from Arizona and the Senator from Texas.

Mr. REID. Mr. President, if I may speak briefly, I say through the Chair to the senior Senator from New York, we have been taking significantly longer than the majority on speeches. They should get two speakers to make up for what we have been taking on our side. Senator CLINTON is next in the order.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, there are a number of significant issues that have been raised in this debate over the last 48 hours. I remind our colleagues and our seniors who may be following this debate with some interest that we have had this bill—this gigantic bill—for 4 days.

This is one of the most significant pieces of legislation that will come before this Congress certainly this year, but I would argue for many years to come. It is a wolf in sheep's clothing. We remember the old fairy tale about the wolf that couldn't get into the hen house or into the shepherd's enclosure to try to go after the hens and go after the sheep and kept trying and trying.

Finally, the wolf figured out that a frontal assault was just not going to work. People would see the wolf sneaking up on the hen house, sneaking up

behind the sheep, and they would scare them off and try to get him before he got the hens and the sheep.

The wolf got really smart. The wolf found some poor old sheep that hadn't quite made it back from the hills and, unfortunately, killed that sheep, got that sheepskin, and snuck in. When people saw it moving across the ground, they thought: That's just an old sheep.

Lo and behold, the wolf got to the hen house and the sheep, and that poor old farmer didn't have any hens or sheep left by the time the wolf got done.

Make no mistake, that is what is going on here. You can dress it up, you can talk about how significant a benefit it is going to turn out to be, how we are modernizing and changing Medicare for the 21st century, but remember that fairy tale. Fairy tales are rooted in ancient folk wisdom and experience, and what we have here is just a classic wolf in sheep's clothing.

There are many reasons to oppose this bill, and my colleagues have been going through them one after another. I think the bottom line is, No. 1, this bill does very little of what it actually advertises doing. It advertises it is going to be a sea change—a positive sea change—for seniors, and that is not the case.

We have been fighting over prescription drug benefits for seniors for years. A decade ago, when I was working on behalf of the Clinton administration with respect to health care, we included a drug benefit. Some of you may remember that debate. That debate went down, and it went down for many reasons, but one was that it was a 1,300-page bill—a bill that would guarantee health insurance to every American, a bill that would control prices so that we could actually afford health care for every American, and people said: Oh, my goodness, that is such a long bill; why, look at what the Clintons are trying to do. They are trying to change health care with that gigantic bill.

Remember, we produced that bill with a thousand people involved in the process. We vetted it with everybody. We brought it to the Capitol. It was done in the light of day. We produced a bill and then, of course, all the special interests got everybody confused about what was in the bill, and the bill went down even though, as it was going down, public opinion surveys were asking Americans: What is it you want in a bill?

They said: We want guaranteed affordable health care coverage and the ability to pick our doctor—all of which was in the bill.

It didn't do me any good to keep saying it because $300 million had been spent by the special interests for TV ads, radio ads, and newspaper ads—the whole 9 yards. Oh, my goodness, the bill was so big and so confusing and all these terrible things were going to happen.

Four days ago—4 days ago—we got this bill. I am looking through this bill trying to figure out, my goodness, how long it is. I know it is awfully heavy. I think it is about 1,200 pages. That is just to do something to Medicare. It is not to guarantee health insurance for children and working people. It is not to guarantee health insurance for people 55 to 65, who retired and who start, as you do when you get to 55, to have health kinks and problems and are not eligible for Medicare. It doesn't do anything for that.

It is a 1,200-page bill which we received 4 days ago, and I can guarantee you there are disputes on the floor of the Senate as to what is in it and what it means. Why is that? Because we haven't had a chance to examine and analyze it, and if we haven't, with our staff and our efforts over the last 4 days, I know the American people, particularly our seniors, haven't either.

There are many provisions in this bill that really need to be brought into the light of day. I will be voting against cloture, which is a parliamentary term to try to cut off debate, because I don't think we have had enough debate yet. I don't want anybody being surprised about what is really in this bill because there are going to be a lot of surprises.

The promise of reimporting drugs from Canada—which is really important in a place such as New York because we border Canada. A lot of my seniors from Watertown, Massena, or Plattsburgh go across the border and get those cheaper drugs. In this bill, that is going to continue to be a problem and a prohibition in reality, if not legally, because drug companies are going to be given the go-ahead to basically violate antitrust rules so they can cut back on the amount of drugs they send to Canada.

I don't blame the drug companies. They have a captive market in our country. Our tax dollars do the research at our great universities and research labs. Our tax dollars support the National Institutes of Health. Our tax dollars create the conditions in which drugs are given clinical trials to determine whether they help or hurt. We do all the work for the entire world for determining the efficacy of drugs, quality, and safety, and then other countries, such as Canada, Europe, and other places, bargain with the drug companies.

They say, OK, we have a big market. We have millions of people. It is kind of like Sam's Club, only think of it as the Canadian club or the European Union club. They bargain with these drug companies and they drive the prices down because they are going to buy in volume.

Should we not have an Uncle Sam's Club? Should not Uncle Sam be able to bargain with these drug companies? Apparently that is not what the backroom negotiators and writers of this legislation wanted because in the most wonderful example of Orwellian language, on page 53 of this bill, under a title called noninterference—I love that—it says in order to promote competition—there are magic words around here. It is said that competition is going to be promoted, while they create a monopoly, while they end antitrust, because they are setting up all kinds of special privileges for special interests. Nevertheless, we just hope nobody notices that.

So in order to promote competition under this part and in carrying out this part, the Secretary, No. 1, may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors—those are drug plans—and may not require a particular formulary—that is the list of the drugs one can get—or institute a price structure for the reimbursement of covered drugs.

Basically, what this means is the lid is off. Not only can we not get the drugs from Canada anymore because our drug companies will say to the poor Canadians, keep letting your pharmacists send them across the border and we are going to not send the drugs for the Canadian people. But we cannot even bargain. We cannot have an Uncle Sam's Club. We cannot get the volume discounts.

We have to look at who is doing what in this debate to figure out where the sheep are, where the hens are, and where the wolves are. One of the biggest wolves who has been after Medicare for as long as he has been in public life is our old friend, Newt Gingrich, former Speaker of the House, when he called for Medicare to wither on the vine.

Well, guess who showed up to try to whip those House Republicans in line to vote for this bill, which is why they had to leave the vote open for more than 3 hours, the longest time they had ever had to leave a vote open because basically, there was the wolf in sheep's clothing going up to the House Republicans and saying: Do not worry, we are going to say all of these good things about this bill, but just wait until we get our hands on it; just wait until we get into that hen house.

I do not blame them if that is what they believe. Nevertheless, we are the ones who are going to be paying the price.

I ask unanimous consent for an additional 2 minutes.

The PRESIDING OFFICER. That will be 2 minutes off the Democratic side. Since there is no one from the Democratic side objecting, it is so ordered.

Mrs. CLINTON. I will put a chart up that gives a short summary for any American, and particularly for any senior citizen, watching. This bill sacrifices seniors' interest to special interests.

Seniors need lower drug prices. Forget it. The drug industry wants higher profits.

Seniors need predictable premiums. Forget it. Managed care wants the flexibility to raise their rates even in the middle of the year.

Seniors need a choice of drugs. Forget it. The drug industry wants a restrictive formulary that pushes their brands.

Seniors need to keep their retirement benefits. Forget it. The private plans want a $12 billion slush fund so we are going to lose retiree health care.

Seniors want to stay in Medicare. Forget it because what is going to happen is that Medicare is going to get increasingly the health care plan for the sickest and the oldest of our seniors, which will make it more expensive. In this bill we are going to even see a constriction on the nondrug benefits for Medicare.

So one has to really watch what goes on around here. They have to follow it carefully. This is a bill that is bad for seniors, bad for America, and I hope my colleagues will stand against it.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, we have before us a conference report that represents one of the biggest expansions of the Medicare entitlement program and offers enormous profits and protections for a few of the country's most powerful interest groups, paid for with the borrowed money of American taxpayers for generations and generations to come.

This legislation reminds me of the ancient medieval practice of leeching. Every special interest in Washington is attaching itself to this legislation and sucking Medicare dry.

We do not need leeching. What we need is reform. On top of the existing $7 trillion accumulated deficit, which translates into $24,000 for every man, woman, and child in the United States, this year's current deficit is quickly approaching a half trillion dollars. Adding a new unfunded entitlement to a system that is already financially insolvent is so grossly irresponsible that it ought to outrage every fiscal conservative.

According to the Congressional Budget Office, this package is estimated to cost just over $400 billion over 10 years. If one believes that is the maximum we will spend over 10 years, I have some beach front property in Gila Bend to sell you. Four hundred billion dollars is merely a down payment.

One important number not frequently mentioned is the estimated increase this new package will add to existing liabilities. The Office of Management and Budget estimated that current unfunded liabilities of Medicare and Social Security are $18 trillion. That is the current unfunded liabilities. What is absolutely astounding is that this new benefit will add an estimated $7 trillion in additional unfunded liabilities. By the year 2020 Social Security and Medicare, with a prescription drug benefit, will consume an estimated 21 percent of income taxes for every working American.

I think we ought to be honest with the American people. Passing this package without implementing the necessary reforms to ensure that the Medicare system is solvent over the long term is rearranging the deck chairs on the Titanic. There is no one in America who is reliable who will not say that the Medicare system is going to go broke. The question is not if. The question is when, not what.

To save this system we should enact true free market reforms and bring Medicare into the 21st century. Unfortunately, the minor reforms in this bill do not even begin to offset the burden added by the new drug benefit. With future generations of American taxpayers funding the purchase of prescription drugs under Medicare, we have an obligation to ensure some amount of cost containment against the skyrocketing costs of prescription drugs. Unfortunately, however, this package explicitly prohibits Medicare from using purchasing power to negotiate lower prices with manufacturers.

How is that possible? The Veterans' Administration, the VA, and State Medicaid Programs use market share to negotiate substantial discounts. It is prohibited in this bill. The taxpayers should be able to expect Medicare, as a large purchaser of prescription drugs, to be able to derive some discount from its new market share. Instead, taxpayers will provide an estimated $9 billion a year in increased profits to the pharmaceutical industry.

Prescription drug importation is another lost opportunity for cost containment. American consumers pay some of the highest prices in the developed world for prescription drugs and, as a result, millions of our citizens travel across our borders each year to purchase these prescriptions. In all, Americans spend hundreds of millions of dollars on imported pharmaceuticals, not because they do not want to buy American but because they cannot afford to.

This conference report contains language on drug importation. However, it has been successfully weakened to the point of guaranteeing that implementation will never take place.

There is a good provision as far as generic drugs are concerned, but this package is not only a bad deal for American taxpayers, I believe seniors will also find it not worth the price.

Although this conference report allocates close to $80 billion in subsidies to corporations to encourage them not to drop or reduce benefits, the CBO estimates that approximately 20 percent of seniors will lose their current employer-sponsored coverage.

I am concerned we are about to repeat an enormous mistake. I was here when we enacted Medicare catastrophic in 1988, and I was here 1 year later fighting to repeal it. We cannot let political shortsightedness blind us from the long-term fiscal implications of this package.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. I yield 5 minutes to the Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that I be told in 3 minutes because I intend to leave 2 extra minutes to the Senator from Utah.

The PRESIDING OFFICER. Three minutes remaining or use 3 minutes?

Mrs. HUTCHISON. After I use 3 minutes. Thank you.

Mr. President, while the medical community has ridden the technological wave of the future, pushing the envelope in research into new pharmaceuticals, treatments and life-saving measures, Medicare has been stuck floundering in the 20th century. The venerable program, designed to provide healthcare for the elderly and the disabled, has failed to meet all of the needs of those it set out to serve.

After years of talk, Congress is poised to enact the most sweeping change for America's seniors in nearly 40 years. We have the opportunity to bring Medicare up-to-date and take advantage of the incredible advances in prescription drugs.

Pharmaceuticals are one of the miracles of modern medicine. Ailments that traditionally required an expensive in-patient hospital stay and invasion surgery can now be treated with medication. But most Medicare recipients wouldn't know it. While the government pays for costly heart surgery, it currently will not pay for the preventative drugs that may have precluded the need for an operate in the first place.

An estimated 9.9 million Medicare beneficiaries do not have private prescription drug coverage, almost 600,000 in Texas alone. Some seniors who could lower their cholesterol by ingesting a simple pill like Lipitor have to pay out their pockets for the drug which retails at $108 per bottle, placing this simple solution out of their reach.

The bill before Congress would give America's seniors access to a prescription drug benefit for the first time. Beneficiaries would pay a $35 monthly premium and a $250 deductible, after which they would pay 25 percent of drug costs between $275 and $2,250 and 100 percent between $2,250 and $3,600. Costs over that threshold would require an average copay of $2 for generic drugs and $5 for brand name drugs, or 5 percent of the total drug cost depending on the plan.

Until these reforms are in place, a prescription drug discount card offering savings of up to 25 percent will be available in 2004, providing some relief immediately.

This measure also offers additional and unprecedented assistance to those with low incomes. Medicare beneficiaries at the poverty level and below will pay no premiums or deductibles and will have nominal cost sharing responsibility, with copays of $1 for generic drugs and $3 for other pharmaceuticals. Those at 135 percent of the poverty level, or $12,123 annually for

individuals, will not pay premiums or deductibles and will have co-payments of no more than $5. Beneficiaries at 150 percent of the poverty level, or $13,470 annually, will have a sliding scale subsidy for premiums, a $50 deductible and $2 and $5 co-pays. These changes will mean more than 680,000 low-income Texans will pay no more than $5 per prescription. Furthermore, with the Federal Government providing drug coverage for those individuals who qualify for both Medicare and Medicaid, my State will save $1.7 billion over an eight-year period.

Though much of the attention surrounding Medicare reform has focused on the prescription drug benefit, there are a number of other elements that are important. In the end, the legislation is a good compromise and addresses the fundamental problems.

One significant element is choice. This plan provides access to a broad array of healthcare options, similar to what most working Americans already enjoy. Seniors can stay in traditional Medicare, add a prescription drug plan or choose an HMO or PPO that includes a prescription drug plan. Unlike the current Medicare+Choice plans, which have been pulling out of communities, the bill guarantees all seniors will have access to an HMO or PPO plan.

It also has provisions to encourage companies currently providing healthcare to their retirees to continue offering this important benefit.

Another important component of the bill is an increase in the reimbursement rate for physicians, many of whom have stopped taking on new Medicare patients. Physicians were facing a cut in March of 2004 and another in 2005, but this legislation not only stops the reductions, it gives physicians an additional 1.5 percent reimbursement.

Hospitals that treat a large number of illegal immigrants will receive some compensation for their services—a provision important for Texas hospitals and other providers.

Another advantage that will benefit the general population, not just those within Medicare, is the creation of Health Savings Accounts, which will allow individuals and families to put tax-free money into an investment-type account dedicated to their medical costs. The money is not taxed when withdrawn for qualified medical expenses, giving Americans another tool to cover healthcare costs, such as deductibles and co-payments.

As with any compromise, the bill is not everything I would want. I advocated larger teaching hospital reimbursement levels, and although the percentage is not as high as I proposed, in 2004 it increases the current reimbursement rate, from 5.5 percent to 6 percent in April and then to 5.8 percent in October, but it is still higher than the current rate.

This increase means almost $13 million to Texas' teaching hospitals. Every State has at least one teaching hospital, with 1100 of the facilities nationwide. Teaching hospitals train nearly 100,000 physicians, and the Federal Government has traditionally recognized the higher costs inherent in training and educating those health care providers. They utilize newer technology and provide more indigent care. This increase will provide some much-needed assistance to our financially strapped rural and teaching hospitals.

Let me be clear: this bill is not perfect, but as AARP President James Parkel said this week, ''Millions of Americans cannot wait for perfect. They need help now.''

After years of talk, we are taking the first step to bring this vital program up-to-date. For the first time, we can provide a voluntary prescription drug benefit that offers additional assistance for those who need it most and strengthen Medicare for future generations.

I know my 3 minutes are up. I would like to add 2 minutes to Senator HATCH's 5 minutes with that added 2 minutes. I urge my colleagues to support this major first step.

The PRESIDING OFFICER. Who yields time?

Mr. THOMAS. Under our agreement, we will slip over to that side and then Senator HATCH will be next.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, without objection, I yield myself 5 minutes from the time of those in opposition.

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

Ms. STABENOW. Mr. President, we have a very important vote coming up shortly on whether or not to proceed with the bill or to continue working, whether or not to stop our efforts to continue to try to improve this bill or to begin the clock to a final vote. Many colleagues have pointed out that this is the bill—this is the bill. The bottom line of all of this paperwork is that it does not take effect, in terms of prescription drug coverage for seniors, until 2006. So this is the bill we are asking for time to thoroughly go through, line by line, and to be able to fix what does not work for our seniors.

We are being told we have to rush this; this is the last time we are going to be able to do it; we don't have any more time to be able to put this together. Yet the bottom line of all this, for seniors' prescription drug help, if there is any in here—and there is a little—doesn't even start until 2006.

I am going to be voting against the effort to stop debate and move to a final vote because I believe we need to take the time to get it right. I believe there are critical issues we need to fix.

Let me first say a positive aspect in all of this is important efforts to help our rural providers, our doctors and hospitals, home health agencies, and nursing homes. On Saturday I put forward a bill that would actually pull out those positive provisions that are critical for our providers, to vote separately on that. I believe we would have, if not unanimous, overwhelming bipartisan support for those efforts that help our providers.

While I do not believe this bill, on balance, is good at all for our seniors, it is a bad deal for seniors, there are good provisions in it. I hope if this bill does not go forward, we can pull those provider pieces out and support them.

Why don't I support this bill as written? In this bill as written, 2.7 million retirees lose their coverage. One out of four folks who worked hard during their lives, maybe have taken a pay cut here or there to get good health coverage, would actually lose coverage as a result of the provisions, the way this bill is written for private employers.

Mr. President, 6.4 million low-income seniors, the folks we all talk about, the folks we are desperately concerned about, who really are sitting down today at the table and saying, Do I eat today or do I take my medicine, they will end up paying more because of the way this is changed between Medicaid and Medicare. That doesn't make any sense. It is a bad deal for too many of our low-income seniors who need help the most. It is a bad deal for 2.7 million folks who have private insurance and will lose it. My fear is they will not just lose the prescription drug coverage; they will lose their entire health care coverage.

To add insult to injury, this bill locks in the highest possible prices in the world. It keeps drug prices high, which is why the pharmaceutical industry is so strongly supporting it.

They changed their strategy a few years ago. They have been trying to stop prescription drug coverage because they didn't want Medicare to use its clout as a group purchaser to be able to get a good discount, as we do for the veterans, and lower prices. They fought it, but then they decided they couldn't fight it anymore because seniors are desperate and we do need to do something. We are long past doing something real for our seniors. So they changed the strategy. They said: Let's write a bill that gets a whole bunch more customers, 40 million more customers potentially, and let's make sure we lock in the highest prices so they can't compete; they can't lower prices; they can't go to Canada or other countries where there are safe, FDA-approved processes right now to be able to bring drugs back across the border.

That is a big deal for us in Michigan. It is 5 minutes across a bridge or 5 minutes through a tunnel to be able to get lower prices—in half or more. So they made sure we are not going to be able to do that and they made sure we are not going to be able to negotiate for lower prices.

What do we have in the end? We have a whole new group of customers for the pharmaceutical industry who will be forced to pay the highest possible prices.

This is not a good deal for our seniors. We can do better than this. People don't have to lose coverage. People don't have to pay more. People don't have to be locked into the highest possible prices in the world. We have time. This bill doesn't take effect until 2006 for our seniors. I urge us to take the time to get it right.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THOMAS. Mr. President, I think we have agreement we would yield 7 minutes to the Senator from Utah and then 5 minutes to the majority whip.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. It is my understanding I have 7 minutes.

The PRESIDING OFFICER. That is correct.

Mr. HATCH. Mr. President, I have listened carefully to the debate on H.R. 1 during the last few days.

I regret to say I have heard many half-truths and misrepresentations about our bill from the opponents of the legislation.

This simply won't stand.

We're reaching the point where twisted facts and wrong-headed reasoning have been repeated so often that even those who know better are no longer jarred to hear it.

As one of the conference committee members who actually wrote this bill, I find this untenable, because the opposition is just scaring and confusing Medicare beneficiaries.

The last thing any of us want is for critical decisions to be made in a climate of fear or in a fog of uncertainty.

Yes, this legislation is not perfect. But it is good.

I'll tell you why.

First, and most important, this bill provides all beneficiaries—seniors and the disabled—with voluntary prescription drug coverage for the first time in almost 40 years.

Coverage for their medications is something Utah beneficiaries have sought for decades.

Not a day goes by that I do not receive a letter from some part of Utah beseeching Congress to pass this bill.

Second, that coverage will be immediate. Seniors wherever they may live, from St. George to Logan, from Tooele to Vernal and down to Blanding and Monticello, will be able to use a new drug card to get an immediate discount on their medications.

Third, the program is voluntary. We all know—as do the bill's opponents—that beneficiaries will not be forced to join this new drug program. If they are happy with the status quo, then things can stay as they are. If they want to participate in the new program—it will be there for them.

Fourth, H.R. 1 provides choice in coverage. Beneficiaries may stay in traditional Medicare and elect to take a stand-alone drug plan if they want one. Or they may receive their coverage through a local health plan or the new regional PPO plans offered through the new Medicare Advantage program.

How often does a Federal program offer people the range of choices that this bill creates?

Fifth, this bill preserves retiree health coverage. Close to one-quarter of the spending in this bill, approximately $89 billion, is dedicated to protecting retiree health benefits.

For the first time—and none too soon—Medicare will provide funding as an incentive for employers to continue retiree health coverage. Under this bill, no beneficiary will be forced to drop retiree health coverage and participate in the new prescription drug program.

Sixth, the conference agreement is good for rural America, which has gotten the short shrift under Medicare for some time.

We want to ensure that Medicare beneficiaries will have access to quality health care, no matter where they live. We also want rural providers, providers in Moab and Panguitch, providers in Price and Manti, providers who dispense vital health services to beneficiaries, to be properly reimbursed for their services. This legislation accomplishes those important goals.

Seventh—as I intend to amplify later—this legislation improves the Drug Price Competition and Patent Term Restoration Act of 1984, better known as Hatch-Waxman. The conference agreement strengthens the 1984 law so it is easier for everyone, including seniors and the disabled, to have timely access to less expensive, generic drugs.

Eighth, the Medicare agreement includes an appropriate response to the question of reimporting prescription drugs into the United States.

While we include the provisions contained in the legislation approved by the Senate, this agreement also requires the HHS Secretary to conduct an extensive study that identifies the barriers to implementing a drug reimportation program.

Many of my constituents have written, asking why they cannot use the lower cost medications from Canada. The answer is easy: it is just irresponsible for Congress to jeopardize public safety by allowing the unchecked reimportation of drugs. That is why I adamantly opposed the House policy.

If we truly care about our seniors and other patients who depend upon prescription drugs, we should not expose them to what amounts to pharmaceutical Russian roulette.

And, finally, we have done all we can to craft a bill that is as cost-conscious as possible, a bill that the Congressional Budget Office has certified stays within our budget, and a bill that minimizes bureaucracy whenever possible.

We have worked hard to write a measure that relies whenever possible on the private sector, not on exploding the size of big, Washington government.

Before I conclude, I would like to take a minute to refute some of the points that have been raised by the opponents of this legislation.

Yesterday, I heard my good friend from Massachusetts talking about how he feels that the Senate is being stampeded with a bad bill.

It is hard to argue we are being stampeded, when we have worked on this issue for almost 15 years.

I also have heard our colleague say this legislation dismantles the Medicare program and that the HMOs are going to make out like bandits. Again, that is simply not true. Guess who was one of the people who helped to bring about HMOs. None other than the senior Senator from Massachusetts.

This agreement improves the Medicare program by giving beneficiaries voluntary prescription drug coverage for the first time in 40 years—that is a reaffirmation of Medicare, not a weakening of it.

We also give beneficiaries expanded choices in their health care coverage; they may remain in traditional Medicare or in their retiree health care plan. Or they may receive their coverage through local or regional plans offered to them through the new Medicare Advantage program.

Contrary to what my friend from Massachusetts says, no one will be forced into an HMO, and I hope that the American people are not buying that kind of scare tactic.

The other fallacy that I heard during this debate was that the premium support demonstration project, which would be conducted in only six metropolitan areas, is going to disadvantage beneficiaries who remain in traditional Medicare. I have heard it said that those premiums could go up by 10, 15 or 20 percent, even though we who wrote the bill know that the Part B premiums for traditional Medicare could not rise by any more than 5 percent over the regular premium.

This rhetoric is absolutely outrageous. If you look on page 254 of the conference report, you will see that it is not true. The legislative language speaks for itself:

''The amount of the adjustment under this subsection for months in a year shall not exceed 5 percent of the amount of the monthly premium.''

In addition, if a beneficiary is under 150% of poverty, there is no impact on premiums at all.

And I am really getting tired of Speaker Newt Gingrich's words being continuously misconstrued.

He never said, as my colleagues on the other side of the aisle like to assert, that he wanted Medicare to wither on the vine. What he did say is that the agency that controlled Medicare, HCFA, should wither on the vine because it was filled with bureaucrats that were strangling the program. That is a far cry from what they have been representing—person after person after person.

He was arguing against large bureaucracies and for seniors to have more control over their health care.

I have saved the best for last: the accusations and allegations made against

the AARP, which are truly amazing to me. It is truly amazing how last year they were considered to be the greatest organization on Earth by folks on the other side of the aisle, but this year they are dirtier than dirt. That is just not true.

It is ironic that some in this Chamber are criticizing the AARP for supporting a bill that will provide drug coverage to Medicare beneficiaries.

What a difference a year makes! Last year, the AARP could do nothing wrong in the eyes of today's opponents.

Yet, suddenly the AARP is either greedy or being taken in like a bunch of half-wits. So much for honest disagreement among friends!

What has changed? What does AARP know that the opponents of S. 1 do not?

AARP knows that this may very well be our last chance to enact a program adding prescription drug coverage to Medicare.

AARP knows, as we all do, that this is not a perfect bill. But AARP also knows that this bill lays a solid foundation which we can refine in the future.

In the eyes of this Senator, AARP has made a courageous decision by endorsing our proposal and I greatly appreciate their support

In conclusion, I want to commend the chairman of the Senate Finance Committee, CHUCK GRASSLEY and the ranking minority member, MAX BAUCUS on a job well done.

I also want to compliment the Majority Leader, Dr. BILL FRIST, on his leadership in shepherding this bill through the Senate.

Today we will make history.

We will break gridlock. We will act decisively to help the people of this great country.

The citizens of this great country are counting on us to get the job done.

So, let us clear away all the parliamentary hurdles and pass H.R. 1.

It is the right thing to do.

One last thing. I have heard some of my colleagues who are opposed to this bill raise the issue that Government can do nothing to help restrain the growth of drug costs or bring drug costs down. Again, this is a misrepresentation of what the conference agreement actually does.

The conference bill specifies the Government ''may not interfere with the negotiations between drug manufacturers and pharmacies and PPO sponsors and may not require a particular formulary or institute a price structure.''

Opponents claim that provision, which originated with Democratic proposals, by the way, is a concession to the pharmaceutical industry. That is why it is so phony to hear these arguments. They are plain wrong. The noninterference provision is at the heart of the bill's structure for delivering prescription drug coverage. It is a good deal for consumers rather than price fixing by the CMS bureaucracy, which I believe is opening the door for universal health care. It is a misrepresentation of the language in this provision to argue otherwise.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, will the Senate turn its back today on 40 million American seniors? We are going to find out in a few hours.

Will a prescription drug benefit that we have promised our seniors for 38 years become law or became a victim to the political agenda of a partisan minority?

This bill provides a Medicare drug benefit to 40 million seniors. It has passed the House, and the President of the United States will sign it.

Only one hurdle—just one—stands in the way of seniors getting a Medicare drug benefit, and that is the Senate.

While a strong bipartisan majority in the Senate supports this drug benefit bill, that may not be enough. While the American Medical Association, AARP, and hundreds of other health provider organizations support this bill, that may not be enough.

While businesses, health plans, citizens, and taxpayer groups support this bill, it may not be enough.

All of this support may not be enough because this is the Senate. And the minority can, if it chooses to, obstruct.

Incredibly, some on the Democratic side plan to kill this Medicare drug benefit through a filibuster, or use any other way they can think of to defeat the will of the majority.

Points of order have been suggested. We know this bill is within the budget that we passed last year. So there may be some tricky point of order raised, but it should not be sustained because we know this bill is within the budget that we passed.

No matter how the minority tries to block the majority in the Senate, a filibuster by any other name is still a filibuster.

Somewhere in my home State of Kentucky, a senior is beginning a new week. She will have to choose whether to take half a pill of her medication, skimp on her food, or endure some other belt tightening. She doesn't understand about filibusters or arcane Senate procedures. But she does know that the drug benefit she needs is one step away from her. She thinks because the majority rules in America she will get relief soon. Well, the majority rule is everywhere except here in the Senate, potentially. She may be wrong. Here in the Senate the will of the majority can be defeated by the minority. The will of the people can be thwarted by a handful—a handful.

This is as close as we have ever come to passing a drug benefit, and a minority in the Senate is determined to make sure this is as close as we ever get. They do not want us to ever get any closer than we are right now. Why? Why deny our seniors that which they absolutely deserve?

Despite the hyperbole, it cannot be policy. This bill is based on the 1997 Medicare Commission. It reflects bipartisan legislation, such as the Breaux-Frist and the Breaux-Thomas bills. It mirrors the Federal Employees Health Benefits Plan, which Senators on both sides of the aisle have endorsed. And it is the product of countless hours of bipartisan negotiations between the ranking member and chairman of the Finance Committee.

Time and time again, demands have been made by the minority as to what must be and what must not be in this bill. Time and time again, this leader and this chairman have met them more than halfway.

The problem today is not this bipartisan policy but raw partisan politics.

Because of partisan politics, some want to keep the Medicare drug benefit as the ''Holy Grail'' of American politics—something always sought but never found.

To keep their election year gimmick where the Medicare drug benefit is always promised but never delivered—always promised but never delivered—this partisan minority will deny seniors a drug benefit now.

This is crass politics of the worst kind. Our seniors deserve better. Our parents always put us first. Now is our chance to put them first.

But will our seniors come in second place to political games here in the Senate? In the fight for prescription drugs, second place gets seniors nothing. Today, we will vote to see if we put our seniors first or if the greatest generation ever will come in last.

I yield the floor.

Mr. THOMAS. Mr. President, I will react to some of the comments, particularly the fact there is emphasis in this bill for help for low income Medicare Beneficiaries. As we move forward, certainly in Medicare the costs obviously are going to get higher as more and more in this generation move into the category of Medicare eligibility.

This conference report contains a generous drug benefit for the dual eligible. There is no donut for low-income Medicare beneficiaries. They talk about people being less well off because of this. That is not the case. This bill guarantees all 6 million dual eligibles, the people eligible for both Medicare and Medicaid, access to prescription drugs.

Under the conference report, dual eligibles will have better access through Medicare, especially since State Medicaid Programs are increasingly imposing restrictions on patient access to drugs.

Further, States have the flexibility to provide coverage for classes of drugs, including over-the-counter medicines not covered by the Medicare Program. This bill ensures appeal rights for dual eligibles. Under this arrangement, duals will maintain appeal rights like all those in the Medicaid Program. Dual eligibles are a fragile population, certainly, and are well taken care of in this bill. The conference report recognizes and provides

generous coverage for those 6 million beneficiaries.

It is time for the partisan rhetoric to be put aside and we approve this bill.

The PRESIDING OFFICER. Who yields time? If no one yields time, time is charged equally to both sides.

The Senator from Nevada.

Mr. REID. I yield the Senator from Massachusetts 1 minute additional.

Mr. KENNEDY. Would the Chair notify me when I have 1 minute remaining.

The PRESIDING OFFICER. The Chair will so note.

Mr. KENNEDY. Mr. President, in a very short period of time, the Senate will be making a judgment about whether we are going to effectively close off any further debate on this legislation I hold in my hands. It was made available last week, on Friday, to the Members of the Senate on an issue of enormous importance and significance to every person in America. That is the question of Medicare and its future and how our seniors are going to get their prescription drugs.

It seems to me that out of consideration for our senior population and the importance of this issue, the Members of this body ought to know what is in it, what is going to benefit our senior citizens, and what is going to benefit the special interests. We think we ought to take a few more days, come back next week in the Senate and debate that issue, spend a couple weeks discussing it.

But our friends on the other side say no, they had to stay in all weekend—which I was glad to do. We had debate on Saturday, we had debate on Sunday, and now on Monday they are asking Members to vote on this measure.

I was not in the Senate at the time they passed Social Security, but I was here at the time we passed Medicare. The reason we created the Medicare system was because private insurance companies were not paying attention to the elderly in this country. We debated the issue for 5 years—not 4 days; 5 years—from 1960, 1961, 1962, 1963, 1964 and finally we passed it in 1965. When we passed the Medicare system in 1965, it was opposed by many on the other side of the aisle. It only got 12 Republican votes.

This is the party that is committed to Medicare and Social Security. Over the period of time I have been here, we have seen constant efforts to undermine Medicare. It was understood when we passed Medicare that there was not going to be a role for private industry to take over senior citizens in the Medicare system. Many of our elderly, who have worked a lifetime, brought the Nation out of the Depression, fought in the World Wars of this country, fought in Korea, and paid their dues to the Nation, are elderly and frail and many of them have illnesses. We know the private sector cherry-picks, takes the healthiest senior citizens and the younger senior citizen, makes a profit, and leaves the others out so they can never get any kind of protection. We rejected that as a nation, passed Medicare, and said everyone is a part of it.

That is why it is a beloved program in the United States. Seniors today, this morning, this afternoon, last night, know their doctor, know their health care delivery, have trust and confidence in Medicare. They do not want to risk that. This bill does. This bill does, make no mistake about it. It is the beginning of the unwinding of Medicare, the replacing of Medicare with the private sector and privatizing the Medicare system, make no mistake about it.

They are using—our friends on the other side—the words ''prescription drug program'' in order to carry this through. I have just listened to some of these statements. They say: ''Don't you want your parents tonight in different parts of the country to be able to get their prescription drugs in order to meet our responsibility?''

We have been trying to do that. And we did it pretty well—not as well as I would have liked—several months ago, in a bipartisan bill we created a prescription drug program. But the bill we have now has hijacked the prescription drug program and used it as an excuse to undermine the Medicare system, to require, effectively, or coerce our senior citizens to leave Medicare and to go into HMOs in order to be able to get the prescription drug program.

The subsidies that are provided for the HMOs are scandalous—scandalous. We hear about ''free competition.'' There is no more free competition than the man in the Moon in this with the kind of subsidies that are given. And who is paying for those subsidies? The elderly people.

It is undermining the Medicare system in three different ways.

First of all, it undermines the Medicare system because of the unconscionable subsidies it gives to the HMOs, which will permit them to lower their premiums to draw and coerce seniors out of Medicare to go for HMOs.

Second, we have premium support. Premium support just means the costs for our seniors who remain in Medicare will be going up.

Is that what I say? Yes. But who else says it? The Medicare actuaries say there will be an explosion in the increase of the cost of premiums. Do we want to take that risk? Do we want to say, well, let's try an experiment with our nation's seniors? Why do we need an experiment when we know the premiums are going to go up?

The third is the undermining of employer-based systems through the HSAs. They tried it. They fought for it. It is an ideological commitment on the other side, and they have that included in the report.

All those three measures were not in the Senate bill but in the House bill. That is why the bill passed with only one vote in the House of Representatives. Imagine that. If this is such a wonderful bill, why would they only be able to pass it by one vote? That is all they passed it by the first time it came up in the House of Representatives. Then, after twisting arms, cajoling, effectively bribing Members in the House of Representatives, keeping the tab open for 3 hours, they were able to bring together and carry the vote on the repot by just four or five votes—this overwhelming new program that is so good for everyone? It passed by such a narrow margin. And now they are trying to jam it through the Senate.

We all know what is going on. It is the objective of our good friends on the other side; and that is the beginning of the dismantling of the Medicare system, make no mistake about it.

I was here when Medicare passed in 1965. I was here in 1964 when it failed. I remember the debate. I remember very clearly. And we are seeing, if this bill passes, the beginning of the unwinding of the Medicare system.

Now, you can say: Well, Senator, you are really extending yourself on this and your interpretation of the motivation on the other side. I am saying they want to undermine the Medicare system. And the next is going to be Social Security, make no mistake about it.

Is that what I say? No. This is just reported in the Washington Post this past week. Just read it. It does a lot better sometimes to read what the objective is in the White House and what their statements are rather than necessarily the speeches by some of our Members on the floor.

Here it is in the Washington Post, on page A–14: Presidential adviser said Bush is intent on being able to say that reworking Social Security is part of my mandate if he wins. This is it. President Bush aids reviving the long-shelved plan on Social Security. It is the privatization of Medicare. And next is Social Security. That has been their objective.

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. KENNEDY. Now, Mr. President, we are strongly committed—when this bill fails or goes down, or a legitimate point of order is made—that we go back to the drawing boards. I am as strongly committed to get an effective prescription drug program as I was when I stood earlier this year when we passed a good program here in the Senate in a bipartisan way, and as I was when I stood with the Senator from Florida and the Senator from Georgia, Mr. GRAHAM and Mr. MILLER, when they fought for a good program here, and we got 52 votes for it.

But when we hear all this chatter over on the other side about, oh, my goodness, they are filibustering the bill, they filibustered that bill—Republicans filibustered that bill a year and a half ago. We got 52 votes. They would not let it pass. They refused to. It was a good bill.

So let's go back to the drawing boards. Let's go back to that conference. Sure, they will say: Well, we

can't. It is conferenced. They say we have Thanksgiving coming up. We can't do it. We would like to be home for Thanksgiving. But this is a matter of life and death for many of our senior citizens.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I thought I asked the Chair to inform me when I had 1 minute left.

The PRESIDING OFFICER. I rapped the gavel and said 1 minute. I thought the Senator had seen it.

Mr. KENNEDY. Well, Mr. President, I hope we will not invoke cloture.

The PRESIDING OFFICER. Who yields time? Who yields time?

Mr. THOMAS. Mr. President, I yield to the Senator from Utah for 3 minutes.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have listened to my dear friend and colleague from Massachusetts. I guess he wants us to spend another 15 years either trying to reform Medicare, improve Medicare or pass another prescription drug benefit program through the Congress.

We are putting up $400 billion over 10 years, for both a Medicare drug benefit, something that seniors currently do not have today, and Medicare program improvements. Medicare beneficiaries have a choice of whether or not they want to participate in this program. They may remain in traditional Medicare. And, to be honest with you, those remaining in traditional Medicare who end up participating in the comparative cost adjustment demonstration project will not see their premiums increase more than 5 percent.

Mr. KENNEDY. Will the Senator yield on that point?

Mr. HATCH. I only have a few minutes, so I would like to finish my comments.

According to my colleague from Massachusetts, we are dismantling Medicare. That could not be further from the truth.

How can we say that—when we are improving and strengthening Medicare, we are giving Medicare beneficiaries a choice of coverage, and we are giving them $400 billion to help with their prescription drug coverage and Medicare benefits. These new choices include the plans created under the new Medicare Advantage Program, the stand-alone drug plan, the regional plans, the local plans—how on Earth is that dismantling Medicare? And this coming from one in this body who was one of the major proponents of HMOs, to begin with? I might add, I have been here long enough to have remembered that.

Next is Social Security? Nobody in this body wants to hurt Social Security, and the Senator from Massachusetts knows that. Since when does the Washington Post have the inside track on the Senate Republican agenda? Give me a break.

Mr. KENNEDY. Will the Senator yield on that issue?

Mr. HATCH. I am going to finish in just a minute.

Again, I think my friend from Massachusetts, as great a Senator as he is, is trying to scare senior citizens. And, frankly, I think to say let's just not pass this bill and let's go back to the drawing boards is just plain wrong. The Members of the Medicare conference have been meeting for hours and hours, days, weeks, months to figure out how to provide Medicare beneficiaries with the best drug coverage possible. There are Members of Congress who have been working on this issue, trying to get a bill signed into law, for close to 15 years. And we are almost at the finish line. Yet my good colleague wants to go back to another 15 years of floundering around on this issue.

Now, if beneficiaries did not have choice in drug coverage, maybe my friend from Massachusetts would have a point. But seniors will have choice in coverage. Why would we go back to the drawing board, especially after all the time and effort we have put in this legislation? We have before us a bill that really does so much for seniors. The AARP is coming out strongly behind this bill, because they know full well that it is the last train out of the station, it is the only way we can go. I urge my colleagues to support this legislation so Medicare beneficiaries can finally have what they have wanted for close to 40 years—comprehensive prescription drug coverage.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. I yield the floor.

Mr. THOMAS. Mr. President, I yield 2 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont is recognized for 2 minutes.

Mr. JEFFORDS. Mr. President, I have been listening closely to our colleagues and their many statements of support or opposition to the Medicare Prescription Drug and Modernization Act of 2003.

Some have said this is the culmination of the debate we began last year. But this debate is much older than just a year, or even 2 years.

The debate as to whether, and if so how, to provide prescription drugs for the elderly through the Medicare program has been with us since the very beginning of the program.

Thirty-eight years ago, when this body engaged in the historic debate on the original Medicare bill, Senator Jacob Javits from the state of New York offered an amendment to ensure that Medicare beneficiaries would have access to prescription drugs. Senator Javits was asked to modify his amendment to a study that would examine the assurance of paying for drugs, methods of avoiding unnecessary utilization of drugs and mechanisms for controlling costs.

Now, almost 40 years later, they are still debating the very same issues that were part of the 1965 Javits debate. We should enact a prescription drug benefit today. The doom and gloom scenario painted by the bill's opponents is as exaggerated as the claims that this bill will solve all seniors' needs. It is time to put aside our differences for the good of all seniors. This is not a perfect bill, but it is a very good bill.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JEFFORDS. May I have an additional 1 minute?

Mr. THOMAS. Without objection.

Mr. JEFFORDS. Forty million seniors and disabled Americans need help now. They cannot afford to wait for a perfect program because it may never come. The bill provides the foundations we need. In the final analysis, I find there are more reasons to support this bill than to oppose it. I fear that if we do not take this golden opportunity, we will have lost it forever.

We have on one hand the opportunity to provide the largest benefit improvements to Medicare in nearly 40 years, including a comprehensive and universal prescription drug benefit.

On the other hand, we can turn away from the proposal before us today, and return yet again to the drawing board in search of perfection.

I believe it is time that we begin to offer a real benefit instead of more studies, more analysis and more delay. We should enact a prescription drug benefit today.

Let's take a moment to look at some of the issues, because I think it is worth dwelling on why I think we should vote in support of this measure.

Vermont already has one of the most generous prescription drug programs for the elderly and disabled.

As part of a waiver through the Medicaid program, Vermont expanded its ''V-Script'' state pharmacy assistance program and extended subsidized coverage to individuals at 250 percent of poverty, well above the income levels that provide subsidies in this measure.

In fact, the Vermont V-Script program is so generous that some have argued that people will be worse off with a less-generous Federal benefit. I don't think that's the case.

First, in today's economy there is no guarantee that Vermont will be able to continue its current level of support for the V-Script program.

But this bill dedicates almost $400 billion to the development of a universal prescription drug program, representing the largest expansion of the Medicare program since its inception.

This bill will guarantee a comprehensive and universal drug benefit to 41 million seniors in America.

That includes all 93,000 seniors in my own home state of Vermont. And, it guarantees the same coverage to the millions of baby-boomers who will soon rely on Medicare.

For 40,000 seniors in Vermont with limited savings and incomes below $13,470 for individuals and $18,180 for couples, the Federal Government will cover most of their drug costs. In fact, nearly one-third of all seniors nationwide will receive assistance for nearly 90 percent of their drug costs.

Additionally, Medicare, instead of Medicaid, will now assume the prescription drug costs for 21,767 Vermont beneficiaries who are eligible for both Medicare and Medicaid.

According to the Centers for Medicare and Medicaid Services, this will save Vermont $76 million over 8 years on prescription drug coverage for its Medicaid population.

Finally, the bill includes provisions that will allow States such as Vermont that have pharmacy assistance programs to augment, or ''wrap-around'' the Federal Medicare benefit with State resources.

In fact, there is nothing in the legislation that would preclude Vermont, should it wish, from using the savings to establish its own prescription drug plan as long as it meets the requirements of the bill.

Some of our colleagues have criticized this bill, arguing that it would lead to an increase in employers dropping or reducing prescription drug coverage for its retirees.

I have looked at the estimates put forth by the Congressional Budget Office and the employee benefit think tanks, and I am concerned with those numbers.

But again, it is important to consider this potential downside in light of what is already occurring.

The number of employers providing prescription drug benefits has already been steadily declining for years, and without this Federal guarantee those disenfranchised workers would not have any benefit at all.

In short, no senior, regardless of income, will go without prescription drug coverage in Vermont or throughout America once this legislation is enacted. That is, in part, why two of the largest national aging organizations such as AARP and the National Council of Older Americans supports this legislation.

And it why the Vermont AARP supports it as well.

Perhaps most important of all is the $25 billion for rural providers, ending years of unfair payments to rural hospitals, doctors and other providers.

This bill will ensure reliable access to health care services for seniors by better compensating health care providers.

I have already seen estimates that these rural provisions will provide Vermont hospitals with an additional $41 million over the next 10 years, and physicians will get a boost of $18 million in reimbursements over the next 2 years.

I have received many announcements from many Vermont constituents and stakeholders, including the Vermont AARP, the Fletcher Allen Health Center, the Vermont Association of Hospitals and Health Systems.

I am also glad that Chairman GRASSLEY and ranking member BAUCUS have worked with me to address another inequity in the system.

Critical access hospitals provide care in some of the most underserved regions of Vermont, as is the case throughout rural America. These hospitals are small, yet serve as critical resources to their communities.

So I am pleased to see that the conferees retained a provision from the Senate measure that will allow critical access hospitals, such as Mt. Ascutney Hospital in Windsor, VT, to expand access to psychiatric and rehabilitative services to the most vulnerable citizens in that community.

Finally, I would like to acknowledge the conferees for retaining another key provision from the Senate bill that will begin a major demonstration on improving quality and patient outcomes for Medicare beneficiaries.

This is the result of several years of working in concert with Dr. Jack Wennberg at Dartmouth College to bring greater attention to the regional disparities in the consumption of health resources without the improvement in health outcomes to show for it.

I acknowledge the sentiments of many of my colleagues here today. I too agree that this is not the bill I would have written if I had infinite resources to do it.

This bill is not perfect. However, after all of the time that has been spent on trying to develop a Medicare plan for prescription drugs—38 years—it would be a missed opportunity if we reject this good beginning to comprehensive coverage.

By passing this bill, we are laying the foundation. A foundation that requires constant vigilance, as has the original Medicare program.

So in closing, I would like to urge my colleagues from both sides of the aisle to support this bill as we move forward.

This bill will establish a drug benefit that is universal, comprehensive, affordable, and sustainable.

This bill restores necessary and long-needed fairness to our physicians and providers in rural areas. And, the bill will improve the quality of care offered under Medicare.

I hope my colleagues will join me in voting for the measure.

I ask unanimous consent to have the following article printed in the RECORD.

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

AARP CALLS ON VERMONT CONGRESSIONAL DELEGATION TO VOTE FOR MEDICARE RX BILL

(MONTPELIER, VERMONT) Earlier this week AARP, the leading advocate for older Americans with 35 million members nationwide and more than 116,000 in Vermont, endorsed the Conference Committee's Medicare Rx bill. Their bill represents a first step in the nation's commitment to strengthen and expand health security for its citizens.

''For the first time in the history of the Medicare program, more than 90,000 Vermont Medicare beneficiaries will have access to a prescription drug benefit. This is about getting vital help to people who need it most—people whose high drug costs have become a heavy burden to them and their families,'' said Philene Taormina, AARP Vermont Director of Advocacy.

AARP and its members call on the Vermont Congressional delegation to vote for the Conference Report that establishes a prescription drug benefit in Medicare.

In a survey conducted Wednesday of this week 83 percent of AARP members polled supported enactment of the Medicare legislation. Further, 75 percent of respondents said that the proposed Medicare legislation should be passed because it will help low-income elderly and those with high prescription drug costs. Among middle and big-income individuals, 80 percent were in favor of passing the legislation for this reason; support for the bill was evenly split among Democrats and Republicans.

Every day, AARP receives letters and calls from our members recounting how the high cost of prescription drugs is hurting their financial and physical health. We believe that the legislation that has emerged after long negotiations is the right start to relieve these burdens for millions of older and disabled Americans and their families. Though not perfect, the bill represents an historic breakthrough and an important milestone in the nation's commitment to strengthen and expand health security for current and future beneficiaries. This Medicare legislation guarantees a voluntary drug plan is available for all Medicare beneficiaries, regardless of where they live.

VERMONT PHYSICIANS AND HOSPITALS STRONGLY SUPPORT PASSAGE OF MEDICARE REFORM LEGISLATION

MONTPELIER.—The Vermont Medical Society (VMS), Fletcher Allen Health Care and the Vermont Association of Hospitals and Health Systems today announced their strong support for the Medicare Prescription Drug and Modernization Act of 2003 conference report and urged tri-partisan support for its passage. Not only will the bill provide a prescription drug benefit to almost 93,000 Vermonters for the first time in the history of the Medicare program—beginning in January 2006—but it will also increase access to physician services for Medicare beneficiaries in Vermont and improve Medicare reimbursement rates for Vermont's rural hospital system.

The legislation provides approximately $28 billion nationwide to correct a number of basic inequities in Medicare's reimbursement system for rural providers. Physicians in rural areas like Vermont are currently paid far less under the Medicare program than their colleagues in urban areas for doing the same procedures. In fact, in 1998 Vermont received the lowest payment of any state for its Medicare beneficiaries. This poor reimbursement continued despite Vermont being ranked this year as 2nd highest in the country in the quality of care provided to Medicare patients.

The Medicare prescription drug benefit bill being considered by Congress will greatly reduce the geographic disparities in physician payments. ''If the Medicare bill is passed it will be much easier to recruit physicians to serve rural states like Vermont,'' said VMS President James O'Brien, MD. ''Congress must pass this legislation before the Thanksgiving recess to fix many of the reimbursement issues that have unfairly penalized Vermont.''

''Clearly, this bill will benefit Vermont's rural health care system as well as Fletcher Allen,'' said Melinda Estes, president and Chief Executive Officer, Fletcher Allen Health Care. ''It provides real benefits for all Vermonters.''

The legislation protects Vermonters' access to physicians by replacing a 4.5 percent

payment cut scheduled for 2004, which would have reduced Medicare payments to Vermont physicians and hospitals by $6.7 million, with two years of modest payment increases. The Vermont Medical Society estimates that if the bill passes, Vermont providers will see an increase in payments of more than $2 million a year. The improved reimbursement will encourage physicians to lift restrictions on how many Medicare patients they accept in their practices.

Rural Vermont hospitals will also benefit if the Medicare bill passes, because they will be paid at the same rate for procedures as hospitals in more urban areas. Richard Slusky, administrator of Mt. Ascutney Hospital stated, ''This bill is an important step forward for Vermont's Medicare beneficiaries and our small, rural hospitals. As a Medicare-designated Critical Access Hospital, the rural hospital provisions in this bill will strengthen our ability to provide the local services our patients need. This assistance could not have come at a better time for our community.''

Bea Grause, President and CEO of the Vermont Association of Hospitals and Health Systems (VAHHS), believes that the bill is good for Vermont hospitals and for Vermont hospitals and for Vermonters with commercial health insurance coverage. ''This bill will increase Medicare payments to Vermont hospitals by $41 million over ten years.

This will help to reduce the cost shift to Vermonters with commercial health insurance coverage and will move us toward a fairer reimbursement system for our rural hospitals with a high percentage of Medicare recipients in their case mix.''

The provisions improving access for Vermont Medicare beneficiaries and reducing disparities in payment for rural providers were added to the conference committee report through the efforts of Sen. James Jeffords. The Vermont Medical Society, Fletcher Allen Health Care and the Vermont Association of Hospitals and Health Systems commend Sen. Jeffords for his work to protect the Medicare benefits of all Vermonters.

Mr. THOMAS. Mr. President, could the Chair tell us how much time remains on each side?

The PRESIDING OFFICER. Thirteen/15 on your side; 15/40 the other side.

Mr. THOMAS. I thank the Chair. I yield such time as he may consume to the chairman from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I should not take more than 5 minutes, so please tell me when 5 minutes are up.

This is the opportunity, a time of destiny, whether or not this Congress will deliver on the promises of the last three elections, the promises the other party has made as well. Thank God there are people in the Democratic Party who are working in a bipartisan way to deliver on the promises of that party as there are Republicans willing to deliver on the promises of the Republican Party.

Nothing gets done in this body without bipartisanship. This is bipartisan. We are putting aside partisanship. It is time the other side put aside rhetoric and complete our work on this bill for which the AARP says seniors have waited far too long.

This bill offers an affordable, universal prescription drug benefit. This bipartisan bill offers better coverage than today's Medigap policies plus Medicare. It also offers much more generous coverage for 14 million lower income seniors. And just to emphasize this point, this bill does not harm 6 million seniors, as the opponents of this legislation claim. That is political poppycock.

In fact, this bill protects the benefits for these 6 million and then adds generous prescription drug coverage for an additional 8 million. It expands coverage for lower income seniors, far more than anything offered today. This means that for about two in five seniors, this bill offers drug coverage with lower or no premiums, no coverage gap, and coverage of 85 to 95 percent of the cost of prescription drugs. And it is voluntary.

The opponents of this legislation happen to believe—and they sincerely believe—that Government should always force people into doing something. We want the right to choose for our seniors. Seniors can stay in traditional Medicare if they like what they have today and have full access to prescription drugs. There is also a guaranteed Government fallback if private plans might not go to all rural areas of America. This bill protects retiree benefits in the corporation from which they retired. Overall, we put $89 billion in this bill to protect retiree health coverage.

This bill also creates new choices similar to what Federal employees have for beneficiaries in a new revitalized Medicare Advantage Program. With respect to drug costs, the bill speeds the delivery of new generic drugs to the marketplace, lowering drug costs to Americans and not just those on Medicare.

Finally, the bill includes long overdue improvements in Medicare's complex regulations. It also revitalizes the rural health care safety net with the biggest package of rural payment improvements that Congress has ever done or seen. I urge my colleagues to put the interests of our seniors first and give them more choices and better benefits by supporting this bill.

Most importantly, we have brought this bill as far as we have over the last 4 or 5 years because of bipartisanship. I hope this body will not let the narrow partisanship of a few on the other side of the aisle destroy our efforts.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, I yield 7 minutes to the Senator from Massachusetts, Mr. KENNEDY.

Mr. KENNEDY. Mr. President, I didn't hear a word from the chairman of the Finance Committee on what he is going to do or what this bill is going to do with regard to costs. Hello? Costs. There is virtual silence in this bill.

We know what is happening to the senior citizens. It is an issue of access to prescription drugs and it is an issue of cost. This bill does not meet its responsibility in terms of protecting our senior citizens with regard to the cost.

The Senator from Iowa mentioned the numbers of people who are going to be the losers. If the Senator has trouble with this, just ask the Budget Committee, not the Senator from Massachusetts. They said that 6 million seniors who are on Medicaid are going to lose their coverage. That isn't the Senator from Iowa or Massachusetts, that is the financial analysis. And 2.7 million retirees are going to be dropped, for a total loss of 9 million; almost 25 percent of the total retirees are going to be lost.

We can do better. We can do something about the escalation of cost, but they refuse to do it. Let's go back to the drawing board and do something that is worthwhile.

The Senate is on trial today. In a few moments we will vote to stop this charade. But I say this today: I am going to fight this bill with everything I have and, if necessarily, fight it tomorrow, next week, and next year. I will fight it for the nurse who paid into our hospital retirement fund for 20 years and the 3 million retirees like her who will lose their health insurance because of this bill. I will fight for the city workers in Springfield, MA, whose brave mayor plans to purchase cheaper prescription drugs from Canada for them and their families, an action that is illegal—do you understand?—illegal under this bill. I will fight for the widowed grandmother on Medicaid and the 7 million poor Americans like her who count every penny yet will pay more for their prescription drugs under this bill. And I will fight for the 36 million Medicare seniors who want to stay in the program they love with the doctors and the hospitals they choose.

I will fight to keep billions and billions of Medicare dollars that come out of your paycheck from lining the pocketbooks of the big drug companies and the HMOs. I will fight it for our honor as a nation that keeps its commitment to our seniors, the ones who fought our wars, raised our families, and built our economy.

The more the American people learn about this legislation, the less they like it. The more senior citizens learn, the more they oppose it. Let us not reverse the historic decision our country made in 1965. Let us not turn our backs on our senior citizens so that insurance companies and pharmaceutical companies can earn even higher profits. Let us reject this bill and come back and do the job right.

I withhold the remainder of my time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. I yield 3 minutes to the Senator from Louisiana.

Mr. BREAUX. Mr. President, I think one of the subjects that really united both Republicans and Democrats was the question about dual eligibles. There was a large number of seniors being treated as second-class citizens

of this country because, if they were poor, they were not in the Medicare Program. If they were poor, they were not allowed to get through the Medicare door, and for no other reason than they were poor.

Under that scenario, low-income seniors, maybe 80 years old, who worked all of their lives, but ended up in a very low-income status, were relegated to the Medicaid Program, where there was not a consistent amount of benefits for their health care programs. They were subject to the will and whims of the various State legislatures. Some treated them better, some treated them worse, and some didn't treat them hardly at all.

What we were able to do, which I thought was a priority for many Republicans because it was in the House bill—but it also was a priority for many Democrats in this body—was to say that we are going to bring those low-income seniors, for the first time, into the Federal Medicare Program. We did that. That is part of this bill. Those low-income seniors now are going to have the opportunity to be in the Federal Medicare Program. They will know what their benefits are. They will know, for the first time, they have access to prescription drugs, which is what I think the bill is all about. In addition, we were able to find an extra amount of money to help them with any type of copayments they might have.

Some States have high copayments; some States have no copayments on drugs. But what we were able to do was to say: Here is extra money for the purpose of helping States to reduce the copayments down to $1, if they are buying a generic drug and only $3 if they are buying a prescription drug. In addition to that, the subsidies and assistance we have for low-income seniors in general is extremely important.

Starting in April of this coming year, they will get a drug discount card. If they are low-income, they will start off with a $600 credit on that card, to be able to immediately have the benefit of something, where they have nothing at all today.

On balance, when you have a 150 percent of poverty and below special assistance program, when you have a discount card that starts in April, and all of the seniors, for the first time, will be in the same Federal program, I think that is significant. For the first time, we will say to seniors who are low income that you will no longer be treated as a second-class citizen and be different from all of the other seniors you know. You will be part of the Federal program and you will have access to prescription drugs.

Again, I think the question is, Have we designed a perfect bill? The answer is no. But I think when you look to associations such as AARP and the National Council on the Aging, we have a bill that merits their support.

Mr. REID. Mr. President, my understanding is that we have 12 minutes left.

The PRESIDING OFFICER. That is correct.

Mr. REID. We have allocated time to Senator EDWARDS, 3 minutes; is that right?

The PRESIDING OFFICER. That is correct.

Mr. REID. I yield 8 minutes to the Senator from Massachusetts, Mr. KENNEDY. We want to make sure we will use all of our time now. If Senator EDWARDS isn't here, that time will run because Senator FRIST gets the last 5 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I will just take a few moments to review for our colleagues what the implications of this bill will be for my State of Massachusetts. I can say that this is very typical of what is going to happen just about to every State. We have three MSA potentially eligible for premium support—the program that will raise premiums and effectively drive our seniors out of Medicare into the hands of the HMOs. We have three potentially eligible. We have 62,000 retirees who will lose their drug coverage. They are part of the 6 million nationally, and those figures are the figures that have been found by the Center for Budget and Policy Priorities. So we have 62,000 retirees who will lose their drug coverage. And 185,500 low-income elderly and disabled will pay more for prescription drugs. We have 60,000 low-income elderly and disabled who will fail the assets and income test in Massachusetts.

This conference reimposed the asset test, which we had eliminated here by 67 votes in the Senate. They reimposed it. So there are 2.8 million across the country, and 60,000 in my State, who will fail the asset test, and 34,920 seniors will pay more for Part B premiums.

In the few hours of this debate, the proponents of this legislation have described their proposal in the most benign and misleading terms. They say it gives seniors the freedom to choose among competing plans and gives protection to the poor seniors. They say this bill will lower drug prices through competition. They say at least it helps low-income seniors. They are absolutely wrong on all those counts.

Here is the truth: This is a partisan plan, I remind my friend from Iowa. You saw the vote over in the House of Representatives, what the Republican leadership had to do to coerce Members to pass it. That answers the question as to whether or not this is a partisan plan. This partisan program is out of the mainstream. The proposal damages Medicare and leaves the millions of senior citizens who rely on it without a lifeline. It is the first step toward a total dismantling of Medicare. In exchange for destroying Medicare, it offers senior citizens a paltry and inadequate drug benefit. The moment it is implemented, it will make 9 million senior citizens—almost a quarter of all senior citizens—worse off than they are today.

Senior citizens already have the most important choice they want—the choice of doctors and hospitals they trust. That is the choice they want, not higher premiums and premium support. Those are their choices if we pass this. They lose if they are forced to join HMOs and PPOs, or other programs that say an insurance company bureaucrat can choose their doctor for them.

Senior citizens already have the choice to join a private insurance plan competing with Medicare if they choose. But 9 out of 10 prefer to stay in Medicare. So they already have a choice and they are not taking it. But under this bill, you are providing so much in terms of effectively bribing them, and overpayments that they will eventually coerce those seniors. The bipartisan bill that passed the Senate provided additional choice, a program for regional PPOs. The conference adopted a right-wing House approach of ending Medicare as we know it and establishes a massive demonstration program that would subject 7 million senior citizens—1 out of 6—to a so-called premium support program.

Mr. HATCH. Mr. President, I would like to take a few minutes to rebut some of the points raised by the Senator from Massachusetts.

First, he mentioned he is concerned about the cost of this bill. Let me remind my friend from Massachusetts that last year, he supported a bill that would have not only cost $800 billion, it would have sunsetted the Medicare prescription drug benefit. How would that have helped senior citizens and other Medicare beneficiaries, especially the disabled?

Our bill costs $400 billion over 10 years and it is a permanent benefit.

He also mentioned retiree health benefits and how individuals are going to lose their coverage as a result of the bill. Let me correct that statement for the record. First, $89 billion—yes, I said $89 billion—is devoted to employer subsidies in order to preserve retiree health benefits, so individuals will not lose their retiree health coverage. We have gone from a drop-out rate of 37 percent in H.R. 1, to a drop-out rate of under 20 percent. Again, my colleague is simply using scare tactics.

Mr. KENNEDY. Mr. President, I see the Senator from North Carolina here. He wanted some time.

The PRESIDING OFFICER. The Senator has 7 minutes 10 seconds.

Mr. KENNEDY. I am glad to yield that to the Senator. I know he intended to speak.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, I thank the Senator from Massachusetts. I spoke yesterday, but I wish to speak once again on this bill.

This bill is a perfect example of the kind of legislation that should not go through the Senate. It is a giveaway to HMOs and insurance companies, a giveaway to big drug companies, a continuation of this administration's shifting

of the tax burden in America from wealth and the wealthy to work and the middle class.

It is not shocking that there is a $12 billion stabilization fund in this bill—$12 billion of taxpayer money that is going to go to HMOs so that they can compete? I thought the whole purpose of this bill was so that HMOs could provide competition. We are going to give $12 billion of taxpayer money—money that, in fact, could go to providing a better prescription drug benefit to seniors who desperately need it, instead of using that money to cover seniors, to give them help in getting the medicine they desperately need when they go to the pharmacy. No, instead we are going to give $12 billion of taxpayer money to HMOs. That is a great idea. That is just a terrific idea.

On top of all that, we are not going to do anything meaningful to bring down the cost of prescription drugs. We have been through this fight over and over. We fight to try to allow reimportation of prescription medication from Canada, to bring down costs for people in America. Does it pass? No. Can we get it into this bill? No. Why? Because the drug companies are against it.

We try to do something about misleading company advertising on television. Billions and billions of dollars are being spent every year by drug companies on television advertising. Much of the advertising is misleading. We know who is paying for this advertising: consumers, seniors, every time they go to the pharmacy, are paying for those ads. When we try to do something about that advertising, try to put some kind of reasonable controls on it, are we able to do it? Are we successful? No. Why? Because the drug companies are against it.

We cannot even allow the Government to use its bargaining power to bring down the cost of prescription drugs for all seniors.

This bill is a giveaway—a giveaway to HMOs, a giveaway to drug companies. It is not surprising that as a result of looking as if this bill is about to pass, the drug companies' stock and HMO stock is rising.

One thing I can tell you for sure, if this bill passes, it will pass over the dead bodies of a lot of us standing here fighting against it. If this bill passes, the lobbyists will be celebrating all over this town, lobbyists who worked this bill every single day on behalf of the HMOs and the drug companies.

I grew up in a small town in North Carolina in a rural area. There are more lobbyists for those industries around Washington, DC, than people who live in my hometown. How about if we in the Senate stand up for the kind of people I grew up with in that small town? How about if we actually stand up to big drug companies and big HMOs?

Speaking for this Senator, I intend to stand up to those people. I will vote no and fight with everything I have to stop this legislation.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. EDWARDS. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. THOMAS. Mr. President, I yield 1 minute to the Senator from Montana.

The PRESIDING OFFICER. The minority still has time at this point.

Mr. KENNEDY. How much time do we have?

The PRESIDING OFFICER. Three minutes ten seconds.

Mr. KENNEDY. I will be glad to wait until the Senator concludes, and then I will yield the remaining 3 minutes to my colleague from Massachusetts.

The PRESIDING OFFICER. The Senator from Montana has 1 minute.

Mr. BAUCUS. Mr. President, there is not a lot to say in 1 minute. I will do the best I can.

Essentially, we have $400 billion in prescription drugs for seniors. I do not see how in the world we can let that moment pass by.

It was said before that there are not enough low-income benefits for seniors. The previous speakers said that. They are wrong. One-third of our seniors will get such benefits under this bill that 95 percent of their benefits will be paid for. One-third of American seniors will find that 95 percent of their benefits are paid for. The allegation is there is no help for low-income seniors. That is just flat wrong.

There were a lot of other statements made by those opposed to this legislation that are flat wrong. Some say 10 million will be affected by premium support. Flat wrong. We asked CBO what the number is. They said 600 to 700 to 1 million.

Some people say 6 million were going to be hurt by Medicaid. Flat wrong. It is much less than that.

I strongly urge Senators to look at the facts. Vote for the bill and particularly vote against the points of order because those are mere technicalities. They don't go to the substance of the bill. It is important to pass this legislation now for seniors.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the Senator from Montana just admitted the case. He said it is much less than that. He is arguing over fewer people being hurt, not whether any are going to be hurt.

The question is, Why are people going to be hurt? How many people know there is going to be $25 billion raised in new revenue directly out of the pocket of senior citizens because we are going to increase the cost for the traditional Medicare coverage for doctor and hospital visits?

This is following right in the wake of the Energy bill. Same deal. You pick up the newspapers and you see a headline: Drug companies win in battle over prescription drugs. Who do you think lost if the drug companies won? The senior citizens.

There will be $139 billion or $125 billion, depending on which you read, of windfall profits to the drug companies. Why are the drug stocks going up the way they are? The difference between Medicare administrative costs, which are 2 percent, and drug company administrative costs, which are 15 to 20 percent, are now going to run roughshod over seniors who are going to be paying the additional administrative costs, and they are not going to get the benefit of lower cost drugs.

There is nothing in this legislation that lowers the cost of prescription drugs. Indeed, it is the opposite. By pushing seniors off Medicare into HMOs and giving them the tough choice that if they were to stay where they have the ability to, they are going to pay more, they are going to be picking up the additional cost. This is going to be like catastrophic insurance in the 1980s when they pass legislation they think is good and seniors find out how complicated it is and how much more they are paying, which is exactly why it has been set for 2006 for implementation. It took us 11 months to put the entire Medicare Program in place. Why can't we put a prescription drug benefit in place 2 months from now or 3 months from now? Why does it have to be 2006 after the 2004 election? This is one of the greatest giveaways that I have seen in this city in a long time.

We are not even going to allow Medicare to negotiate lower bulk prices. The State of Maine is allowed to do that. We have veterans who are allowed to do that. We have veterans in this country for whom the VA, in an almost unanimously adopted amendment in this body, can go out and do bulk purchasing. And we are not going to allow Medicare to bulk purchase and lower the prices.

We should vote no. This is wrong. It is a giveaway. It is a special interest bonanza.

The PRESIDING OFFICER. The Senator's time has expired. The majority leader.

Mr. FRIST. Mr. President, we bring debate to a close prior to a very historic vote in which we are making a decision whether to give 40 million seniors the opportunity, for the first time through Medicare—the program that has been constructed and been used to give them health care security—whether for the first time these 40 million seniors will have access through that program to prescription drugs, to the tool which is the most powerful element of health care security today. Seniors don't have it. What we are voting on today is to give them that true health care security.

America's seniors have waited 38 years for this prescription drug benefit to be added to the Medicare Program, and today they are just moments away from prescription drug coverage that they desperately need and deserve.

It is clear that in this body there is a bipartisan majority—and I would say an overwhelming bipartisan majority—in favor of this Medicare Prescription Drug, Improvement, and Modernization

Act of 2003. Yet we have before us an attempt to block this body from expressing, through an up-or-down vote, their will to give seniors and individuals with disabilities access to affordable prescription drug coverage and, thus, stand in the way of health care security for those seniors.

We are about to vote on a cloture motion in an attempt to overcome this filibuster.

Later today, we are likely to face additional procedural hurdles that the minority has threatened to prevent passage of this bill. Make no mistake, these are not one and the same. The result of this filibuster and of the procedural points of order will be once again to deny these 40 million seniors access to modern prescription drug coverage, something they need and something they deserve.

In my own State of Tennessee, there are nearly one-quarter of a million seniors who right now have no prescription drug coverage. There are millions more all across the Nation for whom this legislation literally means life or death. Think hypertension, heart disease, chronic obstructive pulmonary disease, asthma, or emphysema, all for which we have effective prescription drugs which are not made available through our Medicare Program today. Our seniors cannot afford to wait longer. Then why wait? They cannot afford to wait. It is a matter of their health.

This generation of seniors did survive the Depression, did fight World War II, did help make the United States the prosperous and thriving Nation we have today. Again and again, they answered the call. Now is the time for us to fulfill our duty to that generation. Many of them are poor and many of them are sick. It is time to answer their call.

When he signed Medicare into law in 1965, President Johnson said:

> No longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this . . . country.

Let us not stay this hand of justice now. Let us not turn our back on America's seniors and individuals with disabilities. Our seniors deserve better than to be held hostage to Washington politics.

There is a life-or-death issue in many ways in this legislation for millions of Americans and they cannot wait. Opponents of this bill would deny coverage to essential medicines.

Mr. President, I will go on leader time for my remaining 2 minutes, if necessary.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. What will people tell millions of Americans or millions of low-income seniors if we go home and say, no, you are not going to have access to prescription drugs that this bill would have made available or tell individuals with disabilities, no, you are not going to have access to the preventive care that is actually in this bill?

The elderly, the sick, and the disabled are now being told to wait for action in the future. Now is the time to act.

We will do it next year, some say, but our seniors tell us time is running out. People are waiting for help.

Just 2 days ago in my office was Dorthea Yancy of Lakewood, CO, a retired African-American woman who worked for years but lost her pension when her company went bankrupt. She needs our help now. Dorthea Yancy needs our help now.

We are an eyelash away from fulfilling our promise to seniors. I ask my colleagues not to thwart the overwhelmingly bipartisan majority in this body because of using the tactics of some sort of parliamentary maneuvering. Do not hold America's seniors hostage to Washington politics. Our seniors deserve better.

I want to close by just reading a statement issued today by the AARP on behalf of 35 million seniors that fine organization represents. This is from the AARP today, and I will close with this:

> The fate of the landmark Medicare prescription drug bill now stands in the hands of the U.S. Senate. More than a vote is at stake. With the final passage in the Senate, the Congress will honor a longstanding promise to 41 million older and disabled Americans and their families by finally adding a prescription drug benefit to Medicare. This bill will help millions of people, especially those with low incomes and high drug costs. It will strengthen Medicare by adding this long overdue benefit and preserving the basic structure of the Medicare program. We urge the Senate to act to seize this historic opportunity and vote to pass this bill now.

America's seniors are watching. America is watching. I urge my colleagues to do the right thing, to seize this historic opportunity, to vote up or down on this bipartisan legislation, and to pass this historic bill.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 1, the Medicare Prescription Drug and Modernization Act, an act to amend Title XVIII of the Social Security Act to provide for a voluntary prescription drug benefit under the Medicare Program and to strengthen and improve the Medicare Program, and for other purposes.

Bill Frist, Charles Grassley, John E. Ensign, Ted Stevens, Susan Collins, Lisa Murkowski, Jon Kyl, John Cornyn, Orrin Hatch, Larry Craig, Craig Thomas, Robert Bennett, Olympia J. Snowe, Jim Bunning, Christopher Bond, John Warner.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 1 shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alabama (Mr. SHELBY) is necessarily absent.

The PRESIDING OFFICER (Mr. ALEXANDER). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 70, nays 29, as follows:

[Rollcall Vote No. 457 Leg.]

YEAS—70

Alexander	DeWine	Mikulski
Allard	Dole	Miller
Allen	Domenici	Murkowski
Baucus	Dorgan	Murray
Bennett	Ensign	Nelson (FL)
Biden	Enzi	Nelson (NE)
Bond	Feinstein	Nickles
Breaux	Fitzgerald	Pryor
Brownback	Frist	Reid
Bunning	Graham (SC)	Roberts
Burns	Grassley	Santorum
Campbell	Gregg	Sessions
Carper	Hatch	Smith
Chambliss	Hutchison	Snowe
Cochran	Inhofe	Specter
Coleman	Jeffords	Stevens
Collins	Johnson	Sununu
Conrad	Kohl	Talent
Cornyn	Kyl	Thomas
Corzine	Landrieu	Voinovich
Craig	Lincoln	Warner
Crapo	Lott	Wyden
Daschle	Lugar	
Dayton	McConnell	

NAYS—29

Akaka	Edwards	Leahy
Bayh	Feingold	Levin
Bingaman	Graham (FL)	Lieberman
Boxer	Hagel	McCain
Byrd	Harkin	Reed
Cantwell	Hollings	Rockefeller
Chafee	Inouye	Sarbanes
Clinton	Kennedy	Schumer
Dodd	Kerry	Stabenow
Durbin	Lautenberg	

NOT VOTING—1

Shelby

The PRESIDING OFFICER. On this vote, the yeas are 70, the nays are 29. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Democratic leader.

Mr. DASCHLE. Mr. President, for purposes of time management under cloture, I designate Senator REID, the Democratic whip, as the opposition manager.

Mr. President, I make a point of order that H.R. 1, the pending conference report, violates section 311(a)(2) and section 302(f) of the Congressional Budget Act of 1974, among other reasons, because of the provisions related to premium support and health savings accounts.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, on behalf of myself and Senators GRASSLEY, BAUCUS, and BREAUX, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act and the budget resolution for the consideration of the conference report.

The PRESIDING OFFICER. The motion is debatable.

Mr. FRIST. Mr. President, I ask unanimous consent that there now be 2 hours of debate on the pending motion to waive, with that debate time equally divided between the two leaders or their designees; further, I ask consent that following that debate time, the Senate proceed to a vote on the motion to waive, with no amendments in order to the motion.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, we will shortly begin debate for 2 hours, as we just agreed to, after which we will have the vote—approximately 2 hours from now.

Mr. DASCHLE. 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. DASCHLE. 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. DASCHLE. Mr. President, obviously the pending motion is now the matter before the Senate and the clock is ticking. I want to use some of the time at this point and reserve the remainder of time for those who wish to speak. I will, hopefully, reserve some time for myself at the end of the debate.

I make this motion recognizing there are a lot of concerns involving budgetary considerations on the legislation now pending. Those on the other side have expressed their understandable concern about the overall commitment in the budget to a new entitlement program, and I respect their position. It may be that on that basis alone, many of our Republican colleagues will want to vote against the motion to waive a budget point of order.

They will make the case that this is an entitlement that goes way beyond the $400 billion, that it is very likely this legislation could grow to $600, $800, $900 billion in the very near future, as other entitlements have on occasion. That is their right.

They will argue that this, as a new entitlement, provides very little cost control. On that I would agree, and I will come back to that point in a moment. So without a doubt, there are very important budgetary points of order to be made.

Technically, this budget point of order challenges the bill because it exceeds the 2004 budget authorization. It also challenges the allocation of resources within the jurisdiction of the Finance Committee. So those are the technical reasons.

I want to give my reasons for expressing the concern I have throughout the debate, and how it relates to this budget point of order. I don't challenge the $400 billion. Frankly, I don't think that it is adequate to provide a meaningful drug benefit. We have to do better than that. But that is another issue. What I challenge is why it is we are misallocating so many of the resources within that $400 billion budget pie. That is my concern; how it is that we can spend $6 billion on HSAs, health savings accounts, and at the same time tell our seniors they are going to have to pay $35 a month, 100 percent of the cost for drugs up to $250, 25 percent up to $2,250, 100 percent up to $5,100. Why are we going to tell them that when we have all this money for these special interests is something I can't understand.

I can't go to my senior citizens and tell them: You are going to have to suck it up and understand that sacrifice is something we are going to ask of you for the opportunity of the Government to pay 75 percent of your drug costs for a limited period of time throughout the year.

That is what we are saying. We have money for all these other accounts, but we don't have adequate resources dedicated to providing meaningful help to seniors. That is my first concern. We are simply not allocating the resources within that $400 billion to their maximum advantage.

But there is another concern as well. We all ought to be concerned, Republicans and Democrats, about this. We have taken virtually all the cost control mechanisms out of this bill. So those who are concerned about an exploding entitlement have a right to be concerned about what this is going to cost 10 years from now.

Ten years ago, we passed a bill by unanimous consent. I wish my colleagues all could have heard an eloquent speech made by the distinguished Senator from Florida about this in our caucus this morning. Ten years ago, on a bipartisan basis, we passed legislation providing not only a drug benefit to veterans but a cost containment mechanism for that benefit. We passed it unanimously. When we passed it, we basically said, we are going to allow the Government to negotiate the price for the VA, passing on the savings to veterans.

We have done that. And by most accounts, we have now cut the cost of veterans drugs in half. Senator GRAHAM talked about being at a VA hospital in Florida on Veterans Day. He said: How much are you spending on drugs right now?

They said: $39 million, at that facility.

He said: If you couldn't negotiate, if you had no ability to negotiate on behalf of your veterans, what do you think the veterans would be spending?

They said: $71 million, almost twice as much.

How is it we can argue on behalf of veterans that we ought to keep their costs down but at the very same time, argue that senior citizens ought to bear the full cost of those drugs? You tell senior citizens sitting next to another one at a public meeting a year from now that we somehow just believed there was a distinction, that it was OK for seniors to spend twice as much as veterans.

I will fight every single day for the right of veterans to get the lowest cost for their drugs, but that same opportunity should be provided to every senior citizen as well.

So you are going to see an exploding cost. And you are going to see the misallocation of resources within that $400 billion, away from seniors and to so many other groups that I have to say even the most avid supporters of this legislation would say don't need it as much. Do healthy people who have access to an HSA really need help as much as a senior citizen who is struggling to pay their bills?

Isn't there a better way that we can allocate these resources to maximize the drug benefit for every citizen in the country today? The answer is, of course, yes. Why is it that we saw the need to exclude the single demonstrated ability on the part of a Federal program today, in the Veterans' Administration, to control the cost of drugs when it came to protecting drug prices for senior citizens? Why did we do that?

Unfortunately, that wasn't the only cost containment mechanism excluded. For all intents and purposes, we also took out reimportation. We don't have any real authority now to reimport lower cost American-made drugs into this country. I am told the reason we didn't is because the drug companies were overwhelmingly opposed. Keep in mind that a lot of these drugs are manufactured inside the United States, exported to be retailed outside the United States. So the irony is that drugs made inside the U.S. cannot be sold and brought back into the U.S. under this bill. I think it is a folly.

So the bottom line for those who are concerned about the exploding cost of an entitlement is this: I have news for you. You have a right to be concerned because we have not done anything to control costs in this legislation. We are going to woe the day we passed this without providing the same mechanism VA has to do just that. We are going to woe the day. We are also going to woe the day when we draw distinctions between seniors for absolutely no good reason. If it is good enough for veterans, it ought to be good enough for senior citizens across the board. But the drug companies don't like that either. Because they don't like it, it was excluded. So I make these points of order on four very specific points.

No. 1, we are not using that $400 billion we have allocated very well. We could do a whole lot better.

No. 2, there are specific programs in here that don't belong in here in the first place, have nothing to do with offering drugs to seniors; that are handouts to special interests and have no business in this bill.

No. 3, we do very little with cost containment. We exclude the most consequential leverage the Government has had in the past with a program as important as the VA. It passed unanimously on the Senate floor 10 years ago. Why is it excluded now? Because there was special interest opposition.

No. 4, we are going to woe the day when we put special interests ahead of the senior citizens in making these resource allocations in this legislation the way we have.

Mr. President, we can do better than this. We have to do better than this. I hope, on a bipartisan basis, we simply say we are going to ask that these provisions, these concerns be renegotiated.

I was one—and I will end here—who voted in favor of cloture. I am not desirous of extending debate unnecessarily and in a prolonged way. I wanted to make that point by voting for cloture.

But I must say, we expedite the day when we do the right thing with regard to the costs of drugs and with regard to a new system under Medicare. We expedite the day by voting against the motion to waive the point of order made by the distinguished majority leader.

So I hope those who claim fiscal responsibility as an important priority, those who want to maximize the bang for the buck for seniors in this legislation, those who are concerned about the distinctions we draw among senior citizens, will join with those who voted for and those who voted against cloture, against waiving this point of order.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, the distinguished Senator in charge left the floor and said I could allocate some time to myself. I will not use much. I note the presence on the floor of the chairman of the Budget Committee. He wants to speak. Clearly, I want to speak for no more than 7 minutes. I ask that I be advised when I have spoken for 5 minutes.

The PRESIDING OFFICER. The Senator will be advised.

Mr. DOMENICI. Mr. President, the Budget and Impoundment Control Act will be 30 years old soon—30 years in existence. Many pundits never thought it would survive even 1 year. As a freshman Senator, I worked along with my colleagues to help bring about the act, and then I was honored by this body to serve as chairman for many years.

Let me say that the drafters of the Budget Act knew it was a bold and daring piece of legislation, setting up a whole new way of considering legislation in the Congress. As a matter of fact, I am not sure they even knew how bold it would be. It, indeed, in many respects, changed the way the Senate does business—some for the better, some not so much for the better.

There is one provision that is called reconciliation—a strange word—and people wonder what it means. Let me just tell you, without trying to take much time, that our distinguished leader had an opportunity to move this bill under what is called a reconciliation bill. Do you know what that would have done, Mr. President? That would have limited debate, and it would have made the bill almost not amendable and, indeed, besides that, there would be no points of order. He chose, as the bill progressed through, to do otherwise.

So let me repeat. The drafters recognized the need to provide waivers of points of order in this bill. The waivers are just as important as the points of order. They are not there just because points of order might cause so much damage that you need to waive them. They are there because points of order can be a range of things, and the points of order can be waived because the Budget Act says you can waive them, unless in fact they are important to fiscal responsibility or, in some way, violate the soundness of a Budget Act.

So let's be clear. The budget resolution before us, which we adopted back in the spring under the leadership of Senator NICKLES, authorized spending over the next decade of $400 billion for reform of the Medicare Program with prescription drugs. Let me repeat. The fiscal dimensions are $400 billion. You would think if you are going to make a point of order about this bill being out of line budgetwise, somebody would be here saying it spends more than $400 billion, it breaks the budget, would you not?

Most logically, any Senator who says there is a point of order against this bill would say, well, we didn't think it spent more than was prescribed in the Budget Act. They are right, it didn't.

As a matter of fact, using technical rules of evaluation, it spent less than allowed. It spent $395 billion. You would almost think it should get an accolade instead of a point of order. It should get a bow, a ribbon instead of a point of order. It spent less than the Budget Act, and yet a Budget Act point of order is being raised against it. Let me explain.

I know that members of the committee and the leader himself tried their very best to keep this bill under $400 billion, and they succeeded. But you had to provide 10 years of estimates, the sum total of which could not exceed $400 billion. Are you with me, Mr. President? They had to produce a bill with 10 years of estimates, the sum total of which did not exceed $400 billion. The sum total of this bill is less than the Budget Committee gave them to spend. So it didn't break the budget.

One of the years—1 of the 10 years—they could not make the estimate for that year fit the estimate of the 10 years.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. DOMENICI. I will complete in 2 minutes.

The committee could not make this proposal fit in each piece of the 10 years. In other words, if you look along and keep adding up the years, it is $395 billion. But the committee also made some estimates by the year, and one of those years is $4 billion high—got it, $4 billion in an estimating bonanza of $400 billion.

First of all, everybody knows they are estimates, the best you can do. I have had to rely upon them and got accused that I shouldn't have relied upon them when I was the budget chairman, but we did. So there is one year that is $4 billion off in the estimating of 10 years. But every other year is within, which is truly remarkable, and the sum total is $395 billion.

Mr. President, I say to fellow Senators, the truth is the Budget Act point of order should not be used for a frivolous matter—$4 billion off in 1 year with a $400 billion bill. It should not be used to cure technical matters—$4 billion in a 10-year bill of $400 billion. I am sure my friend, the chairman of the Budget Committee, will talk about some of the other technical issues regarding programs. But the biggest issue is fiscal soundness.

We have from time to time in a Budget Act authorized $300 billion for a program over 10 years, and I can tell you, many times a committee came back with a bill that was $300 billion, but for each of the 10 years it didn't fit the number.

This Senator, as chairman of the Budget Committee, wouldn't have dared to get up and say the bill should fail on a point of order because it violates the budget and, thus, the Budget Act should be used to kill it because they had done a great job and had met the total, but you can't, in estimating, make every year hit it right, right on the head.

I submit that a point of order should not be used. The leader's waiver of that provision should be sustained because we are using the Budget Act to try to kill a Medicare bill that is fiscally as sound as, if you are just talking about fiscal soundness, not substance—the points of order are not substance; they have to do with dollars—if you are just off 1 year out of 10 but not on the total of 10, you should not invoke the point of order. It should be waived as requested by the majority leader.

I thank the Senate for the 7 minutes. I yield the floor.

I note the presence of the chairman of the Budget Committee.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. REID. Mr. President, will the Senator withhold?

Mr. NICKLES. I will be happy to yield.

Mr. REID. Mr. President, on our side, Senator GRAHAM will speak for 10 minutes, Senator BOXER for 5 minutes, Senator DODD for 5 minutes, and Senator CORZINE for 5 minutes.

Mr. NICKLES. Mr. President, I yield myself as much time as I might consume.

I urge my colleagues to vote to waive the budget point of order. I think I am correct—I haven't looked at numbers—I probably voted to make more points of order than almost anybody, maybe with the exception of my very good friend, the past chairman of the Budget Committee. I have always tried to maintain the integrity of the budget, but I think what we have here is a way of people saying: Let's vote for cloture, but maybe we can kill this bill indirectly; we will do it with a budget point of order and not to save money.

I wish the people were really concerned about the fiscal integrity of Medicare, but I don't think that is what is behind the proponents of these budget points of order.

As a matter of fact, in looking at past records, Senator DASCHLE, who made the budget point of order, has moved to waive a budget point of order 56 out of 60 times. Senator KENNEDY has moved to waive a budget point of order 54 out of 57 times that he voted. In other words, some 97 percent of the time they always moved to waive the budget rules. I have always been on the opposite side. I am going to be on the opposite side of them this time because, frankly, I think they are just trying to kill the bill so the bill will come back later with more costs and be a lot more irresponsible.

If my memory serves me correctly, when we debated the budget this year on the floor of the Senate, there was an amendment to increase the $400 billion authorization or the reserve fund we put in the budget for prescription drugs and to improve Medicare. I believe Senator KENNEDY and Senator DASCHLE supported an amendment to increase that figure to $600 billion. They were not successful.

My point is I think their effort today is not because they are concerned about this bill costing too much money. I think they are trying to figure out a way to bring this bill down so it can come back and cost more money. I just mention that.

What about the point of order? The budget said we would have up to $400 billion to spend for improving and strengthening Medicare, including providing prescription drugs. The bill that was reported out, according to CBO, meets that target. It scores at $395 billion. I happen to think it is going to cost more than that, but it is compliant with the rules set by the Budget Committee on its total spending and scored by the Congressional Budget Office.

There is a violation or budget point of order in 2004. What do I mean by that? It scores $3 billion more in 2004. What that relates to is when we pass a budget, we allocate so much money to each committee each year, and the Finance Committee has already spent all of its money. It spent all of its money because we passed unemployment compensation—a total of $4.7 billion in unemployment compensation in 2004 not assumed in the Budget Resolution. We spent an additional $10 billion in aid to the States that was not assumed in the budget resolution. There are some other things that we didn't do, so the Finance Committee is out of compliance now by about $3 billion with this bill.

What does this bill do in 2004 that costs money? The prescription drug proposal doesn't really get started in 2004 with the exception of the prescription discount drug card. The card, which offers all seniors a 15-, 20- or 25-percent of immediate savings in January of 2004 and provides a $600 benefit for low-income seniors. Seniors who have incomes less than 135 percent of poverty will get a card. I believe that card will be authorized in January of 2004 for $600. The beneficiary would have to make a copayment of 10 percent. So that costs money in 2004. I don't hear the opponents seeking to delay immediate relief for seniors and low-income seniors.

Further, there are other items that cost money in 2004. Providers receive assistance. Providers, who do I mean? I mean doctors, hospitals, rural hospitals—provisions that are supported very strongly by Members of both parties—rural add-ons, and so on. That is the bulk of this money, $3.8 billion. So if people don't want to spend that money, that is of interest, but my guess is that is not really the case.

My guess is people want to spend the money for rural health care areas.

I then heard the Democratic leader indicate his concern was also on the revenue side of the budget. There is a point of order because of health savings accounts. That is a $160 million revenue loss in 2004.

I understand some people do not like that particular provision of the bill. I happen to think it is a very good provision of the bill. If the supporters of this point of order prevail then the entire Medicare bill is going to be pulled down. Am I right to assume that their goal is to ensure that there will be no prescription drug coverage for low-income seniors because of that provision? I do not think so.

Now folks are stating that the bill has no cost containment. Well, I believe we have very different meanings of those words. The proponents of the point of order consider government price controls to be effective cost containment tools. I do not agree. I do agree that the legislation lacks real cost containment—I heard Senator DASCHLE say we did not have cost containment. This Senator worked very hard to get real cost containment. I wanted to put cost containment in that would require a supermajority vote to worsen Medicare's financial condition. If any future Congress had legislation before the body which would make the fiscal problems of Medicare, which are already significant, worse, there would be a vote, a 60-vote point of order. I was not successful in convincing our colleagues to include that fiscal restraint.

In fact, my primary opponent in creating real cost containment was Senator BAUCUS. He kept saying: I cannot pass that in my caucus. That will never pass. That is a nonstarter. You cannot get a supermajority on this entitlement. You will be curbing the growth of this entitlement. That is not done for other entitlements. I heard it over and over. We debated it for a long time. Well, the facts are that it is done for other entitlements. We have this rule in place today for Social Security. Social Security's entitlement status has never been in question as a result of a supermajority requirement.

I was not successful in getting stronger cost containment than what we have in this bill. I regret that. I wish that we would. I would be happy to pursue that in subsequent budget resolutions with the Democrat leader, but we were not successful in getting it in this package. I think the proponents of this point of order are not serious in their effort to control costs. In fact I am puzzled as to why the proponents of this point of order voted for cloture. Instead of opposing cloture they are trying to get around it the other way and say, we will just use a 60-vote budget point of order.

Seriously, I do not think their efforts are about budgets. I think it is a way to try and kill this bill. I may not support final passage of the bill because I am concerned about the total cost of the bill. But I do not think it should be because we are spending some money for rural hospitals or for doctors. I think doctors are getting like $600 million in 2004; rural hospitals and other providers are receiving money in 2004; and health savings accounts reduce revenues by $160 million in 2004.

The real reason the Finance Committee has exceeded its allocation in 2004 is because we spent $4.3 billion for unemployment compensation and because we spent $10 billion for aid to the States in 2004, neither of which were in the original budget resolution.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. I will yield time in just a moment to my colleagues. First, I will respond briefly to a point made by the distinguished Senator from New Mexico, Mr. DOMENICI. I am sorry he is not on the Senate floor. I wanted to respond to a comment he made. He said this was a frivolous point of order.

I remind my colleagues, this is precisely the point of order made by Senator GRASSLEY and Senator FRIST on two different motions last year. So I argue if it was appropriate last year, it would be appropriate this year. If it is frivolous this year, it would have been frivolous last year. Yet the distinguished Senator from New Mexico, and I might add, of course, my friend the distinguished Senator from Oklahoma, both voted in favor of the points of order last year when that precise point of order was made.

I ask unanimous consent that the rollcall involving both points of order be printed in the RECORD at this time.

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

U.S. SENATE ROLLCALL VOTES 107TH CONGRESS—2ND SESSION

As compiled through Senate LIS by the Senate Bill Clerk under the direction of the Secretary of the Senate

VOTE SUMMARY

Question: On the Motion (Motion to Waive CBA re: Graham Amdt. No. 4309).

Vote Number: 186.

Vote Date: July 23, 2002, 02:54 PM.

Required For Majority: 3/5.

Vote Result: Motion Rejected.

Amendment Number: S. Amdt. 4309 to S. 812 (Greater Access to Affordable Pharmaceuticals Act of 2002).

Statement of Purpose: To amend the XVIII of the Social Security Act to provide coverage of outpatient prescription drugs under the Medicare program.

VOTE COUNTS

YEAs: 52.

NAYs: 47.

Not Voting: 1.

ALPHABETICAL BY SENATOR NAME

Akaka (D–HI), Yea
Allard (R–CO), Nay
Allen (R–VA), Nay
Baucus (D–MT), Yea
Bayh (D–IN), Yea
Bennett (R–UT), Nay
Biden (D–DE), Yea
Bingaman (D–NM), Yea
Bond (R–MO), Nay
Boxer (D–CA), Yea
Breaux (D–LA), Yea
Brownback (R–KS), Nay
Bunning (R–KY), Nay
Burns (R–MT), Nay
Byrd (D–WV), Yea
Campbell (R–CO), Nay
Cantwell (D–WA), Yea
Carnahan (D–MO), Yea
Carper (D–DE), Yea
Chafee (R–RI), Nay
Cleland (D–GA), Yea
Clinton (D–NY), Yea
Cochran (R–MS), Nay
Collins (R–ME), Nay
Conrad (D–ND), Yea
Corzine (D–NJ), Yea
Craig (R–ID), Nay
Crapo (R–ID), Nay
Daschle (D–SD), Yea
Dayton (D–MN), Yea
DeWine (R–OH), Nay
Dodd (D–CT), Yea
Domenici (R–NM), Nay
Dorgan (D–ND), Yea
Durbin (D–IL), Yea
Edwards (D–NC), Yea
Ensign (R–NV), Nay
Enzi (R–WY), Nay
Feingold (D–WI), Yea
Feinstein (D–CA), Yea
Fitzgerald (R–IL), Yea
Frist (R–TN), Nay
Graham (D–FL), Yea
Gramm (R–TX), Nay
Grassley (R–IA), Nay
Gregg (R–NH), Nay
Hagel (R–NE), Nay
Harkin (D–IA), Yea
Hatch (R–UT), Nay
Helms (R–NC), Not Voting
Hollings (D–SC), Yea
Hutchinson (R–AR), Nay
Hutchison (R–TX), Nay
Inhofe (R–OK), Nay
Inouye (D–HI), Yea
Jeffords (I–VT), Yea
Johnson (D–SD), Yea
Kennedy (D–MA), Yea
Kerry (D–MA), Yea
Kohl (D–WI), Yea
Kyl (R–AZ), Nay
Landrieu (D–LA), Yea
Leahy (D–VT), Yea
Levin (D–MI), Yea
Lieberman (D–CT), Yea
Lincoln (D–AR), Yea
Lott (R–MS), Nay
Lugar (R–IN), Nay
McCain (R–AZ), Nay
McConnell (R–KY), Nay
Mikulski (D–MD), Yea
Miller (D–GA), Yea
Murkowski (R–AK), Nay
Murray (D–WA), Yea
Nelson (D–FL), Yea
Nelson (D–NE), Yea
Nickles (R–OK), Nay
Reed (D–RI), Yea
Reid (D–NV), Yea
Roberts (R–KS), Nay
Rockefeller (D–WV), Yea
Santorum (R–PA), Nay
Sarbanes (D–MD), Yea
Schumer (D–NY), Yea
Sessions (R–AL), Nay
Shelby (R–AL), Nay
Smith (R–NH), Nay
Smith (R–OR), Nay
Snowe (R–ME), Nay
Specter (R–PA), Nay
Stabenow (D–MI), Yea
Stevens (R–AK), Nay
Thomas (R–WY), Nay
Thompson (R–TN), Nay
Thurmond (R–SC), Nay
Torricelli (D–NJ), Yea
Voinovich (R–OH), Nay
Warner (R–VA), Nay
Wellstone (D–MN), Yea
Wyden (D–OR), Yea

GROUPED BY VOTE POSITION

YEAs—52

Akaka (D–HI)
Baucus (D–MT)
Bayh (D–IN)
Biden (D–DE)
Bingaman (D–NM)
Boxer (D–CA)
Breaux (D–LA)
Byrd (D–WV)
Cantwell (D–WA)
Carrahan (D–MO)
Carper (D–DE)
Cleland (D–GA)
Clinton (D–NY)
Conrad (D–ND)
Corzine (D–NJ)
Daschle (D–SD)
Dayton (D–MN)
Dodd (D–CT)
Dorgan (D–ND)
Durbin (D–IL)
Edwards (D–NC)
Feingold (D–WI)
Feinstein (D–CA)
Fitzgerald (R–IL)
Graham (D–FL)
Harkin (D–IA)
Hollings (D–SC)
Inouye (D–HI)
Jeffords (I–VT)
Johnson (D–SD)
Kennedy (D–MA)
Kerry (D–MA)
Kohl (D–WI)
Landrieu (D–LA)
Leahy (D–VT)
Levin (D–MI)
Lieberman (D–CT)
Lincoln (D–AR)
Mikulski (D–MD)
Miller (D–GA)
Murray (D–WA)
Nelson (D–FL)
Nelson (D–NE)
Reed (D–RI)
Reid (D–NV)
Rockefeller (D–WV)
Sarbanes (D–MD)
Schumer (D–NY)
Stabenow (D–MI)
Torricelli (D–NJ)
Wellstone (D–MN)
Wyden (D–OR)

NAYs—47

Allard (R–CO)
Allen (R–VA)
Bennett (R–UT)
Bond (R–MO)
Brownback (R–KS)
Bunning (R–KY)
Burns (R–MT)
Campbell (R–CO)
Chafee (R–RI)
Cochran (R–MS)
Collins (R–ME)
Craig (R–ID)
Crapo (R–ID)
DeWine (R–OH)
Domenici (R–NM)
Ensign (R–NV)
Enzi (R–WY)
Frist (R–TN)
Gramm (R–TX)
Grassley (R–IA)
Gregg (R–NH)
Hagel (R–NE)
Hatch (R–UT)
Hutchinson (R–AR)
Hutchison (R–TX)
Inhofe (R–OK)
Kyl (R–AZ)
Lott (R–MS)
Lugar (R–IN)
McCain (R–AZ)
McConnell (R–KY)
Murkowski (R–AK)
Nickles (R–OK)
Roberts (R–KS)
Santorum (R–PA)
Sessions (R–AL)
Shelby (R–AL)
Smith (R–NH)
Smith (R–OR)
Snowe (R–ME)
Specter (R–PA)
Stevens (R–AK)
Thomas (R–WY)
Thompson (R–TN)
Thurmond (R–SC)
Voinovich (R–OH)
Warner (R–VA)

NOT VOTING—1

Helms (R–NC)

GROUPED BY HOME STATE

Alabama:
Sessions (R–AL), Nay
Shelby (R–AL), Nay

Alaska:
Murkowski (R–AK), Nay
Stevens (R–AK), Nay

Arizona:
Kyl (R–AZ), Nay
McCain (R–AZ), Nay

Arkansas:
Hutchinson (R–AR), Nay
Lincoln (D–AR), Yea

California:
Boxer (D–CA), Yea
Feinstein (D–CA), Yea

Colorado:
Allard (R–CO), Nay
Campbell (R–CO), Nay

Connecticut:
Dodd (D–CT), Yea
Lieberman (D–CT), Yea

Delaware:
Biden (D–DE), Yea
Carper (D–DE), Yea

Florida:
Graham (D–FL), Yea
Nelson (D–FL), Yea

Georgia:
Cleland (D–GA), Yea
Miller (D–GA), Yea

Hawaii:
Akaka (D–HI), Yea
Inouye (D–HI), Yea

Idaho:
Craig (R–ID), Nay
Crapo (R–ID), Nay

Illinois:
Durbin (D–IL), Yea
Fitgerald (R–IL), Yea

Indiana:
Bayh (D–IN), Yea
Lugar (R–IN), Nay

Iowa:
Grassley (R–IA), Nay
Harkin (D–IA), Yea

Kansas:
Brownback (R–KS), Nay
Roberts (R–KS), Nay

Kentucky:
Bunning (R–KY), Nay
McConnell (R–KY), Nay

Louisiana:
Breaux (D–LA), Yea
Landrieu (D–LA), Yea

Maine:
Collins (R–ME), Nay
Snowe (R–ME), Nay

Maryland:
Mikulski (D–MD), Yea
Sarbanes (D–MD), Yea

Massachusetts:
Kennedy (D–MA), Yea
Kerry (D–MA), Yea

Michigan:
Levin (D–MI), Yea
Stabenow (D–MI), Yea

Minnesota:
Dayton (D–MN), Yea
Wellstone (D–MN), Yea

Mississippi:
Cochran (R–MS), Nay
Lott (R–MS–) Nay

Missouri:
Bond (R–MO), Nay
Carnahan (D–MO), Yea

Montana:
Baucus (D–MT), Yea
Burns (R–MT), Nay

Nebraska:
Hagel (R–NE), Nay
Nelson (D–NE), Yea

Nevada:
Ensign (R–NV), Nay
Reid (D–NV), Yea

New Hampshire:
Gregg (R–NH), Nay
Smith (R–NH), Nay

New Jersey:
Corzine (D–NJ), Yea
Torricelli (D–NJ), Yea

New Mexico:
Bingaman (D–NM), Yea
Domenici (R–NM), Nay

New York:
Clinton (D–NY), Yea
Schumer (D–NY), Yea

North Carolina:
Edwards (D–NC), Yea
Helms (R–NC), Not Voting

North Dakota:
Conrad (D–ND), Yea
Dorgan (D–ND), Yea

Ohio:
DeWine (R–OH), Nay
Voinovich (R–OH), Nay

Oklahoma:

Inhofe (R–OK), Nay
Nickles (R–OK), Nay
Oregon:
Smith (R–OR), Nay
Wyden (D–OR), Yea
Pennsylvania:
Santorum (R–PA), Nay
Specter (R–PA), Nay
Rhode Island:
Chafee (R–RI), Nay
Reed (D–RI), Yea
South Carolina:
Hollings (D–SC), Yea
Thurmond (R–SC), Nay
South Dakota:
Daschle (D–SD), Yea
Johnson (D–SD), Yea
Tennessee:
Frist (R–TN), Nay
Thompson (R–TN), Nay
Texas:
Gramm (R–TX), Nay
Hutchison (R–TX), Nay
Utah:
Bennett (R–UT), Nay
Hatch (R–UT), Nay
Vermont:
Jeffords (I–VT), Yea
Leahy (D–VT), Yea
Virginia:
Allen (R–VA), Nay
Warner (R–VA), Nay
Washington:
Cantwell (D–WA), Yea
Murray (D–WA), Yea
West Virginia:
Byrd (D–WV), Yea
Rockefeller (D–WV), Yea
Wisconsin:
Feingold (D–WI), Yea
Kohl (D–WI), Yea
Wyoming:
Enzi (R–WY), Nay
Thomas (R–WY), Nay

Mr. DASCHLE. I yield 10 minutes to the distinguished Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, given my expanded amount of time, I would like to talk about two aspects of this. In 2001, first with Senators ZELL MILLER and TED KENNEDY, and then with Senator GORDON SMITH, I offered variations of a prescription drug bill to this Senate. In the case of the first legislation, there was, in fact, a point of order, precisely the one that is now before the Senate, offered against both of those provisions.

In the first instance, the vote to waive the point of order was 52, so the bill had a majority of the Members of the Senate prepared to support it, which would have meant we would not be having this debate today because senior citizens and disabled Americans would be going to the drugstore and getting their prescription drugs today.

The second bill which Senator SMITH and I offered was very similar in structure to the one that is in this current legislation; I would say somewhat better and more public spirited but similar.

On that bill, there were 50 votes exactly not to waive the point of order. So this is not a unique, unusual, or inappropriate motion to make. It was made twice in 2001. In the one case, it denied passage of legislation. In the other case, on virtually the same bill we have before us today, it denied us the opportunity because we could not get the 60 votes in order to override the point of order.

What I really want to talk about, however, is the last point that my friend and fellow-departing Member of the Senate, Mr. NICKLES, just said, and that was about the issue of cost containment. Senator NICKLES has a definition of cost containment. That definition is that we will impose limits on the amount of funds which can be spent on the Medicare Program, the most prominently suggested approach being to say that if more than 45 percent of the nontrust fund monies of the Federal Government are going to be spent on Medicare, then there will be a complex Rube Goldberg of votes and countervotes to determine if that can occur.

If those limits are imposed, then the only way that 45-percent excess can be replaced are through things which are clearly going to be very onerous upon the Medicare beneficiaries, such as increasing the payroll tax or increasing the amount of premiums that seniors would pay.

The idea that we might go to general revenue as the means of meeting that excess is not allowable. It has to come out of the Medicare Program itself.

I have a different definition of what a cost control ought to be, and it is not a bureaucratic maze. It is a very straightforward, capitalist, free enterprise, marketplace approach. It also is not a new idea. In the early 1990s, this Senate passed legislation which authorized the administrator of the Veterans' Administration to negotiate with pharmaceutical companies on behalf of the VA. That bill was sponsored by Senator Alan Simpson, retired Republican from Wyoming; Senator and now-Governor Frank Murkowski of Alaska; retired Senator Alan Cranston from California, and our colleague today, Senator JAY ROCKEFELLER. Those were the four sponsors.

When the bill came before the Senate, there was not a request for a recorded vote. It passed unanimously. So that does not sound like it was a very radical bill, given who its sponsors were, or that it raised any great cries in the Senate.

What has happened over the intervening decade plus since this legislation was passed? Well, here is a chart that shows some of the common prescriptions which are now being purchased by the VA under this legislation. Let us take one which I happen to know well because I take it myself, and that is Zocor. It was designed to control high cholesterol.

On Veterans' Day of this year, I spent the day at the VA hospital in Miami. A lot of the day was spent in the pharmaceutical dispensing area. I asked the question: What are you paying for Zocor? Well, the answer was 66 cents a tablet. I then asked what would it be if they went to the drugstore and bought the same identical tablet. It was $3.77.

I said: Is that illustrative of the kind of discounts you are able to negotiate? The answer was: No, it frankly is a little bit deeper than average. We, this year, will dispense about $39 million of prescription drugs through the Miami VA. I asked: If you went down to the drugstore and bought it at the same price that, for instance, seniors under Medicare would pay, what would it cost? It was $81 million. So there is more than a 50 percent discount—in some cases much more dramatic discounts.

The question that I think we should anticipate, so we had better ready with an answer, is the question: Why, in light of the success of the VA in providing for its 27 million eligibles—why do we have this in this legislation, under the clause ''noninterference?''

I might correct a statement I made yesterday when I said it was on page 54. In the final version of the printed conference report it is moved to page 53, lines 18 through 26. Here is what those lines say:

> Noninterference. In order to promote competition under this part and in carrying out this part, the Secretary—[who was in the Chamber just a few moments ago]—(1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP—[which is the drug-only insurance policy] sponsors; and (2) may not require a particular formulary or institute a price structure for the reimbursement of covered part D drugs.

What all that legalese means is that we are about to prohibit the Secretary of HHS from using the tremendous bargaining power which Medicare has, similar to the Veterans Administration, to accomplish for Medicare beneficiaries the same cost control that we are now achieving in the Veterans Administration.

Some people say: Why are we doing this? What is the reason we would have such diametrically different policies for two very similar groups of Americans?

One answer was: Well, veterans, they are a special class. There are not as many veterans; therefore, they will not have the impact.

I agree, veterans are a special group of Americans. They deserve to be honored. But so are the other members of the greatest generation. So are the wives who stayed home with the children while their husbands were fighting abroad.

The fact is, there are 27 million veterans eligible to get these reduced costs. When we pass this Medicare bill, until such time—and I am afraid it will not be very long—that we see a mass retreat of private pre-employers—that is the persons, the businesses that used to employ the current retirees—start to drop coverage—until that happens, there will be about 10 million to 12 million of the 40 million Medicare beneficiaries who are likely to take most advantage of this prescription drug benefit.

You can't tell me if 27 million veterans can take advantage of this program, and they have not brought the

pharmaceutical industry to its knees, that 10 to 12 million Medicare beneficiaries are going to cause that to occur.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator has used 10 minutes.

Mr. GRAHAM of Florida. I ask for an additional 5 minutes.

Mrs. BOXER. Reserving the right to object—of course, I will not object—I would like to be the next Democrat on the list to speak because Senator DASCHLE had committed that to me but he is not in the Chamber at this time. I ask unanimous consent that I be the next Democrat to speak, up to 7 minutes, after Senator GRAHAM, and of course yielding to the other side.

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

Mr. GRAHAM of Florida. There is a question more serious than the question I just asked, and that is, How do we answer the question? This is Ms. Kitterage. She is 75 years old. She lives in Tamarac, FL. She has about $4,900 a year expenses over a range of prescription drugs. That is her annual expense. Here you see some of the vials of her prescription drugs.

This is not the case—at least I don't know it to be the case—but let's assume that Ms. Kitterage either is married or is a widow and that her husband was about her age, which would have meant that he would quite possibly have been one of our brave soldiers in the Korean war. As such, he would be eligible, as one of the veterans, to get the VA discounts. She is not eligible today. Because of this provision we are proposing to put into law, she will not be eligible in the future to get the benefit of Medicare's tremendous purchasing power.

I want to just leave this question. When we stand up before an audience of elderly Americans and Ms. Kitterage comes and asks this question: My husband is the same age I am; why is he able to buy prescription drugs at half the price that I have to pay because he can do it at the VA, that is the question we are going to be required to answer. I would like to offer that to my colleagues for a response. Would somebody please tell me what is the public policy that justifies utilizing the purchasing power of the VA to get these kinds of discounts?

Yet to the wives of the veterans we say: You have to pay the full amount. I can't find a justifiable reason for that.

I am a capitalist. I am a free enterpriser. I am a marketplace person. I don't believe in socialism. Why should we bring the marketplace to the veterans but bring the red flag of socialism to Medicare? I hope, during the course of this debate, we can engage on this issue because I think it is maybe the most central issue. If we did this one thing, if we eliminated this specific paragraph and wrote in the language that we did over 10 years ago for the VA, we would be doing the seniors of America a greater benefit than anything we are considering and we would be saving the American taxpayers an enormous amount of money, therefore avoiding further additions to our national debt.

The PRESIDING OFFICER. The Senator has used his additional time.

Mr. GRAHAM of Florida. Mr. President, I leave that question with you and hope during the course of this debate we will be engaged in answering.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, first of all, I should find out how much time we have left.

The PRESIDING OFFICER. You have 43 minutes.

Mr. GRASSLEY. I yield myself such time as I might consume.

This may sound like a simple vote, to raise a point of order about a budget and how this fits into the budget. But what this vote is all about is whether or not we are going to have any bill whatsoever providing prescription drugs for seniors. That is what this next vote is all about because I believe if we get 60 votes like we did 70 votes on the cloture motion, we will be on our way to passage, in a bipartisan way—everything has been bipartisan on this bill, as far as I am concerned—in a bipartisan way, passage of this bill, so our seniors can have prescription drugs, so that the biggest hole that has ever existed in Medicare for the last 38 years is filled in.

So all the arguments can be made about this little budget deal or that little budget technicality, but this is a vote about keeping the promises of both political parties over the last three elections. I do not think we ought to pooh-pooh keeping the promises of the last election. People are cynical about political leaders anyway—overpromising, not delivering on promises. This is our opportunity. This is one of the last two votes for this bill to go to the President of the United States.

So this vote is about our seniors, and also we can include Americans with disabilities. So a successful vote against overriding this point of order will gut the immediate funding we provide for prescription drug discount cards.

Much has been said by the opponents of this bill about not providing help to seniors fast enough. How many times, in the last 3 days, 4 days of debate on this bill have you heard the point: ''Well, this bill is not going to take effect for 2 years. I don't know why it can't take effect sooner''?

Now, that is not our choice. We pass a bill. You have to give some time for bureaucrats to implement it and write the regulations, and you want to do it right. So that is what they say: They need that amount of time, No. 1. No. 2, this bill takes effect immediately for part of it, and that part is the drug discount card for seniors and the disabled so they can get 15 to 25 percent discounts on drugs right away.

So apparently a discount card available to all seniors in less than 5 months, and also with a direct $600 subsidy to those with the lowest incomes, is something that opponents of this bill—crying in their beer all the time about this not doing enough for seniors or not taking effect soon enough—is a reason to block this bill.

They are talking out of both sides of their mouth when they say that. On the one hand, they say it is not going into effect soon enough, and then with the next vote we are going to have up, they are going to guarantee no drug benefit for years, and just with some little budget technicality on a procedure vote.

That is pretty ironic, that they would take that stand over the course of 4 days—argue that this bill is not going into effect soon enough, ignoring the discount card that starts immediately, and saying we are not doing enough—and then they are willing to block it on a technicality.

It seems to me that anybody who says we are not providing drug benefits quickly enough for our seniors and our disabled would vote to override this point of order so we can get to the next vote, final passage of this legislation.

Also, I just heard some of my colleagues from the other side of the aisle say this bill, in some instances, does not do enough for rural health care delivery. We provide $25 billion in this bill for rural providers to deal with the inequitable situation of the 30 States below the national average. That is because the formulas for doctors and hospitals in rural areas treat them less well, less equitably than the formulas for urban areas, because the assumption is in rural areas you can deliver health care for less costs.

But they are crying in their beer about maybe that is not doing well enough. And if they vote as 1 of the 41 who might keep us from overriding that point of order, then how can they talk out of both sides of their mouth—one time saying, ''We are not doing enough,'' and then, on the other hand, ''Kill this bill on this budget technicality''? Because just as soon as this bill passes, rural providers are going to get a great deal of help from this legislation.

Now, that help is not just for our providers because we feel sorry for doctors or hospitals. We are not being able to recruit doctors and maintain our hospitals in rural America. This $25 billion in this bill will strengthen our hospitals. It will give us an opportunity to recruit doctors.

So if you are 1 of the 41 who does not help us override this point of order, you are saying no to the recruitment of doctors in rural America. You are saying it is OK to close rural hospitals. Because you know what is going to happen right away if we do not pass this legislation—all the doctors of America are going to take a 4.5-percent cut in their reimbursement because of the way our formulas work. I do not

know how formulas such as that were written, but those formulas have an egregious impact upon the doctors.

I strongly disagree that that ought to happen and that we ought to have situations where medical doctors are fed up with working with Medicare patients and they just get out of the program. Then our seniors have fewer doctors to take care of their needs.

But if this bill passes, it is going to give relief to our doctors, not only stopping that 4.5-percent cut, it will give them a 1.5-percent increase in reimbursement.

It seems to me a vote against overriding the point of order is a vote against our rural hospitals every day because every day our hospitals are doing more with less. They serve our elderly. They serve the uninsured, those who live in some of the remotest parts of our country, and those who live in our cities as well because city hospitals have problems, too.

Are we going to tell those hospitals what they do every day in saving lives and improving patients' quality of life is not somehow important? I certainly hope not. But a vote against overriding this point of order is a thumb in the eyes of health care providers, in the eyes of the people who run our hospitals, the nurses who work there.

So this is going to be a vote against some of our neediest seniors. And the neediest of our seniors are those in nursing facilities who need physical therapy. They need occupational therapy, speech therapy. This bill, out of this $25 billion, provides a 2-year moratorium from the therapy cap that is in law today, which, basically, at $1,500 is saying, if you have a stroke, if you have some sort of major operation, you are only going to get physical therapy up to $1,500; and too bad after that.

Well, we take care of that in this legislation. But the people who vote against overriding this point of order are saying no to those neediest of seniors in the nursing homes who will be hit by this $1,500 cap and will not be able to get the physical therapy services they need.

We are at a point where all this effort about rural hospitals has been supported by an overwhelming majority in both the House and the Senate.

We heard our colleague, Senator BENNETT of Utah, speak passionately about his daughter. His daughter is a speech therapist and knows all too well how nursing home residents benefit from therapies after they have suffered a stroke, heart attack, or maybe just a fall. Are we going to say to Senator BENNETT's daughter that we don't need to delay these caps? Are we going to say to our seniors that access to physical therapy doesn't matter? I certainly hope not.

You will hear a lot about this vote being a comment on how we spend money in this Medicare bill. You will hear how this vote might be a vote against special interests in America. I ask my colleagues what they mean because if their seniors need immediate relief from high prescription drug bills, their hometown doctors need some help, their local hospitals need some help, their seniors recovering from stroke and heart attack need some help because they need more therapy, then I guess they should vote against these people.

That isn't what I hear from the other side of the aisle. They are the great humanitarians of the American political environment. They are concerned about all these people. Well, this next vote will show how concerned they are because they are voting against all these people who have need, most often the seniors of America who need prescription drugs.

I do not intend to vote against them and, in the process, hopefully get this bill to final passage.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from California has already been recognized to speak for 5 minutes. Following the Senator from California, I ask unanimous consent that Senator DODD be recognized, and following that, Senator CORZINE be recognized for 5 minutes, and following that Senator DURBIN for 5 minutes.

The PRESIDING OFFICER. It is the understanding of the Chair that Senator BOXER was going to be recognized for 7 minutes.

Mr. REID. That is correct.

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

The Senator from California.

Mrs. BOXER. Mr. President, let me tell you where we are because people watching this debate may be confused on what has happened. On our side we have made a point of order against this bill because it busts the budget. Know where does it bust the budget? Does it bust the budget by giving a more generous prescription drug plan to our seniors? No. It busts the budget by giving away billions of dollars to the HMOs. It also busts the budget because it allows a big deduction from the wealthiest and healthiest people to set up what they call HSAs, health service accounts, and to be able to deduct that money. What that does is, it raises the premiums for everybody else, taking those people out of the insurance pool.

So make no mistake about it, when the Senator from Iowa says we are terrible on our side because we don't want to spend more money, we are willing to spend the funds on the senior citizens' prescription drug benefit. We are not willing to throw it away on HMOs and on the tax breaks for the wealthiest people who are already doing just fine, thank you very much.

Having said that, there is a real benefit to ensuring that this bill stops in its tracks by supporting this point of order. In order to do that, we have to vote no on the motion to waive it. So if we prevail, if the other side does not get 60 votes, this bill will go back and get started again. It will come back to us with a better prescription drug plan. It will come back to us with less confusion, less bureaucracy and the rest.

The underlying bill hurts seniors; 6 million of them will pay more for prescriptions than they do today. There is a cruel asset test in here where you may have to sell off your wedding band to get help. You may have to sell off your car if it is worth more than $4,500 to get help with prescription drugs. And it seems to me selling off family heirlooms is not something we want to do to our seniors.

In many of our States that have big metropolitan areas—and I see the Senators from Connecticut, Illinois, and New Jersey, I am from California—our seniors will be forced into demonstration projects. That means they will either have been forced into an HMO to get a better break on their monthly premium or have to pay more to stay in traditional Medicare where they have the choice of a doctor.

It increases Medicare premiums for middle and upper class people. Some people may say that is a great thing. Let me tell you a couple of bad things about that. Again, what will happen is, these people may well leave Medicare, which means the pool shrinks and the premiums go up for everybody else. The other problem is, these premiums are not indexed. If this had been in place in 1980, I think we figured it would be people with $33,000 a year who would have to pay higher premiums. We know that is a low number.

There will be confusion and fear. I will talk about that. And there will be large benefit shutdowns which are daunting and penalize innocent seniors.

I say to the occupant of the Chair, something maybe he has not yet found in this bill because, look at the size of this thing. This is the size of it. It is hard to lift it. If you look at this, hidden in there it says the Secretary of HHS can demand from the IRS your tax return or mine or any of our constituents to just make sure they are not cheating on a lot of the rules that go along with this.

In California, the minute this bill goes into effect, I have a lot of problems: 867,000 sick low-income seniors will have worse coverage; 250,000 retirees will lose their more generous prescription drug coverage; 296,000 fewer low-income seniors will qualify for low-income protections than under the Senate bill that I was pleased to vote for; 230,000 Medicare beneficiaries will pay higher Part B premiums; and 1.4 million seniors will be forced or could well be forced into one of those demonstration projects with HMOs.

I don't have a lot of time left so I want to leave you with this chart that I made up, sort of wrote it myself. A lot of it is in my own hand. I have to tell you, I used this chart on Saturday. My phones have been ringing off the hook. This is what the senior citizens now have to understand.

I would urge my colleagues to look at every expression on this chart and you tell me if you understand what these things are: Transitional assistance, there is one thing seniors better learn because they are transitioning into something different; MSAs, medical savings accounts; risk adjustment, you are going to hear about that; benefit shutdown, that is when you know longer have any benefit, and Senator DASCHLE was so eloquent on that point.

If you have $5,000 worth of prescriptions, you are going to have to pay $4,000 toward that $5,000. You can get a better deal with a discount card. If I was a local pharmacist, I would just say: Come on in, Medicare patients. I will give you a discount. Don't bother filling out all the forms that will be necessary with this so-called great benefit that the other side says they have given. There is a huge benefit shutdown.

Coverage gap is another expression to explain. There are copayments, risk corridors. You all know what HMOs are. You better know it well because there are going to be a lot more of them. There is MA–PD plans, plan retention funding; MA regions; donut holes—and you can't eat those donut holes; those are gaps in coverage—premiums, you all know what that means.

Let me tell you, it is going to be confusing. You won't know what group you fall in and what your premium is. Income related, HSAs, wraparounds, national bonus payments, stabilization funds—that is a nice name for the slush funds that are going to the HMOs, and one reason that budget point of order ought to be sustained—Medicare advantage competition, annual out-of-pocket threshold. Seniors, you better learn what that is. You are going to have to keep notes on every little penny you spend.

By the way, if you happen to be on a prescription drug that is not in the Medicare formulary, but it was in your Medicaid formulary—I don't even have the time to go through all this.

One of my favorites is ''clawback.'' Half of my colleagues probably don't know what that means. States are prohibited from helping their seniors who are very poor pay their copayments. The States are prohibited and they must pay back the Federal Government. So seniors, pick up the phone, call your Senator. Tell them to bring this bill back to the drawing board. It is a huge bill. Only a tiny portion of it is a prescription drug benefit.

Mr. President, let's get rid of this turkey in time for Thanksgiving.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I commend my colleague from California. Bring that chart down here. Talk about alphabet soup, this is very instructive, it seems to me, in terms of why people are so confused about what is in this bill. There is incredible language here that even the most determined person to learn about this bill would be hard pressed. There it is.

I thank the Senator from California because she has laid out here a lexicon of language which would glaze over the eyes of the most determined people to try to sort out what this bill means.

One of the points the Senator made is worth noting again. This is not the end of a Congress. This is only the end of a session. If we were at the end of a Congress, I presume the argument made that we have no other choice, we can either do it now or it doesn't get done would be valid. Each new Congress has to begin all over. But we can actually come right back, pick up where we left off, and try to work this legislation out to serve a better interest.

I thank her for this. Some of this really needs further explanation. Let me say this—and I am being repetitive to some degree—the prescription drug piece of this is of concern to me. I was willing to accept the argument that having a prescription drug benefit of $400 billion over the next 10 years, while not perfect, was a start. If that is all we were voting on today, I would probably vote for it. What is not being discussed at any great length is the second half of the bill, which is very confusing to people because it has language in it that is unclear as to what the ramifications mean.

So people need to pay attention and understand that if we are just dealing with the second half of the bill, the Medicare-exclusive parts of Medicare, I think there would be a very different reaction in the Chamber to what we are proposing. I suspect the prescription drug benefit piece would pass overwhelmingly, and I suspect that a free-standing Medicare piece might not get 15 votes, when you consider what is being proposed.

You are absolutely prohibited, under this bill, from joining to go out and buy prescription drugs collectively. You are banned under this legislation. Under this legislation, of course, you are going to give a significant advantage in the competition because of the $12 billion subsidy. That is the reason the order holds here. This piece of legislation has a significant subsidy coming up to the private piece of this proposal. Nothing like that is being offered anywhere else.

In fact, a similar point of order was raised in July of last year—at the end of July of 2002—making the exact same point of order that has been made on this legislation. That point of order was raised by the majority leader and the chairman of the Finance Committee against the piece of legislation offered by Senators Graham, Miller, and Kennedy. There, the point of order was against section 302(f) of the Budget Act because it broke the budget ceilings.

That is what is being offered here for exactly the same reasons. It will be curious to see whether or not the people who felt so strongly about not waiving the Budget Act back then will do the same here.

This legislation being proposed, obviously, also makes it extremely difficult for people, down the road, to be able to have a prescription benefit plan that is going to be fair and balanced. I take note that none of these provisions, by the way, will go into effect rather immediately. You can impose many of the things we are talking about here in a matter of days if you are truly interested. Yet they are delaying it until 2006, until after the 2004 elections when, obviously, what happens to beneficiaries under the so-called fair competition—Medicare, remember, was a program designed to take the wealthy and healthy and the poorer and sicker together, not to discriminate, and to provide for both of these constituencies. Over the years, that is why the program has been so successful. What is going to happen, of course, with this unfair competition of a 9-percent differential and a $12 billion subsidy is that those who are wealthier and healthier will spin off out of Medicare, and only the poor and the sicker will be left in the program; thus, raising the premium costs or reducing benefits. That is what is going to happen here. There is no doubt in my mind about where we are headed with this proposal. We have raised this point of order to suggest that there is a better way of crafting this legislation. We urge our colleagues to support the point of order when the vote occurs.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I yield myself such time as I may consume. Will the Chair please notify me when I have used 10 minutes?

The PRESIDING OFFICER. The Chair will do so.

Mr. SANTORUM. Mr. President, I find this to be a little bit of a surreal experience, being here on the Senate floor and listening to all of the problems in this legislation, all about how it doesn't provide enough benefits and how we need to spend more money, and what is being offered is the budget point of order by the very people who want to spend more than what this bill does.

Someone is saying we are spending too much money—I think $4 billion or $5 billion—in 2004. We are not even spending the $400 billion allotted. It is a $395 billion bill. We are within the budget window over 10 years and also over 5 years. But in the first year we are not in the budget window. Why? Let's figure it out. If you are in for 5 and 10, what is the problem for the first year? The problem the first year is that the budget sets up a category for mandatory spending, and included in that was the money for Medicare.

Now, is the money that we have in this bill exceeding the money that we anticipated in the budget for Medicare? No. Well, wait a minute. If the money that we have in this bill doesn't exceed

what we had budgeted for Medicare, then why is it subject to a budget point of order? Well, because the money that we had budgeted for Medicare was eaten up by two Democrat initiatives that have swallowed up that money—unemployment extension, and FMAP, money to the States for their medical program. Because of those two expenditures—which I agree was done in a bipartisan way, and I tip my hat to the other side; it was clearly motivated by the other side of the aisle to spend this additional money—we have now blown through what we were going to spend on Medicare. Guess what. There is no money left in fiscal year 2004 for Medicare—any kind of spending in this bill.

So if we would have done anything in this year to spend money on Medicare, we would have exceeded the budget caps. So we have this thing tantamount to a gimmick, if you will, where we have exceeded the budget because of other spending having nothing to do with Medicare, and that leaves us liable to a budget point of order.

Now, I understand if you want to kill the bill—and I understand you do want to kill the bill—we had a vote on cloture. We had 70 votes, and it would have been 71 had Senator SHELBY been here and his plane was able to get off the ground. But we had 70 votes not to block it on a procedural vote, to give the people of this country, through the Senate, an opportunity for an up-or-down vote as to whether this proposal is worthy. Seventy Members voted today that we were not going to use a procedural filibuster.

What is the next step? The next step is to use another procedural gimmick. In this case, as the Senator from New Mexico has pointed out, it truly is a gimmick because we are within what was contemplated when we passed the budget earlier this year for Medicare next year, but we have a technical problem because of other spending that has nothing to do with Medicare.

I say to my colleagues who are going to be casting their votes momentarily on this issue: If you want to block this vote procedurally, you had your chance. It was a vote on cloture. We are now postcloture. To put up another procedural gimmick—and this is truly a gimmick—being offered by someone who for 57 out of the last 60 waivers of the Budget Act voted to waive the Budget Act and the 3 times they did not, they were not here to vote as a way to obstruct the Medicare bill at the 11th hour and the 59th minute, when they had voted for every single waiver that was available to be voted on, to use this to try to block this bill I think does not comport with the original vote which was not to filibuster this bill.

This is tantamount to another filibuster only it doesn't have the word attached to it. Maybe you can go back home and say: We didn't filibuster this bill; I voted to allow this bill to be considered. But, you know, there was this budget problem. Now by the way, I have never seen a budget problem that I didn't have a problem with waiving. I have waived it 57 times or 60 times this year on things a heck of a lot less important than prescription drugs for Medicare, and we routinely did it, but when it comes to Medicare, when it comes to $3 billion or $4 billion or $5 billion out of a $400 billion bill in the first year, because of a problem having nothing to do with Medicare, then I am going to find a problem, then I am going to be concerned about the budget when I voted to waive the Budget Act 60 times prior to that.

That dog doesn't hunt. That is just a procedural obstruction. I hope my colleagues who voted for the cloture motion will vote consistently. This is another vote on cloture. That is what this is. This is a procedural hurdle that has no substance or basis to it.

When the people who offer this procedural motion, concerned about the impact on the budget, and in all of their speeches talk about how much more money we should be spending, one wonders how sincere the budget concerns really are. Every person who has gotten up to support this budget point of order has said this bill falls short because it doesn't spend enough. Yet they are making a point of order on the budget which says we are spending too much.

This is the kind of shenanigans that goes on in the Senate, that goes on in Washington, DC, that the public, frankly, just doesn't understand. You are either for this bill or against this bill. If you want to block this bill, vote against cloture, but don't put up these gimmicks, rules that are in place to stop something from happening because you want to accomplish the opposite effect of the rule. The rule was put in place to save money. They are using the rule so they can spend money.

It shouldn't be any surprise that on another issue relating to this, we have a situation where many on the other side of the aisle have been critical of this noninterference issue. That is the provision that says the Federal Government is not going to negotiate a price for prescription drugs for everybody on Medicare. Why do we have this in place? Let me give you the policy.

We have this in place from a policy point of view because roughly 50 percent of all prescriptions in this country are going to be bought through Medicare—to have that kind of ''market power'' where the Federal Government will basically go in and dictate a price fix, price set to every pharmaceutical—most pharmaceutical, not every—most pharmaceutical products in this country.

Most Members of Congress are not for a command-and-control, one-size-fits-all drug price in America. Some are. Some would like to adopt the Canadian-style system, and some would like to adopt the German-style system, but we have made a decision that we believe it is better for the private sector insurance company, with big market share because there will not be very many of these plans—there will be big market share—to negotiate with the private sector drug companies for the best price they can get. And the better negotiators they are, the better premiums they can offer to their beneficiaries which means more enrollees. It is certainly their incentive to negotiate tough bargains with the pharmaceutical companies. They have the market power and the ability to negotiate.

It is different than giving the Government the ability to negotiate—I shouldn't say negotiate, I should say dictate—the price they will pay for pharmaceuticals. We think the private sector should work, not the Government dictating prices. They compare it to the Veterans Administration. Yes, the Veterans Administration has such a proposal—not a proposal; it is the law. It mandates a 24-percent reduction. Does that have any rhyme or reason to what the drug costs should be? No, it is just a flat 24 percent across the board. If you don't take that reimbursement, then you can't participate in Medicaid or any other Federal program. It is a heavy hammer. It is a very small part of the pharmaceutical industry.

I yield myself 3 additional minutes.

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

Mr. SANTORUM. Mr. President, that is the policy. What is the history of this provision? It is very interesting. This proposal, which was criticized by Senator DASCHLE today, was introduced by Senator DASCHLE. This came from the Democrats' bill in the year 2000. This language, almost verbatim, was introduced by the Democratic leader, and now like lemmings, they are lining up saluting this as the worst thing they have ever seen. Yet it is their proposal, not just Senator DASCHLE's. It was also in Congressman STARK's bill in 2000, and again, in the Snowe-Wyden proposal, there was the exact language. It was in the tripartisan plan of last year. Actually, a version of this language appeared in the Senate bill that received 76 votes on the floor of the Senate.

I just wonder whether the degree of outrage is somehow inversely proportional to the actual complicity of the act. We see this huge amount of outrage, and yet we see complicity. In fact, it is their language that is in this bill. Why did they put it in? They put it in because they did not want to be charged with having Government price fixing. They didn't want to be accused in their proposal that it was going to be a command-and-control Government price fixing of pharmaceutical products.

What did they do? They said: We believe in competition. They wanted to be able to say that they have a competitive model, so they put in a competitive model. Let the private sector negotiate their incentives for the insurers to get lower costs out of the

pharmaceuticals, and there are incentives on the pharmaceuticals point to give volume discounts.

Let that mechanism work. Don't have the head of CMS, the Medicare Director in Washington, DC, dictate prices for everybody.

Let us not set those prices in the Senate. Let us let the marketplace work to squeeze cost and get efficiency out of the system. It is their idea. So, again, I suggest on two issues that have gotten a lot of talk, No. 1, the budget point of order, which is made to save money, is actually being used by the other side so they can spend more money. The major provision that has gotten the ire of so many, which is this noninterference with negotiating drug prices, is their proposal.

I suggest, as I had a conversation with one of my colleagues on the other side of the aisle a few moments ago, I understand the left hates this bill. As we saw from the House and we saw from some of our colleagues, a lot of the right hates this bill. Usually, things that come straight down the middle are usually where most Americans are and where most Americans would like us to go. That is what this bill does. I hope we have very strong support for it as a result.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I want to speak for about 5 minutes about encouraging my colleagues to sustain this point of order. I want to use some of the comments I heard about gimmickry because I am concerned about the budget issues, and this is absolutely relevant. It was gimmickry to say we are spending $400 billion on a prescription drug benefit for seniors and then hide it in HSAs, $12 billion support for the insurance industry, lots of support, some of which I actually might even have agreed to with regard to encouraging corporations to maintain their insurance policies so Medicare does not have to pick it up, all of that is true. But we have a major league problem. There is no cost containment in this program of any serious effect.

I come from a State where there are a lot of pharmaceutical industries and we were talking about importing price controls from Canada. We had that debate around here. I am not for that. I think we ought to deal with a market structure that is fair and respectful of the buyers actually competing for the price.

Last time I checked, the Federal Government, when it buys a tank, actually goes out and negotiates the price. When it is buying airplanes, we talk about negotiating the price. I think it is absolutely essential that if Medicare is the provider of the resources, the taxpayer, that they be able to negotiate their price.

One of my problems with this bill—which I will remind people is 1,200 pages long and not many of us have read it—is that it has a lot of unintended consequences. It has one very real intended consequence which is to dampen competition which might lower prices. We are increasing the demand curve and we are keeping the supply curve the same, and that raises prices. That is exactly what happens. That is economics 101.

By the way, the VA is a perfect example of it, and I thank Senator GRAHAM for pointing this out. When the VA is negotiating prices, it is not 24 percent across the board. It is on individual drugs. They can save about half of what would be paid if they went to a pharmacy.

This is not my chart but it is actually doggone good. I take this Lopressor for high blood pressure. No wonder I have high blood pressure being in the Senate. It costs 1 cent per pill. At the drugstore it is 87 cents.

Here is another one. This is Zantac. I guess if one has an ulcer—some people get ulcers when they are around here—it costs 2 cents at the VA. It costs $1.83 at the drugstore. That is price control, price containment at the VA, while the drugstore is charging what the market will bear. That is what our seniors are doing. That is going to back into the longrun explosion of costs with regard to this bill, about which a lot of conservatives are concerned. I am concerned about it.

We say this is $400 billion, it is out of tilt with the budget resolution in the first year, but if we think we know whether this bill is going to produce $400 billion worth of expenditures over the next 10 years, I think we are kidding ourselves.

Nobody knows what is inside this bill on each individual page. There is going to be a lot of difference by the time we get there. The one thing we do know when we go from 40 million seniors to 70 million seniors is this thing is going to explode in the second 10 years. The estimate is it will cost $1.3 trillion to $2 trillion.

Frankly, it is going to increase the unfunded mandate for Social Security and from about $18 trillion to $25 trillion. I cannot even think of those numbers, but that is a huge problem if we are not willing to deal with the reality of what we have to do.

That is why it is important on the budget to take into consideration whether VA and the Medicare system are actually going to negotiate these prices because they can hold down those costs. If we do not want to deal with that, then we are going to have those kinds of long-term results which are going to end up undermining the ability of the American people to continue to have the kind of support they expect from Medicare and other things.

I said last night, there is a lot of good in this bill. Unfortunately, at least in New Jersey, 300,000 folks who do not have insurance or drug coverage right now are going to get it, but 550,000 are going to be impacted negatively. It is real. We have done the analysis. We know it.

What is important is we are putting ourselves on a track where we will not be able to afford Medicare A, B, prescription drugs, or any of these things. I think we are putting ourselves on a track because we have been unwilling to deal with cost containment in a serious way. The way to do that is not command and control. It is 15 percent of the market. People negotiate for the Federal Government in every other purchase they do. They ought to be doing that here. It would make a big difference on cost containment.

I urge my colleagues to sustain the point of order.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I yield whatever time he might consume, up to 5 minutes, to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to add a couple of comments to my earlier statement. I noticed the Democrat leader, Senator DASCHLE, alluded to similar points of order being raised in July of 2002. That was raised and supported for a couple of reasons. One, the budget resolutions in 2002, that was based on the resolution that passed in 2001 for fiscal year 2002, said there is up to $300 billion in a bill that was reported out of Finance Committee that would strengthen and enhance Medicare.

In 2002, the Democrats were running the place. They did not report a Medicare bill out of the Finance Committee. They bypassed the Finance Committee. I was a member of that committee. I was incensed that we would just ignore the committee. Therefore, it violated the budget. One, I know it was not reported by committee. Also, it was just, here is the bill. I believe the bill was quite a lot larger than $300 billion. I am not sure if it was $570 billion or $600 billion. It was a lot more than $300 billion.

So there was a very legitimate reason. One, it was not reported out of committee. It did not have work done on it by the committee. It did not meet the overall structure or the framework. This bill that we have before us is within the $400 billion as reported by CBO. It did go through committee, both the Finance Committee and the Ways and Means Committee. It has been scored by CBO. At that time, I believe the bill we had on the floor of the Senate had not even been scored, or at least the details had not been scored, by CBO.

There was a legitimate reason to make a budget point of order. This, in my opinion, is not. By its very fact, as evidenced by most of the people who are promoting this budget point of order, they have almost all the time, 90-some percent of the time, opposed budget points of order when they have been raised in the past.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Illinois.

Mr. DURBIN. Under the unanimous consent, I believe I have been allocated 5 minutes. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. I ask for 4 and ask if the Chair will notify me when I have 1 minute left.

A few minutes ago, the Secretary of Health and Human Services, Tommy Thompson, was on the floor. It is his right to visit with us. It is an opportune moment for him to come as the Senator from Pennsylvania reminds us that we are not going into socialism, socialized medicine, command and control; we are not going to have the Government bargaining on the prices of medicine.

Yet I guess the Senator from Pennsylvania has forgotten that during the anthrax crisis when Cipro, which was going to be used as an antidote, was $4.67 a pill, Secretary Thompson negotiated for America to reduce the price of that drug in the midst of the crisis to 75 cents. He was quoted as saying:

Everyone said I wouldn't be able to reduce the price of Cipro. I'm a tough negotiator.

Sounds a lot like command and control for me.

For Americans, they are taking a look at this bill and saying: Who is going to speak for us? This 1,100 page bill prohibits reimportation of drugs from Canada. So our friends, the seniors and families and others who are looking there for relief, they will not be getting it out of this bill. Even worse, as has been noted, in this one page that I take out of 1,100, page 53, lines 18 through 26, we prohibit Medicare from negotiating lower drug prices.

The Senator from Pennsylvania says that is because we believe in the free market. Let the market set the price.

I might say to my friend from Pennsylvania, how do you explain the multibillion-dollar subsidies for HMOs included in this bill? How do you explain the $6 billion subsidy for your friends with health savings accounts in this bill? Frankly, you can't, under free market principles.

Let me say, when you take a look at this bill you understand that we are squandering $6 billion for retiree coverage. That is one of the key elements. We create these new health savings accounts. I will not go into the long and lurid history, but when Mr. Newt Gingrich of Georgia took control of the House, he brought with him one of his best pals, the Golden Rule Insurance Companies from Lawrenceville, IL. In fact, the Speaker was so smitten with this company he cut a television ad for them with their medical savings accounts. Frankly, they returned the favor, contributing over $3.6 million to Republican congressional candidates. It was such a sweet arrangement. They would pass bills sending more business to Golden Rule, Golden Rule would send millions of dollars to Republican candidates.

Frankly, that meant nothing compared to this bill. This bill gives $6 billion for health savings accounts that have nothing to do with Medicare and nothing to do with prescription drugs for seniors. This is the largest single giveaway I have ever seen in 21 years. It is in this bill.

Now, let me connect the dots. Turns out Golden Rule Insurance Company was recently purchased. Who bought Golden Rule Insurance Company? A group called UnitedHealthcare, down here, whose CEO, Channing Wheeler, was paid $9.5 million, a sweet salary; compared to other HMO execs—not that great.

Now connect the dots. Golden Rule, a friend of the Republican Party, purchased by UnitedHealthcare; UnitedHealthcare is the largest insurance group working with AARP. It all comes together.

AARP is selling this product for UnitedHealth Group, a $6 billion subsidy in this bill, and now they have discovered this is the best bill in the world.

I suggest to all my colleagues and all those watching this debate, call AARP. Here is the telephone number, 1–800–424–3410. Tell them to stand up for seniors for a change, tell them to fight for Medicare, tell them to stop the sweetheart deals with Golden Rule and UnitedHealthcare. We need to make sure the people who wrote this bill get back to work and eliminate these giveaways, the multibillion-dollar giveaways, the subsidizing for these great free market disciples that are included in this bill. And we need to do it now. Sustain the point of order. Vote no on the waiver of the point of order.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, we reserve the last 4 minutes for the Democratic leader.

The PRESIDING OFFICER. There is 3 minutes remaining. The Senator from Iowa.

Mr. GRASSLEY. I want to take 30 seconds and then yield 5 minutes to the Senator from Louisiana and then the Senator from Montana.

Before I do that, how many times have we heard from the other side of the aisle about this being a 1,000-page bill? I want them to read, if they know how to read: There are 678 pages here. I want to know how you folks can raise a point of order when you can't even count the number of pages in a bill? I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, we have reached that point where the debate is on the size of the bill and not the merits of the bill.

Let me just say, 38 years ago this Congress passed this document that I have in my hand for the first time. It was in 1965 that we enacted Medicare, which was a noble experiment. It was led by Democrats and signed into law by President Lyndon Johnson. It was, indeed, a change and a challenge. No one knew whether it was going to work. People could not be guaranteed it was going to serve the needs of America's seniors. But it was a chance worth taking. It was a change. I suggest today Democrats in particular should not fear change if it is aimed at improving a document that has served this country so well.

The only defect of this legislation was that it didn't do everything that it should have. For instance, while it covered doctors and it covered hospitals, it did not cover what at that time were new innovations in the area of prescription drugs. Members of Congress knew we had to take care of seniors going to the hospital. We had to take care of seniors seeing their doctors. But no one really thought that seniors getting prescription drugs was going to be that important.

Today we have the opportunity to correct what we did not do in 1965 and bring about a reform to this program which is greatly needed. I would just say that is why organizations such as the National Council on Aging, which represents all of these seniors who go to these senior centers throughout our States and congressional districts, as well as the AARP—and Democrats many times cite the AARP when they agreed with them. But now when they do not agree with them they find fault with the organization.

I suggest the Nation's largest organization representing over 35 million seniors has had their health economists and their lawyers carefully study the document that is before us and made a recommendation to those of us in Congress. They said this is something we support because it is indeed, on balance, the bill we should approve and send on to the President for signature.

Again, I say it is not a perfect bill. But, once again, we can't let the perfect be the enemy of the good. We also cannot let the political pundits of both of our parties suggest we cannot vote for this bill because somehow it may give credibility to the other party. I have actually heard that from both sides of the aisle. I think that would be a tragic mistake.

The issue today is not which political party wins. The issue today is whether we can craft legislation that allows America's 40 million seniors to come out a winner. I think on balance this bill does that because it combines the best of what government can do with the best of what the private sector can do.

Many on my side of the aisle think the Federal Government should do everything all the time. We can't do that. We can't do it very effectively. So I think it is important to note that on the other side of the aisle, many of them think the Federal Government should not do anything and that the private sector should do it all.

The truth lies, as most truthful matters lie, somewhere in between. The fact is, we ought to combine the best of

what Government can do with the best of what the private sector can do and create a new Medicare reform for the 21st century.

With regard to the points of order, I made it very clear the two points of order we are going to be voting to waive are not dealing with the so-called premium support language that is in the bill. It doesn't deal with the cost containment provisions that are in the bill. It doesn't deal with whether we are going to bring in the Medicare Program all low-income seniors who are currently in, under the State Medicare Program—it doesn't deal with any of that. It deals basically with the fact that we are spending more money in this legislation than the structure of the budget would allow us to do.

That is not uncommon, and the proper procedure is to have a waiver of those points of order, which is what we are going to be voting on.

The first point of order really lies because of the fact that we put more money to help the State Medicaid Programs, something that most people on my side of the aisle strongly supported, to make sure we help those programs make sure the drugs that they are going to still be involved in helping seniors with—that they will be able to help them to the maximum degree possible.

In addition, one of the other reasons the first point of order lies is because previously the Finance Committee helped the States with their unemployment insurance, something most people on my side of the aisle strongly supported. It is not sufficient for people to go back to our States and tell seniors that we somehow prevented this bill from being adopted because of a point of order that was very technical in its essence. I think people want to know where we stand on the merits of the bill. Are we for prescription drugs for the first time, for seniors, since 1965? Are we for giving them a program where the Federal Government pays 75 percent of their drug costs? Are they for or against a program that is going to give particular help and assistance to our Nation's low-income seniors, which is so terribly important? Are we for bringing low-income seniors into one standard national Medicare Program or are we not?

I would not want to go back and somehow argue the technical merits of the point of order and say this is why I could not vote for prescription drugs for seniors, a $400 billion package. There are going to be some on the more liberal wing and more conservative wing who will find reasons to be against this bill, but on balance it represents a centrist coalition, and I urge my colleagues to support it.

The PRESIDING OFFICER (Mr. SUNUNU). The time of the Senator has expired.

Mr. DASCHLE. Mr. President, how much time remains on either side?

The PRESIDING OFFICER. The minority side controls 3 additional minutes, the majority side controls 6¾ minutes.

The Senator from Montana.

Mr. BAUCUS. Mr. President, make no mistake about it, the issue before us—that is, whether a point of order should be sustained—is a vote about whether or not we provide prescription drug benefits to seniors. It is that simple.

If we fail to waive this point of order, this bill is dead, certainly for this year, probably for the next Congress. The very narrow issue before us is whether or not it is ''OK'' to spend roughly $4 billion more than the Budget Act previously allocated for the year 2004.

It is important to remember that this bill is totally within the Budget Committee's allocation for the 10-year period of $400 billion. So the narrow question is, Is it within the allocation for the year 2004?

Now, a couple points here. In 2004, dollars will be spent based upon various pieces of legislation. There is already legislation passed which allocates dollars for 2004. So the conference report itself does not break the 2004 cap, but, rather, it is the accumulation of the dollars in this bill plus previous bills which total up to exceeding the cap allowable for 2004 under the Budget Act by about $4 billion.

So the real question we are asking ourselves is, Are we going kill this bill—a bill for which the full $400 billion allocation does not violate the Budget Act—are we going to kill this bill on a mere technicality, a technical trap that any spending in 2004 has the effect of bringing this bill down?

Now, it makes no sense to do that because, clearly, we want, in this bill, to spend some money in 2004. What about the doctors in 2004? What about the hospitals in 2004? Are we to tell doctors and hospitals, because of a mere technicality, they do not get reimbursed in 2004? We will suspend payments for a year, but then, beginning in 2005, we could pick them up again? I do not think so.

I don't know what Senators are going to say to their seniors back home who vote to sustain the budget point of order to kill the bill because of some spending in 2004 for doctors and hospitals, denying them a prescription drug benefit because they killed the bill. I do not think many people in this body would like to do that.

This is a good bill. It is unfortunate that at this stage of the debate, where we are past the listening stage, an awful lot of Senators are not listening to each other. Rather, they are being rhetorical, they are making their rhetorical points, and they are trying to persuade I don't know who, but some people to certain points of view.

But if you look at the mere language of the bill, it is a good bill. It provides a prescription drug benefit for seniors, a huge benefit for low-income seniors. One-third of all seniors, under this legislation, are categorized as low-income, and they get the benefits of this bill.

We also added in more money for what is called the Medicaid wrap to help lower income folks even more than earlier was the case. We also added in money to help keep retiree coverage.

I think it is important to note that companies generally are reducing retiree coverage in America, irrespective of this bill. We have put in $88 billion to companies for retiree coverage, which means, clearly, that those companies are more likely to keep and retain coverage; that is, this legislation intends to encourage the retaining of coverage, not discouraging it.

So if this bill goes down, there are going to be more retirees who will lose their coverage. Senior citizens will not get the benefit of a drug benefit, particularly the lower income seniors will not get the benefit, and we will be doing our seniors a terrific disservice.

So tomorrow is another day. We can improve upon this bill. If the bill is killed, as it will be if this point of order is sustained, those who hope, ''well, maybe we can do better next year,'' I think should remember the admonition that a bird in the hand is worth two in the bush.

Next year is a very political year. It is 2004. It is a Presidential election year. It is almost impossible to predict the dynamics of next year. It depends on the economy. It depends upon foreign policy. It depends upon the Presidential election politics. And we all know that usually in a Presidential election year not much legislation of consequence passes. Usually, there is a lot of talking but not a lot of action.

I do not think we can afford passing up giving seniors a chance to get prescription drug benefits. So I urge Senators, on the technical matter before us, to vote to waive the point of order because it does not make much sense to me to let a technicality kill this bill.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume, and probably all of it.

Keeping the point of order means keeping the status quo. So I am asking my friends on the other side of the aisle, what is there about the status quo on Medicare that is good and acceptable? The lack of prescription drugs? The slowness in getting cheaper generic drugs out into the market? Arbitrary caps on physical therapists? Insufficient funding for rural hospitals and long waiting lines for seeing the doctors, if Medicare people can get in to see a doctor in rural America?

I ask my colleagues, is this status quo acceptable? Apparently it is, at least to the Senators who are refusing to waive the point of order.

I say nothing about Medicare's status quo is acceptable, not doctors' cuts, not decreasing hospital and home health payments, not the lack of access to health plans in rural areas such as

mine. And most of all, seniors' lack of access to prescription drugs for all these years is what I find to be most unacceptable about the reality of the status quo.

For those of you happy with the status quo, I say, try telling that to your doctors, your hospitals, and, most of all, to your seniors. You try telling these people that a technical point of order is more important than changing Medicare's status quo. I will not try, and I hope my colleagues will not try either.

The PRESIDING OFFICER. The Senator's time has expired.

The minority leader.

Mr. DASCHLE. Mr. President, this is our last chance to do something to control the exploding costs that are absolutely guaranteed to occur for seniors and for the Government unless we do something else. This is the last chance.

There are those who have just said this will kill the bill. Just to make sure everybody understands, this has nothing to do with killing the bill. What happens under Senate rules is that we will go back to S. 1 as an amendment to H.R. 1. That is the pending business. That was voted on, by the way, 76 to 21. So we go back, if we sustain this point of order, to the Senate-passed bill, which passed 76 to 21. We can send it to the House and ask for bipartisan support.

The distinguished Senator from Pennsylvania was saying that one of the concerns I raised was our ability to contain costs. And yes, he is right, we had an early bill that had the provision, this egregious provision in it prohibiting the Government from getting the best deal, just as Secretary Thompson has done with Cipro, just as we do with the Veterans Administration.

What he did not tell our colleagues is that every subsequent bill—the last two bills we have introduced—did not have this provision in it. Why? Because we understand what an incredibly valuable tool it has been for the Veterans Administration.

So, Mr. President, if you want to control costs, if you want to make sure the senior citizens of this country have the ability to get the lowest price, if you are absolutely as concerned, as you say you are, about controlling the costs of this program, then you are going to vote to sustain this point of order.

This is our last chance.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota has 1 minute remaining.

Mr. DASCHLE. I yield the remainder of my time.

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 61, nays 39, as follows:

[Rollcall Vote No. 458 Leg.]

YEAS—61

Alexander	DeWine	McConnell
Allard	Dole	Miller
Allen	Domenici	Murkowski
Baucus	Dorgan	Nelson (NE)
Bennett	Ensign	Nickles
Bond	Enzi	Roberts
Breaux	Feinstein	Santorum
Brownback	Fitzgerald	Sessions
Bunning	Frist	Shelby
Burns	Graham (SC)	Smith
Campbell	Grassley	Snowe
Carper	Gregg	Specter
Chafee	Hatch	Stevens
Chambliss	Hutchison	Sununu
Cochran	Inhofe	Talent
Coleman	Jeffords	Thomas
Collins	Kyl	Voinovich
Conrad	Landrieu	Warner
Cornyn	Lincoln	Wyden
Craig	Lott	
Crapo	Lugar	

NAYS—39

Akaka	Edwards	Levin
Bayh	Feingold	Lieberman
Biden	Graham (FL)	McCain
Bingaman	Hagel	Mikulski
Boxer	Harkin	Murray
Byrd	Hollings	Nelson (FL)
Cantwell	Inouye	Pryor
Clinton	Johnson	Reed
Corzine	Kennedy	Reid
Daschle	Kerry	Rockefeller
Dayton	Kohl	Sarbanes
Dodd	Lautenberg	Schumer
Durbin	Leahy	Stabenow

The PRESIDING OFFICER. On this vote, the yeas are 61, the nays are 39. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to, and the point of order falls.

Mr. FRIST. I move to reconsider the vote.

Mr. MCCONNELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DASCHLE. 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. DAYTON. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DAYTON. It is with a heavy heart I rise to speak against, and later vote against, this bill before the Senate. I campaigned in Minnesota on the need for prescription drug coverage for senior citizens. I said consistently I would vote for a responsible bill. Something was better than nothing. I voted a few months ago for the Senate-passed bill despite considerable reservations. It was better than nothing.

That Senate bill contained my ''taste of their own medicine'' amendment which would require Members of Congress to live with the same prescription drug coverage as we have for seniors and other Medicare beneficiaries. That amendment, which passed the Senate by a vote of 93 to 3, was stripped out of the conference report as, evidently, some Members were promised it would be. That should tell the American people everything they need to know about this bill. It is not good enough for Congress.

Some Members of Congress are trying to sell this legislation as good for seniors and other Medicare beneficiaries of America, but it is not good enough for them to live under. That is the height of hypocrisy. It is good enough for the senior citizens of this country, it is the best we will vote to provide for them, but, sorry, we will pass on it for ourselves. Why is Congress opting out of this coverage if it is so good? Why is it only half as good as what Members voted to provide themselves and their families and their employees?

First, the program does not begin for 2 years, not until January of 2006. Until then, the senior citizens of America are going to have their opportunity to get another drug discount card. There is a novel idea. There are only how many dozens available already to seniors?

This one plays special favorites. A senior with an income above 150 percent of poverty, approximately $13,000 per year of income and approximately $16,000 a year for a couple—they get a drug discount card and nothing more. A single senior with an income just under that amount, by even a couple dollars, or a married couple with an income similar, just a few dollars under that cut off level, gets a drug discount card plus $600. It is all or nothing. Either $600 or nothing.

I am strongly in favor of helping low-income retirees but certainly on a more equitable basis than $600 or nothing. That is all that is available for seniors for the first 2 years.

I would think the administration and others who decry the bureaucratic ineptitude and want to dismantle whole structures of Government would say something about this kind of ridiculous delay. Two years from passage to inception, for what? To give insurance companies time to write insurance policies? Or to shortchange seniors for 2 years to get the 10-year costs of the bill down? What is the reason for this ridiculous delay?

Whatever it is, if a program such as this cannot be initiated for 2 years, that is a compelling reason to junk this program and find one better. Seniors of Minnesota and America have waited too long already to get good comprehensive prescription drug coverage. They should not be told they have to wait another 2 years before the program can even begin. That should be reason itself to find another way.

When it does begin, what does the average senior get? He or she pays an annual premium of about $420 with an annual deductible of $250 and a 25-percent copay for the next $2,000 in expenditures in that 1 year. In other words, $500 of the $2,000 of costs. So if you add those up—$420 premium, the $250 annual deductible, the copay of $500, the

senior is paying $1,170 of the first $2,250 annual costs for prescription drugs. In other words, just over half.

But the next $2,850 of the costs for that senior citizen in that single year have to be paid entirely by the senior, everything out of their own pockets. That means for the first $5,100 of annual expenses for prescription drugs—which is not, unfortunately, beyond the pale for many seniors—the senior citizen pays $4,020. The Senior pays for 80 percent of the first $5,100 of annual prescription drug expenses. Above that, catastrophic coverage kicks in and the program pays 95 percent of the balance for that year but then the next year it starts all over.

Something is better than nothing, but to delegate $400 billion over 10 years for coverage that seniors have to wait 2 years to begin and then they have to pay $4,000 of the first $5,100—all of that to save a little over $1,080 is something but it sure is not much.

If that were all the bill did, I still would support it reluctantly because something is better than nothing. Unfortunately, the bill does worse than that; 2.7 million seniors estimated by the Budget Office now covered under private plans will lose that private coverage and will be relegated to this coverage which is far inferior to what they have now. That would include an estimated 40,000 Minnesotans. People who worked all their lives for a private employer and are now covered under that plan would lose it and be shifted to something much worse for them and what they have now.

For over 7 million low-income elderly, the poorest of our poor senior citizens, they will pay more as they get shifted from Medicaid to Medicare. Their copay will increase and their choice of prescriptions will be reduced. That will affect almost 90,000 people in my State of Minnesota.

The worst result in this bill is a prescription for higher and higher drug prices for all Americans that all Americans will have to pay. All Americans will have to pay out of their own pockets for their own prescription drugs and they will have to pay out of their own pockets for this program and other Government programs because the way this bill is written, the drug companies profit and everyone else has to pay.

There will be no drug reimportation from Canada permitted unless the Secretary of Health and Human Services certifies the safety of all, which is something that the Secretary's predecessors in the previous two administrations did not do and this Secretary has indicated he will not do either.

It is a totally unrealistic requirement to put on a Secretary to give a blanket certification of the safety of everything that would transpire.

If the Secretary of Transportation had to provide that kind of guarantee for all air travel in the United States, we would not have an airline network functioning because no one could be expected to give that kind of guarantee.

But the people who wrote this bill were very clever. They will not prohibit reimportation themselves, even though that is the result they want. No. They pretend the opposite, that it is permitted if—if—the Secretary of Health and Human Services certifies safety, something they know he will not do.

The irony—or the absurdity really—is that according to Congressman RAHM EMANUEL, one of the coauthors of the reimportation bill in the House of Representatives, the United States imports $14 billion worth of foreign-made drugs into the United States every year—$14 billion of prescription drugs that are manufactured in countries such as Ireland and elsewhere that are imported into the United States and distributed to U.S. pharmacies and then sold to American citizens.

Those exact same drugs are manufactured in exactly the same plants, in the exact same countries, such as Ireland, and are shipped into Canada and distributed to Canadian pharmacists; and the only difference—they are exactly the same; the same product, manufacturer, packaging—the only difference is in Canada the price is one-third what it is in the United States or one-fourth what it costs in the United States or even as little as one-fifth or less than what it costs in the United States.

That is the only difference: the price. Yet all of my colleagues who are free trade proponents and those over in the House want to repeal NAFTA just for prescription drugs, which is one of the areas where the American consumer would benefit most decidedly, enormously, from NAFTA, from free trade, from the ability to go to another country and take advantage of those lower prices.

No. Sorry. Under this legislation, the result will be you Americans must buy your drugs in the United States, and only in the United States, at prices two or three or four times the world market price.

Now, why are the prices so much lower in Canada than they are in this country? It is because the Canadian Government stands up for its citizens and negotiates prices that are lower and will not agree to prices that are exorbitant. And their citizens are the beneficiaries of these prices that are one-third, one-fourth, one-fifth of what they are in the United States—not even close approximations.

People say the Government ought to act more like a business, and they are right. What we are proposing the Government would do is exactly what large corporations which self-insure or HMOs do, which is to purchase volumes of prescription drugs at negotiated discounts of 30 percent, up to 50 percent. It is exactly what my colleague BOB GRAHAM from Florida has pointed out, that the Veterans Administration does quite successfully, with fantastic savings for veterans and for the American taxpayers who pay for part of the cost of that program.

But not under this legislation. This legislation would prohibit what they call Government interference in price setting negotiations. Why? Well, once again, the words of the bill belie the intent and the result. It says: ''in order to further competition.'' What deception that is. It says, let a bunch of small-competitor plans offer nickel-and-dime savings, but prohibit the Government from insisting upon and getting 5 times, 10 times that amount of savings, savings that would benefit everyone in America—seniors and everyone else. Those price reductions would be reflected in domestic market prices.

The critics call it price fixing. Well, there is price fixing now in this country. It is the drug companies that are doing the price fixing. They are given monopolies, called patents, for 15 to 20 years or more. They set the prices, they raise the prices, and we have to pay the prices. But that kind of price fixing, I guess, is all right according to some who want to prohibit the Government from doing so.

Does anybody really believe Americans are going to be upset about paying lower prices for prescription drugs? Does anybody think consumers in America are going to say: Government is acting in a way that I don't support? In fact, it will be the opposite. People will say: Wow, my Government is doing something for me. My Government is standing up for me against these big corporate entities that I don't have the ability to face by myself. I don't have that purchasing power. I can't go to a drugstore and negotiate price. Even as a pharmacist I can't negotiate a different price. My Government is standing up for me the way the Canadian Government is standing up for their citizens. By golly, my Government is doing something right.

But the people who wrote this bill are so anti-Government that they will not even let Government do something right. They will not even let Government do something that would have enormous financial benefit for all the people of this country that would save them billions of dollars of expenditures because I guess it might contradict their ideological absolutism that Government does everything wrong.

Well, it also might cost the drug companies, the largest contributors to the Federal political campaigns—it might cost them, I guess, some of their millions of dollars of profits, coming out of the pockets of people we are supposed to represent.

It is a big victory, this bill, for the corporate drug dealers. You have to give them credit. All those lobbyists—what is it? They estimate there are six times the number of lobbyists for the pharmaceutical industry for every Member of this body. Well, it sure paid off for them this time. They won everything. They got uncontained price increases for years to come, a market group, 39 million seniors who will have help pay them, who will pay those

higher prices, and everyone else paying higher prices, and a captive market, where they are not even able to go someplace else and take advantage of lower prices elsewhere. The drug companies want everything.

The Medicare manipulators, they are the other winners. This bill is supposed to be about providing the best possible prescription drug coverage for senior citizens. Now we find out all these ambushes of various aspects of Medicare are tossed in that were not considered by the Senate, for which there were no hearings. And there were not votes on these matters. They were either put in the House bill or stuck in the conference committee behind closed doors where no one else could see what was going on.

The program reform in Congress has become like a drive-by shooting. With no forewarning, somebody picks a target, shoots a bunch of holes in it, and takes off. That is our version of reform. That is what we are doing here with no forethought.

Another example is special education. We have waited 3 years for so-called reform of special education, which is always used as the reason we cannot spend the money that is necessary to fulfill a 27-year old commitment. And then suddenly, last week, lo and behold, there was unanimous consent for 2 hours of debate, evenly divided, on IDEA reform, and, boom, we are going to have it done, boom, in time to go home and eat turkey.

Unfortunately, we produce enough turkeys right here with this legislation. Unfortunately, this bill we have before us is one of those turkeys. And I say that with no pleasure at all, given the importance of it. But this is a $400 billion turkey that gives first pickings and all the gravy to the corporate drug dealers and the big insurance companies and the big plan providers. Some seniors get the leftovers, and the American taxpayers get the neck and higher drug prices for themselves and higher payments through this program and others, subsidizing prices that are just exorbitant and that I would be ashamed to support.

There is a better bill that could be written. There is a better bill that could be passed. There is a better bill that could benefit the people of Minnesota and the people of this country. With a 2-year delay, we could come back next year and pass that bill and still enact it and get it implemented sooner than this one. That is the course of action we should take.

We should reject this conference report, not for nothing, but for something better because the American people deserve something much better than what is being foisted on them here.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, I ask unanimous consent to speak for 5 minutes.

The PRESIDING OFFICER. The Senator has that right.

Mr. LAUTENBERG. I have a question, Mr. President, about the process. Is the time available under the cloture rule divided between two sides in equal parts?

The PRESIDING OFFICER. No, there is no provision for equal division of time.

Mr. LAUTENBERG. So that any speeches now are made under cloture.

The PRESIDING OFFICER. The Senator is correct.

The Senator from Oregon is recognized.

Mr. LAUTENBERG. I thank the Chair.

Mr. SMITH. Mr. President, for the information of my colleagues, Senator CLINTON and I are going to speak briefly and make a unanimous consent request with which I think he would agree.

Having listened to my colleague from Minnesota, I think many of us come to this historic day on this vote on Medicare with some trepidation but, frankly, with a lot of hope. Everyone knows that Medicare, as it is currently constituted, does many good things for our senior citizens. We also know they need a prescription drug benefit. And we also know we are just about to add $400 billion for that purpose. There are reforms in this we hope will work, but reforms which will make us enlightened as to how best to preserve Medicare in the future. I believe that is the bipartisan motive behind all of this.

UNANIMOUS CONSENT REQUEST—S. 1839

Mr. SMITH. Mr. President, I sought recognition to talk about our economy and, frankly, the need to extend unemployment benefits. It is a fact that long-term unemployment reached a 20-year high and the job outlook for the future, though improving, still leaves an awful lot of people wanting and unemployed as this holiday season approaches. For example, in my State of Oregon, we are down from 8 percent now to 7.6 percent. This is simply too high. Despite this economic reality, the Federal program that provides Federal unemployment benefits is set to run out next month unless we provide an extension.

We have extended these benefits several times since it was created in March 2002. I believe we need to do so again. Millions of unemployed workers have reached the end of their benefits without finding work, and thousands more continue to run out of their State unemployment benefits at the highest rate on record.

My concern is that Congress is going to recess and go home without providing the assistance jobless Americans need and deserve. This month, Senator CLINTON and I introduced the Temporary Extended Unemployment Compensation Program for an additional 6 months of unemployment benefits. She and I have introduced this bill because the current unemployment insurance program will run out in June, unless we do this. It would then run out in June and phase out by September 30. This is a modest extension for Congress to pass, but it is vital to many unemployed Americans, particularly those who have lost not only their jobs but their homes, health care, and more. We simply cannot leave families out on a limb while they are looking for jobs. This is a bill that will help them provide for their basic needs while making their job searches a little easier.

I urge my colleagues not to leave Washington for the Thanksgiving and Christmas holidays without passing legislation to lend a helping hand to those Americans most in need.

Before I propound a unanimous consent request, I yield time to my colleague, Senator CLINTON of New York, for her comments, and then would make my request.

The PRESIDING OFFICER. Without objection, the Senator from New York is recognized.

Mrs. CLINTON. Mr. President, I am very pleased that my colleague Senator SMITH has taken the lead in asking for an extension of the Temporary Extended Unemployment Compensation Program. One might wonder why we are having to do this, but the simple explanation is that once again we have run out of time. People will run out of their benefits by the end of this year. If we go home for the Thanksgiving and Christmas holidays without acting, there will be many Americans and a lot of people in Oregon and in New York who are not going to have the continuing help they deserve in these times.

We have extended unemployment insurance with bipartisan support in the Senate three times in the last 2 years. I am very proud of that because I think it shows how we can work together to help those who deserve our assistance.

Because we are not coming back in, as I understand it, until January 20, we won't be able to do that if we don't act now on the Senator's proposal. If we do act now, the House, which is coming back in early December, will be able to similarly act and the benefits will flow.

It is significant, too, that Senator SMITH and I are in the Chamber asking our colleagues to join us because the State of Oregon and New York City have the highest unemployment rates in the entire country. New York City has an unemployment rate of 8.2 percent. We have never recovered from the effects of September 11. Oregon has an unemployment rate of 7.6 percent. So both the Senator and I are very concerned about the good people we represent on opposite ends of our country who have been out of work for a long time. We know long-term unemployment is at the highest level it has been in 20 years. We need to give them some additional time.

This extension would provide another 13-week extension until June. I would urge support of Senator SMITH's proposal. If I am not already listed as an original cosponsor, I ask unanimous consent that I be so.

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

Mrs. CLINTON. I yield back to the Senator from Oregon.

The PRESIDING OFFICER. Without objection, the Senator from Oregon is recognized.

Mr. SMITH. Mr. President, I ask unanimous consent to proceed to the immediate consideration of S. 1839, to provide additional Federal benefits for the unemployed.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. ENSIGN. Mr. President, reserving the right to object, I want to make a couple of points. Point one is that we have seen that the economy is recovering. We are at about a 6 percent unemployment rate nationwide. Back in 1993, the Democrats controlled the House of Representatives, they controlled the Senate and they controlled the White House. Extensions of unemployment benefits had been going on for a period of time because of the recession. And with the Democrats in control of both Houses and the Presidency, they terminated the program when the national unemployment rate was at 6.4 percent. The national unemployment rate was .4 of a percent higher than it is today.

The current extension of unemployment benefits does not end until the end of December. In December, individuals currently receiving extended benefits will still maintain those benefits. And based on all the projections, the national unemployment rate should be lower at the end of December than it is today.

There are a couple other points that need to be made in this debate. First, when the unemployed are about to exhaust their unemployment benefits, over half of those unemployed individuals get a job in those last 2 weeks. And we have seen that a lot of people lately have been exhausting the full time on their unemployment. Why is that? Well, for one reason: The States have been reducing the amount of job searching required by each individual. Basically, they are making it easier to stay on unemployment insurance and taking away the incentives to go out there and get a job.

The welfare reform bill, signed into law by President Clinton, characterized Republicans as throwing women and children out into the streets, that we were cruel, heartless, hard-hearted people. But we knew something about human behavior. We knew that if we gave some assistance, some temporary assistance, and gave individuals an incentive to be employed, in other words that it was better to get a job than it was to be on welfare—we knew that a lot of people would go out and get jobs. What we didn't know was the staggering number of them who did.

Unemployment insurance is the same way. The more generous the benefit, the easier you make it to stay on unemployment insurance, and the less incentive there is for people to actually go out and do what it takes to get a job. So this is not about being cruel and heartless. It is recognizing the fact that our unemployment rate is less today than it was in 1993, when the Democrats were in control and every single Democratic Senator and House Member voted to end the program when the unemployment rate was higher than it is today.

Every single Democrat voted to end the program. With that, I appreciate the work they are trying to do. I know their hearts are in the right place. But on policy grounds, I object.

The PRESIDING OFFICER. Objection is heard. The Senator from New York is recognized.

Mrs. CLINTON. Mr. President, I believe we are to go back on the schedule for the postcloture Medicare debate; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mrs. CLINTON. Mr. President, I will say a few words and then yield to my good friend from New Jersey. Before I get into the Medicare debate, I wish to say some concluding remarks in response to my colleague from Nevada.

At the rate that job creation is going under this current administration, we have one job opening for every three applicants, and it will take the next 19 months to get to the level of jobs we had before the March 2001 recession started. So I think we are mixing apples and oranges here.

This has been a jobless period. One can argue about whether or not there has been any kind of recovery. I would take issue with people suggesting it, but if they do, then they need to use that oxymoron ''it is a jobless recovery,'' because the economy sure is not creating jobs. In addition, we have places such as the one my friend, the Senator from Oregon, represents, and my State, where the unemployment rate is far above the national average. There is no way to say New York City, with an 8.2-percent unemployment rate, is creating jobs again. It is not happening.

I have a little problem with this idea that we are comparing welfare recipients with people who lost their jobs. Welfare recipients didn't have jobs, by definition. The whole effort in the 1990s was to create circumstances in which people could move from welfare to work. What we have now are people moving from work to nothing. We have no safety net. So we are telling people who have worked hard, done what they were supposed to do, been laid off from airlines, or telecommunications, or financial services, whose jobs have gone to India or China, and there are no jobs to replace them, we are telling them: Tough luck, happy Thanksgiving, Merry Christmas, Happy New Year.

If that is what the other party wants to send as their Christmas greetings to their constituents, that is certainly their right. It certainly seems not to be in the spirit of the holiday we are about to celebrate.

It is factually inaccurate to say there are jobs being created, and all we have to do is really put the pressure on these people and make it impossible for them to do anything other than go get a job. That would be great if there were jobs to be gotten.

Given the combination of the economic and budget policies of this administration, I don't think we are going to have those jobs available. I predict to you that even if we have an unemployment rate nationally of 6 percent, or 6.1 percent, or 6.2 percent, we are not going to have the jobs coming back because this administration has presided over the largest job loss in American history since Herbert Hoover. If I were on the other end of Pennsylvania Avenue, I would not want to be reminded of that, either. I would not want there to be an up-or-down vote on whether or not to extend unemployment insurance because, if do you that, you admit the obvious: You know what, we are not creating jobs and we have to do something to help people.

I regret that the effort my friend, Senator SMITH, and I have joined together in trying to accomplish has been objected to; namely, to bring about an extension of unemployment benefits, which strikes me as not only the right thing to do but the smart thing to do, because every time we extend unemployment benefits to the people who truly need them, you pump more money into the economy, which may create a job or two and obviate the need for uninsurance benefits in the future.

We will be back, as we were last year. We are not going away, obviously. This is something about which we care deeply. It is the right thing to do. If I thought we were having the kind of economy in the future that we had starting in 1993, I might have a different idea, but that is not what is going to happen. All the happy talk notwithstanding, that is not going to happen.

Mr. President, I will now move to the Medicare conference report. I have to tell you that the more I learn about this proposal, the less I like it, the less fair I think it is, the less useful for our seniors.

Just recently, because we got this 1,200 page bill 4 days ago, including a weekend, when people were combing through it, our experts were trying to read it. I can guarantee you that if you put two Senators up in the well of the Senate on opposite sides of the bill, or even on the same side of this bill, they would not agree on every provision because there is not anybody who fully understands what is in this bill.

But what I just learned is that three important items from the Senate bill were changed in conference, in addition to everything else we know that was changed—all the big things, including the reimportation of drugs, the limitation on premium support, the lack of any kind of support for HSAs, all of those things which changed. Here are

some additional changes which are now coming to light as people comb through the fine print of the bill.

First, we thought seniors would know at the time of their enrollment in these private plans what drugs would be on the list. That is called a formulary. It is kind of a fancy term. There are lots of fancy, confusing terms in this bill. My colleague, Senator BOXER from California, has a mind-boggling chart, where she and her good staff have pulled out all kinds of words that no normal human being understands. Heaven forbid, I don't think abnormal people understand them. They are made-up words that describe these processes and events, and nobody understands what they really mean.

So we now found out that these formularies—the list of drugs that would be offered by a plan—are not necessarily going to be available to a senior when that senior signs up.

Now, imagine that. Think about my 84-year-old mother, who takes a number of prescription drugs that are very specific and assigned to her by her physician to meet her needs. Her doctor says: This is what you need, and here is your prescription. So in 2006 or 2007, when she signs up for one of these plans, she is not going to know whether the plan includes a particular drug that she needs. I find that a big problem, because how can you buy something when you don't know what it is you are buying?

This is supposed to be a prescription drug plan. Therefore, prescription drugs are at the heart of it. If you don't even know which drugs you are supposed to get on your plan, that is not much of a plan. This is another typical example of the old bait and switch—maybe it is better to call it buying a pig in a poke. You don't know really what you are buying but you have to go out and buy it.

Second, when the Senate sent the bill to conference, the Senate required that the 10 regions determined by the Secretary of Health and Human Services would be larger than a State. Now, that was supposed to assure that we avoid the problem we now have with Medicare+Choice, where HMOs serve some counties but withdraw from or refuse to serve other counties.

I have that problem all over my State. The most intensely organized seniors in my State are seniors who have had a bad experience with HMOs—HMOs that came into their county and left them high and dry at the end of the year; HMOs that came in and, when they found they had no competition, raised the costs right in the middle of the year. Or at the end of the year, when it came time to change and they were the only game in town, they really increased costs to our seniors.

But the conference report, instead of taking the Senate requirements, eliminates it—eliminates the requirement that the insurers must serve an entire State or a large region.

I also know that as a Senator from New York, I have a special obligation toward the people of Puerto Rico. We have a lot of Puerto Ricans in New York. We are very proud and I am very honored to represent a large Puerto Rican population in New York. But the conference report has less money than the Senate bill for prescription drugs for Puerto Ricans. I know it always comes as a surprise to some people to learn that Puerto Ricans are American citizens. They are not some alien group over here. They are American citizens. They don't live in a State, but neither do the people who live in the District of Columbia, but they are American citizens, too. For some reason, we are not providing adequate funding for the people of Puerto Rico to get the prescription drugs to which American citizens under this bill are entitled.

Those are three hidden provisions in the fine print that we just discovered today. Now we are going to have to vote on this bill today or tomorrow, and we are going to be setting ourselves on a course that will radically change Medicare.

Why should people care? If you are not 65 or older, if you are not my mother's age, if you are not even closing in on Medicare, as I am, why should you care if you are my daughter's age or one of these young people working in the Senate in their thirties or forties? Why should you care?

I would argue you should care because, No. 1, in our country we try to keep faith with each other by providing a safety net for seniors, for people who fought the wars, raised their families, built their businesses, and served their communities. We thought ever since 1965, when Medicare was passed, that it was really good for America to make that commitment to our parents and our grandparents. It was the right thing to do. It was the moral thing to do. It was the smart thing to do. Before 1965, the poorest people in America were people over 65. Now there are poor children. We have had a massive transfer of wealth to take care of our parents and grandparents through Social Security and Medicare. I believe we have neglected our children. We have about 22 percent of our children living in poverty. I am not proud of that, but I am proud of what we have done through Social Security and Medicare.

If we are starting to unravel that now, that says something about who we are as a people. It says something about this generation of American leadership compared to previous generations.

Why else should you care if you are not a Medicare beneficiary? Maybe you are the son, the daughter, or a grandchild of a Medicare beneficiary and maybe you will want to do the right thing if your grandparent or your parent has some kind of medical problem and they cannot afford to pay for it themselves, and you want to step in and help because that is the kind of person you are. And I hope that describes the vast majority of our young people in our country today.

That may be tough because maybe you are saving to send your own child to college or maybe you are saving to buy your first house. Then all of a sudden, a medical catastrophe strikes, and what used to be Medicare to provide that safety net is just not there anymore in 2010 or 2012. All of a sudden, the burden falls back on you.

Why else should you care? Because in this bill it is not only about undermining Medicare, it is about undermining health insurance in general. We already have an increasing number of uninsured people, and we are going to have even more of them in the future because we have a totally dysfunctional system for financing health care that certainly does take care of insurance companies and their executives and pharmaceuticals and their executives but doesn't do a great job for the average person.

This bill will undermine insurance for everyone, not just for Medicare recipients. Why do I say that? Because there are no cost controls to keep the price of a prescription drug down. There is no bargaining power for the Governor to try to hold the pharmaceutical companies in line to prevent them from just blowing the top off whatever the price structure is. There is a really insidious provision that puts a limit on how much money we can spend on overall Medicare if the prices of Medicare go up—that is, hospitals, doctors, and drugs now—which means you have to cut back on everything, not just prescription drugs. So we are going to have Medicare recipients squeezed even more. There is such a thing called cross subsidization. What that means is, if you have insurance and you go to the hospital, you are not just paying for your services that you get, you are, in effect, paying for people who couldn't pay. For example, maybe the day before you showed up in the emergency room, Mrs. Smith came in after a terrible car accident or maybe some kind of acute asthmatic attack or other kind of serious problem, and she didn't have any insurance. The hospital takes care of her, but then they have to charge you, your employer and your insurance company more to pay their bills. Anytime you transfer money away from direct care, you are forcing more people to pay more for the same care. Some of them will be unable to afford it, but the cost to the providers of that uncompensated care will, in turn, raise the price which, in turn, has employers dropping people which, in turn, creates more uninsured individuals. It is a closed system. It is a circuit. The circle should not be stressed. This breaks that circle. This takes the security of Medicare and pulls it right out, causing all sorts of effects throughout the circle.

The reason we created Medicare in the first place was that insuring older people who might be more sick and more frail is not a profitable enterprise. There are people who retire and go to some beautiful place and play

golf all the time. They are physically fit and they look great when they are 75, but now they may live to be 100, 25 more years. At some point, the body starts breaking down no matter how well you take care of yourself.

Medicare was the idea that we needed to provide a product because the marketplace would not provide it, and this bill proves the wisdom of that because the only way you are going to provide these benefits is basically by subsidizing or, some might say inelegantly, bribing insurance companies with billions and billions of taxpayer dollars to provide this benefit that they would not ordinarily provide because it is not cost-effective; it is not profitable.

There are many other reasons this Medicare bill is not in the best interests of either Medicare recipients or our general population.

It is a sad day when we essentially devise this scheme to try to transfer money from the Medicare system and the taxpayers' pocket to those who are already doing very well, indeed. Probably the saddest thing to me is not what might happen to the average Medicare recipient, which I deeply regret, but to the poorest of our Medicare recipients, the people who don't retire from an office job or some other undertaking that gives them the resources to move to some warm place and play golf every day, but the vast numbers of people who are sick, who are frail, who are chronically ill, who are poor, and who end up in nursing homes. Six million of them will be worse off under this bill. That is really hard for me to accept. I do not understand how a great, rich nation like ours can come to this point, where we impose new and extra burdens on the poorest of the poor and the sickest of the sick.

I guess we think if somebody is in a nursing home and not out at a golf course that we will not see them; we will not care; we will not know. Maybe that is true if it is not your relative, your neighbor, your colleague, or your friend. But 6 million low-income, chronically ill or nursing home bound Medicare beneficiaries will be worse off under this bill because of formularies or increased co-pays. I find this not only hard to justify but cynical, cynical because some folks are making a bet that those poor people are not going to raise a fuss or a ruckus: Out of sight, out of mind.

They will not show up to vote or certainly not give anybody any campaign contributions. So basically they do not exist. So we can turn our back on them.

I do not understand what has happened to our country. I do not understand what we believe about our obligations to one another or our values when we would do that to our fellow citizens. I also do not know what universe some people are inhabiting because none of us knows what is going to happen tomorrow. Not a single one of us can predict when we might need help, when we might have that accident, when we might get that terrible diagnosis. We do not know.

I thought the golden rule was the overriding philosophy that should guide us, but unfortunately in this bill that stands for an insurance company that is going to get billions of dollars for the unproven concept of health savings accounts. That is not what I learned in Sunday school but what somebody else figured out how to make some money off of.

It is a sad story, but I have a lot of confidence in the intelligence of Americans and particularly for the generation that lived through the Great Depression and World War II. I am about to yield the floor to one of them. He is someone I admire and think so highly of, who had a lot of blessings in his life and never forgot where he came from. He never turned his back on people who were less fortunate than he was because he knew the basic lesson that I think some people forget—there but for the grace of God go I.

If that were our hallmark, we would not be passing this bill, which puts so many of our seniors at risk, but even more than that puts at risk what we mean when we talk about America and American values.

I yield to the Senator from New Jersey.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from New Jersey.

Mr. LAUTENBERG. I thank my colleague from New York for her eloquent statement and her perception about what is really taking place in front of us. We both have the good fortune to share one of the most interesting areas of this country, the center for finance, industry, and trade, and people, yes, who have to work hard to maintain their living in this high cost area that we share.

One of the problems we see in both of our States is that unemployment is unreasonably high; that people who used to work in manufacturing in the New York City region, in New Jersey, have lost jobs that are not available to be regained. It is a pity, but what has happened is that they were sold out to cheaper prices. We are looking for things cheaper while many of us revel in the fact we can live by such luxurious standards.

What does it tell us? It tells us there is a significant imbalance out there in the way people earn their livings, live their lives. That is one of the things that is so much in our view today when we talk about the outcome of the vote thus far on this purported Medicare bill. It does not have the ''care'' and I am not sure it even has the interest.

One of the things we are looking at is whether or not people who have had the good fortune, as I have—as said by the Senator from New York, I have had very good fortune. My father died when he was 43. His father died when he was in his middle fifties. His brother died when he was in his early fifties. I think the cause of death was probably occupational. They all worked in the same factories in the city of Patterson, NJ, where I was born. My father's death left a permanent imprint on me because of the circumstances of how and when it occurred.

My father was 43 in the year 1943. He lived his life by the healthiest of standards, including the food that he ate. He disavowed smoking in a very vigorous way. He was not someone who drank a lot of coffee. In fact, he did not drink any coffee. He enjoyed his nonworking time by being in a gymnasium. They did not call it ''workout'' then. They called it exercise. They called it the ''gym.''

So he would spend time down there. He used to like to lift weights, wrestle, and play basketball. One day, he was not feeling well and he went to a doctor. The doctor informed our family that my father had colon cancer, a condition that gets ever rarer with the medical care we have today, if it can be afforded. No matter what we did, without the advances that we have today and medical technology and medicines, he suffered for 13 months. From a well built, muscular man, who was a picture of health to behold, he disintegrated before our very eyes until he died 13 months later.

My mother was 36 when my father died. She was a very young widow. I was 18. I had already enlisted in the Army. Why this story? Because it is seared so deeply in my memory. Not only were we grieving, we were poor, and my mother strained to make a living as my father was in his illness. I had a job loading trucks. That was my skill. That was my experience. We just about kept ends together.

When my father died, imagine a family of four—I had a little sister who was 12—grieving over the loss of a father at age 43, so young, and also at the same time worrying about bills that had to be paid, about obligations that occurred as a result of hospital treatment, bills that occurred because of doctors' visits, bills that we had to pay because we owed pharmacists money. That is what I remember. I thought, oh, my goodness, if only we could find the money to pay the bills so my mother and I didn't have to worry so much about our existence and at the same time honor our obligations. We were that kind of a family.

Then, as time passed, we saw developments in America that made us all proud and that, frankly, I think should have caused us in this body to be more tender, to be more understanding, to be more sensitive to the people who have been able to live long enough to be eligible for Medicare and Social Security and all of that that is intended to reward people for their work to build this country. Many of these people come from what has been described as the greatest generation. If they weren't exactly in that generation, they were in the generation that continued to build our country through the 20th century

to make this a stronghold of industry and business and technology and education. That is what these people did who are now concerned about how they continue their life.

Oh, of course, a lot of them can get jobs if they want them at school crossings, at $5.50 an hour, $206 a week—have a good time, go to a restaurant and have dinner. Not on your life.

That is what should have been thought about as we debated this issue. There was a certain degree, I saw, of smugness, as they pirated votes, giving lots of money—$11 billion, $12 billion to a special interest here, special interest there, here a special interest, there a special interest. It reminds me of a nursery rhyme. But that was no game that was being played. They held open the vote in the House of Representatives way beyond the rules. They did anything they could to bypass the process as it was normally.

I wish to show those who can see what I am holding, if I have the strength to hold them—I do. Those who witness this stack, who see it, this pile of paper, may say: What is the Senator talking about? This describes what was in this Medicare proposal in which the Democrats were not invited to participate. That is against the rules. The participation was limited. This was a stealth affair: Sneak it out, get it out there. Why? Because they don't want people to know what is in here.

Do you know what else? Here is a little smaller part of this whole package. This says: ''Joint Explanatory Statement.'' This tells the audience who might read this what is really in this stack here. It is all mysterious. It is all arcane—can't really understand what is happening.

Why is this debate so acerbic? Why is it that those of us, along with the senior citizens of this country, look as if we are losing this debate? It looks as if we are going to lose control of this issue. It is true, that we will have suffered a day in infamy, to steal an expression, because what happens here is we are going to assess poor people more costs.

I come from the corporate sector. I was fortunate to be able to create one of America's great companies with two other young fellows who lived in the same area as I did. Both of them, like me, had fathers who worked in the silk mills. That was the trade in the city in which we lived. They had no money. Their parents had no education. But it gave them the incentive to create something for themselves.

So we created a company. The company is called ADP. A lot of people know it. It is an international company with 40,000 employees. We started with nothing.

One of the things I learned as the CEO and chairman of that company, before I came to the Senate, was that the most important asset my company had was not its customers. The most important asset we had was its employees, because if the employees did their job, the customers were there for us. We could render a service that was an invaluable beginning to outsourcing, to giving specialists opportunities to do jobs that they could best do. But one of the things we had to do was to make sure the employees were considered in everything we did, including health insurance, including an early start with daycare, to make certain our employees were happy and thus productive.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if I could interrupt the distinguished Senator from New Jersey, I have a unanimous consent I would like to propound.

Mr. LAUTENBERG. I am happy to yield, with the proviso that I regain the floor.

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

Mr. REID. Mr. President, pursuant to the rule, Senator DASCHLE has designated me the manager in opposition. Senator LEVIN is on the floor. Senator AKAKA is on the floor. Pursuant to the rules, they have asked that I be given their 1 hour postcloture. They are both on the floor. Is that sufficient?

The PRESIDING OFFICER. The Senators have that right under the rule. Is that the will of the Senators?

Mr. LEVIN. Mr. President, I do ask unanimous consent that the hour which I might be entitled to under the postcloture rules be yielded to Senator REID.

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

Mr. AKAKA. Mr. President, I yield my time to Senator REID.

The PRESIDING OFFICER. The Senator has that right.

Mr. REID. Mr. President, through the Chair to the distinguished Senator from New Jersey, thank you very much for allowing me to proceed.

Mr. LAUTENBERG. I assume the time that would have been credited to me for my 1 hour, whatever time remains, is still available.

The PRESIDING OFFICER. That is correct.

Mr. LAUTENBERG. I thank the Chair.

What I got today was a request from one of America's largest companies. I will not identify them because they are not unique. But they wanted us to pass this bill. They don't make pharmaceuticals; they don't do anything in the health care field; they are not an HMO. They are a manufacturing company, a gigantic company by any standards. They are hoping we are going to pass this bill.

The reason they are hoping we would pass it is because then those retirees who are dependent on their health care continuation could be kicked off the system. Then, because of what we are saying in this bill—this hocus-pocus language that there will be some money to provide premium support for HMOs—go there and you will be able to get it cheaper, and this giant company, this unnamed giant company will be able to say: Whew, we are finally rid of those retirees who we promised we would give this care to all those years they worked for us. But now we don't have to keep that promise—no. All we have to do is say goodbye, thank you, we are eliminating coverage.

In New Jersey, it means that about 90,000 people are likely to lose their company-provided health care.

Coming from a State as I do—a State often called ''the Medicine Chest;'' it is a great State—we produce terrific products that make people feel better and help them live longer. I know because I use a couple of their products here and there. But the entire debate here is the result of the irrefutable fact that prescription drugs cost too much in this country. This bill doesn't do anything to fix that fundamental problem. All over the world, people pay less money for the exact same prescription drugs that they can buy cheaper in other countries.

In Italy, Acoplex is 40 percent less than here in the United States. In England, it is 31 percent less than here in the United States. And just to the north of us, our friendly neighbor, Canada, the price is 37 percent less.

No wonder seniors are getting on buses and making the trip to Canada to get their medication.

If you look at the things that we talk about, and see what happens when prices are not negotiated, the prices keep rising. From 2001 to 2002, drug prices rose 17 percent. The only way to lower drug prices is to give Medicare bargaining power—just the opposite of what this bill does. This bill says they want to prohibit giving what is normally called volume discounts. Instead of taking this step to lower prices, this bill explicitly forbids it.

The company I was talking about with a health plan has over 1 million employees. They want us to pass this bill. Imagine what happens when they say to their retired employees that they will be off their health care system.

We know from experience that allowing agencies to use bargaining power brings down prices. A good example of this is the health care system run by the Veterans' Administration. The VA is encouraged to negotiate prices. In this bill, as it presently exists, they forbid Medicare to negotiate prices.

I want to follow up on a point that our friend and colleague, Senator BOB GRAHAM, made earlier today. This chart really tells the story. The chart compares VA-negotiated prices for medication with what it costs to buy from a local pharmacy.

By way of example, Acoplex, a stomach acid product, in the drugstore it is $4.37. At the VA it is 22 cents.

Let us take a product such as Zocor, to guard against high cholesterol which is very damaging to one's heart. If you want to buy it in the drugstore, you have to pay $3.77 per tablet, and if you are a member of the VA, their price is 66 cents. The list goes on.

At the drugstore for aspirin at 325 milligrams, the cost is 20 cents. If you buy it in the VA, it costs a penny.

Plavix to guard against heart attack and strokes, $3.63 per tablet; $2.01 if you go to the VA.

The list goes on with even better known products. The price comparison is ugly at best when you consider what happens with people on Medicare.

Mevacor reduces cholesterol—four bucks in the pharmacy and 26 cents at the VA.

Many of these medications make the top 50 list of drugs used by the elderly. We ought to learn from that and not prohibit the VA from negotiating volume prices.

Another troubling part in this bill is the effective date. When the Senate first voted on a prescription drug benefit for seniors back in June, I offered an amendment to make this benefit effective within 1 year. But it was voted down with strong Republican assistance. Eleven votes made the difference. We passed that amendment with bipartisan effectiveness to make this benefit effective within 1 year.

Under this conference report, the drug coverage doesn't start until January 2006, 23 months from now.

We have to ask the question: Why is this taking so long? One clue is illustrated on this chart. Notice election day in the yellow box; the original Medicare Program was processed in 11 months. President Johnson signed the law on July 30, 1965, and 11 months later, July 1, 1966, all of the people who were eligible for the program were enrolled in the program. I know something about computer processing. I literally had my career grow in the computer development stage. They had to create the files. The identification had to be punched into cards. They weren't read electronically in 1965 as they are now. It took 11 months and the whole deal was done. It was created from the beginning in 11 months.

Now we are asking for a toleration of 25 months to get it into place. But election day is here, and Heaven forbid that the public at large should find out about this bill. When they learn about it, they are going to be mad as could be.

If they can get safely past election day, the rhetoric is out there flooding the country. They even have the American Association of Retired Persons supporting the bill. That is a mystery that we are going to have to find out about one day. A lot of people we get calls from—Medicare recipients and beneficiaries—are ripping up their cards. We got one batch that was 75 to 2 against the bill. There were two who were doctors also who are concerned about whether they will be able to continue their practice as it was. It is a reasonable question. But 75 to 2—that is while this bill is being discussed. The bill is not yet in place.

Once the phone calls start coming into my office, I know what is going to happen. They are going to ask: When can we sign up? What are the benefits? We are going to say: Hold your horses. What is the rush? It costs you a lot of money later on. Right now, we have your temper down. Not so much your temperature but your temper is going to go up once you find out after election day that this bill is going to take place with higher prices for medical care and prescription drugs.

The Democrats created Medicare. We protected it for decades. The Republicans never really liked it. They resisted the creation of Medicare and have opposed it ever since.

It wasn't too long ago that a very well known leader of the House, Newt Gingrich, expressed his desire to see ''Medicare wither on the vine.'' That is what he wanted to see happen. He represented a view that was generally accepted.

We may see it wither but not without a strong fight on our hands, even if we have lost step 1 here. The senior citizen population in this country has to raise the alarm and shout it out to those who are in this building and those who are in the House of Representatives. Tell them: We don't like that bill. It is going to cost us more. You are not helping us, you are hurting us. We worked our lives away with certain promises in place, and the promise included a proposition that said as you get older and as we see things develop, we are going to help you get those things to keep your health going.

The bill before us today is the first major step toward disintegration of Medicare as we know it.

In reality, this bill is not as much a benefit for seniors as it is a big benefit for HMOs, the private health care organizations, and other private-sector special interests who want to tear the Medicare Program to pieces. Get them in corporate hands so we can charge more, make more. I wonder whether we could limit the incomes of some of the guys at the top of these companies, in the interest of public service? We regulate lots of industry.

So what is it specifically the President is afraid seniors will find out before 2006? Is the President afraid the seniors will realize they will pay at least $810 before they break even and get any benefit from this plan? For many seniors, that is more money than they currently spend on prescription drugs. Up to 30 percent of the beneficiaries would pay more for enrolling in the plan than they would receive in actual benefits. Is the White House worried seniors will learn there is a huge gap in coverage? Under this plan, a senior will pay a premium estimated at $35 a month, a $250 deductible, 25 percent coinsurance payments until reaching $2,250 in drug expenses.

What happens then? Seniors then get no coverage. I have been heard correctly: Zero coverage. At that point, seniors continue to pay their premiums but they will also pay 100 percent of their drug costs. That is a double whammy, as we say in New Jersey. Only until they have reached a catastrophic limit of $5,100 in drug costs does any benefit restart. By that time, seniors will have incurred $3,600 in out-of-pocket spending. This is the so-called hole in the donut. It does not sound like a good deal to me.

Remember, nowhere in the bill does it say that premiums will be only $35. It could be significantly higher. The $35 is a current estimate. We know how good this administration has been at making estimates. Is the President afraid that seniors will figure all this out? You bet. Seniors deserve a much better program than that which the Senate is considering right now. They certainly deserve it before 2006.

I will spend a few minutes more talking about the overall impact of this bill on seniors in the State I represent, New Jersey. The most important reason I am voting against this bill is I am convinced more seniors in my State will be hurt by this legislation than helped. There are approximately 1.1 million seniors in New Jersey. Because this bill provides a disincentive to employers to continue offering coverage to retirees, it is estimated that over 90,000 seniors in New Jersey will lose their existing, more generous retiree drug coverage from their former employer.

This bill is also going to make poor seniors in my State worse off. In New Jersey, Medicaid covers drug costs for seniors with incomes of less then $9,000 a year for an individual or $12,000 a year for a couple. In New Jersey, low-income seniors currently on Medicaid have access to whatever drugs they need and they do not have a copay for their prescription. Under this bill, however, they are now going to pay $1 per prescription for generic drugs and $3 per prescription for brand name drugs.

Low-income seniors tend to be in the worst health and have higher annual drug spending. A senior with $8,000 annual income does not have the discretionary income to shell out $15 or $20 or $25 for the prescriptions he or she may need.

I will long remember the battles we have had in the Senate to try to raise the minimum wage. It is the old rhyme that says: Try, try again. We tried, we tried, and we tried, but we could not raise it. So there are people out there who are working for $5.15 an hour, $206 a week. Having to pay these extra burdens for their prescription drugs is going to be a torturous outcome for them. The low-income Americans can be forced to choose between providing medication or buying food, providing medication or keeping the heat on in the winter.

This bill represents an enormous opportunity squandered. We had a real chance to do something right. We had $4 billion to improve the lives of 34 million seniors, 14 million of whom do not have any prescription drug coverage right now. Frankly, we missed the opportunity. We ought to scrap this plan and go back to the drawing board to give seniors a real prescription drug

benefit in the Medicare Program. Let's not try to move seniors into HMOs. Let's not leave that enormous gap in coverage. We should give seniors a plan that starts now, not in 2006.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Connecticut.

Mr. DODD. Madam President, let me first of all commend my colleague from New Jersey for a very fine statement on the pending matter, the Medicare bill. I intend to take some time to speak on the same matter and then I plan to yield my remaining time to the Democratic leader for his purposes.

This is the third time I have spoken on this matter since last Friday. We are now in a situation, I am sure people are aware, where we have had a cloture motion which was approved earlier today. We then considered a point of order which was not sustained, and as a result our efforts to try to use a procedural move short of final passage have been, I gather, exhausted. So we are down now to the question of whether or not we ought to vote for this bill at this juncture or whether or not people will come to the conclusion there are enough flaws in the pending matter that we ought to take some additional time to review it before it becomes the law of the land.

Before I get into some discussion of the substance of the bill, I will take a minute or so and talk about the process of law. Putting aside the matter before the Senate, which has obviously been contentious, I am very worried about how we are doing our work in this institution—not just this body but the legislative branch in general.

I will have served, at the end of this term, some 30 years in the Congress, 6 years in the other body and 24 years in the Senate. I have enjoyed serving in this fine institution and watched it carefully over the years. In that time, I have noticed that there are ebbs and flows in how the institution functions and operates. There have been periods affectionately referred to as the golden age of the Senate and other times when they have been less than golden. I will not use language to describe what others have used to describe the less than golden periods of the Senate.

I am very worried about how we are proceeding at this time with the underlying measure. It is so important in these institutions that we not only just be concerned about what we accomplish but how we go about working toward these accomplishments.

The Founding Fathers of this country were very concerned about that. If they were looking for efficiencies of systems, if they were looking for a process that would guarantee quick results overnight, this is certainly the last system they would have constructed. Particularly in this institution, the Senate, the rights of a minority are paramount. We have always said in the other body, the House Chamber, the rights of the majority should prevail. And the Founders, in their wisdom then, in the creation of the Senate, emphasized the rights of a minority. In so doing, they wanted to guarantee that matters would be thoughtfully deliberated.

I am very worried, over these last number of months, including the bill presently before the Senate, that we are not devoting the time necessary for deliberate consideration of matters before this body. In fact, I was stunned to just learn that when conferees were named on the Medicare bill before us—and for those who are not students of this institution or follow the Congress on a regular basis, when the Senate passes a bill, and the House passes a bill, invariably, with some exceptions, there are differences.

So this body, the Senate, will appoint conferees, representatives of this body—usually from the committees of jurisdiction over the legislation—to meet with conferees of the other body, usually coming from their committees of jurisdiction. And those two smaller groups then meet to resolve the differences between the two bills.

Over the years, of course, many conferences have been lengthy, many have been contentious, particularly those involving difficult matters, but it is the nature of the institution, learned over our 220-year experience that it is in the tension of debate that some of the best ideas emerge, when there is full expression of the views of the American public in those meetings, when people of different persuasions and ideologies come together and work to resolve their differences.

What I find stunning is that it has become popular, in recent days, to have conferees named and then have conferees excluded from meeting in these conference committees. That is exactly what happened here with the measure presently before us. Whether you are a Republican or Democrat, liberal, conservative, or moderate, you ought to be deeply concerned if this becomes the precedent, the operating standard procedure, that when bills are passed and conferees are named, then people are excluded from meeting to try to resolve their differences.

I can only suspect, Mr. President, that most Americans are not aware that this 675-page bill, the Medicare reform bill, was crafted by only Republican Members of the House of Representatives. There was not a single Democratic Member of the House of Representatives from the Ways and Means Committee included in the room to write this bill—not one—despite the fact that the House is controlled by Republicans by only a small majority. Yet not one member of the minority party of the House of Representatives was brought into the room to sit down when the conferees met to resolve their differences on this bill. And out of this body, only two conferees from the minority side were included, despite the fact that only one Member separates us. Senator DASCHLE and Senator ROCKEFELLER, duly appointed as conferees, were excluded from meeting. In fact, Senator DASCHLE, the Democratic Leader of the Senate, was excluded from the conference on this important measure. To say to the Democratic leader, the minority leader of the Senate, and to Senator ROCKEFELLER, two senior members of the Senate Finance Committee: You are not allowed to come into the room to help draft a piece of legislation dealing with 41 million Americans, Medicare beneficiaries, to frame a prescription drug benefit. I am stunned, Mr. President, that a 675-page bill, on as an important a matter as the healthcare of nearly 41 million elderly Americans, that not a single Democratic Member of the House, and only two members of the Senate Finance Committee already supportive of this bill could meet to craft the bill before us. I find it breathtaking that the process was so flawed in the development of this bill that Members of our own respective Chambers were not allowed to come in and work to resolve differences on matters as important as this.

Then, in the House of Representatives on Friday evening and well into Saturday morning, when the vote was being cast on the final passage of this bill, we witnessed a historic moment as the House held open for almost three full hours—the longest recorded vote in the body's history—a vote that was supposed to take 15 minutes to pass this bill. The Presiding Officer said: There will now be 15 minutes to record your votes by electronic device. Having served in the House of Representatives when electronic balloting came into place, I heard that message over and over again: Members will have 15 minutes in which time they can record their ballots by electronic device. And almost 3 hours later, that ''15 minutes'' elapsed, as every possible bit of arm twisting, every possible maneuver you could make to change the outcome of that vote transpired. I believe that this vote constitutes one of the worst moments I can think of in the conduct of the House of Representatives.

Then, when several other members of the minority decided they would change their votes in light of the arm twisting and in light of the final outcome, the gavel came down within a nanosecond, and the traditional opportunity given to Members to change their votes before a final vote is recorded was denied them.

I am stunned as I watch a process around here so deteriorated that it has come to this. And I say to my friends on the other side: Beware. The wheel does turn. The day will come when we will be in the majority. And in the House that will happen as well. Changes in leadership have occurred throughout our history and they will continue to occur. What sort of precedent are we setting if this is how we conduct our business?

Then, last Thursday, late in the afternoon, those of us who were excluded from having Members who represent our views work on this conference report, were delivered this 675-page document.

Suffice it to say, there is not a Member here who has read this in its entirety, nor could they possibly understand it even if they tried to, since last Thursday. Yet we have just voted on several procedural motions here to say that within a matter of hours, we are now going to adopt this historic piece of legislation without fully, in my view, understanding the implications of what is actually contained in the bill.

Mr. President, a bill of 675 pages, delivered just last Thursday, and here it is, Monday at 6 p.m., and we find ourselves only a few hours away from deciding the fate of 41 million Medicare beneficiaries and coming generations of them as to whether or not they will have the incredible safety net the Medicare Program has provided for 38 years.

These process questions cannot go unnoticed, Mr. President. And while we talk about the implications of what we are told is in this bill, I am deeply troubled that the shutting out entirely of Democratic Members of the House, the denial of the Democratic leader of the Senate, along with Senator ROCKEFELLER, the ability to meet and discuss this bill and its full implications. Further troubling then to witness a 3 hour vote in the House of Representatives in the middle of the night, under the guise that we must get this done. As my colleagues know full well, this is the end of a session, not the end of a Congress, and to not take a few more weeks to analyze what we are doing with this bill, to see if there is not some compromise that can be reached, when you consider the great implications of this bill, I think is a sad commentary on the condition of the Congress. I have been here for a quarter of a century, and I do not recall a time like this in my 24 years where we have come to this.

So beware. Beware, America. Beware, America, of what happens when this process breaks down, as it has here with this bill.

Beware, America, when you have a bill of this magnitude and size passed in the wee hours of the morning in one Chamber, and rushed through the other in a matter of hours of debate and discussion—more a litany of speeches than any real debate.

Beware, when almost one-half of the entire Congress is excluded from sitting and working on a product as important as this. There is something wrong when that happens, Mr. President.

I don't care what your politics are; I do not care what your ideology is. Beware, Americans, when you find out other voices are denied being heard. It is the critical quotient, the critical element of what constitutes this democracy: the importance of debate and discussion, the tension the debate brings, and the ultimate improved product that occurs when that happens in America.

When other voices are not heard, when other ideas are not brought to the table, then we all suffer. That is what has happened in the construct, if you will, of this legislative package.

Let me take a few minutes, if I may, and try to share with my colleagues what I believe is included in this bill. I have talked about it to some degree already, and I know, in a sense, why we are being called on to do this as rapidly as we are. Because based on the time I have spent going over this bill, and looking at it, and others who are more knowledgeable than I am about health care issues, who have dedicated almost their entire careers to examining these issues, I would say one of the reasons this is being pushed through as rapidly as it is, is there is a lot in this bill that the more you know about it, the less you would like it, and the more opposition would grow to its passage. The more people are aware of what is included in these 675 pages, the greater concern they ought to have.

There are those who have never liked the Medicare program, who fought against its very creation 38 years ago, and since then have been seeking an opportunity to undo it.

Congratulations to them. Congratulations to them because I think, in effect, they have achieved that result with what I think is going to happen in a few hours; that is, the adoption in the Senate of this particular package, the approval already in the House and the likelihood, of course, that the President is going to sign this into law.

Then I would tell America, as you get to know this bill, you will come to have greater and greater concerns about it. Let me explain why I think that is the case.

We have all been talking about—certainly this side of the aisle has—the great need for a prescription drug benefit for years. However, I have reservations about the prescription drug benefit contained in this bill. Under this bill, 2.7 million retirees are going to lose their existing drug benefit package—2.7 million of the 41 million Medicare beneficiaries. While some might say that doesn't amount to much, when combined with the other millions of seniors who are going to have their premiums increased, and possibly their benefits reduced if this bill is to pass, you begin to realize how troubling this bill is. That is literally what is going to happen under this bill. 2.7 million retirees are going to lose their present prescription drug coverage.

Why? Because they presently are covered under plans offered by their previous employers. They have retired and yet they carry with them those plans. The estimates are that 2.5 million retirees are going to lose coverage because their employers are going to drop those plans if the benefit under this bill is enacted.

In my State, just to put it in local terms, this will mean that 39,000 people in Connecticut who fall into that category will lose their present drug coverage. In Connecticut there are approximately 515,000 people who are of retirement age, and of that number, I am going to have 39,000 who are going to be dropped from their prescription drug coverage.

Further troubling, I am then going to have 74,000 Medicare beneficiaries in my state of Connecticut, and 6.4 million nationwide, who are going to lose as well under this bill. What happens to these people? These are seniors with severely limited incomes, making them eligible for both Medicare and Medicaid. These senior citizens are going to face less access to and higher prices for the drugs they need due to this conference agreement requiring drug copayments and the creation of an assets test.

I have heard Members say that the price increases these low income seniors will face are not that significant. Well, it isn't much, if you make $158,000 a year as a Senator. A few bucks a month amounts to nothing. But if you are a person making $13,000 a year or less, as these people do, and you are on Medicaid and Medicare and you are working each month trying to pay a mortgage, to put food on the table, to pay for the other essential needs you have, then believe me, these cost increases are terribly hard to bear. We in this body do not have such worries because we have such a great health care program. Members of Congress enjoy a fabulous healthcare plan. We offer nothing like that to the rest of the American public so we don't quite understand what other people go through in many ways.

Taken together—those losing their present prescription drug coverage and those low-income beneficiaries facing increased costs—you have one fourth of all Medicare beneficiaries negatively effected by this bill. Those are, to begin with, some of the concerns we have with what happens to close to 9 million of this nation's nearly 41 million retirees.

Now let me move to address some of the other issues of concern in this bill. While others have already talked about the prescription drug benefit portion of this bill at length, I want to point out that I am worried about certain aspects of this portion of the bill which will present real problems for our seniors. Under the proposed prescription drug benefit, this bill before us contains a gap in coverage, the so-called donut hole. The donut hole is nearly $2,800, twice the size of the one we adopted when this bill was adopted by the Senate back a number of months ago. Under the conference report, Medicare beneficiaries with costs within this so-called donut hole will be forced to pay for the full cost of their prescribed medicines as well as a monthly premium of an estimated $35. This will mean that when your prescription drug

spending falls within this coverage gap that you will receive absolutely no assistance purchasing your prescribed medicines under this bill. To add insult to injury, you're still on the hook for the monthly premiums while receiving no assistance affording your needed medicines.

Also troubling, Mr. President, is the notion of the monthly premium of an estimated $35. Under this conference agreement, if you end up having only one private plan providing the drug coverage in your area, these plans could charge whatever they want, because the lack of a another competing plan. The $35 figure often cited is not a cap; it is the estimate of what the average may be. There is nothing in this bill that prohibits one of those private plans from charging whatever they want in that area. You would end up being forced to charge whatever these plans determine is their price or not having any drug coverage at all.

Despite all of the problems with the prescription drug benefit portion of this package, even with the concerns I have outlined, I would have supported this portion of the bill if it stood alone as I believe it offers a first—though not nearly complete—first step toward adding a prescription drug plan under the Medicare program. I think the idea of doing something in this area made some sense. I would have, even with these bad features, supported this legislation in the hopes that in the coming years we could have modified it and changed it.

But something that few people want to talk about on the other side of the package before us are the structural reforms of Medicare contained in this bill. The conference report we are considering today is not just about prescription drugs. It has a second, much more troubling part. It is over this part that most of us who are expressing our strong objections to this bill have found concern. It is this part of the bill that gives us all pause because it is no less, in our view, than an attempt to end Medicare, certainly as we have known it over these past 38 years.

I tell America to watch carefully. This is the part on which you want to focus. The more you read about it, the more you will draw the same conclusion as those of us who are strenuously fighting adoption of this bill. It is an attempt to force seniors into private plans, producing billions in profits for HMOs but denying seniors access to the benefits to which they have become accustomed and the doctors they trust.

This bill provides a $12 billion subsidy to the private companies and a 9-percent kicker, in effect, to make sure the competition called for by this bill is rigged in such a way that they cannot possibly lose in that competition. The supporters of the bill will tell you it is not forcing seniors out of traditional Medicare. They claim they are creating competition and, as a result, offering seniors a choice.

Let's talk about the so-called competition in this bill and what it would create. Private plans under this conference report will be reimbursed at a higher rate than traditional Medicare—9 percent higher to be exact. How does Medicare compete when you have a 9-percent higher reimbursement for the private insurance plans they are supposed to be competing against? What kind of a competition is that, when all of a sudden you get a 9-percent higher reimbursement rate and claim to have a level playing field? Additionally, this bill makes available $12 billion to be used to lure private plans into the marketplace. If it is going to be a competition, let it be a competition—but we are going to stick $12 billion into the pockets of the HMOs, give them a 9-percent higher reimbursement rate, and say to Medicare: Go out and compete. That is like tying both hands behind their back and tying their legs together and then saying go run a race. A 9-percent higher reimbursement rate and $12 billion to lure private plans into the market amounts to the inclusion of a corporate subsidy in this bill of major significance.

Under this plan, private plans can design their benefits to attract certain beneficiaries, and that is a critical piece. These private plans can design them to attract wealthier, healthier Medicare beneficiaries. In the beginning, one of the magnificent features of Medicare was that we didn't discriminate based on wealth or illness. We said if you reach the age of 65, we are going to provide a safety net for you. The idea was that regardless of whether or not you are healthy, sicker, wealthy, poor, all are together under Medicare.

For the first time—and this is a major change—we are going to start to discriminate if this report is adopted. So the wealthier and healthier people are going to join plans designed by the private companies, leaving in the traditional Medicare program only the sickest and the poorest beneficiaries. When this happens, the premium costs are going to go up and for these seniors, and when they do, they are going to face higher costs and reduced benefits. I don't know what other conclusion you can draw. You cannot accept the notion that we are creating a level playing field. It is not a balanced competition if I provide you a 9-percent higher reimbursement rate than Medicare gets and I then give you an additional $12 billion to lure you into the market. It is just not.

America, pay attention. If you are, today, in the Medicare Program, you could end up watching this program be radically changed. So you end up paying higher premiums and watching your benefits be cut and watching only the poorest of the poor or the very sick be left in a program, as these designer programs created by the private plans will find ways of causing the healthier and wealthier to desert traditional Medicare. This is not a fair competition. It is a rigged game. This bill stacks the deck against traditional Medicare. The effects are self-perpetuating.

Traditional Medicare will grow weaker and private plans will grow stronger, forcing more beneficiaries out of the traditional program and into the arms of HMOs.

It is very easy to get bogged down in the complexities of this bill. So let me state very simply that the weakening of the traditional Medicare caused by this 675-page bill is going to force seniors to pay more and face the prospects of fewer benefits.

Ironically, this bill will mean less choice for seniors. One of the things we are being told is there is going to be a lot more choice under this agreement. One of the great features of Medicare is that you get to choose your doctor. I don't know a single American who doesn't like that feature, who doesn't appreciate the opportunity they have to choose which physician they want to have treat them. Under this 675-page bill, that is over with for many seniors. That fact alone ought to cause people to pause. Why? Why would you deny people the choice of which doctor they use, someone they may have dealt with for years? That choice is gone with this bill.

America, pay attention. It is gone. If this bill gets adopted in the next few hours, that is gone. That is not choice at all. Nothing would make me happier than to find out these predictions are wrong, but they are not. I truly hope seniors can retain the choice that they already have and that traditional Medicare survives.

Let me explain briefly why I get as passionate as I do about these issues, Mr. President. When the Medicare+Choice Program was created and these private plans first came to our communities, many offering zero premiums. People joined in droves, jumped from traditional Medicare at the promise of reduced cost and increased benefits. Then, of course, once the plans looked around in certain areas and discovered there weren't quite as many wealthier, healthier people in certain areas but there were poor and sicker people, they decided—and they can do this at a moment's notice—they said: We are leaving, packing up and getting out. They did that in my State. They packed up and left.

I remember going to a meeting because the senior Medicare beneficiaries I represent were so upset and concerned about these decisions to leave. I convened a town meeting in Norwich, CT. About 350, 400 people showed up, and it was on a Saturday morning. They could not believe what happened to them. One individual was so upset about his wife losing her Medicare+Choice plan—a man who served in the U.S. Navy in World War II and worked at the Electric Boat Division in Groton, CT, for many years. As he spoke passionately about what happened to his wife, being dropped from this program, in his great worry and concern about that, he passed away at this meeting. I will never forget it. It was, obviously, a stunning moment for

the people there. He was so upset about what happened to him because his wife's HMO left, and she was left with nothing in terms of the promised health care coverage. He was a man by the name of Frederick Kral from eastern Connecticut. I have never forgotten that tragic incident and the deeply personal stories shared at this town meeting.

I remember how people felt when these HMOs came running in and then walked away. I cannot say that will happen here. I don't know what is going to happen. We are just playing such a risky game with all of this. Why are we taking these kinds of risks on such an important issue? We should realize the tremendous damage we can do to people.

I recall very well what happened when we had HMOs promise they were going to step in and provide choice and do all these wonderful things. Remember, these are companies that have to make money and they want, as their customer base, healthy people. They would like wealthier people because then they don't have to pay out as deep a benefit. When these plans discover people are not quite as wealthy and healthy, then they design plans that exclude them. My fear is that will happen here.

Even more ironic is this highly unfair system is being championed by the self-proclaimed champions of free enterprise.

The bill, as I mentioned, will provide $12 billion to help HMOs unfairly compete against traditional Medicare, along with a 9 percent higher reimbursement rate. It does nothing to control drug prices. If we really want to do something to promote competition under this plan, wouldn't you think we might have allowed the purchasing power of nearly 41 million Americans to achieve lower prices for prescribed medicines?

That is what we allow with veterans hospitals. The veterans hospitals collectively get together and negotiate with the drug companies for the best price. If you are a veteran in the country, you get a much reduced cost of prescription drugs because the VA has negotiated these prices on your behalf.

As my friend from Florida, Senator BOB GRAHAM, so eloquently described earlier today—what do you say to two people who walk in—a husband, who is a veteran of the Korean war, who is paying one price for drugs because as a veteran the VA has negotiated a lower price, and his wife who stayed home and raised a family and maybe held down another job during that time? She is not a veteran, but she is on the same drug as her husband and she pays two, three, four times what he pays. How do you explain that to people?

Why can we not do in this bill what we have done in the VA? This 675-page bill specifically prohibits the Medicare program to negotiate for lower drug prices. How is this representative of free market principles?

On the other hand, we are being told that we ought to have competition between private plans and Medicare. When it comes to negotiating for lower prices for prescription drugs, this law categorically prohibits the Federal Government from doing so. It is OK for the VA, and I applaud them for doing that, but it is not OK for Medicare. Yet we are told this is supposed to provide a fair competition.

The reason, of course, for all of this is simple: The champions of free enterprise know private plans cannot compete with traditional Medicare on a level playing field. The subsidies are absolutely necessary because Medicare is actually more efficient. Medicare delivers services at a lower cost. That isn't one Senator's conclusion. Those who have examined this program from top to bottom, in every different manner, say Medicare is a very efficient program. And it delivers terrific services at a much lower cost than private plans, and we are about to walk away from that with the adoption of this bill.

We are going to go off now and take 41 million Americans and make them guinea pigs, despite the fact the system works. There is that old expression: If the wheel ain't broke, don't fix it. This wheel is working well—the Medicare wheel.

I am afraid we can only conclude one thing: The architects of this bill are going to spend billions and billions of taxpayers' money not to reform Medicare, but to dismantle it, to push patients out so that it will, indeed, wither on the vine.

I remember so well when the former Speaker of the House, Newt Gingrich, speaking in front of a group of people here in Washington, a group of lobbyists from the health care industry, talked about Medicare withering on the vine. I heard the other day Mr. Gingrich, no longer a Member of Congress, showed up at the House Republican caucus and gave a strong pitch for this bill: It is a great bill, according to the man who wanted to make Medicare wither on the vine. Either he had a great conversion on the road to Damascus, along the lines of St. Paul, or he still believes what he did a few years ago, and he is finally going to be able to achieve what he talked about doing then.

I suspect it is more the latter than the former. I have seen no evidence that there has been a change of heart by Mr. Gingrich in his views about Medicare. So the individual who promised you we are going to let this tremendously-successful program wither on the vine is now applauding the fact we are going to finally achieve what he suggested a few years ago.

I predict we will be back, unfortunately, at great cost to the American taxpayers and at great cost to older Americans. We will be back in this Chamber rewriting this bill. That much I will guarantee will happen.

Unfortunately, we will squander billions of dollars unnecessarily. We will put a lot of people who shouldn't have to go through this, given their age and the problems they face—older Americans shouldn't have to go through the added frustrations and anxieties and wonder every day, as millions of them do, about how they are going to pay for the healthcare needs they have. They are going to have to go through this wringer because there are people around here who just never could stand Medicare and have been looking for ways to undo it since its inception.

This part of this bill, these structural changes to Medicare, if they were to offered before this Chamber as a sole proposition, I don't think would get 15 or 20 votes, but because they have been linked inexorably to the prescription drug benefit, the bill will pass.

As I mentioned at the outset of these remarks, the prescription drug benefit, while it is flawed, in my view, is worthy of support, despite the objections I have to certain parts of it. But it is not so good, in my view, that it ought to override the great damage to the Medicare program that will be caused by this bill.

Allow me to express my concerns about another provision. The conference agreement before us today establishes the dangerous precedent of instituting so-called cost containment measures that could directly lead to service cuts in what Medicare covers and just-as-severe increases in costs to Medicare beneficiaries.

Specifically, the conference report calls on the Congress and the administration to address Medicare's costs when general revenue spending on Medicare reaches 45 percent of the program's total cost. Let me read that again. Specifically, this conference report, calls on Congress and the administration to address Medicare's costs when general revenue spending on Medicare reaches 45 percent of the program's total cost.

Does anyone in this Chamber know of any other Federal program that has a similar provision in it, when we pay for anything else you can think of, when 45 percent of the cost comes out of general revenues, that we must take enact cost containment measures? Only Medicare; there is no other Federal program that has similar handcuffs on it that Medicare does under this bill: It states that when you reach 45 percent coming out of general revenues, then cost containment measures must be taken.

The adoption of this purely arbitrary cap will lead to almost certain erosion of this critical program's scope of coverage and affordability. It is yet another attempt of opponents of Medicare to destroy this program that so many of our senior citizens rely on every day.

Today, after nearly 40 years of Medicare's inception, we find ourselves truly at a crossroads. The opportunity is before us to move Medicare toward the future without threatening its proven availability, to provide for the health and well-being of this Nation's

seniors citizens. Sadly, the conference agreement represents an opportunity lost, an opportunity not only to add comprehensive coverage for prescribed medicines under the Medicare Program, but also an opportunity to strengthen the Medicare Program for future generations.

So it is with a great deal of sadness that I find myself faced with this 675-page document. The entire House minority was not allowed in the room on this bill. There were secret meetings of the conference committee that crafted this agreement—I am not making this up—clandestine meetings so no one could find out where they were meeting. Not a single representative of the minority in the House was allowed to sit in and help craft this bill affecting 41 million Americans—and all but only two members of the minority on this side were excluded as well from these deliberations. The Democratic leader, a member of the Finance Committee, was told he had no right to go to the meetings. In fact, the chairman of the committee said: If the Democratic leader shows up, then the meeting will be canceled.

What kind of arrogance is that? The chosen leader of a minority of this body was told if he shows up as a member of the conference committee, the House chairman of this conference would close down the meeting and walk out.

This process is broken, Mr President. How much confidence can America have in a product that in the construct of these 675 pages, minority views were almost totally excluded.

I warn my colleagues, a dangerous precedent is set when a bill of this significance is crafted in the manner of the bill before us. This bill before us affects not just those who are direct recipients of Medicare. Think what Medicare has meant to the children and grandchildren of its beneficiaries. Think what costs would have had to have been borne by children trying to raise their own children while they were taking care of their parents had it not been for Medicare.

How many college educations would not have been achieved if the families were forced to choose between making sure that mom and dad could see a doctor or their children might go on to college? That is not hypothetical at all. Think how many people's dreams of home ownership, making investments in things families need, were made possible because there was a program called Medicare. It said to Americans: You have given so much, particularly the generation that Tom Brokaw has called the greatest in our history, that carried us through a Depression, through World War II and Korea, that after all of that, we said to them, look, we are going to create a program that makes it possible for you and your families not to have to face poverty or worse when you face expenses for needed medical attention.

Despite the fact the program works well, has been efficient, and produces services at low cost, we are about to enter a casino, under the best of circumstances, and start playing roulette with people's health care and with the costs associated with it. That is why I am so saddened by the emergence of this conference report.

The process has broken down. This is a product in which one can have little or no confidence. I am being asked as one Member, with only 3 or 4 days to review this product, to agree to sign on to something of this magnitude. There is an opportunity, I think, to get this right and to make this better. We owe it to the people of this country to seize this opportunty.

Older Americans are not Democrats or Republicans. They are not conservatives or liberals. They are just hard-working people. The least they deserve is to have a Medicare Program they do not have to worry about. They need a comprehensive prescription drug benefit so they do not have to make choices between the medicines they need and the food they must have or the heat they must purchase to warm their homes.

We should be able to find a way to achieve that. I am deeply saddened that we have not achieved that goal with this conference report. After all of the reasons I have laid out, I will vote against this bill and I urge my colleagues to do likewise.

I deeply regret we did not prevail on opposing cloture or on the point of order that was raised so that we might have been able to go back and work on this again and come back in January with a better product. This is not the end of this Congress, it is only the end of a session. Yet every effort is being made to see to it that we jam this flawed bill down the throat of America.

We will be back; unfortunately, at great cost to the Treasury, and at great cost to the well-being of an awful lot of people who deserve better than they are going to get through the adoption of this bill, in order to fix this bill. I truly wish this were not the case.

I reserve the remainder of my time and designate the Democratic leader as the beneficiary of any time I may have remaining.

The PRESIDING OFFICER. The Senator has that right.

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

The PRESIDING OFFICER (Mr. FITZGERALD). Without objection, it is so ordered.

Mr. HARKIN. Mr. President, today by a 2-vote margin, I guess it was, the Senate, this greatest deliberative body in the world, decided to begin the process of ending Medicare in America. After nearly 40 years in which the elderly in our country have been raised out of poverty, in which the elderly in our country have been given the assurances that they will not have to go to the poor farm to pay for medical care, after nearly 40 years of children being freed from the burden of caring for ailing parents and grandparents, after providing an envy of the world in what we do to care for our elderly in terms of health care, the Senate today began the process of turning our back on all the progress we have made. Medicare was created, as I said, almost 40 years ago, with the purpose of providing our Nation's aged and disabled with that safety net, to protect them from death and destitution.

For years, seniors have counted on health security in their golden years thanks to Medicare. For nearly 40 years, this program has stood as a social contract between the American Government and the American people. After a lifetime of labor, when a person turns 65 they are promised health insurance covering doctors' visits, hospitals, and many other health costs. There was one exception for all of those 40 years; that is, there was no coverage for prescription drugs. It is almost impossible to overstate what Medicare means to a family, a citizen of modest means who has worked hard for a lifetime, a person who does not want to be a burden on the rest of his or her family. Medicare has been a rock solid, reliable, guaranteed lifeline for America's senior citizens.

Today, with a two-vote margin, we are watching that social contract erode. We are taking huge risks with the health and security of seniors, all to satisfy ideological agendas, to satisfy big political donor's wishes and certain political strategies.

With this Medicare bill, we have seen grave abuses of power—such as the recent vote in the House of Representatives in which this bill before us today lost in the House of Representatives, lost under the normal rules, lost under the democratic means over there. But as you know, they kept the vote open for almost 3 hours, from about 3 a.m. to 6 a.m., to twist arms until they finally got the votes.

I was driving to work Saturday morning. I was listening to public radio. A caller had called in and she said President Bush says he wants to bring democracy to Iraq. After what happened last night in the House of Representatives, I hope Iraq wasn't watching. That is not the kind of democracy they need in Iraq.

I am disappointed in the process that we have had here. This has been a sham process.

We have this bill here; I have held it up many times. I can barely hold it up right now—1,200 pages. It is dated November 20. It was delivered on our desks when we arrived here Saturday morning, that big. Saturday morning and here it is, Monday, and we are expected to vote on it.

How many seniors in this country have seen this bill? How many here in

this room have actually gone through it or looked at it—or staffs? We know basically what is in it, but who knows what fine print is included and how some things may work? It is a terrible process.

That is why I argued against it repeatedly and that is why I voted against cloture today on the filibuster. It is not that I want to keep filibustering, but I believe we should have gone home and let this bill get out to the public, let the American people see it, talk about it, digest it. Then we can come back here in late January, as we are going to do, and February, and see what our constituents think about it. To me that seems to be the American way, the democratic process.

That is not the process we followed here. That is not the process. We are debating a proposal that was originally supposed to accomplish one simple goal: to right the wrong in Medicare, that gap that was in there, by providing coverage for prescription drugs and to make medicine more affordable for seniors.

I regret that in writing this bill Congress has strayed from that objective. We have forgotten who we are supposed to be helping—our Nation's seniors. Instead of a straightforward drug benefit, we now have a Medicare privatization proposal that threatens to undo the entire Medicare Program on which seniors and the disabled rely each and every day. Seniors who rely on the stability and affordability of this program, seniors like many in my home State of Iowa, simply want and need affordable medicine.

I have seen no big clamour to change the basic Medicare Program. We had a proposal here in the 1990s to get more competition in Medicare. The Congress came up with this Medicare+Choice Program, where seniors could stay in traditional Medicare or they could join an HMO. So we have had several years of experience with this.

What is the result? Eighty-nine percent of the seniors in this country have chosen to stay with Medicare. About 11 percent in various parts of the country went with HMOs. That is fine. That was purely voluntary. But seniors have spoken. They want to keep traditional Medicare. They simply need an affordable drug benefit.

I want to say more about this as I talk, but under this bill seniors do not really have a choice. You hear my friends on the Republican side say time and time again, choice, choice, choice, we are giving seniors choice, choice, choice. That simply is not true.

I hear all the time they say if a senior wants to stay with Medicare, they can stay with Medicare. That is true. But at what expense? What they don't tell you is, if a senior wants to stay with Medicare, they don't get drug coverage. They get no prescription drug coverage. Yes, you can stay with Medicare but you have to give up prescription drug coverage. If you want prescription drug coverage, you have to go to some private plan. That is what they are not telling. I will have more to say about that choice.

This bill totally violates the spirit and substance of the original Medicare Program. Again, to make it worse, we are rushing it through the Senate. This bill doesn't start until 2006. What is the rush? Why are we here 3 days before Thanksgiving, 7 o'clock in the evening, having a vote on a filibuster today, trying to ram this bill through? Why is it that the House of Representatives, in an all-night session, rammed this bill through? I will tell you why they rammed it through. Because the pharmaceutical companies and the big insurance companies want to get it through before Americans broadly know what is in it. That is why. Get it through in a hurry.

Only a few fortunate people know what is in this: a roomful of Republicans, two Democrats, and big money industries. Seniors didn't have a seat at the table. If they would have, I am sure they would have created a very different bill.

I have this cartoon here. I will show it again. Here is a pharmacy. There is a pharmacist who represents Congress. This elderly woman has come in, has given her drug benefit to Congress, and Congress is saying: Have a seat. It will be ready in 2½ years—your prescription; 2½ years. Yet we have to rush this through right now.

As I said, I called this the big Medicare gamble. It is like a roulette wheel. That is what we are doing. Before, under Medicare, it wasn't a gamble. You knew what you had. You had good, rock solid coverage, no matter what part of the country you lived in, whether you lived in rural Iowa or New York City; it didn't make any difference. Now we are rolling the dice, spinning the roulette wheel. It is going to unravel Medicare. The special interests, the drug companies, the HMOs are now more important than seniors.

Seniors are being told there is not enough money for a really good drug benefit. Why isn't there enough money? It is because we already squandered our surplus in tax cuts worth trillions for the wealthy. Once again, the well-heeled on Wall Street are more important to this administration than the elderly and disabled on Main Street.

Mr. ENSIGN. Will the Senator yield for a unanimous consent request? I ask unanimous consent that I be recognized following the Senator from Iowa.

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

Mr. HARKIN. What we have before us today is a bill drafted behind closed doors in the dark of night that amounts to a bonanza for special interests. Don't take my word for it. Look at what others are saying regarding this bill.

This is from the Des Moines Register editorial board, my home paper:

> This legislation is a big, sloppy kiss to the pharmaceutical and insurance industries.

The Albany Times Union:

> This is not only an imperfect bill, it may also be a disastrous one.

This is the New York Times of the 19th:

> This is a gift to pharmaceutical companies and insurers and a threat to elderly Americans.
>
> Deal would alter Medicare's core. If a compromise bill on prescription drugs passes, the Government program will become a massive subsidized insurance market.

That is the LA Times. They have it right. It is not just the media and some of us on this side. From the American Conservative Union, listen to what they say:

> The Medicare prescription drug benefit bill that passed the House and the Senate would drive up costs for millions of senior citizens. Millions more will lose their current coverage under private Medigap insurance and employer provided plans. The House-Senate conference committee should reject the bill and start over with a bill that includes real Medicare reform.

This bill would provide billions of dollars in subsidies—bribes—to private plans and HMOs. In fact, this morning's Washington Post had an article which said the Medicare bill would enrich companies $125 million more for employers and health firms. It would ensure billions of dollars in profits and projected $139 billion to pharmaceuticals. I think it speaks volumes that when this bill came out last week, the drug and health industry stocks surged on Wall Street.

I ask unanimous consent that the article from today's Washington Post be printed in the RECORD.

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

[From the Washington Post, Nov. 24, 2003]

MEDICARE BILL WOULD ENRICH COMPANIES

(By Amy Goldstein)

The Medicare legislation that passed the House near dawn on Saturday and is moving toward a final vote in the Senate would steer at least $125 billion over the next decade in extra assistance to the health care industry and U.S. businesses, in addition to its widely heralded goal of helping older Americans pay for prescription drugs.

The largest chunk of that assistance, according to congressional budget estimates, would be $86 billion worth of payments and tax benefits for employers, giving them a new subsidy for the health benefits that many already provide to retirees. Health maintenance organizations, hospitals and physicians also would be paid more by the government for treating the 40 million elderly and disabled people in Medicare, the estimates show.

Whether this extra money, part of a $400 billion plan to redesign the program, is warranted remains a matter of intense debate. Regardless of whether the payments are needed, the bill's generosity to employers and major sectors of the medical industry helps explain the aggressive lobbying campaigns for the legislation by groups including the U.S. Chamber of Commerce and the American Medical Association.

Liberal and conservative health policy analysts say the payments undercut a significant goal of the White House and congressional Republicans in redesigning the Medicare system: preventing it from running out of money in the near future.

One of the bill's main architects, Ways and Means Committee Chairman Bill Thomas (R-Calif.), has repeatedly said that expensive new drug benefits must be balanced against other steps that will rein in the program's spending. The most recent federal estimates predict that Medicare will become insolvent in 2026 because Americans are living longer and the large baby-boom generation will start to retire in a few years.

Yet, as House and Senate members have worked out an agreement on the Medicare bill, ''nobody is serious about the solvency goal,'' said Stuart Butler, vice president of domestic and economic policy studies at the conservative Heritage Foundation, which opposes the legislation. ''That isn't even on the radar screen of more than a handful of members.''

The extra money to private health care companies is part of the reason many Democrats oppose the measure. Sen. Edward M. Kennedy (D-Mass.), his party's leading voice in the Senate on health care and a vehement critic of the bill, said last week that provisions calling for increased payments to HMOs and other health plans were ''obscene.''

Kennedy and other critics say that, for the first time in the many years that Medicare has encouraged private health plans to welcome older patients, the government would be abandoning its original rationale that managed care is more economical. Instead, the bill would create new funding rules to ensure that no private plan is paid less than the rates that Medicare pays for patients in the traditional, fee-for-service part of the program. It also would establish a special $12 billion fund to try to persuade health plans to enter—or stay in—parts of the country where they have been scarce.

Lobbyists for health plans counter that they cannot afford to take Medicare patients unless they are paid enough to make it worthwhile. But health economist Marilyn Moon said: ''It is very ironic. . . . To increase participation in private plans, we are going to overpay them for the foreseeable future.''

The extra payments in the bill have varying purposes. One is to send more Medicare money to doctors, hospitals and other care providers in rural areas, through a combination of funding methods that total about $25 billion over 10 years. Rural health care advocates—and the lawmakers who represent them—made that money a top priority.

The thinking behind the new employer subsidies is connected to the new drug benefits. Once federal benefits became available, corporate executives told lawmakers and Bush administration officials, companies might accelerate a recent trend in which some have been dropping—or charging more for—health coverage for retired workers.

As a result, the House and Senate members who negotiated for four months over separate Medicare bills, that the two chambers had passed included incentives to deter companies from abandoning their retirees. The bill would give companies essentially the same amount of money per retiree that the government would provide in subsidies to individual Medicare patients who got the new federal coverage for prescription drugs. The employers would get $70 billion in direct payments and $16 billion more in new tax breaks over the next 10 years.

Thomas A. Scully, administrator of the federal agency that runs Medicare, said employers ''should be having a giant ticker-tape parade.'' Scully recalled that he and Health and Human Services Secretary Tommy G. Thompson met in the spring with labor and corporate leaders—including the chairmen of General Motors Corp., General Electric Co. and a major steel manufacturer. ''Their joint plea was, retiree health costs are an unbelievable burden.'' They requested what Scully called ''a modest buyout,'' equivalent to perhaps $350 per retiree. The bill, he said, provides more than twice that amount, a sum ''way beyond their wildest requests.''

Employers repaid with their support. Nine days ago, less than an hour after House and Senate leaders announced their compromise on the legislation, the Business Roundtable, an organization of chief executives of large corporations, issued a statement praising the agreement.

Similarly, the American Medical Association has mounted a grass-roots campaign in which about 10,000 doctors and their patients have contacted their congressional representatives in recent weeks, urging them to vote for the measure. The bill would cancel a planned decrease in Medicare's payments to physicians for the next two years, providing them a small increase instead. That would give doctors an extra $2.5 billion over the next five years, although the money would be decreased after that.

Together with special physician subsidies in rural communities, the bill would give physicians $1.9 billion more in Medicare payments during the next decade than they would get otherwise, the budget analyses show.

Donald J. Palmisano, a New Orleans surgeon who is the medical association's president, said the payments were important ''to make sure physicians can stay in the practice of medicine.''

''It will be of no value to have medical coverage or a prescription drug benefit, if you can't fine a physician,'' he said.

Hospitals would get nearly $24 billion extra over the next decade, about two-thirds of it in rural areas. The rest would be used to help defray the cost of new technologies and training doctors and to give all hospitals a bigger boost for inflation next year than the House originally wanted.

''I really take issue with anyone who would question the need of those hospitals that are critical to Medicare beneficiaries,'' said Charles N. Kahn III, president of the Federation of American Hospitals. But health policy analyst Gail Wilensky, a Republican who used to run Medicare, said hospitals rarely have received as much money to cope with rising costs as they would get from the bill.

Mr. HARKIN. Mr. President, the legislation before us seeks to privatize Medicare, plain and simple. It seeks to privatize it, despite the fact that 89 percent of seniors say they want to stay in traditional Medicare—and they have done so when they had a choice—despite the fact that traditional Medicare is less expensive to administer—2 to 3 percent compared to 15 percent in private plans.

Again, there is something the average person doesn't understand. They don't realize. You would think a Government plan such as Medicare would cost more than a private plan. Private plans are supposed to be cheaper because of competition. We have had Medicare for almost 40 years. We have had private plans that length of time. So we have a lot of data. We know. This is not conjecture. We have the data. We know. What does the data say? Administrative costs for Medicare, 2 to 3 percent. In other words, out of every dollar that goes to a beneficiary, it takes 2 to 3 cents to administer Medicare. For a private health care plan, for every dollar that goes out, 15 cents goes for administration.

You might ask, Why is that? Just think about it this way. With traditional Medicare, we don't have to spend hundreds of millions of dollars on corporate CEO salaries. We don't have to spend hundreds of millions of dollars at least for fancy full-page ads in the New York Times and USA Today and Newsweek magazine. We don't have to spend all of that money to advertising agencies. That is where you get chewed up with these private plans.

Despite the fact that Medicare expenditures are growing at a slower rate than private plans, they say government costs are going up. The fact is—again, we have data for 40 years—Medicare has increased by 9.6 percent compared to private plans at 11.1 percent. Despite that, this Senate, this Congress, and this administration want to move us into private plans. Despite the clear wishes of senior citizens in this country, they want to move us into private plans.

I guess for those who came up with Medicare+Choice, somehow their ideology said these seniors would move into HMOs, and 89 percent said no. By gosh, I guess the thinking is here, if they didn't want to voluntarily move into HMOs, we will force them into HMOs. That is what this bill does.

The conferees chose to ignore all of the facts and all of data we have from the past. Instead, they concocted a grand experiment that encompasses all their right-wing ideological fantasies and seniors are the guinea pigs.

What we have in this bill that no one here has read is nothing less than a witch's brew of seemingly appealing benefits. But it is a witch's brew, one that is going to come back to haunt us in the future.

This experiment is a result of what I call private sector worship. It is a faith-based notion among some of our colleagues that the private sector will take care of everything. It is a blind faith that free markets solve every problem. But this private sector worship flies in the face of past experience. The entire reason we have Medicare today is that there is no private sector market for health insurance for sick seniors—none. Why? Because there is no money to be made in insuring sick, older people.

The free market works fine when you are talking about automobiles, airplanes, TVs, widgets, clothes, and that type of thing. But the free market is not stupid. The free market cares about profits—not people. By its very nature, the free market shuts out people with disabilities, shuts out people with mental illnesses, and shuts out people who are in the last years of their lives. In short, the free market shuts out people who are not profitable.

I have news for my colleagues who believe the free market is the answer to everything. The free market did not

break down barriers to people with disabilities in our country. It was the Government—we here in the Congress—that had to step in to ensure opportunity and openness in our country for people with disabilities. In the survival of the fittest free market, these folks were left behind.

Another example: We have been fighting this Congress for years to pass a bill ensuring mental health parity. But people with mental illnesses are not a profitable group. So the free market, left to its own devices, will have nothing to do with mental health parity.

Think about it. We don't have mental health parity. Why wouldn't we? Why wouldn't the free market jump in there and get it? Because there is no profit. That is why, as soon as we get back into session next year, I hope we pass the Paul Wellstone mental health parity bill. Again, if we leave it up to the free market, people with mental illness are simply left behind.

Another prime example of those left behind is the elderly. The elderly are not a profitable group of people to include in an insurance risk pool. They are sick. They have chronic illnesses. They are expensive to treat. The proof is all around us. It is impossible to imagine private insurers fighting and competing with one another for the privilege of covering the elderly. That is why we have to bribe the companies with billions of dollars of taxpayer money to get them to participate in this witch's brew scheme we have come up with here.

I have seen this proof firsthand. The other day, I talked about my own situation. I want to repeat it again.

In 1958, I was a senior in high school. My father was 74 years old. My mother had passed away 8 years prior to that. My father had worked most of his life in the coal mines in Iowa. My father had an eighth grade education. My mother was by then deceased. She was an immigrant with no formal education—little formal education. We lived at that time in a little house in a rural town of Cummings, IA, of 150 people. Because of my father's years in the mines—we called it miner's lung at that time; they call it black lung today—he would get sick every year. We would never see doctors. We didn't have any money. My father's total income was less than $1,500 a year. It was about $1,200 a year. That included bonuses for having kids under the age of 18.

Thank goodness he worked a while during World War II to pay into Social Security and he had some Social Security. That is all he had. My father had no stocks, no bonds, no property, no trusts, nothing. He had the small house we lived in and he had a Model A Ford, the only car he ever owned. That was 1958. And every year during those 1950s, I remember, like clockwork, my father would get sick. He would get sicker; he would get pneumonia. We would rush him to the hospital in Des Moines. They would put him in an oxygen tent, give him antibiotics, fix him up, and send him back home again.

If we did not have any money, and our total family income was less than $1,200 a year, how did we afford that? I tell you how: It is called charity. The Sisters of Mercy at Mercy Hospital would take care of my father, and knowing that we were poor and could not afford it, they would not bill us. That was charity.

I was in the Navy some years later, in 1966. I came home on leave, I think for Christmas, and my father was quite beside himself because he showed me this new card he had, a Medicare card. Now he could go see a doctor. If he had to go to the hospital, he did not have to rely on charity any longer.

I often think of how much better my father's later years would have been had he had Medicare. If he had seen a doctor and had preventive health care, his later years would have been much healthier and much better. But he only had Medicare for 2 years before he passed away.

I tell that story because I wonder, as I stand here and as I listen to all this debate about choice, as I listen to the debate about how insurance companies out there will come in and do all this, I wonder, why didn't insurance companies rush to help my father? Why weren't they knocking on his door, competing with one another, to cover my father? We had insurance companies at that time. Why weren't they knocking his door down to cover him? Why? Because my father was not profitable. Elderly people in health care are not profitable.

So do not tell me the private sector will solve every problem, because I lived through its failures firsthand. I know many Iowans and many Americans have the same situation. They do not want to be left to the volatility and the whims of private HMOs.

I understand many of my colleagues prefer the free market over Government intervention. I do, too, in most cases. But to say that we are going to do it regardless is a misplaced faith. There is a time and a place for the Government to step in, where the private sector fears to tread or fails to tread. No question, this is the case when it comes to helping people with disabilities, people with mental illnesses, and seniors with serious health problems.

We hear the claim that private sector competition will drive down costs and save Medicare. Nonsense. The only competition will be competition for healthy seniors. If you are sick, you will be shunned.

I saw this headline in the Washington Post: ''Medicare Deal Likely to Spark More Health Care Competition.'' I thought, my goodness, and I got to reading it.

On Wall Street last week, drug stocks jumped as investors anticipated a congressional deal finally announced in principle last night that would add a prescription drug benefit to the Medicare Program.

Pfizer was up on Friday. So was Eli Lily. And so was Johnson and Johnson.

But this is what it is all about, as Robert Hayes, president of the Medicare Rights Center, states:

This could be like the wild West out there. If suddenly there are five or six or seven plans out there, the insurance companies will be pricing their product to make a profit, as they are obligated to do. If the consumer is kind of shooting in the dark because of the complexity of this—and the darkness is deepened by age or disability—you'll have a customer primed for exploitation. We're real concerned that people could get ripped off.

It is not competition for the elderly out there. It is competition among the drug companies as to who will make the most money. That is the only competition that will be out there. They do not want an even playing field competition. This bill will give billions to private plans so they can compete and make profits.

This is what people have to understand. They should know this before we vote on this bill. That is why we should get it out there and come back in February and vote on it and let the people see what is in there. This bill before the Senate will pay a private insurance company 26 percent more than traditional Medicare; $1,900 more per senior.

Get this straight: We are going to take your hard-earned tax dollars and we are going to give those tax dollars to a private insurance plan to compete with Medicare, and in order to be able to compete, we are going to give them 26 percent more than what we provide in Medicare.

I guess I would kind of like that competition. Man, I would like to get a piece of that action. I would like to have the Government give me 26 percent more than what Medicare is making. That is not competition; it is a corporate giveaway. It is corporate welfare. That is what it is. It is a waste of taxpayers dollars when Medicare, over 40 years, shows it can do the job cheaper, more effectively, and more efficiently.

Seniors know it, trust it, and want to keep traditional Medicare. We are saying: No; we are taking your tax dollars and we are going to give it to private companies, 26 percent more, $1,900 more per beneficiary to bribe them to get into a private plan.

On top of that, the conferees have come up with what they call a stabilization fund. How about that for a nice fancy word—''stabilization'' fund? What are we stabilizing? It sounds as if there is an earthquake out there. There may be when seniors find out what is in the bill. It is a $12 billion slush fund for private plans. Privatization, when it comes to medical care for the elderly, costs more money and it will reduce choice.

We have heard the claim time and time again that seniors should have a choice as Members of Congress do. Seniors will be gravely disappointed when they find out what they are getting is nothing like what we have. I hear

about choice all the time. No senior will be forced out of Medicare. How many times have we heard that? They will be able to stay with Medicare.

Listen to the words carefully because what we are not hearing is that if you want drug coverage, you have to get out of Medicare. If you do not care about not having drug coverage, you can stay in Medicare. That is what they are saying. They are saying no one will be forced out of Medicare. No. But if you want drug coverage, you are out of Medicare; you have to go to a private plan.

Isn't that what we are all about, trying to get drug coverage for seniors? And seniors say they want it under Medicare; they do not want it under private plans. Seniors will actually end up with reduced choices under this legislation.

If there are two private plans, say, an HMO and a PDP—maybe you have never heard of a PDP. If you say you have never heard of it, I understand that because they do not exist. But it has been conjured up in this bill. We have conjured up something called PDPs. So if there are two private plans, an HMO, and a PDP, and if a senior who is in Medicare wants drug coverage, that senior is forced to take the PDP or the HMO. You cannot stay in Medicare. You have to move over and take one of the private plans.

That is a choice? That is a choice? That is like you have a choice between getting shot and getting hung. Either way, you are dead. Not a very good choice. They will not be allowed to get their drugs through traditional Medicare.

Again, let's say they go and join one of these private plans, this PDP, or whatever it is, or an HMO. Well, then the HMO can tell them: You can't see your doctor. You have to see another doctor. Oh, you can't take that drug. It is not on our formulary. You have to take this other drug.

Why do you have to take this other drug? Well, they will not tell you why, but they are probably getting a bigger kickback from the pharmaceutical companies for that certain drug. So seniors are forced to change drugs. That is not choice.

It seems to me around here sometimes it is almost to the point that if you hear someone say it is daytime, you might just think it is probably night. If someone says something is black, you probably think it is white. Around here we have gotten to the point where we use these words to confuse people, to make people think something is not what it is.

This idea of choice, that somehow we are giving seniors more choice—just false. The rhetoric around this bill does not match reality. The President and this administration has said many times that seniors deserve choice, that the seniors deserve what Members of Congress have. I am all for that. But that is not what they are getting.

Right now, I pay about 25 percent of my drug costs. That is it, flat. But the prescription drug plan put before seniors in this bill will not even come close to that.

Instead, it is a confusing, convoluted maze that—mark my words—will leave the seniors feeling betrayed and bewildered. All I can say to some of my colleagues who may have been here in the 1980s is, do you remember when we passed the catastrophic health insurance plan? Well, if you like the seniors' reaction to that plan in the 1980s, you are going to love their reaction to this grossly inadequate prescription drug plan.

Now, look at what they are going to be faced with right here. Every year we, in our plan, the FEHBP, the Federal Employees Health Benefits Plan, have an open season, and we get to choose what plan we want to go in. So we get all these books. Here is one from Aetna. Here is another one from a different Aetna. Here is one from, of course, Blue Cross, and then a different Blue Cross. Here is Kaiser. Here is APWU. Here is PBP. Here is Mail Handlers. Here is NALC. Here is GEHA. Here is MB, Individual Practices Association.

We are supposed to read this and go through them all and decide which plan we want to be in. I wonder how many Senators actually go through these. I can count them on less than one hand. I can count them on less than one finger. Yet seniors every year are going to get this. They are going to be asked: Make a choice. It is confusing. It is going to be bewildering to them every year—every single year.

That is what I mean, a senior could get out of Medicare and go into an HMO or one of these PDPs. They could jack up their prices—I will say more about that in a minute—because the premium is not set in law. It can go up. It can go up. They can get bounced around. So they may be in one plan 1 year, and that plan may not exist the next year.

Then what do they do? What do they choose? Well, that is why I say, you wait. This is going to be a confusing, bewildering mess for our senior citizens.

The only ones making the money are pharmaceutical companies. I think it is instructive that in this bill—if I can find it here, I think on page 53 of this bill, if I am not mistaken. I wonder how many people read this. Page 53, line 18: ''Noninterference—In order to promote competition''—I love this, I love the way they play with words—''In order to promote competition under this part and in carrying out this part, the Secretary''—the Secretary of Health and Human Services—''(1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and (2) may not require a particular formulary or institute a price structure for the reimbursement of covered part D drugs.''

Now, what do you suppose that is all about? Well, what it says is that Medicare cannot negotiate with drug companies to get a better price on drugs for our seniors. That is what was written in the bill. We have said for a long time that we ought to use the power of Medicare to negotiate with the drug companies to get a better price. The VA, the Veterans' Administration, going back to a law that we passed here, I think, in the 1980s, the VA sits down and negotiates with drug companies for the price of drugs for veterans hospitals and veterans throughout the country. That is why veterans' drug prices are 50 percent or more less than what you might normally pay or what an elderly person would pay because they use the purchasing power of the VA to bring it down.

But in this bill, we have said, no, you cannot do it any further than that. Medicare cannot negotiate. Think about it. It is written in here. Medicare is prohibited from negotiating with drug companies to get a better price on drugs.

People always ask: Why are drugs so much cheaper in Canada? I have been to Canada a lot. I am sure the occupant of the Chair has been to Canada. If you go to Edmonton, Calgary, places like that, there are drugstores all over, private drugstores owned by private citizens—free enterprise. You go in there, and the pharmacist is there, and you can get your drugs 50, 60, sometimes as much as 80-percent cheaper than what you get here.

It is the same drug, made by the same manufacturer, that is that much cheaper in Canada. Why? Well, guess what. The Canadian Government buys the drugs. They negotiate with the drug companies to get a lower price because they buy in such huge volumes. Then the private pharmacist makes money on filling the prescriptions, watching your prescriptions.

But in this bill we are forbidding Medicare from negotiating with drug companies for a better price. What a sweetheart deal that is.

Let's see what seniors are going to pay for this and why this is kind of confusing. Here is what seniors are going to find out. Right now, here is what seniors pay under Medicare: Part A premium, hospital, nothing; Part A deductible, $876 for benefit period set for everybody; Part B premium $66.60 a month; Part B deductible for their doctor, $100 per year, and a 20-percent cost share on each visit to the doctor's office.

Very simple, very straightforward; every person in Medicare understands that.

Now what? Well, let's see. Seniors who have an annual income above $13,470 per year will have to pay a yearly deductible of $250. They will then pay a $35-a-month premium, which can go up, by the way. That is not fixed in law. So that is $420 a year. That figure can change every year because if the private plan is not making the profit that they want, they can boost that figure up, and they will.

After seniors have put in at least $670 up front, they can start receiving some

benefits. You might say, well, 670 bucks, that isn't much. Remember what I said: This is someone who is above $13,470 a year. Six hundred seventy dollars is a lot of money to someone making $14,000 a year and worrying about heating bills, buying food, taking care of themselves. So after they pony up $670, the Government will then pay 75 percent of the drug costs up to $2,250.

What happens then? What happens then is that person making more than $13,470 a year will have to pay 100 percent of their drug costs up to about $5,000. That is the so-called donut hole. That is going to be outrageous.

One day you are going in, you are getting your drugs, and you are paying 25 percent. You are going to go in one day and your drugs are $2,200, and then all of a sudden your pharmacist says: You have to pay full price.

Why?

Well, I am sorry. You reached the donut hole of $2,250.

Think of it this way. If your drug costs are $5,000 a year, you will have to pay $4,000 out of pocket. And for that, we bribe HMOs, we give billions of dollars in subsidies to the pharmaceutical companies and to HMOs and to PDPs and whatever else.

Another thing, a senior who has an annual drug cost of only $500 will pay more into the program than they receive. You will put in $500. If you have $500 in drug costs, you will pay $751.25 into this program every year. What a deal.

To make things even messier, the program would create several tiers of classes under the Medicare Program. Again, there are different low-income benefits available to those under 135 percent of the poverty level. That is $12,123 for a single person. There is another set of benefits for those under 150 percent of poverty level. That is $13,470 a person. On top of that, to receive the low-income benefits, a senior must undergo an asset test. We threw the asset test out of here in the Senate. Now it is back in this bill. But now let's look at this asset test. For one group, those who are at 135 percent of the poverty level or below—that is below 12,000 bucks a year—if you are below that, the asset test is $6,000 for a single person. You can't have more than $6,000 in assets. It is $9,000 for a couple.

For the group at 150 percent of the poverty level—let's see, that is $13,470—the asset test there is $10,000 in assets, $20,000 for a couple. So mind you, for a difference of a little over $1,000 a year, maybe about $1,300 a year, your asset goes from $9,000 to $20,000 for a couple; $6,000 to $10,000 for a single person. If this sounds confusing, believe me, it is. How are you going to decide where you fall?

Let's take a group of senior citizens down at McDonald's having their morning coffee. They are all talking about the drug benefit when it goes into effect. Bob is over there, and he gets good benefits under the low-income benefit. But his friend Sue just took a job at the local supermarket at minimum wage to try to make ends meet, pay her heating bills. But because she has a little extra income, even though she barely makes any money, she is in a different class. So, therefore, she is going to get a different drug benefit.

Margaret thought she was going to get some low-income benefits but she filled out her forms and she had too much life insurance, over $10,000 in life insurance. So she is out.

How in the world is the average elderly citizen supposed to know where they fit into this mess? You are going to have several different people who make nearly the same amount of money each year and they are going to receive drastically different benefits.

This is a formula for confusion and confrontation. You are going to be pitting elderly against one another. You are going to have friends wondering: Why is it that Bob over there gets all those benefits and I don't? We know that Bob owns something else. He is cheating maybe. And why did he get that and we didn't? Why is it that George over there gets all these low-income benefits? And you know George. All his life he frittered his money away, gambled it, boozed it up. Sure he doesn't have much now, but the Government is coming in and giving him everything.

How about Bob? Bob over here worked hard all his life, raised a family, educated his kids. He is a man of meager means, but he has Social Security. He was frugal. He saved a little bit. He has a little life insurance policy. No, Bob, you don't get this. Your income may be just about the same as George's, a little bit more, but because you have a little bit of assets—you saved for a rainy day—you are out. Tell me what this is going to be like when the seniors get ahold of this and talk about it.

Then there are those citizens who are going to lose retiree prescription drug benefits. Two to three million are going to lose prescription drug benefits. It is outrageous. This bill would spend roughly $88 billion to try to bribe employers not to drop retiree health coverage yet, even with that, 2 to 3 million seniors will lose their retiree benefits.

Yes, the drug and health industries are spending millions to ram this bill through immediately, even though seniors across the Nation don't know what it contains. The authors of this bill did not let the senior citizens of this country see what was in the bill because they knew once they found out they would have trouble passing it here. Apparently a seat at the Medicare table was quite expensive.

The Washington Post article from Saturday morning was entitled ''Two Bills Would Benefit Top Bush Fundraisers.'' It explains that the Medicare bill will benefit at least 24 Rangers and Pioneers as executives of companies or lobbyists working for them.

A Pioneer in the Bush campaign is one who raises at least $100,000, while a Ranger is someone who has raised at least $200,000.

I ask unanimous consent that this article be printed in the RECORD.

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

[From the Washington Post]

2 BILLS WOULD BENEFIT TOP BUSH FUNDRAISERS

EXECUTIVES' COMPANIES COULD GET BILLIONS

(By Thomas B. Edsall)

More than three dozen of President Bush's major fundraisers are affiliated with companies that stand to benefit from the passage of two central pieces of the administration's legislative agenda: the energy and Medicare bills.

The energy bill provides billions of dollars in benefits to companies run by at least 22 executives and their spouses who have qualified as either ''Pioneers'' or ''Rangers,'' as well as to the clients of at least 15 lobbyists and their spouses who have achieved similar status as fundraisers. At least 24 Rangers and Pioneers could benefit from the Medicare bill as executives of companies or lobbyists working for them, including eight who have clients affected by both bills.

By its latest count, Bush's re-election campaign has designated more than 300 supporters as Pioneers or Rangers. The Pioneers were created by the Bush campaign in 2000 to reward supporters who brought in at least $100,000 in contributions. For his reelection campaign, Bush has set a goal of raising as much as $200 million, almost twice what he raised three years ago, and established the designation of Ranger for those who raise at least $200,000.

With the size of donations limited as a result of the campaign finance law enacted last year, fundraisers who can collect $100,000 or more in contributions of $2,000 or less have become key players this election cycle. The law barred the political parties from collecting large—sometimes reaching $5 million to $10 million—''soft money'' contributions from businesses, unions, trade associations and individuals. This has put a premium on those who can solicit dozens, and sometimes hundreds, of smaller contributions from employees, clients and associates.

The energy and Medicare bills were drafted with the cooperation of representatives from dozens of industries. Power and energy company officials; railroad CEOs; pharmaceutical, hospital association and insurance company executives; and the lobbyists who represent them are among those who have supported the bills and whose companies would benefit from their passage.

The Medicare bill was scheduled to be acted upon by the House late last night. If passed, it will go to the Senate. The first comprehensive revision of energy policy in more than a decade passed the House this week, but in the Senate, the measure ran into a roadblock yesterday when opponents stopped it from coming to a vote. Sponsors promised to make further efforts to get the 60 votes to break the filibuster.

The energy bill provides industry tax breaks worth $23.5 billion over 10 years aimed at increasing domestic oil and gas production, and $5.4 billion in subsidies and loan guarantees. The bill also grants legal protections to gas producers using the additive methyl tertiary-butyl ether (MTBE), whose manufacturers face a wave of lawsuits, and it repeals the Public Utility Holding Company Act (PUHCA), a mainstay of consumer protection that limits mergers of utilities.

The bill has been the focus of a bitter ideological and partisan fight for three years. A leading sponsor, Rep, W.J. ''Billy'' Tauzin (R–La), Chairman of the House Energy and Commerce Committee, praised the legislation, saying, ''All Americans can look forward to cleaner and more affordable energy, reliable electricity and reduced dependence on foreign oil for generations to come.''

Public Citizen, which has tracked the legislation and correlated patterns of contributions to members of Congress and to Bush, denounced the bill as ''a national energy policy developed in secret by corporate executive and a few members of Congress who are showered in special interest money.''

Perhaps the single biggest winner in the energy bill, according to lobbyists and critics, is the Southern Co. One of the nation's largest electricity producers, it serves 120,000 square miles through subsidiaries Alabama Power, Georgia Power, Gulf Power, Mississippi Power and Savannah Electric, along with a natural gas and nuclear plant subsidiary.

The repeal of PUHCA, for example, would create new opportunities to buy or sell facilities; ''participation'' rules determining how utilities share the costs of new transmission lines that are particularly favorable to Southern; two changes in depreciation schedules for gas pipelines and electricity transmission lines with a 10-year revenue loss to the Treasury of $2.8 billion; and changes in the tax consequences of decommissioning nuclear plants, at a 10-year revenue loss of $1.5 billion, according to the Joint Committee on Taxation.

At least five Bush Pioneers serve as a Southern Co. executive or as its lobbyists: Southern Executive Vice President Dwight H. Evans; Roger Windham Wallace of the lobbying firm Public Strategies; Rob Leebern of the firm Troutman Sanders; Lanny Griffith of the firm Barbour Griffith and Rogers; and Ray Cole, of the firm Van Scoyoc Associates.

The railroad industry also has a vital interest in the energy bill. For years, it has been fighting for the elimination of a 4.3 cent-a-gallon tax on diesel fuel, and, at a cost to the Treasury of $1.7 billion over 10 years, the measure repeals the tax. Richard Davidson, chairman and CEO of Union Pacific, is a Ranger, and Matthew K. Rose, CEO of Burlington Northern is a Pioneer.

Among the major lobbying firms in Washington, Akin Gump Strauss Hauer & Feld, has been one of the most successful collecting fees for work on the energy and Medicare bills. In the first six months of this year, Akin Gump, which has two partners who are Pioneers—Bill Paxon and James C. Langdon Jr.—received $1.6 million in fees from medical and energy interests.

Barbour Griffith & Rogers received $1.1 million from similar clients.

On energy issues, Akin Gump represented Amerada Hess Corp., Waste Management Inc. and FirstEnergy Corp., Pacific Gas and Electric Co., BP Exploration and Phillips Petroleum Co. Two of those corporations have, in turn, executives who are major Bush fundraisers, Pioneer A. Maurice Myers, CEO of Waste Management; and Anthony J. Alexander, president of FirstEnergy, a Pioneer in 2000 and again in the current campaign.

On Medicare issues, Akin Gump represents the Pharmaceutical Research & Manufacturers of America, Johnson & Johnson, Abbott Laboratories and Pfizer Inc. All would benefit from the expanded markets resulting from a key provision of the bill—the first federal subsidies to help Medicare patients pay for prescriptions.

Hank McKinnell, chairman and CEO of Pfizer, has pledged to raise at least $200,000 for Bush's reelection, although he is not yet listed as a Pioneer or Ranger. Pioneer Munr Kazmir, who runs a direct-mail drug company called Direct Meds Inc., estimates that he has about 100,000 customers on Medicare who will have more money to buy drugs from his company. ''We know the patients, we know how important this bill is,'' he said.

In addition to the prescription drugs provision, the Medicare bill is intended to encourage recipients to join preferred-provider organizations (PPOs) and other kinds of private health care, instead of receiving care through the traditional fee-for-service system in which they pick their doctors and generally get whatever care they request. The health industry has provided substantial support to the Bush campaign, and a number of officials whose companies and associations actively support the Medicare bill are Pioneers and Rangers.

Pioneer Charles N. Kahn, president of the Federation of American Hospitals, said that the Medicare bill will make ''important strides in ensuring that all hospitals have sufficient funding to meet the medical needs of this nation's seniors.'' A federation spokesman noted that the bill provides more money for rural hospitals and for hospitals serving disproportionate numbers of the uninsured, and that it prevents doctors from setting up new competing specialty, or ''boutique,'' hospitals.

M. Keith Weikel, chief operating officer at HCR Manor Care, a chain of more than 500 nursing homes and other facilities serving the elderly, is another Pioneer. Weikel and Manor Care did not respond to requests for comment on the Medicare bill, but the major nursing home trade group, The American Health Care Association, strongly endorsed the bill, which among other things, would continue to bar Medicare from capping the amount it covers for various therapies offered by health care providers such as nursing homes.

Mr. HARKIN. The article goes on to describe how the drug industry got everything they wanted. I think seniors in this country deserve more. They deserve to be put first in the process. Instead they have been put last. Corporate interests, insurance companies, pharmaceutical companies, they come first. It speaks volumes that on Wall Street the health industry and drug stocks have surged with the emergence of this bill. Corporate executives may be popping their champagne corks in celebration of what happened here today, but seniors are left scratching their heads and wondering why their interests were forgotten.

Maybe they assumed that the AARP would stand up for their interests. But AARP has brazenly betrayed the wishes of its members. Seniors need to know what direction Medicare is taking and whose side the AARP is on.

It says everything about this bill that Newt Gingrich is urging Republicans to vote in favor of it. Remember, this is the same Newt Gingrich who was Speaker of the House and expressed his desire to let Medicare wither on the vine. Mr. Gingrich is one of those ideologues who insists that the private marketplace will solve all of our problems. It would make his day to see Medicare dismantled. If he is for this bill, that ought to give us pause for concern.

Mr. Gingrich and his rightwing friends love this bill, like the head of Americans for Tax Reform, Grover Norquist, who once said:

> My goal is to cut government in half . . . to get it down to the size where we can [drag it into the bathroom] and drown it in the bathtub.

Today, with this vote on this bill, Newt Gingrich's dream is coming true. The bill is a first step toward privatizing Medicare. You can bet that once the ink is dry, they will be starting on Social Security and going after that, too. Mr. Gingrich even went so far as to say he believed the pharmaceutical companies are getting unfair treatment; that they are punished by the success. Wrong. The bill doesn't ask for a penny from the pharmaceutical companies. I disagree.

On page 53 of the bill, it protects drug companies from Government efforts to negotiate lower prices. That is on page 53, line 18. It says that Medicare cannot negotiate for lower prices for drug companies.

A recent Peter Hart poll found that almost two-thirds of seniors view this bill unfavorably. Most of them identified themselves as members of AARP, American Association of Retired Persons. Among those AARP members, only 18 percent said Congress should pass this bill, while 65 percent said Congress should get back to work. Last week, AARP members from Maryland, New York, and Pennsylvania tore up their membership cards in front of their organization's headquarters here in Washington. Members are accusing William Novelli, CEO of AARP, of ''selling out'' to insurers and selling out to Newt Gingrich. Where did they ever get that idea?

Well, in fact, the relationship between Newt Gingrich and the bigwigs at AARP goes way back. William Novelli, the head of the AARP, wrote the preface to Gingrich's book, ''Saving Lives, Saving Money.'' In that preface, he states:

> Newt's ideas are influencing how we at AARP are thinking about our national role in health promotion and disease prevention and in our advocating for system change.

That is Mr. Novelli in Newt Gingrich's book. I would have to ask Mr. Novelli which of Newt's ideas are ''influencing how we at AARP are thinking''? Is it Newt's wish that Medicare wither on the vine? Is that influencing Mr. Novelli's thinking?

AARP's endorsement is disturbing for another reason. They have a flagrant conflict of interest in this matter. They receive vast revenues from the sale of insurance to seniors. Royalties from such arrangements include deals with UnitedHealthcare Insurance Company, Metropolitan Life Insurance Company, and Advance PCS pharmacy benefit manager. All that accounted for more than one-third of AARP's $630 million in revenues last year, according to AARP's 2002 annual report.

If you open up any newspaper in the last 3 days, you have seen full-page ads by AARP telling you why this is such a good bill—full-page ads in USA Today, the New York Times, Washington Post, and on and on.

First of all, I want every elderly person who belongs to AARP to think about this and the dues they pay. Think of all that money being siphoned off to ad agencies. Think about all that money being spent on these full-page ads to get Congress to rush this through and pass it. Well, Americans deserve better from AARP. They deserve better from Congress.

This bill reflects the priorities of Newt Gingrich, who has been hostile to Medicare since its inception. Seniors know this bill is a betrayal. They know who the winners and losers are with this bill. HMOs, PPOs, pharmaceutical companies, on premium support, they win, and seniors and disabled lose. On cost containment, they win because Medicare is prohibited from bargaining for better prices, and seniors and disabled lose. On drug coverage, pharmaceutical companies win and seniors lose. On health savings accounts—my, my, my, now we have them—HMOs win, seniors lose; stabilization fund—a slush fund is what it ought to be called—again HMOs and PPOs win, and seniors lose; on competition, pharmaceutical companies win big time on that and seniors lose.

It may seem in what I am saying tonight that somehow I am opposed to insurance companies. Nothing could be further from the truth. In my State of Iowa, I think we are, if I am not mistaken, the second largest domiciliary for insurance companies in America, second only to Connecticut. Insurance has a prominent role in Iowa. It employs a lot of people. Insurance can provide meaningful protection for a lot of people. I happen to have a lot of insurance—homes, cars, life insurance; I have all kinds of insurance. It is a good deal. I have benefited from insurance. Insurance is good. It shares the risk. You put people in a large pool and it shares the risk. That is the basic essence of insurance, and there is one principle of insurance that everyone understands, or should understand: The bigger the pool, the less the risk for everyone in the pool.

But what is Medicare doing? What are we doing in this bill with Medicare? We are dividing up the pool: a little bit here, a little bit there, and a little bit there. Under the health savings accounts, the healthiest will opt out. Under premium support, the healthiest will be cherry-picked by the HMOs.

The PRESIDING OFFICER. The Senator's time has expired. Under the previous order, the Senator from Nevada is recognized.

Mr. ENSIGN. I ask unanimous consent that Senator GRASSLEY be recognized for 2 minutes to make a point, and then I will follow.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, there is an issue that my colleague from Iowa brought up that I don't want to take exception to or argue with him about. He finds fault with something on page 53 of this bill called noninterference. That is perfectly legitimate for him to take that point of view. But I want to point out something that Senator SANTORUM had pointed out earlier in the day's debate, in which a very similar noninterference provision was in a Democrat prescription drug proposal introduced May 10, 2000.

I don't mind intellectual arguments against this, but when Republicans take a Democrat idea and put it in our bill, I don't think it is fair for colleagues on the other side of the aisle to find fault with what we are doing. I only want to make that point. I don't want to argue with my friend from Iowa. I think everybody ought to know that this is something that has had broad bipartisan support.

I yield the floor.

Mr. HARKIN. Will the Senator yield because I was mentioned? I just want 30 seconds. I was opposed to it at that time, too. I was opposed to the noninterference at that time. I have always been opposed to it.

Mr. GRASSLEY. I thank the Senator.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I now want to take my time and talk about the Medicare reform and prescription drug bill that we have before us today. I rise to explain how and why I am going to vote on this bill.

From the day I was sworn into office in 1995 as a Congressman, I have spent as much time on strengthening the Medicare program as I have any other single issue considered by Congress.

On the Health subcommittee of the House Ways and Means Committee, I learned the details of how this comprehensive healthcare system works for our seniors and the disabled.

I have tried to keep true to the principle of making Medicare more oriented to keeping seniors healthy, not just waiting until they become ill to treat them.

With the growth of Medicare costs and the baby boom population, I also believe just as strongly that the structural security of Medicare must be kept healthy and reforms must not wait until the program is ill.

As a Senator, I have continued to pursue my passion for healthcare policy. I campaigned on and introduced my own Medicare prescription drug bill, along with Senator CHUCK HAGEL.

I was proud that our bill received the votes of a majority of the Senate when it was considered last year, although not adopted as the final bill.

Aside from the prescription drug benefit in the bill, I strongly believe that for Medicare to remain healthy, structural reforms must take place that control unnecessary costs through market forces and allow the program to operate more efficiently and more preventatively.

This bill contains a number of provisions that I hope will help drive down the increasing costs of health care, not just for our seniors, but throughout the entire healthcare market place.

Health Savings Accounts will give patients control over their care, to include who patients go to for care, as well as control over their individual expenditures. If shown to be successful, this would be the most sweeping healthcare reform since the managed care model over a decade ago.

Likewise, income-relating of the Medicare Part B premium, the disease management demonstration project, and the prescription drug card with a private account—by the way, that was a component of the bill Senator HAGEL and I introduced—are all positive aspects of this legislation.

I am pleased that in the bill are two other critical reforms that I spearheaded in the House and now in the Senate.

Placing a 2-year moratorium on the outpatient therapy cap is a win for our oldest and sickest Medicare seniors. Those who suffer from life-threatening ailments such as Parkinson's disease and stroke should not have to pay every dollar out of pocket just because they require additional care.

The bill also includes a provision that eliminates the late penalty military retirees pay for joining Medicare. Our military retirees, who gave so much of their lives to our country, deserve access to the best healthcare benefits available without being penalized for changes in the system. They thought they were going to get lifetime Health Care. Then, when they were put into the Medicare system they were not informed, or at least many of them were not aware that if they did not sign up right away, later they would have to pay extra penalty costs.

Joining me in helping to get these passed was Senator LINCOLN, and I would like to thank her for all of her efforts.

The reason I have struggled so fervently over the merits of this legislation is the substantial financial burden this bill places, not only on the Medicare program, but on the country.

The benefits in this bill will assist seniors and disabled Americans only to the degree that our Nation is fiscally able to sustain paying for it. That is why I drafted a bill that was responsible to the next generation of workers who will bear the burden of paying the price tag on Medicare prescription drugs.

I want to put up a couple of charts that help us understand what we are dealing with for the next generation.

Until 1970, we had about 20 million seniors in our Medicare Program. Today we have a little over 40 million seniors, 30 years later. Thirty years from now we will have close to 80 million seniors, equaling another doubling of the number of seniors.

This chart shows the problem. These are the number of workers per senior, per retiree, per person over 65 who we have in this country. In 1970, for every one retiree we had a little over seven people, on average. In 2000, that had slipped to 3.9. When that huge expanse

of the baby boomers is in full bloom in 2030, we will have 2.4 workers for every one retiree.

I remember Senator Phil Gramm telling us that means there are a lot more people riding in the cart and a lot fewer people pulling the cart.

I believe this bill threatens the fiscal security of the Medicare Program and compromises the continued growth of our economy by lacking the necessary cost controls to keep it from consuming our domestic budget. I personally believe the cost of this bill is grossly underestimated. By the time the drug benefit goes into effect in 2006, we will have a better understanding of the enormous cost of this bill but at that time it will be too late to do anything about it. Without measures to contain overutilization, the Government or the private sector plans will be forced to ration prescription drugs for our seniors, similar to the way care is rationed in Canada.

While all major legislation requires legislative corrections after becoming law, I believe that before the ink is dry on this new benefit, a campaign will be underway to expand this program by closing the coverage gap that exists in the bill. I believe there will also be efforts also to reduce deductibles and reduce premiums as well, further transferring costs onto the next generation.

While providing seniors with a prescription drug benefit is so very important to all of us, it must be done in a way that does not bankrupt Medicare and threaten future access to care in our country for our seniors. It also needs to be fiscally responsible to the next generation.

I believe the Congressmen and Senators who put this bill together labored so intensively, and they did it for the right reasons. They had pure motives. I also appreciate the leadership the President has shown on this issue. In fact, if we would have adhered more to the principles that he laid out at the beginning of the year, I believe we would have a much better bill before us today—perhaps a bill I could support.

I am very disappointed in the debate these last few days in how people have politicized this bill. Unfortunately, I believe many have done so for their own political benefit. There have been many things said about this bill. You could say many negative things about this bill, and you could say many positive things as well. However, what we ought to do in this Chamber is at least talk about what is in the bill and what is not in the bill. To mischaracterize the bill, I believe, is patently unfair, and it is just wrong to scare senior citizens into thinking that Medicare is somehow going to go away.

We must remember that most of the private sector reforms in this legislation do not even kick in for several years. So to scare seniors I just, frankly, believe is wrong.

I have anguished deeply over this bill. There really are some positive things in it, things that I like. But, overall, I just believe the negative things in it outweigh the positive. That is why I, unfortunately, am going to have to vote against this conference report.

I look at the chairman of the Finance Committee who is on the floor right now, and there is just no finer person in the Senate than Senator GRASSLEY.

So it is with a heavy heart that I announce that I am going to vote against final passage of this bill because I know that he did his best to put together a bill with all the different people he had to work with in the House and the Senate, the various interest groups and the like. But I believe this bill does not rise up to the level where I think the positives will outweigh the negatives in the future. I think the costs are going to be too great. Looking at the first 10 years, it is estimated to be around $400 billion. For the second 10 years, I know of estimates as high as $1.7 trillion. Do we really want to shoulder our children and our grandchildren with this burden? That is a question each of us has to least ask ourselves, and go into this with our eyes wide open. Twenty years from now when we look back on this debate and on our entire careers, will we be able to say we really did what was right for the future of our country? I hope that in fact we can.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I had the privilege of addressing the Senate yesterday on this bill. This is the bill that we are considering—some 675 pages. My statement yesterday announced that after spending the better part of the weekend trying to comprehend some of the details of this bill, I have come to the conclusion that I will vote against this legislation for a number of reasons.

As has been stated by so many Senators, there is a lot that is good in this bill. Clearly, the part about reimbursement to doctors and other health care providers is very important. Interestingly, while giving enormous subsidies to PPOs and managed care to the tune of some $12 billion, they take away from oncologists and other cancer providers in this bill $11.5 billion. That is a part to which I strenuously object.

For my predecessor, Senator Connie Mack, who has been at the forefront of the fight against cancer, this is one of the provisions that is causing him enormous agony. Visiting with so many of the oncologists all over the country, it is just inexplicable to them as to why there would be a $11.5 billion cut on cancer care. The truth is, it was a tradeoff. It was a tradeoff back when we originally considered the bill in the Senate to provide for rural health care. You had to get the money from somewhere. The choice was to take it from cancer care. I think that was not only a poor choice, but I think it was a tragic choice. But that is in this bill. That is one of the reasons I am against it.

But there are other things that are good in this bill, and a lot of that has to do with trying to get physicians and other health care providers adequately compensated instead of cuts that were enacted some 5 to 7 years ago in the Balanced Budget Act of 1997, which really started cutting health care providers to the bone in their Medicare reimbursement.

But there is a lot more in this bill that is causing me great concern. It is why I am going to vote against it. I want to share that with everybody.

One of the toughest jobs that I have had in a lifetime of public service is the years that I served as elected Insurance Commissioner of the State of Florida. I inherited a mess in the aftermath of Hurricane Andrew. I had to learn something about insurance marketplaces and how in a devastated insurance market we could encourage and nourish the free market back to competition. In the aftermath of Hurricane Andrew, the insurance companies—other than the 12 that went bankrupt—were fleeing the State of Florida. Those who stayed were cancelling homeowners right and left.

We had to dig in to see what would make that insurance marketplace tick, and what would encourage insurers to come back into the marketplace; at the same time, what would provide the needed commodity—namely, in this case homeowners insurance—to the consumers of Florida.

Because a marketplace had been disrupted by the most costly natural disaster in the history of the country in insurance losses, a lot of it we had to learn by first impression. We were successful in doing that. It took a long time. It was very difficult. One of the things that I learned about insurance in the marketplace is when you get to health insurance, you should let the principle of insurance work for you; that is, you take the health risk and spread it over the largest possible group so that the health risk—when it comes out in costs because people get sick and they have to have health care expenditures—because it is a huge group and it is a diverse group in age and health, the per unit cost comes down.

One of the things that used to frustrate me the most as the Insurance Commissioner of Florida was when the new products would be filed, they would be filed for a very small group. The insurance company would drive the cost of the premium down so that it made it very attractive for people to take that particular brand of health insurance. But over the course of time, instead of the insurance company continuing to expand that group, they would keep it stagnant. Over time, people would drop out. Over time, people would get older. Over time, people would get sicker. The group would start getting older and sicker and smaller. Since the group was defined and not expanding, what do you think the costs were going to be? The costs

were going up. That meant the premium was going up in order to make that group actuarially sound in what they were charging for that insurance.

People were stuck in an insurance group. They had no place else to go because they weren't employed by a big employer. They certainly couldn't go out on their own and buy a policy for one individual. The cost would be astronomical for that. They were stuck in a spiraling, upward cycle of insurance costs and insurance premiums that went to the Moon.

I saw people literally cry giving testimony about how they could not afford it.

I learned something from that. I learned that if you are going to have a logical way of handling health insurance, it can't be with a small group. It can't be with a segmented group. It needs to be with a large group.

Beyond this particular bill, as we look ultimately to the future of what we are going to do about health care delivery and its costs in this country, in my judgment, since I would like to see it delivered by the private sector and free market competition, you are going to have to expand the groups. You are going to have to make them as large as possible so that the companies compete for that business. It is when you start to shrink that large group that you get into trouble. Senators, that is what this bill starts to do. It starts to selectively take people in Medicare, segmenting them, separating them, dissecting them, and ultimately when the healthier people in America—in this particular case, Medicare—when the healthier people in Medicare are siphoned off, it leaves the sicker seniors to be dealt with in Medicare. And what will happen to the cost? The cost will go up and it will go up big time.

The figure has been thrown out in this bill that the starting point for the premiums for the Medicare prescription drug benefit will be $35 a month per person. That is not going to happen. It will happen when it starts off in 2006, but as the group gets sicker, the costs are going to go up and the premiums—that $35 per person per month—are going to go through the roof.

Why are they getting siphoned off? Look at the provision. The provision says we are going to divide up the country in regions. Say one State is a region. First of all, it says that you are going to offer the benefit in 2 ways. It will be offered with what is called a PDP, or prescription drug plan, and there is going to be the alternative of managed care, either a PPO or an HMO.

What this bill provides is the incentive for the healthier seniors to go into the PPO or the HMO because this bill has a very generous subsidy—as a matter of fact, $12 billion—to be used at the discretion of the Secretary of HHS, to nourish the PPOs so they can bring their costs down, so they can make it very attractive to senior citizens to come into the PPO because they can get their health care cheaper—indeed, all of their health care, including the Medicare fee for service.

Also in this bill is a healthy subsidy for HMOs. This bill does not allow reimbursement for HMOs per patient like Medicare at 100 percent but kicks it up an additional 9 percent, 109 percent reimbursement. So the Medicare HMO then will be able to offer lower costs for services, thus enticing the senior citizen population, particularly the ones who are healthier, particularly when they use such recruiting methods as going into bowling alleys and recruiting seniors to come into the managed care operation, the PPO or the HMO.

What will that do? That is going to leave the rest of the seniors to get their drug benefit from the only other available way, which is the prescription drug plan. And if their seniors are sicker, what do you think will happen to the cost? The cost is going to go up and the marketplace under this bill is starting to be fragmented, violating the principle of insurance which is, take the largest possible group, spread the health risk over the group, and it brings down the per unit cost.

There is another way it is being fragmented, and that is the basic health care population in America. If another 5 or 10 years down the line we ever want to do major health care insurance reform—and it is done around employers just because we have done it that way historically—if your employer is a big employer, such as the Federal Government or General Motors, you have a big group in which to spread the health risk. But what happens if the employer has five employees or two employees or one employee? It is not an efficient way of delivering health care through an insurance system.

Indeed, that provision in this bill is another way of fragmenting that population, another way of segmenting that population that ultimately, when we have to face this crisis—as surely we are going to someday—you cannot keep operating in a country this large, with 44 million people who do not have health insurance, who at the same time get health care because when they get sick they go to the most expensive place at the most expensive time—to the emergency room—when sniffles have turned into pneumonia. Sooner or later, the crisis will become apparent and we will have to deal with it, if the entire population has been so fragmented as a provision of this bill in creating health savings accounts.

Now, for people who have some means of income, this is a very attractive alternative. Health savings accounts will allow someone to take dollars, without paying tax on them, and put them into a health savings account at the end of the year. Unlike in present law regarding medical savings accounts where, if the dollars are not used, they self-destruct, these dollars will accumulate. And it will not be just for medical emergencies. Those dollars can be put aside. They can go out and buy an insurance policy that has a high deductible, such as $5,000. Even if they put $5,000 into the health savings account, they have saved a lot of money because of the cost of insurance if they were getting, say, a $500 deductible policy. That money can accumulate and they can pay for other things than medical expenses, such as cosmetic surgery. So, for a good part of our country that has the financial wherewithal, that is very attractive.

It is dissecting the overall insured population, and when the crisis comes, it will make it very difficult to get these large pools upon which we can spread the health risk and where private sector insurance companies can come in and bid for that particular pool. That is another reason I oppose this legislation. It violates the principle of insurance.

Some talk about it as a giveaway to the HMOs and the PPOs, pushing seniors into managed care where they lose their choice of doctors. That speaks for itself. Over time, when this kicks in, in January of 2006—that is another 2 years and 1½ months—people are going to start realizing what has happened.

There is another reason I oppose this bill. That is, you cannot go out and offer the alternatives I have just explained for prescription drugs, subsidized by the Federal Government for managed care, without private employers who have drug coverage for their former employees, now retirees, without the private employer asking, why do I want to continue this costly prescription drug coverage for my retirees when, in fact, I will let these retirees go on in to the Medicare system of prescription drugs.

If it were an equal prescription drug benefit, that would be OK for the senior citizen, the retiree. But the shock they are going to get is when their private employer, former employer, drops them as a retiree and they look to Medicare under this bill to give them a prescription drug benefit, and, lo and behold, they will find it is a very inadequate benefit. If they have $5,000 worth of drugs that they have to buy in a year, the senior citizen under this plan is going to pay out of his own pocket $3,600, $3,600 under this prescription drug plan for the senior citizen who has an annual prescription drug cost of $5,000.

So all of these retirees who are going to be dropped are going to be quite shocked and quite unhappy and quite disappointed, when they thought they were getting a full prescription drug benefit.

So in my State, for example, it is estimated by one of the very credible studies—and I have heard no one who has disputed this study—that 2.7 million retirees will be dropped from their private drug coverage. In my State of Florida, that translates to 166,000 people. And I suspect that is going to be a very unhappy 166,000 people in the State of Florida.

It is true that since this bill does cover those up to 150 percent of the poverty level, there is going to be, for that group, some increased coverage that they do not have now, but it is not going to be much. It is not going to be much because a lot of that group who would otherwise qualify because they meet the income test of being at that level of the poverty level, lo and behold, this bill now puts an asset test on them. That asset test is going to disqualify thousands of them. And if it does not, they are going to see that they are limited, under this bill, in the brands of drugs, the brand name drugs, because this bill defines their receipt of drugs in a class, and that class of drugs is yet to be determined. There are going to be some disappointed seniors.

There is another reason for opposition to this bill. We talked about there not being any competition for the prescription drug plan and how—since there do not have to be two prescription drug plans competing against each other and therefore holding the cost down, holding the premium down—that $35 monthly premium is going to go up. But in this bill there is also another violation of a principle we have found in Medicare ever since Medicare was set up in 1965; and that is, the premium is universal. The farmer in Iowa who is retired is paying the same premium as the retiree in Miami Beach, even though the costs of health care in Iowa and Minnesota are much less than the cost of health care in south Florida. There is a universality of the Medicare Part B premium.

That is going to be broken up, not on the Part B premium but on the Part D premium, because this bill causes the division of the country into at least 10 and some say as many as 50 regions in this country, each to be actuarially determined what is going to be the premium that will be actuarially sound with regard to that premium, with regard to the group, and with regard to the cost. So I do not think this bill is procompetition even though that is how it is being sold.

The last reason I will state tonight of my reasons for opposition is one that has been mentioned many times here. Mr. President, $400 billion is lot of money. It depends on how you look at it. The Senator from Nevada, who just stood up and announced he was voting against the bill, has made a very eloquent statement about the cost being so high, $400 billion, at a time we are hemorrhaging to the tune of half a trillion dollars in deficit financing this year.

But I might want to take it in another direction and say, yes, $400 billion is lots of money, but it is not being efficiently used. The reason it is not being efficiently used is that Medicare is strictly forbidden, in this bill, from negotiating with pharmaceutical companies for bulk purchases.

Now, I thought we were for free market competition. I thought we were for letting the market forces determine what the price is. But this is an exact opposite of that. This is an interference in the private marketplace for it says Medicare cannot negotiate in bulk purchases a price less than the retail price. It is in here. It is in here not only on one page, it is in here on two pages.

It is unlike what has been done for nearly 20 years in the Veterans' Administration, in a bill that passed this Senate on a voice vote because it was so noncontroversial that the U.S. Government would negotiate through bulk purchases for the acquisition of drugs for the Veterans' Administration.

The Veterans' Administration is serving a population of about 25 million veterans. Medicare is serving a population of about 41 million Americans. If the Veterans' Administration can negotiate prices downward, why should not Medicare be able to lower the cost of the drugs to seniors? It is not logical that you would not. And it certainly is not logical when you consider we are constrained under the Budget Act that we cannot spend more than $400 billion, until we waived that today.

So $400 billion, at a retail price of a drug, that on the retail market is going to cost at least twice the cost of the drug to the Veterans' Administration, which is buying in bulk—we would be able to provide so many more of the benefits of prescription drugs to seniors without their having to pay so much in a deductible and in copays; and in some cases the copay is an entire 100 percent until they get past the threshold of spending $5,000 a year for drugs.

Now, I have counted noses. This thing is going to pass. It is either going to pass tonight or it is going to pass in the morning. It passed the House two nights ago, when they held the vote open for 3 hours until they twisted arms and turned the vote around. So it is going to pass.

Well, it is not going to pass with my vote for the reasons I have stated, that I think are against the interests of the United States and my State. But I am going to do something about it after it passes because I have already started drafting a bill that is going to say, what is good for the Veterans' Administration ought to be good for Medicare as well, and that if the Veterans' Administration—under a law that has been in effect for two decades, that was noncontroversial when it was passed—can purchase in bulk and therefore bring the price down, so, too, ought Medicare, for the sake of our senior citizens, be able to get a more extensive prescription drug benefit than the meager one they are going to get in this bill.

I will be introducing that bill. I think one of the people I am going to work with is my senior Senator, Mr. GRAHAM, since he has announced his retirement in the last year of his service as a Senator, and the two of us will put together a comprehensive package. But that is certainly one aspect of it that we are going to be following.

I thank the Senate for its attention. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I would propose to proceed for a short period—I think we are going back and forth—unless one of my colleagues signifies to the contrary.

I have listened very carefully, as indeed I think all Senators have, to the very strongly held views of colleagues on this bill. My good friend, the Senator from Florida, who proudly serves on the Armed Services Committee, and I work together. I was quite interested in what he had to say. I guess on most military issues we are together, but on this one we seem to have differences of opinion. I would say that our distinguished colleague from Florida does represent quite a few senior citizens, so I expect he has done a little bit more of his homework to develop his views here tonight. Nevertheless, I respectfully differ, and we are going to have to think what is in the best interest of the country as we approach this vote, whenever that will occur.

I rise in support of the conference report to H.R. 1, the Medicare Prescription Drug and Modernization Act of 2003. Medicare was created in 1965, a nationwide insurance program that offered health insurance protection for approximately 40 million older Americans and those who have had the misfortune of becoming disabled. The program provides broad coverage for many health services, but there are gaps—how well we know that—in this program that has been working since 1965. Those gaps create no coverage in some instances. That is the reason we are here today, to plug those gaps.

I think under the leadership of the distinguished Senator from Iowa, Mr. GRASSLEY, the distinguished majority leader, many others who have worked so long and hard on this bill, we have done more than plug the gaps. We have done more. I hope that increase, which is well deserved by the seniors, is appreciated because it is important to these individuals.

I myself proudly fit into the category of a senior citizen. In fact, when I am speaking publicly, quite often I am not introduced as a senior Senator but as a senior citizen. There is usually a lot of laughter among the crowd, but I look them square in the eye and say that I am very proud to have that status as a senior citizen. My mother lived to be 98 years old. I kind of hope I can follow along in her footsteps.

One area in the current Medicare Program where a major gap exists is in the coverage of prescription drugs. We know that so well. Medicare currently provides no outpatient—if you are in the hospital, you can get some—prescription drug coverage. That is because when Congress created Medicare in 1965—it is interesting, when they created it in 1965, prescription drugs

were not a major component of the health system.

That is fascinating to me. My father was a medical doctor. He was a surgeon. I remember he used to carry that black bag, and he used to have several bottles of pills in it, to the best of my knowledge. I know he was very careful in how he dispensed all those drugs. But when we stop to think, it has been a dynamic, if not revolutionary, change in the practice of medicine and health care owing to the development of prescription drugs. So since 1965, there have been a lot of positive developments in health care.

One major positive development is prescription drug innovations. We are proud in America of the many innovations we have had. Those innovations have improved the quality of life for those with chronic conditions such as heart disease, diabetes, arthritis, and others. Prescription drugs are now an essential component of today's health care system. They often allow individuals to stay out of the hospitals and, therefore, not become a burden on the already overburdened health care system in the United States. That is owing to prescription drugs.

That is the reason—the prescription portion of this—why I am so fervently and strongly in support of this legislation.

I have had the good fortune of representing the citizens of the Commonwealth. I was talking to the distinguished majority leader. When this session of the Congress concludes, it will be 25 years. A quarter of a century I have been privileged to serve in this Chamber. Throughout that period of time, as all of us do, we travel extensively throughout our States. We have our town meetings and otherwise. How often have all of us come across those individuals who simply say they struggle to pay for these prescription drugs, a well-worn but truthful phrase. Often they give up the bare necessities of life—food and shelter—to pay for their drugs. So we have all heard those stories.

I am proud that this act will go a very long way to remove that anecdotal phrase from our town meetings and from these individuals. They are not aggressive about it. Really, they are very sad and almost embarrassed to say they have to dip into their basic necessities of food and shelter to meet their daily requirements, weekly requirements, whatever the case may be.

Some say they ration the drugs they are instructed to take by their physician. Imagine that. A physician says you take a pill a day, and they can't afford it. They take a pill every other day. That is just impacting the health of so many people.

I hail this section on the prescription drugs. I think it is a remarkable step forward. This outpatient benefit is long overdue. Now we are about, with a historic vote, to provide that.

Many of us have worked these years to try to come to this point in the Senate where we do have this prescription drug outpatient Medicare Program. I have in the past voted for a number of pieces of legislation, have cosponsored a variety of bills to add such a prescription drug benefit. In fact, in an effort to reach a legislative consensus, I even offered my own bill. It was bipartisan. I was joined by Senators COLLINS and DAYTON early this year. It was very simplistic. I look at the remarkable size of that. It is about 8 inches thick. Our bill was probably not more than a dozen or so pages, but at least it went to a partial solution of this problem faced by so many people who could not afford their drugs.

None of these measures ever got enough support in either the House of Representatives or the Senate. As a result, while we in Congress continued to debate this issue, America's seniors continued to suffer.

Today, though, we have a historic opportunity before us. Early Saturday morning the other body passed their report and now we are about to pass ours. I am confident we will. At that moment, across this Nation will go the voice of the Congress saying that we have at long last, since 1965, done our best to try to put together legislation to take care of the 40 million beneficiaries of Medicare that exist today.

Under this legislation, starting in 2004, all Medicare beneficiaries will be able to receive a Medicare-endorsed prescription drug discount card. It is estimated these cards will save seniors between 15 and 25 percent on their prescriptions. Low-income beneficiaries will also receive a $600 subsidy on their card towards the purchase of prescription drugs.

I am very proud in the way the drafters of this bill have put such a tremendous emphasis on the low-income Americans. Pain knows no class, no age. Pain is endured by all. Perhaps those of us who have a bit more than others were able to alleviate our pain, but we certainly cannot let those less fortunate than ourselves suffer.

So I think this $600 subsidy is a magnificent part of this bill.

Then, starting in 2006, beneficiaries will be able to, at their option, sign up for a new Medicare prescription drug program. This program is entirely voluntary, so if a senior already has solid prescription drug coverage and does not want to participate, he or she doesn't have to sign up for the program.

Those seniors that do voluntarily sign up for the program will receive standard prescription drug coverage that covers 75 percent of a senior's drug costs up to $2,250 in drug expenses, after meeting a $35 monthly premium and a $250 deductible. After a beneficiary has spent $3,600 out of their own pocket on prescription drugs, the standard plan's catastrophic coverage will cover at least 95 percent of prescription drug costs.

Under the bill, very generous assistance is provided to low-income beneficiaries. In my view, these low-income provisions are truly the hallmark of the bill, as these seniors are truly the one's who have most struggled to obtain the prescription drugs they need. These seniors will pay little or no premium and little or no deductible, based on their income, and will only have to pay at most a $2 copay for a generic drug and up to a $5 copay for a brand name drug.

What does this new drug benefit mean to Virginians? If passed and signed into law, it will provide the nearly 1 million Medicare beneficiaries in the Commonwealth with access to a Medicare prescription drug benefit for the first time in the history of Medicare. Almost 400,000 of these individuals will qualify for the generous low-income benefits.

But, not only does this legislation directly help Virginia's Medicare beneficiaries by providing a prescription drug benefit, the legislation also provides needed enhancements to Medicare providers to ensure they are more adequately reimbursed for their services. As we have seen, without adequate reimbursement, health care access can become a real issue as doctors and other health providers cut back services or even close their doors to Medicare beneficiaries.

That is one of the reasons I strongly support this bill. We simply have to help those people access the care which those of us here in the Senate and the Congress enjoy, and indeed that many other Americans with larger corporations and small businesses enjoy, too. Some of them are being denied the Medicare rights.

This legislation recognizes this fact and provides significant assistance to Medicare providers. For example, the bill blocks the proposed 4.5-percent cut in physician reimbursement in 2004 and 2005 and updates their reimbursement by 1.5 percent in both 2004 and 2005. This one fix alone will result in an influx of almost $200 million into Virginia's health care system.

Now, while I strongly support this historic legislation, I must admit that in no way is this bill a perfect bill. It is certainly not the bill I would have drafted.

But, our leaders in the Senate on this legislation—the bipartisan team of Senator GRASSLEY, Senator BAUCUS, Senator BREAUX, and our Majority Leader Senator FRIST—really should be commended for their work. After the Congress has for years struggled to reach an agreement on this matter, we have finally reached what appears to be a strong, compromise bill that the President will sign.

And, while I intend to vote for this bill shortly, I do wish to take a moment to raise a few brief points of concern that I believe Congress must carefully watch as this legislation is implemented.

First, Congress must be cognizant of the fiscal impact of this bill and its long term effect on Medicare and our

Federal budget. The Congressional Budget Office estimates that this legislation will cost the taxpayers approximately $400 billion over the next 10 years. Over the next few years we must closely watch the implementation of this new benefit to ensure that the program's costs do not explode exponentially beyond the CBO estimate. To do so would leave a tremendously unfair burden on America's younger generations.

Next, we in Congress must pay close attention to the possible unintended consequences of this legislation. Almost ⅓ of all seniors currently have retiree employer-sponsored prescription drug coverage. However, due to rising health care costs, more and more employers are dropping retiree health coverage. This legislation will provide a solid fall-back plan for those seniors who lose their retiree coverage due to rising costs.

In crafting this legislation, though, we were mindful of the prospect that the mere existence of a Medicare prescription drug benefit might somehow encourage companies to drop their retiree prescription drug plan. This is certainly not our intention, and the legislation provides important Federal incentives to employers who offer good retiree prescription drug coverage. Nevertheless, we in Congress must provide strong oversight to ensure that this legislation does not have the unintended effect of actually causing retirees to lose existing employer-sponsored coverage.

Finally, I regret that the bill before us today includes provisions that would sharply cut Medicare funding for cancer care provided to Medicare beneficiaries. After the Senate passed Medicare bill included a $16 billion cancer care cut, I fought hard with Senator SAM BROWNBACK and Senator BILL NELSON to ensure that the final bill contained little or no such cut. Together, we garnered the support of 53 U.S. Senators. Ultimately, though, the Conference Report to H.R. 1 cuts reimbursement for cancer treatment by approximately $11 billion over the next 10 years.

Proponents of this cut claim that it is needed so that cancer treatment reimbursement more accurately reflects the true cost to the physician. On the other hand, the hundreds and hundreds of cancer patients and oncologists who communicated with me on this issue maintain that these cuts will be devastating to cancer care in this country.

I remain committed to working with my fellow Virginians and others in the Senate to ensure that cancer patients are not negatively affected by these provisions.

In closing Mr. President, the bill before us today is the product of a number of years of hard work by a lot of people in the Congress. It presents the best opportunity we have ever had in the Congress to update the Medicare program with a prescription drug benefit.

While I do have some serious concerns about certain provisions in the bill—on balance—I firmly believe voting for this bill is the right thing to do.

I look forward to this bill becoming law but remain cognizant of the need for the U.S. Congress to closely monitor the implementation of this legislation.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, I rise at this late hour to add my voice in opposition to the legislation that I believe we will be voting on later tonight or early tomorrow morning and to basically explain that I think under this bill, my constituents in Washington State, who would benefit from a prescription drug benefit, or are currently benefiting from something, will be worse off after this legislation than if we did nothing at all.

That is the important point for us to discuss today. Going home to Washington State over the summer, and in September and in October, the voices of Washingtonians basically said we would like to see a prescription drug benefit. Actually, first, they said we would like to see a reduction in the cost of prescription drugs, whether you have a benefit or not. Those who have insurance now are seeing increases in the rates of prescription drugs and cannot afford the continual increase in pricing. I am going to talk about that in a minute. They also said that if you can get a prescription drug benefit, go ahead, but certainly don't do harm by passing something that puts seniors worse off than they currently are.

While I voted for the bill that came out of the Senate, I think this conference report is far off from where we need to go. My colleague from Virginia, who just spoke, talked about the physician reimbursement rate and hospital reimbursement rate, for which I applaud the committee. I point out that the reimbursement rate for Medicare patients that is still within this framework of a national average has Washington State at the very low end. In fact, I think we went from 41st in the Nation to 45th in the reimbursement rate. As a place where we want people to come and provide health care benefits, they are certainly not incentivized under this legislation to want to come to Washington when they can practice in other regions and make more money. I think some of the failures of this bill far outweigh the strengths of the legislation.

I may come at this differently than my colleagues who want to, as I say, privatize Medicare. I certainly believe we have made a promise since 1965 that we would provide a universal benefit of Medicare, provide basic care to our seniors. I think this bill is a failure to expand on that and put a prescription drug under Medicare.

When the Harvard School of Public Health did a study in June of 2002, they asked people: If you retired and you had a choice to get a benefit under the Medicare health insurance program or from a private plan, such as a PPO or HMO, which would you choose? And 63 percent said they wanted a program under Medicare. Only 19 percent said they wanted a plan under a private provider, a PPO or HMO organization. So I think the public is clear that they have said they trust Medicare.

In fact, I found great pleasure recently when the Seattle Post-Intelligencer characterized this debate, I thought, in an editorial cartoon that was really right on the spot:

> Two constituents obviously are saying to each other, honey, see, the Republicans—what they promised is that we would get out of the faceless control of the Government bureaucrats on Medicare.

Unbeknownst to the couple, they are sitting in the faceless hands of insurance company executives. I think that is fundamentally what is wrong with this legislation, that while we have had a trusted system for many years and an increase in the cost of prescription drugs going from maybe 5 percent of your health care costs at the time Medicare was introduced to now something like 25 percent of your health care costs, Medicare prescription drug benefits should just be part of basic care under Medicare. Instead, we are saying we are going to subsidize insurance companies to somehow provide a prescription drug benefit for you. I think what we are going to find is that it is going to have disastrous results.

There are a lot of things in this legislation about which I think people in the State of Washington are concerned. Obviously, this particular debate, as the New York Times called it today, is really a debate—I ask unanimous consent that this article be printed in the RECORD, entitled ''Medicare Debate Turns to Pricing of Drug Benefits.''

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

[From the New York Times, Nov. 24, 2003]

MEDICARE DEBATE TURNS TO PRICING OF DRUG BENEFITS

(By Robert Pear)

WASHINGTON, Nov. 23.—With Congress poised for final action on a major Medicare bill this week, some of the fiercest debate is focused on a section of the bill that prohibits the government from negotiating lower drug prices for the 40 million people on Medicare.

That provision epitomizes much of the bill, which relies on insurance companies and private health plans to manage the new drug benefit. They could negotiate with drug companies, but the government, with much greater purchasing power, would be forbidden to do so.

Supporters of the provision say it is necessary to prevent the government from imposing price controls that could stifle innovation in the pharmaceutical industry. Critics say the restriction would force the government and Medicare beneficiaries to spend much more for drugs than they should.

The House passed the Medicare bill on Saturday by a vote of 200 to 215, after an all-night session and an extraordinary three-hour roll call. President Bush and House Republican leaders persuaded a few wayward conservatives to vote for the bill, which calls for the biggest expansion of Medicare since its creation in 1965.

In the Senate, debate continued on Sunday, with Democrats asserting that the bill would severely undermine the traditional Medicare program. Senator Edward M. Kennedy, Democrat of Massachusetts, said he would lead a filibuster against the measure.

Democrats acknowledged they did not have the votes to sustain a filibuster. But they said they would use points of order to slow the legislation, whose passage is a priority for President Bush.

Senators Dianne Feinstein of California, Ron Wyden of Oregon, and Kent Conrad of North Dakota, all Democrats, announced on Sunday that they would vote for the bill. Other Democratic senators who have endorsed it include Max Baucus of Montana, John B. Breaux and Mary L. Landrieu of Louisiana, Blanche Lincoln of Arkansas and Ben Nelson of Nebraska.

But Senator Don Nickles, Republican of Oklahoma, said he would vote against the $400 billion bill.

''We are building a new expansion onto a house that's teetering on a cliff,'' Mr. Nickles said. ''We are saddling future generations with enormous liabilities.''

No provision has been mentioned more often in Congressional debate than the section that prohibits the government from interfering in negotiations with drug companies.

Democrats have repeatedly asserted that Medicare could provide more generous drug benefits if, like other big buyers, it took advantage of its market power to secure large discounts.

But many Republicans have expressed alarm at the possibility that federal officials might negotiate drug prices. The Medicare program, they say, dwarfs other purchasers, and the government is unlike other customers because it could give itself the power to set prices by statute or regulation, just as it sets the rates paid to doctors and hospitals for treating Medicare patients.

Under the bill, the government would subsidize a new type of insurance policy known as a prescription drug plan.

''In order to promote competition,'' the bill says, the secretary of health and human services ''may not interfere with the negotiations between drug manufacturers and pharmacies and prescription drug plan sponsors, and may not require a particular formulary or institute a price structure for the reimbursement'' of drugs.

Tommy G. Thompson, the secretary of health and human services, said Sunday that if Congress wanted to give him the power to negotiate drug prices, it could do so next year. But ''that's not a reason to oppose this Medicare bill,'' said Mr. Thompson, who negotiated with Bayer to obtain a lower price for the company's anthrax medicine, the antibiotic Cipro, in 2001.

Representative Tom Allen, Democrat of Maine, said it struck him as absurd that ''the government will not be able to negotiate lower prices'' for the drugs on which it plans to spend $400 billion in the next decade.

''The bill will allow the pharmaceutical industry to continue charging America's seniors the highest prices in the world,'' Mr. Allen said.

Representative Peter A. DeFazio, Democrat of Oregon, said, ''We could provide a much more meaningful benefit if we negotiated lower prices as other nations have done.''

Representative Rahm Emanuel, Democrat of Illinois, said: ''We could bring down drug prices if we allowed the secretary of health and human services to negotiate on behalf of 40 million seniors. That is what Sam's Club does.''

Sam's Club, a chain of warehouse stores that is a division of Wal-Mart, acts like a purchasing agent for its members, who can buy low-price goods.

Republicans say that health plans will be able to negotiate lower drug prices for Medicare beneficiaries, just as they do for large groups of employees with private insurance.

The Senate majority leader, Bill Frist, Republican of Tennessee, said: ''We tend to use the purchasing power of private entities like individual plans to hold down costs over time. The Democrats tend to emphasize, and thus push for, more government control, government purchasing. We just think that competition through the private sector, through bulk purchasing and negotiation, is a more effective means to hold down prices.;;

Medicare drug plans would be offered by state-licensed insurance companies. They, in turn, could hire pharmacy benefit managers like Express Scripts, Medco Health Solutions and AdvancePCS to negotiate with drug makers, issue discount cards and line up networks of pharmacies.

The bill would also create a benefit: an initial physical examination offered to new beneficiaries as a ''welcome to Medicare.'' this benefit illustrates a shift toward greater coverage for preventive services.

Under the bill, Medicare would cover screenings for heart disease and diabetes and would pay experts to coordinate care for elderly people with chronic illnesses.

Senator John Kerry, Democrat of Massachusetts, took time out from his presidential campaign to join the Senate debate. The Medicare bill, he said, ''lines the pockets of powerful moneyed interests and leaves America's seniors out in the cold.''

But Senator Susan Collins, Republican of Maine, urged support for the bill. ''This historic opportunity may never come again, and we cannot afford to let it pass,'' she said.

Ms. CANTWELL. In this article, I will read the paragraph:

With Congress poised for final action on a major Medicare bill this week, some of the fiercest debate is focused on a section of the bill that prohibits the government from negotiating lower drug prices for the 40 million people on Medicare.

That particular article goes on to talk about the fact that we are switching over to insurance companies when we could have a benefit under Medicare and when Medicare could provide those cost savings as a big market.

Now, some people say: Gee, we don't want to set price controls because that will somehow artificially impact pharmaceutical companies. Pharmaceutical companies are not the people who need the financing and the access to capital.

It is the biotech industry. Washington State happens to be home to many biotech companies. They need access to capital. It is one of the actual advantages of what I would call economic advantage that the United States has in making pharmaceutical drugs; the fact that our access to the capital system allows these biotech companies to do years and years of research and then maybe 10 to 15 years later actually getting a drug produced. So they need access to the capital market.

Once those drugs are created, we need to do something about controlling the costs of those drugs. This section of the bill, again referring to the New York Times article, says:

The provision epitomizes much of the bill, which relies on insurance companies and private health plans to manage the drug benefit. They could negotiate with drug companies, but the government, with much greater purchasing power, would be forbidden to do so.

I have great concerns about what is the basic hamstringing of this proposal as it relates to prescription drug benefits when the key opportunity before us would be to put this benefit under Medicare and capitalize on those savings.

Mr. President, that is why I had supported earlier legislation and find it very difficult to support this legislation. I am going to talk about why, besides this particular provision, we are hampering ourselves from having other price controls in this legislation.

I agree with my colleagues on the other side of the aisle, as we start this new benefit, we must be cognizant of what kind of cost measures we can do to make sure we continue to provide this for our citizens. Before I get to that, I want to mention, I have great concerns about the retiree benefit plans under this proposal. We have about 49,000 retirees in Washington State who might end up losing their coverage under this bill in the future. They have good, solid insurance coverage plans that I don't think are too generous, but under this proposal they might go away.

There is a certain percentage of the population under this proposal that actually will start paying a variety of premiums based on income, and while some people think that might be a good idea, really these people have been in this program—it has been a program based on a payroll tax into the Medicare trust fund—they have paid into the trust fund expecting to get reliable health insurance coverage back. Now they are going to be paying aggressively on their premiums.

About 51,000 residents in Washington State are going to wake up very much surprised to find that as a result of trying to provide a drug benefit package to the country, all of a sudden they are paying more on their Medicare Part B program. I know my phone is ringing very much against this legislation, but I don't know if those 51,000 people realize it is actually their premium rates that are going to go up.

Third, I think the legislation, as it relates to low-income seniors, is another area where we are leaving seniors basically worse off than they are today. My State covers 150 percent of the poverty level under Medicaid with a prescription drug benefit. The lowest income seniors in America are now going to have to pay a copayment.

One of the reasons we created the program at 100 percent of poverty for people on Medicaid is so they can get access to prescription drugs because they couldn't afford a program to pay for prescription drugs. We are taking the poorest of our population and now demanding that they have a copayment, too.

The asset test—I am sure some of my colleagues will talk about that—for

those at 150 percent of the poverty level, which is basically incomes of about $13,000 per individual or $18,000 for a family of two, that the asset test is going to be $6,000 for the individual or $9,000 for a couple, that means after that, you are not going to benefit from the program in the same way.

Basically, you are limiting the opportunity for this section of low-income individuals to benefit from what would be a more profitable way of dealing with a prescription drug benefit and giving them, not hampering them, saying you qualify but limiting them on the asset test.

In Washington State, for those individuals below 150 percent of poverty level, they are going to be worse off under this legislation.

I hope this legislation is not a death knell for those who are living with cancer because according to the CBO estimates, this bill could basically cut $11.5 billion over the next 10 years for cancer care communities because of the reimbursement rate for cancer care. Basically, we are making cuts to programs, and I have heard from facilities, oncologists, and cancer patients all across the State that they are very upset with this legislation and the reduction in reimbursements for cancer patients. This is another group of people who will be worse off if this legislation passes.

As I said, my primary concern with this legislation is it does very little to rein in the cost of prescription drugs. Talking to my constituents, yes, they would like to see a prescription drug benefit, but they don't want to be worse off than they are today. Even without the benefit, they expect the Senate to do something about controlling prescription drug costs.

What have we done? I see my colleague from Michigan on the Senate floor. She had a great proposal that we failed to execute that basically said: Why not cap the advertising dollars of the pharmaceutical companies to the dollars that are involved in research and development; that way, they are doing research and development on new drugs. They are not overspending, overadvertising to America, or at least not getting a tax benefit for overadvertising and trying to drive up the consumption of drugs.

We have done nothing about that. My colleague from New York and others have tried to address the issue of what has become evergreening of patents where drug companies actually change the name or some feature of the product just so they can continue to have a patent control and generic drugs, cheaper drugs, cannot come to the market.

This bill actually deals with some aspect of that, but the aspect I was very concerned about is oftentimes you have big pharmaceutical companies buying a generic drug company right before the generic drug company produces the product. That ought to be investigated by the Department of Justice as an antitrust violation and to make sure we are not allowing such collusive activities to happen, thereby raising the overall price of prescription drugs.

A provision that would have benefited us the most and was critically important—again, as we see insurance companies, basically, in charge of prescription drug benefits—is we had a great opportunity in an amendment I offered with several of my colleagues to control the costs as it was put forth by pharmacy benefit managers.

In traveling around Washington State, actually a summer ago, it became very clear to me that a great deal of purchasing of pharmaceutical drugs for individual plans were done by pharmacy benefit managers. They are the middlemen in this process, and pharmacy benefit managers often negotiate huge savings for various employee groups, companies, and organizations. Yet it is unclear what happens to the negotiated discount. Is it passed on to the individuals within the beneficiaries of that plan? Is it basically profit by the pharmacy benefit managers? What happens to that money? In fact, we have had instances in this country where pharmaceutical companies and the pharmacy benefit managing company are owned by the same entity. Thereby the middleman is basically helping to negotiate and sell a higher price for the pharmaceutical company.

Most of those companies have gotten out of that. Certainly my amendment would have prohibited pharmaceutical companies and benefit managers from working together under the same ownership. But a recent September 9, 2003 study by Loyola University Chicago Law School found that the cost to taxpayers for this inherent conflict of pharmacy benefit managers is in the range of somewhere between $14 billion and $29 billion over the next 10 years. I think that is quite considerable.

To me, putting HMOs in charge of the prescription drug benefit is like putting Enron in charge of our energy policy. Thank God we were able to make some comment and statements that we are not going to have that energy policy of the free market without rules and transparency which basically drove up the cost of energy pricing. But that is what we have here because basically we are saying Government can't do anything to control the prices.

But now we are going to throw this into the private sector, and it is unclear what rules they are going to use to control the prices. The one amendment that was in this legislation saying that pharmacy benefit managers had to come clean about the drug benefits they negotiated with pharmaceutical companies, and what percentage of those dollars they were passing on to consumers—that got thrown out of the legislation.

So a key aspect of this bill, which would have said let's provide transparency, let's give money back to seniors, let's make sure consumers are getting the savings that are being passed on by being in a big market and having market leverage—those things are gone.

I believe our Attorney General of the United States ought to investigate. I don't see why the manufacturers of pharmaceuticals, that then sell through a PBM, can't list the top volume of 50 drugs they have sold and the difference between the prices they received at the pharmacy level and what discounts were realized. They don't have to give all of their pricing information. They don't have to overexpose what I think would be private corporate information that allows them to be competitive. But the Department of Justice ought to be able to investigate collusive activity that is ripping off seniors in America, when somebody negotiates huge discounts based on volume but then doesn't pass those discounts on to consumers.

So, as I said, this is a key part of the legislation that was left out. I hope whatever happens with the outcome of this legislation, that my colleagues will think about how we need to rein in pharmacy benefit managers in the future and make sure they are passing on savings to consumers.

As I said, I think this private delivery model we are talking about for Medicare gives too much control over to the insurance agencies and other organizations and doesn't give a guarantee to seniors. This bill provides no limits on the premiums that drug-only plans can charge.

Seniors need a comprehensive benefit that covers their total prescription benefit needs. Why tease them with a program that we are somehow going to cover their prescription benefits and then not control the price, have it in the private sector, and then have the private sector dictate to them: Here is the very limited number of drugs that are going to be provided.

Thirty percent of Washington State seniors enrolled in the prescription drug benefit under this program would fall into what is the donut hole. Easily some 122,000 people in my State could fall into the donut hole. Again, another percentage of the population that I don't think are—you might not say they are better off. It depends on whether they have a drug benefit now. But they are certainly not going to get anything from this legislation and they are going to be far more confused about why this cliff starts at a certain level.

Again, my colleagues, I am sure, have talked about the economic impact of this legislation. I would go back, saying we should start with a prescription drug benefit.

When my colleague, the Senator from Michigan, and I first came into this Congress, when we had a huge surplus, that was the time we should have put forth a prescription drug benefit that would have been a more comprehensive package and started this process. But we didn't do that.

So what my constituents are telling me, and these are even constituents

living in the rural part of Washington State who might think their physicians will get a higher reimbursement rate or their hospitals will get a higher rate, they will know Washington will still fall behind on the overall Medicare reimbursement rate, falling from 41 in the Nation in reimbursement rate to 45. They will know either the lowest-income seniors who are going to fall out of the program and have to have copayments—that is, they are already under a plan that they don't have copayments on—or there will be some of these seniors who basically end up having to pay more than they are paying today.

As we debate this legislation and look forward to whether, as I said, the vote is tonight or tomorrow, I think we need to talk about whether we are going to trust the American people in their trust of Medicare; whether we are going to say we are going to let the Medicare market carry the weight that it has already carried. Actually, even if we said, Here is the limit of how much we could provide given our budget deficit, I would say: Fine, continue to let Medicare provide for those individuals. As we give more resources as a nation, let's build that up.

But don't fool America by somehow thinking you are going to turn this over to private insurance companies and HMOs and somehow they are magically going to come up with the money to make this benefit program work.

What Americans want is security in their prescription drug benefits. They don't think that privatization will work. They don't think we are doing enough to control costs. I suggest to my colleagues that we need to go back and work this bill to provide both—the certainty to seniors, in a program that they have believed in for many years, and a Congress that will stand up and fight the ever increasing cost of prescription drugs.

I yield the floor to my colleague from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, first, I thank my friend and colleague from the State of Washington for her eloquence this evening in laying out where this is not a good deal for seniors. We wish it was a good deal for seniors. Both of us have been here since 2001, speaking in the Chamber frequently about the need to provide prescription drug coverage for seniors, real coverage, and about the need to lower prices for everybody.

In fact, I have been working on senior issues for a long time. Actually that was the very first opportunity I had to get involved in public service. I won't say when, but it was about 25 years ago. I came into county government, which is a part-time position in Michigan. But what brought me into the Ingham County Board of Commissioners was the issue of senior citizen health care. I have been involved in that issue ever since.

Nothing would please me more than to be able to stand on the floor this evening and say: We did it. We have put together a voluntary, comprehensive prescription drug benefit under Medicare for seniors and the disabled. Nothing would please me more. And nothing would please me more than to say: We did it. We have put in place the ability to lower prices for everyone.

As colleagues have said, this is not just about Medicare and just about our seniors and the disabled—although certainly they are very important people. They use the majority of the prescription drugs. But we know right now the explosion in prices of prescription drugs is driving the entire cost of the health care system.

When I talk to those who are in the auto industry, or when I talk to small businesses, when I talk to those who are in the furniture business in Michigan, or in retail sales or work in State government, I hear the same thing, which is at least half the cost increases in health care are a result of the explosion in prescription drug prices.

So this is an issue that affects everybody. As we look at this question under Medicare, this is also an issue that affects everyone, every taxpayer as well as every person who is paying for Medicare. So this is a big deal. It is important that we get this right. It is important that we be able, at the end of the day, to say we have strengthened one of the great American success stories called Medicare, and that we have put in place the competition and the accountability to bring prices down. This bill absolutely does not do that. It doesn't do either one of those things.

First of all, it starts from the premise that seniors want something other than traditional Medicare. When we look at what seniors have said when they have had a choice, here is what they said. Eighty-nine percent of those who have a choice right now between Medicare+Choice, which is an HMO, private insurance, or traditional Medicare, 89 percent said: We will take traditional Medicare. Eleven percent said: We will take the private insurance.

Seniors have already said what choice they want. When I hear folks talking about what they want in Medicare, they are not asking for more bureaucracy, or more insurance paperwork, or more insurance companies to choose from. They just want to update Medicare for prescription drugs, that is all—just update Medicare for prescription drugs. Eighty-nine percent of the Medicare beneficiaries have already told us what they want to do. They want traditional Medicare.

This bill basically sets in place—some of it is immediate with prescription drug coverage where you have to choose from private insurance plans if they are in your area, and some of it is down the road a bit in 2010 when the entire unraveling of Medicare begins. In some areas, people will have a very different system that will attempt to move them into private insurance.

That is not what folks have said to me. People say we should do that because it costs less. Medicare is in trouble financially down the road. We need to do something to lower costs.

When you look at this, Medicare costs about 2 percent to administer and private HMOs cost 15 percent. So that can't be the reason we are doing this. It costs more to go into private plans than it does with traditional Medicare.

For many of the reasons colleagues said on the floor, traditional Medicare has a very large insurance pool—those who are sick, those who are well, those who are older, those who are younger, all together—the bigger the pool, the bigger the risk pool, the lower the price.

It is not because it would cost less, because it doesn't cost less; it will cost us more. It will cost taxpayers more. It costs more for services under the private sector than it does under traditional Medicare.

Why are we doing this? I think we are doing this for one reason: Unfortunately, the driving reason behind this legislation is that the pharmaceutical lobby has decided, instead of continuing to fight Medicare coverage and the Medicare prescription drug benefit as they have done for many years—they decided they don't want to stop it anymore because it is too big an issue for people. It is a critical life-and-death issue in order to pay for your medicine. That is not to say people got up today and decided to eat or get their medicine. That is not rhetoric; it is real. So they changed their approach and thought they couldn't stop it anymore because it is too real for people: This is a real problem. Let us create a benefit that is done in a way that divides people up into private insurance plans and in a way that doesn't allow Medicare to use all of its leverage to be able to lower prices.

So behind all of this, there are I think two things. There are those who really do believe it ought to be done in the private sector, that we ought to go back to private insurance. But you couple that with an industry that wants to make sure that: No matter what, we can't lower their prices; let us make sure that no matter what, people have to pay the highest prices.

That is why there is no reimportation, which is really important in my State. The idea that you can have a local pharmacist in Michigan be able to do business with a pharmacist in Canada, be able to bring prescription drugs back into the local pharmacy in Michigan at half the price, many of them made in the United States, they are safe, they are FDA approved, bring them back, and create a way to lower prices—they don't want that. That is not in the bill. They do not want a strong provision to tighten patent loopholes so competitors can be able to get into the marketplace with generic drugs. That is not in the bill.

We have a weakened version of that. Amazingly, as colleagues have said,

they were actually able to get language into the bill that says Medicare is prohibited from group purchasing on behalf of seniors and the disabled. It is amazing. That is just amazing. The private insurance companies can try to get the best price. Everybody else can try to get the best price. But Medicare on behalf of our seniors is prohibited from trying to get the best price.

That would only be in the bill for one reason; that is, because the industry has been successful in creating a whole new group of customers who will be forced to pay the highest possible price.

How do we know this? This is not just me talking. The Boston University School of Health has looked at this legislation and estimates there will be $139 billion in increased profits over the next 8 years for the world's most profitable industry. At $17 billion annually, this means about a 38 percent rise in drugmaker profits.

I am all for folks making a profit. I have a major pharmaceutical company in Michigan. They do wonderful research. I am very proud of them for doing this research. But we are talking about an industry that is already one of the most heavily subsidized by taxpayers, because they do not make shoes, or chairs, or cars, they make lifesaving medicine. We want them to make it. We want them to do research. So we help them pay for it. We give them protection. We have patent protection so that they are protected from competition. We give them the ability to write off their research and write off their advertising. They get a lot of support and help. Why? Because we want to be able to afford the product.

At the end of the day, when, by the way, they are spending 2½ times more on advertising and marketing and administration rather than research, which is a big concern of mine, but at end of the day we are seeing not prices going down so people can afford them but efforts to actually protect prices and allow them to go up.

We are looking at about a 38 percent rise in drugmaker profits. Certainly any business would welcome that. But that is on the backs of American citizens. This is on the backs of American taxpayers who are paying the bill—American seniors who just want to know that they can count on Medicare, get the medicine they need, pick their own doctor, live a healthy life, and visit grandkids and great grandkids. They trust us to look beyond the 650 lobbyists, or however many there are in the drug industry now. I know it is over six lobbyists for every one Member of the Senate. Imagine, more than six lobbyists for the drug companies for every Member of Congress. They are counting on the Senate to look beyond the swarm and to look at what they need. They are counting on us to look at what they are asking for.

I know at the end of the day it is our obligation and responsibility to make sure we put together something that actually helps people get their medicine at affordable prices, is responsive to the taxpayers of this country, and is something that protects one of the great American success stories called Medicare.

The No. 1 reason I am opposing this legislation, there is nothing in here to lower prices for anyone. Profits will continue to go up and they are locked in. This legislation sanctions that.

Second, we are putting into place a system that will unravel by privatizing Medicare, or will allow Medicare to wither on the vine as former Speaker Newt Gingrich said. It took a while. He said that in 1995 and here we are in 2003 with a bill that does that.

It does a couple of other things that make no sense to me. I would assume that the first rule would be: do no harm. Yet under this legislation, it is estimated that over and above what is happening right now in the marketplace, 2.7 million retirees will lose their coverage, people with private coverage. That is one in four. That means three out of four employers will wrap around and keep the coverage going, but one out of four, which is too high—we could make that zero if we wanted to, if we had legislation I cosponsored a year ago that made it—but right now one out of four in this bill are estimated to lose their private retiree coverage.

My guess is a lot of those folks gave up pay increases over the years to get good coverage, gave up other things so in their retirement they would have private coverage.

On top of keeping prices high and unraveling Medicare, it is estimated by a study group that 143,000 people in the State of Michigan would lose their private coverage. I don't know how in the world I can support that. And I will not.

The last thing this does, there are 6.4 million low-income seniors and disabled who will lose access to the drugs they need. Many of them will actually pay more. How in the world does it make any sense that we would have a prescription drug benefit that has been described as helping our low-income seniors the most, but actually costs people more out of pocket, people who are currently on Medicaid, who find themselves under Medicare with a different system, a different asset test, different copays, and would actually pay more.

We should be focusing on and helping the people who really are choosing every day whether or not to eat or get their medicine or pay the electric bill.

When we look at this whole picture, as much as I would love to say this is a great deal, this is a bad deal. My colleagues say this is a first step. There is an old saying: Beware of the first step. I think the first step is right off the cliff on this legislation for too many people.

In closing, there is one important piece in this bill that has strong if not unanimous bipartisan support that I wish we were passing separately this evening. That is the issue I have talked about a number of times: what is happening to our doctors, our hospitals, our home health agencies, nursing homes, and others who have been cut consistently in the reimbursements they receive, whether they be rural or urban providers.

Those who care for our seniors and the disabled have seen resources cut. That, in turn, is cutting access. We have known that cuts were coming now for the last 3 years, and instead of doing something about it sooner because our doctors and other providers desperately needed us to, it gets rolled into this legislation that is highly controversial. I regret that. I have offered separate legislation pulling out all of these provisions. I offered it on Saturday, and I asked unanimous consent we take it up immediately and pass it. It was objected to on the other side. I regret that, as well.

The reality is, in the middle of this bill I believe there are some very important providers being held hostage, folks I want to support, whom I have supported, and I will support in the future; folks for whom I have fought, and unfortunately because of the fact that this is in the middle of this bill to unravel Medicare and hurt them in the long run and increase cuts in the long run for all of them, I am not going to be able to support this bill. However, I do want the record to reflect that our doctors and hospitals and others who have been cut too much are cancer care providers. They are still cut too much in this legislation. I am extremely upset that is the case.

But we do have in this bill provisions for rural hospitals, urban hospitals, and others that are desperately needed. I am at least pleased there are provisions there recognizing the desperate needs our providers feel.

In conclusion, when we look at the broad bill before the Senate that unravels Medicare, keeps prices high, causes people to lose their health insurance in the private sector, and causes the most vulnerable seniors to pay more, this is a bad deal. I am hopeful, still, that those listening this evening will call their Members before the vote that I believe is coming tomorrow morning. Tell the Members to go back to the drawing board. We can do better than this for people. I am still very hopeful this will be stopped and we will get back to the drawing board and get it right.

SECTION 641

Mr. CONRAD. Mr. President, I want to thank Senator GRASSLEY and Senator BAUCUS for all of their work on this bill. Prescription drug coverage under Medicare is long overdue, and I am pleased that we are near to final passage on a drug benefit that will provide our seniors and disabled with help they sorely need. That we have made it this far is in no small measure to the important work of Senators GRASSLEY and BAUCUS.

As we continue to debate the Medicare conference report, I want to make particular note of the efforts of Senators BAUCUS, GRASSLEY and MURRAY to address the Medicare bias against self injectable biologics and oral anticancer drugs without an injectable equivalent. These biases can mean that Medicare pays for treatments that are more costly and that require patients to travel long distances for treatment. Working together, we have pushed hard for providing coverage of these drugs for an interim period, until the Part D drug benefit begins. This immediate coverage would make a real difference for thousands of seniors suffering from cancer as well as various chronic illnesses, such as rheumatoid arthritis and multiple sclerosis.

While I am pleased that the Medicare conference includes measures to provide coverage of these medications over the next 2 years, I am disappointed that the funding for this policy was limited and the number of beneficiaries who will be allowed to benefit from this coverage was capped. Also, I am very concerned that the Medicare conference report language does not accurately reflect the intent of the conferees, which is clearly laid out in the statute of the conference report. I would like to ask my colleagues to comment further on this issue.

Mrs. MURRAY. I also want to thank Senators BAUCUS and GRASSLEY for their support of the Conrad-Murray language that would have eliminated this discrimination against self-injected biologics. Our amendment would reward companies who innovate their treatments to meet their patients needs, not Medicare reimbursement policies. Many of these patients suffer from rheumatoid arthritis and MS, two disabling conditions that can restrict mobility and make it very difficult to even get to a physician's office. As my colleagues know, I have spent the last 4 years working to end this outrageous disincentive in Medicare reimbursement policies.

Mr. BAUCUS. It is important to note that without Senator MURRAY's efforts and leadership on this issue, we would not be here today. I also thank the Senator from North Dakota for all that he has done to realize this important benefit. And I thank both Senators, as well as the chairman, for working with me to level a Medicare reimbursement playing field that has long been biased against rural patients and providers. We have the most comprehensive rural health package in history in this bill, and I am proud of that.

With respect to self-injectable biologics and oral anti-cancer medications, let me provide some background. Under current law, Medicare will cover certain drugs that are administered ''incident to physicians' services.'' but self-injectable biologics which are complete replacements for physician administered drugs are not covered by Medicare. In other words, if a doctor is required to inject the drug, you're covered. If not, you're out of luck.

A similar situation exists for oral anti-cancer medications. Coverage is available for oral anti-cancer drugs if they are also available in injectable form. But Medicare coverage is denied for anticancer therapies that are available in oral form only. Many new therapies to treat cancer, as well as many that are in various stages of development and approval, are available only in oral form, and therefore are not covered under the Medicare program.

Mr. GRASSLEY. I thank my friend from Montana for that explanation. And as he and the Senators from Washington and North Dakota know, we have a demonstration program in this bill that covers, until the Part D drug benefit starts in 2006, self-injectable and oral anti-cancer drugs. This demonstration program is in the statutory language. That is good news. However, the report language is clearly in error and refers to an entirely different provision, not the one we negotiated.

Mr. BAUCUS. That is right. And for clarification's sake, we would like to ask you some questions about this demonstration project. First, in negotiations we intended that this demonstration would be available and would operate without limitation to the number of States, correct?

Mr. GRASSLEY. Yes.

Mrs. MURRAY. Isn't it true that you intended that the demonstration ensure that the Secretary preserve physician and beneficiary treatment options by providing for equitable coverage of all qualifying products?

Mr. GRASSLEY. That is correct.

Mr. CONRAD. Isn't it true that the conference committee intended to provide $500 million above what Medicare would have expended absent this provision to cover replacement self-injectable medications and oral anticancer therapies?

Mr. GRASSLEY. Yes, that is right.

Mr. BAUCUS. I thank the chairman for the clarification.

Mr. CONRAD. I also thank the chairman for that clarification and, again, would like to thank both the chairman and Senator BAUCUS for their work on this important effort. I also strongly share their view that the rural health provisions in the Medicare conference report are a real victory for not only our States, but for all of rural America.

Mrs. MURRAY. I just want to be sure that we provide the greatest degree of relief for patients and their families. I was disappointed to learn of this error in the final report language, and it does undermine the entire negotiations for this provision. It certainly undermines the intent of the Conrad-Murray amendment adopted by the Senate during consideration of S. 1. I appreciate your working with me to rectify that error.

COST CONTAINMENT PROVISIONS

Mr. BAUCUS. Mr. President, let me take a few moments to provide some background on the cost containment provisions in the Medicare conference agreement.

First, let me review current law.

Under current law, the Medicare Board of Trustees oversees the financial operations of the Medicare Hospital Insurance—or HI—trust fund—Medicare Part A—and the Medicare Supplementary Medical Insurance—or SMI trust fund—Medicare Part B. The Social Security Act requires Medicare's trustees to submit reports to Congress annually by March 31.

Medicare Part A pays for beneficiaries' medical expenses incurred in hospitals, skilled nursing facilities, hospices, and a portion of home health care services. Payroll taxes provide most HI trust fund revenues. Employers and employees each pay 1.45 percent of earnings. Self-employed workers pay 2.9 percent of net income. Other sources of HI revenue include: interest on trust fund investments, the federal income taxes on Social Security benefits raised in 1993, premiums from voluntary enrollees into Part A, railroad retirement account transfers and reimbursement for certain uninsured persons.

Medicare Part B pays for physician and other health care practitioner services, other medical and health services, including laboratory and other diagnostic tests, outpatient hospital services and other clinic services, and therapy and ambulance services, durable medical equipment, and home health services not covered under Part A. SMI trust fund revenues come from beneficiary premiums to purchase Part B and general revenues. The Part B premium is set at an amount so that aggregate premiums make up about 25 percent of program costs. The monthly premium for 2003 is $58.70. General revenues make up the remaining 75 percent of Part B program funding.

Next, let me note current law on Presidential legislation. Under the State of the Union Clause—article II, section 3, clause 1—of the Constitution, the President has a right to ''recommend to [Congress's] Consideration such Measures as he shall judge necessary and expedient.'' Thus the President can already submit legislation to address Medicare solvency.

Current law on House procedures is that the House regularly passes rules that govern House consideration of particular pieces of legislation. The Rules Committee formulates these rules, which the House can then adopt by a majority vote. Thus the House can already establish such procedures as it deems appropriate to consider Medicare legislation.

And current law with regard to Senate procedures provides that, under Senate rule XIV, any single Senator can cause a bill to be placed on the calendar.

Now let me turn to what was in the House-passed bill. Section 131 of House bill would require the trustees to submit a report on the status of the combined two trust funds and the Prescription Drug Trust Fund. The bill would require the report to include a statement of the amounts spent on benefits

in the preceding fiscal year from the general revenues and the percentage the Medicare general revenues bore to all other general revenue obligations of the Treasury that year. The bill would require this information for each year from the beginning of Medicare and for 10-year and 75-year projections. The bill would also require the report to compare the rate of growth of Medicare general revenue funding to the rate of growth in the gross domestic product. The bill would require the Committees on Ways and Means and Energy and Commerce to publish each report and post it on the Internet.

The Senate-passed bill was quite similar. Section 131 of the Senate bill would require the trustees to submit a report on the status of the combined two trust funds and the Prescription Drug Trust Account. The bill would require the report to include a statement of the amounts spent on benefits in the preceding fiscal year from general revenues and the percentage that the Medicare general revenues bore to all other general revenue obligations of the Treasury that year. The trustees would make this calculation separately for Medicare benefits and for administrative and other expenses. The bill would require this information for each year from the beginning of Medicare and for 10-year and 50-year projections. The bill would also require the report to compare the rate of growth of Medicare benefits and administrative costs to the rates of growth in the gross domestic product, health insurance costs in the private sector, employment-based health insurance costs in the public and private sectors, and other areas as determined appropriate by the trustees.

Section 132 of the Senate bill would require the 2004 reports to include an analysis of the total amount of the unfunded obligations of Medicare. The analysis would compare long-term obligations, including the combined obligations of the HI and SMI trust funds, to the dedicated funding sources for the program—not including transfers of general revenue.

With regard to Senate Procedures, the Senate bill would express the sense of the Congress that the committees of jurisdiction would hold hearings on these reports.

Now let me turn to the conference agreement before us today. Under the conference agreement, the trustees' report would include a statement of general revenue funding as a percentage of total Medicare spending contributions to the Medicare Program. The report would also include a historical overview of general revenue contributions and estimates of general revenue contributions in 10 years, 50 years, and 75 years. The trustees would compare these trends in Medicare funding to growth rates for gross domestic product, private health costs, public health costs, and other appropriate measures. And the trustees would report on the costs of the new drug benefit under Medicare Part D.

The report would also include an analysis of Medicare that assumed that general revenue funding would not exceed 45 percent.

Starting in 2005, the Medicare trustees would annually determine whether they projected ''excess general revenue funding'' that is, ''general revenue funding'' exceeding 45 percent of Medicare outlays during the current year or the next 6 years. If the trustees did so 2 years in a row, it would be a ''Medicare funding warning.''

Under the conference agreement, ''general revenue Medicare funding'' would mean total Medicare outlays minus ''dedicated sources.'' ''Dedicated sources'' would mean funding received from outside the Federal Government, specifically: the HI payroll tax, the income tax raised by the 1993 changes in taxation of OASDI benefits, amounts States pay to the Federal Government on account of dual-eligibles funds collected by the ''claw-back,'' premiums paid by Medicare, and gifts to Medicare. The conference agreement would not include interest on trust fund assets in ''dedicated sources,'' as Republican conferees viewed the general fund as needing to pay these amounts to the trust funds.

If, for 2 consecutive years of reports, both covering 7-year periods of projections, the Medicare Trustees projected that excess general revenue funding would be required in any of those 7 years, then the Medicare Program would be subject to special procedures and the trustees would notify the President and Congress. The special procedures would be in force only after the second annual report confirmed that excess general revenue funding would be required.

Here is a plausible example of how the system would work. When Medicare's trustees issued their March 31, 2010, report, they would examine fiscal years 2010 through 2016. If the trustees projected that in 2016, general revenues would exceed 45 percent of Medicare funding, then 2010 would be the ''notice'' year. The conference agreement says that ''Congress and the President should address the matter under existing rules and procedures.''

When Medicare's trustees issued their March 31, 2011 report, they would examine fiscal years 2011 through 2017. If the trustees once again projected that in at least one year of those 7 years—for example, 2016 or 2017—general revenues would exceed 45 percent of Medicare funding, then 2011 would be the ''warning'' year. The conference agreement would trigger actions in the next year, 2012, the third in this series of years.

Next, Presidential legislation: Section 802 of the conference agreement sets out the Presidential response. After 2 consecutive years of trustees' projections that Medicare would have excess general revenue funding, the President would propose legislation in response within 15 days after the President's first annual budget of the next session of Congress. The legislation could use any means to respond, including adding to the dedicated sources. But if the legislation in response did not include matter within the jurisdiction of the Finance Committee, then the Senate discharge procedures would not apply.

Now the statutory language says that the bill must ''contain'' matter within the Finance Committee's jurisdiction. The joint statement of managers, based on an earlier draft of the bill, says that the bill must be limited to the Finance Committee's jurisdiction. The joint statement of managers is in error on this point. And of course, the statutory language controls.

Mr. FRIST. Will the Senator from Montana yield on that point?

Mr. BAUCUS. I yield to the majority leader.

Mr. FRIST. Mr. President, I thank the Senator from Montana and rise to say that I concur with his remarks that the statement of managers is in error and that the statutory language must control. The result would be faithful to the intent of the conferees on this measure.

Mr. BAUCUS. I thank the Senator.

Mr. President, returning to my discussion of the conference agreement's provisions, the conference agreement expresses a sense of Congress that the legislation that the President submits in response should eliminate excess general revenue Medicare funding for the 7-fiscal year period. If, during the year in which the trustees issue a warning, Congress enacts legislation that would eliminate excess general revenue Medicare funding for the 7-fiscal year period, then the President would not have to propose legislation in response to the latest warning.

The warning would also trigger certain House procedures. Section 803 of the conference agreement sets out the procedures for House consideration of the President's legislative proposal. Within 3 days of receiving the President's legislative proposal, the majority leader and minority leader of the House, or their designees, would introduce the proposal. The legislation would be referred to the appropriate committees which would be required to report Medicare funding legislation no later than June 30. The chairman of the Budget Committee would certify whether the Medicare funding legislation would eliminate excess general revenue Medicare funding for the 7-fiscal year period.

Unless the House of Representatives has voted on final passage of the legislation by July 30, the conference agreement would provided fallback procedures. After 30 calendar days—and concurrently 5 legislative days—after the introduction of the legislation, a motion to discharge any committee to which the legislation has been referred would be in order, under specified circumstances, and debate on the motion to discharge would be limited to one hour.

The conference agreement provides for floor consideration in the House of the discharged legislation by the Committee of the Whole no later than 3 legislative days after discharge.

Now let me turn to Senate procedures. Section 804 of the conference agreement sets out the procedures for the Senate consideration of the President's legislative proposal. Within 3 days of receiving the President's legislative proposal, the majority leader and minority leader of the Senate, or their designees, would introduce the proposal. The Presiding Officer would refer the legislation to the Finance Committee. If the Finance Committee failed to report the legislation—with or without amendment—by June 30, then a single motion to discharge the committee of any Medicare funding legislation would be in order. That motion to discharge would be subject to 2 hours of debate. If Congress enacted legislation that the Budget Committee chairman certified eliminated the excess general revenue, then the motion to discharge would not be available for the rest of that session of Congress.

Once legislation got to the calendar, normal Senate rules would govern its consideration. The motion to proceed to the bill would be fully debatable. The bill itself would be fully debatable and amendable.

That is all that this procedure would do.

Now, let me take a few moments to talk about what the conference agreement on cost control would not do.

The conference agreement does not include references to ''insolvency.'' Some sought to label Medicare general revenue funding of more than 45 percent as indicative of ''insolvency'' and ''unsustainablity.'' The conference agreement contains no such language.

The conference agreement does not include a hard cap. Some sought a cap on Medicare spending after general revenues exceeded 45 percent. Congress would have had to vote affirmatively to allow the program to continue above that point. The conference agreement would not be a cap.

The conference agreement does not include a new point of order. Some sought a point of order providing that when Medicare general revenues rose above 45 percent during the next 7 years for two consecutive reports, it would not be in order to consider legislation that would increase the general revenue funding. This requirement would be waived or appealed by 60 votes in the Senate. The conference report contains no new points of order.

The conference agreement does not eliminate rights to filibuster. Some sought to eliminate the ability of Senators to filibuster the motion to proceed to the Medicare funding bill and to filibuster the bill itself. The conference report does not curtail the right to filibuster either the motion to proceed or the bill itself.

In sum, the conference agreement would provide for reports, Presidential legislative proposals, and getting a bill on the calendar. The President or White House staff could get the reports with a phone call. The President could already make a legislative proposal whenever the President chooses. And any single Senator can get a bill on the calendar under current rules.

Thus although the conference agreement could provide additional impetus to cause these steps to occur, nothing prevents all of them from occurring under current law.

Thus, this is a reasonable set of provisions. And it should not be of concern to those who hold the procedures of the Senate dear.

S. 1402

Mr. LAUTENBERG. Mr. President, I thank the leadership of the Committee on Commerce, Science, and Transportation for their resolve in pushing forward with reauthorization for Federal railroad safety programs. The bill reported out of committee, S. 1402, the Federal Railroad Safety Improvement Act, will reauthorize the Federal Railroad Administration, and make many important updates to continue to ensure safety on the Nation's railroads.

In particular, I thank the chairman for his commitment to work with me to address a problem that has been brought to my attention regarding the use of railroad police officers. These railroad employees, who are commissioned by States with law enforcement authority on the railroad property, are given certain police powers for protecting railroad employees, railroad property, and the general public. The Federal Government, recognizing that these personnel perform important functions, has taken steps to extend this authority across States borders, as many North American railroads are extensive and traverse State boundaries.

In this reauthorization, we look to extend this authority even further, to allow rail police officers to conduct law enforcement activities with respect to railroads other than the rail police officer's employing railroad, as our national system of rail transportation is an interconnected system. While I welcome this extension, as these officers perform an important security function to protect our rail system, I feel we should take a closer look at a related problem—the potential for abuse of this police power. As a special case of law enforcement officer, rail police officers answer to private sector employers and are not directly accountable to the public like most law enforcement officers. I am mindful that this could present potential for abuse—that under guide of State law enforcement authority, these rail police officers could engage in activities unrelated to law enforcement, such as enforcing railroad company policies or even labor agreements.

Given the potential for abuse, I was prepared to offer an amendment to the bill during the committee's executive session to address this problem. However, the chairman has graciously committed to working with me to resolve the issue, and I look forward to working with him.

Mr. MCCAIN. Mr. President, I appreciate the concerns of the Senator from New Jersey and have been working with him to address this issue. It is a complex matter, and one that certainly merits further examination. As such, the ranking member of the committee, Senator HOLLINGS, and I are writing to the Inspector General of the United States Department of Transportation seeking an assessment of the additional duties performed by rail police officers that are not related to law enforcement. We are interested to learn whether such duties are appropriate, and how potential abuses can be avoided. I am confident that the Inspector General's assessment and recommendations will be useful in helping us craft a bipartisan legislative solution should one be necessary.

Mr. HOLLINGS. I also thank the chairman and the Senator from New Jersey for their work on this important issue. Reauthorization of Federal railroad safety programs is needed, and the chairman has acted with great diligence in advancing this legislation. The issue the Senator from New Jersey has raised concerning railroad police officers is one that requires a closer examination, and I believe the Inspector General can provide valuable input. I look forward to working with both of them on this issue.

DEFINITION OF NEGOTIATED PRICE

Mr. BAUCUS. Mr. President, I rise today to engage the distinguished chairman in a colloquy regarding three sections of the conference report, 1860D–2(d)(1)(B) and 1860D–15(b)(3) as they relate to the new Part D prescription drug benefit, and 1860D–31(e)(1)(A)(ii), in order to clarify the intent of the conferees with respect to the prices paid for prescription drugs, particularly the concept of negotiated price.

Mr. GRASSLEY. I thank the Senator from Montana and my Democratic partner in this legislation, Senator BAUCUS, for seeking to clarify this issue. I would be pleased to engage in a colloquy.

Mr. BAUCUS. As I understand the conference report, how the bill defines negotiated price is critical to Medicare beneficiaries, prescription drug plans, and Medicare Advantage plans offering prescription drug coverage. More specifically, I understand in section 1860D–2(d)(1)(B) that with respect to drugs purchased under Medicare Part D, the intent is for negotiated prices to include ''any dispensing fees for such drugs.''

I also understand in section 1860D–15(b)(3) that ''gross covered prescription drug costs'' includes ''costs directly related to dispensing.'' The issue for me then is how the conference report intends the Secretary to operationalize the concept of dispensing costs especially with respect to

Medicare Advantage plans whose Medicare members do not fill prescriptions at retail pharmacies.

I am referring to plans that operate their own pharmacies and take possession of prescription drugs directly from manufacturers and wholesalers. For these plans, is it the intent of the conferees that dispensing costs include all reasonable costs related to plan activities needed to deliver prescription drugs to their Medicare members, including the costs of delivering this benefit? For example, this would include salaries for pharmacists, and facility- and equipment-related costs.

Mr. GRASSLEY. Yes, the distinguished Senator is correct. The intent of the conference report is to recognize that different Medicare Advantage plans are organized in different ways to deliver the new Part D prescription drug benefit and the benefits of the Medicare-endorsed drug discount card.

The conferees understand that Medicare members of some Medicare Advantage plans fill their prescription in retail pharmacies and others in a plans' own pharmacies. For Medicare beneficiaries that will be using retail pharmacies to fill their prescriptions, the conferees understand that the prices negotiated between the prescription drug plan or the Medicare Advantage plan plus dispensing-related costs include the pharmacies' reasonable overhead costs.

Similarly, it is the conferees' intention that Medicare Advantage plans whose Medicare members do not use retail pharmacies, but instead fill their prescriptions at the plan's pharmacies be reimbursed for the costs they incur in delivering the benefit when reimbursed for the same types of costs.

SECTION 507

Mr. BREAUX. I coauthored Section 507 of H.R. 1, the Prescription Drug and Medicare Improvement Act of 2003, which would amend current law regarding physician self-referrals. I would like to engage in a colloquy with my colleague, Mr. GRASSLEY, in relation to the exception language contained in this provision.

I would like to clarify congressional intent with regard to the ''exception'' language included in S. 1, as this language may ultimately be included in any compromise between the two bills.

I would like to discuss the extent to which the Secretary would have discretion to exempt a hospital based on the factors identified in the language. The language in the conference agreement states that, for the purpose of determining whether a hospital qualifies as under development, and therefore exempt from the self-referral limitation, 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.

It was my intent in crafting this language that the factors outlined would serve as an illustrative guide to the Secretary. The Secretary ''shall consider'' these factors, but will not be required to see that each and every factor is met. Is it your interpretation, that the Secretary would have discretion to make a reasonable determination of whether a specialty hospital is ''under development''?

Mr. GRASSLEY. Yes, I believe you are correct in saying that the Secretary would have discretion to consider these factors, but would not be limited to or bound by those factors. The language states that the Secretary ''shall consider,'' which implies that the Secretary shall consider these factors but that he or she should use the factors to make a reasonable decision as to whether a speciality hospital was ''under development'' as of a certain date.

Mr. BREAUX. Is it your understanding that a specialty hospital that has, as of November 18, 2003, met zoning requirements, received approval from the local planning board, and received partial funding, but has not yet completed all architectural plans would quality for the exception?

Mr. GRASSLEY. Yes, it is my understanding that the Secretary would have discretion to determine to what extent the hospital was under development as of November 18, 2003. If the Secretary found that the hospital was ''under development'' despite not having completed all architectural plans, the Secretary could exempt that speciality hospital from the 18-month self-referral limitation.

Mr. BREAUX. Similarly, is it your understanding that a specialty hospital that has completed or substantially completed architectural plans but has not yet received full funding would also qualify for the exception?

Mr. GRASSLEY. The Secretary would have discretion to exempt a hospital that had completed architectural plans and initiated funding and, in making this determination, would consider the extent to which the other enumerated factors had been completed. It is my understanding that the language included in H.R. 1 is meant to provide guidance to the Secretary, and that the Secretary will ultimately determine to what extent the factors have been met and to what extent the hospital was ''under development'' as of November 18, 2003.

Mr. BREAUX. I thank my distinguished colleague for engaging in the colloquy.

RETAIL PHARMACIES AND COMMUNITY PHARMACISTS

Mr. ENZI. Mr. President, I rise today to engage the distinguished chairman of the Finance Committee, Senator GRASSLEY, in a colloquy regarding benefits that Medicare beneficiaries may receive through retail pharmacies and community pharmacists.

Section 1860D–4 of the conference report to accompany the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 states that sponsors of Medicare drug plans or organizations that offer MedicareAdvantage plans shall permit plan enrollees to receive benefits through a pharmacy other than a mail-order pharmacy. These benefits may include a 90-day supply of drugs or biologicals. The conference report states that such enrollees would pay any differential in charge.

I offered the amendment to add this language to the Senate version of the Medicare bill during our debate in June. My intent in offering this amendment was to prohibit plans from implementing restrictions that would steer consumers to mail-order pharmacies. The Senate voted 95 to 0 in favor of requiring Medicare drug plans and MedicareAdvantage organizations to allow local community pharmacists to fill long-term prescriptions and offer any other services that they are equipped and licensed to provide.

The language does permit a Medicare drug plan or MedicareAdvantage organization to charge a different copayment for a mail-order prescription versus a prescription filled by a community pharmacist. This happens today in many health plans.

I note that the conference report would require plans to provide clear information about copayments and deductibles. This information would have to include details on the differences in charges between mail-order and retail prescriptions.

My concern is that any differences in charges between mail order and retail be reasonable differences, based on the actual cost of delivering the service. I would be concerned if differences in charges were used as a method of steering seniors and the disabled to mail order pharmacies.

I know that Chairman GRASSLEY and I both agree that since seniors trust their local pharmacists, they should be allowed to keep those relationships in place.

Mr. GRASSLEY. Mr. President, I say to my colleague from Wyoming that Medicare drug plans and MedicareAdvantage organizations should not force seniors or the disabled to choose a mail-order house when they would prefer to patronize their local community pharmacy.

The Senator from Wyoming is correct in noting that the conference report permits plans to set a different charge to the beneficiary for a mail-order prescription versus a retail prescription. However, it is my expectation that any differential in charge be reasonable and based on the actual cost of providing the service in or through the setting in which it is provided. I also would expect that the Secretary of Health and Human Services would disapprove of any plan that would impose a differential charge that was intended primarily to steer Medicare beneficiaries to mail-order pharmacies versus retail pharmacies.

Mr. ENZI. I thank the distinguished chairman for this clarification.

Mr. INOUYE. Mr. President, I have voted today to oppose the termination of debate on the Medicare Conference Report because I have carefully analyzed the report and come to the conclusion that far from being a bipartisan compromise on prescription drug benefits, the report is nothing short of an attempt to compromise the integrity of the Medicare and Medicaid system as we know it.

When it comes to health care in America, there are many parties in interest—providers, patients, care facilities, and pharmaceutical suppliers, to name a few. These groups have interests that may, at times, be in conflict, but I believe one overwhelming interest unites them all: providing the American public with the health care services and treatment that it needs. Regrettably, I find that the report we have been asked to consider has abandoned this powerful unifying principle.

Worse than abandoning our commitment to the health of our Nation, when viewed as a whole, the report strikes at the foundation of the Medicare and Medicaid system. Rather than buttressing the system of comprehensive care for our senior citizens and disabled persons, the report actually sows the seeds of its demise by undermining its ability to provide a prescription drug benefit, subsidizing competing private health plans, and increasing Medicare premiums without increasing the benefits provided.

The overwhelming drive to reconsider the Medicare and Medicaid systems came from listening to our constituents and their frustration with the ever-increasing cost of the medicines they needed. From blood thinners, to antibiotics, to state-of-the-art pharmaceuticals for cancer and HIV/AIDS, the cry for help was clear: the cost of prescription drugs was breaking the backs of the Americans who were paying for these expensive, but life-saving therapies.

Far from addressing these needs, however, the report actually makes the problem worse. On the administrative level, the report dilutes the Medicare systems's purchasing power by mandating the purchase of necessary medications by individual Medicare regions, rather than as a whole system. With more individual buyers, pharmaceutical companies are more able than ever to raise their prices, because the individual regions will have less bargaining power.

The report will also impact average beneficiaries by potentially depriving them of the specific drugs they need by providing coverage for only one or two of each class of drug. In a world where antibiotic resistant strains of common ailments are on the rise, this could be a very expensive proposition, if the drug you need is not one of the covered drugs in the antibiotic class. Difficulties only escalate in medically complex cases where patients' individual responses to pharmaceutical may vary dramatically, as in treatments for high blood pressure, high cholesterol, cancer, and HIV/AIDS.

Even worse, what flexibility there is in the report to tailor the limited drug benefit to the needs of individual patients must now be requested and petitioned for by the patients themselves. Placing the paperwork burden on seniors and the disabled only shifts the burden to the people least able to bear it, and I would not be surprised to learn that as a result, more and more beneficiaries will lose access to the medicines they need.

Finally, the report strikes a further blow to more than 6 million of our neediest citizens, those who are eligible for both Medicare and Medicaid. At present, States have the statutory flexibility to make any copayments for persons who are ''dual eligible.'' Under the report, however, persons with dual coverage will face increased out-of-pocket expenses because States will lose this flexibility. As a result, Americans who are already below the poverty level would be expected to make copayments between $1 and $3—a great hardship for single persons with incomes of less than $8980 per year, and couples with incomes of less than $12,120 per year.

More than failing to provide the promised prescription drug benefit, however, the report actually paves the way for eventually dismantling Medicare and Medicaid altogether. The report establishes a demonstration project for ''premium support'' in six metropolitan areas. ''Premium support'' does not mean, as one might think, additional Federal support for areas where costs are especially high, and premiums are not sufficient to cover all expense. Just the opposite, it is a way of increasing the Medicare premiums Americans pay in order to compensate for rising health care costs. Moreover, with a ''demonstration project'' such as this in place, it would be a simple step to broaden the ''project'' to include the entire United States—and with an estimate average 25 percent increase in premiums, the costs to American citizens would be substantial.

The report would also provide a $12 billion subsidy to private Health Maintenance Organizations and Preferred Provider Organizations—HMOs and PPOs. With a massive subsidy such as this, there will be no question but that HMOs and PPOs will have a competitive edge over Medicare because they will receive more money per plan participant than Medicare will—and with more money, subsidized insurers will be able to provide more benefits.

''Premium support'' and a $12 billion subsidy for private insurers look suspiciously like a one-two punch aimed at Medicare. On the one hand, ''premium support'' will increase the cost of Medicare without raising benefit levels, while on the other, a multi-billion dollar subsidy will allow HMOs and PPOs to slash premiums and provide more services. Add to this a prescription drug benefit that actually leaves millions of Americans worse off than they are now, and it is difficult to see how this conference report responds to the simple unifying principle of our health care system: providing Americans with the health care they need.

Mr. SCHUMER. Mr. President, our seniors deserve a comprehensive, meaningful drug benefit under Medicare—it's something that I, like so many of my colleagues, have been fighting for years. The world of health care has changed, and Medicare should be updated to give seniors the services and care they need.

I voted for this bill when it first came to the Senate because I thought it was a good start, and I hoped we could build on it in conference. Unfortunately, now that I see the result, I have to say this is not good enough for New York's seniors—in fact, the bad parts outweigh the good.

The bill contains some good things—it provides a good benefit for seniors who have low incomes or very high drug costs who have no other drug coverage. But for the average middle class senior with moderate drug costs, the benefit is much too small.

In fact, the way this benefit is structured, hundreds of thousands of New Yorkers who currently have coverage may actually end up worse off than they are today—and that doesn't sound like a benefit to me.

When I voted for the bill the first time around, I said that if it got any weaker, got any closer to the House version, I could not, in good conscience, support it. And, unfortunately, that seems to be what has happened here.

Other than the generic drug provisions—which represent a huge win for consumers across the board—it seems in every other case where the choice was between seniors and the big drug companies, the big drug companies have won.

Of all the bad things in this bill, the thing that angers me the most is that Congress has squandered away the single best weapon we have against rising drug costs by forbidding Medicare from using its buying power to negotiate lower drug prices with the drug companies.

At a time of rising budget deficits and escalating costs, it really makes you wonder why the Congress would go out of its way to forbid the Federal Government from using its buying power to get prices like we do through the VA.

If the Federal Government leveraged its full buying power under Medicare, we might not have a doughnut hole in this benefit at all.

The impact of this reckless prohibition is best seen by a Boston University study that shows that the drug companies will earn windfall profits of $139 billion over the next eight years alone from this bill.

This bill not only ensures we will be paying the highest possible price for drugs in this country, but it also guts any chance at reimportation—guaranteeing the drug companies a captive audience.

Is that the Republicans' idea of cost containment?

What this bill does is ensure that the government is gouged by the drug companies while putting a huge bulls-eye on the Medicare program. The prohibition on negotiating and artificial ''cost containment'' mechanisms in this bill will simply help the opponents of Medicare justify shifting more and more costs onto the backs of seniors.

Under the drug benefit before the Senate today, the average middle class senior could still be saddled with up to 80 percent of their drug costs. And almost 30 percent of beneficiaries would actually pay more for this Medicare drug benefit than they would be getting back in drug coverage. What kind of relief is that?

So this bill represents a paltry benefit—or no benefit at all—for most people who currently have no drug coverage. I had hoped that the bill would—at the very least—help provide a down payment for the one-third of New Yorkers who currently have no coverage, but I don't think it even does that.

In fact, there is a very good chance this benefit will actually jeopardize access to affordable drugs for New Yorkers who currently have good coverage.

Of the 2.7 million Medicare beneficiaries in New York State, 989,000 have prescription drug coverage from their former employers; 329,000 are enrolled in the state's pharmaceutical program—known as EPIC; and about 537,000 are covered under New York's Medicaid program.

First, let's look at the EPIC program. Right now, EPIC is available to individuals with incomes less than $35,000 and couples with incomes less than $50,000. People in EPIC currently have access to nearly any drug their doctors prescribe, and can go to virtually any pharmacy in the state to get their prescriptions filled.

I fought to get strong language in the Senate version of the Medicare bill that would have provided these New Yorkers with a benefit better than the one they get through EPIC.

The Senate bill would have provided New York State a subsidy equal to about $375 million per year to help it continue the EPIC and even expand it to provide a more generous benefit, to cover the disabled, which the State currently does not do, and to enroll even more people.

The watered-down compromise in the conference report leaves far too many questions unanswered.

Under the bill, if the State wants to use any of the new Federal investment in Medicare, it has to force EPIC seniors to go and enroll in a Medicare private plan and the State legislature will have to go back to the drawing board and restructure the entire EPIC program to coordinate with the Medicare plans.

The end result will be a program so laden with red tape that it is a virtual certainty that seniors fall through the cracks and lose coverage. It will be an administrative nightmare for the State to implement.

I have yet to hear one compelling argument for how the bill before the Senate will enhance the EPIC program. The State can't even tell me what will happen to EPIC and the 329,000 seniors who depend on it if this Medicare bill passes.

Even more shocking is that the bill gives the private Medicare plans a say in how generous any additional state coverage can be. The way I read it, under the new scheme, the Medicare plans will be able to limit which drugs an enrollee has access to and limit what pharmacies they can go to—no such restrictions currently exist for EPIC enrollees. In short, when it comes to EPIC, many seniors may be worse off with the bill than without it.

One of the other major concerns I have about this bill is that it simply doesn't do enough to protect retirees who have good employer-sponsored coverage.

The conferees made some progress toward reducing the employer drop rate by giving employers a tax break worth an additional $18 billion. However, to truly protect retirees from losing coverage would cost about $65 billion.

Even with the change made in conference, an estimated 215,000 New Yorkers will likely lose their retiree coverage if this bill becomes law, and many others may see their options narrowed. That's simply too big a risk for me.

In addition, starting in 2005, all Medicare beneficiaries would be saddled with higher deductibles for doctor visits. Under the bill, Medicare premiums would no longer be universal, but higher for all beneficiaries with incomes of $80,000 and up—a provision which disproportionately affects states like New York.

In addition, over 500,000 Medicare beneficiaries in New York—living in Rochester, Buffalo, Glens Falls and the Capital Region—may be selected for the premium support demonstration program which would provide seniors with a false choice of entering a private plan or being forced to pay more for traditional Medicare.

As I have said, the bill does provide a good benefit for low-income seniors and seniors with very high drug costs who don't have access to any other drug coverage. However, the new assets test in the conference version of the bill means that about 150,000 fewer people will qualify for these low income subsidies than under the Senate bill.

Even the seniors who do get this additional assistance will face confusing and difficult choices each year about which Medicare plan to choose.

They will face a confounding maze trying to figure out which plan will cover the drugs they use and allow them to continue to go to the drug store down the street. If they are even lucky enough to find such a plan, it could be gone the next year, or change its premiums or its list of covered drugs, and seniors would be back to square one.

Of course, despite all of these negatives, there are some very important provisions in this bill which make my decision a very difficult one.

The bill includes significant relief for rural, small community and small city hospitals—about $344 million over 10 years for New York's hospitals, which is crucial to ensuring access to high quality care not only in the very rural areas of the state, but also in and around upstate cities like Syracuse, Rochester, and Buffalo.

There is also modest relief for the nation's teaching hospitals in the bill—but it is not nearly enough. New York institutions would see an additional $76 million over the next four years, but this only restores about 11 percent of the total cuts they face over that time period.

The Nation's teaching hospitals are the backbone of our health care system—they do the research and they train the doctors—and I am worried we will not get another opportunity to provide them the resources they need to do their job.

The bill also addresses the crisis in physician payments which was driving so many physicians out of the Medicare program and leaving seniors in the lurch. These provider issues must be addressed—we've fought back the draconian cuts in the Balanced Budget Act for five years now. Our providers are struggling, and it's time to set things straight.

I am pleased that the bill includes provisions based on a bill I introduced with Senator SANTORUM to stabilize the Medicare+Choice program in the short term.

The changes will ensure that plans in places like Long Island and Westchester get paid on par with plans in other areas of the country and will help significantly bring down premiums in these areas over the next few years.

Perhaps the biggest win in the bill—not only for seniors, but for all consumers, employers, and purchasers of prescription drugs—is the extraordinary victory we have achieved in the face of the unprecedented influence of the big pharmaceutical companies: generic drugs.

The generic drug provisions which Senators GREGG, KENNEDY, MCCAIN and I have been fighting for over the past few years—and which passed the Senate by a vote of 94–1—represent a huge step forward for all seniors, consumers, and purchasers of prescription drugs.

The provisions close loopholes in the law and end the abusive practices in the pharmaceutical industry which have kept lower-priced generics off the market and cost consumers billions of dollars.

The Gregg-Schumer amendments to the Hatch-Waxman Act, would put an end to the practice of brand companies listing frivolous patents for the sole purpose of automatically delaying generic approval. It would also ensure that the 180-day exclusivity period enjoyed by the first generic to challenge a patent cannot be used as a bottleneck to prevent additional generic competition.

First, the Gregg-Schumer provisions would limit brand drug companies to a single 30-month stay of generic approval, and only on patents listed at the FDA before a generic application is filed. This way, the 30-month stay—if there is one at all—will run concurrent with FDA approval of the generic application and minimize delay.

Second, key to ensuring that patent issues are resolved in a timely way, the provisions clarify that a generic applicant has a right to seek a declaratory judgment that its product does not infringe a patent or that a patent is invalid, and direct courts that they must hear these declaratory judgment cases to the maximum extent permitted by the Constitution.

With the removal of the automatic 30-month stay, if the generic company did not have a clear right to seek resolution of potential patent disputes on its own, the brand company could simply file a new patent and sit back and wait—leaving the generic at risk of being sued and having to pay triple the brand's lost profits if it does decide to enter the market. This clarification of the courts' jurisdiction will have an immediate effect on both pending and future declaratory judgment actions brought by generic applicants.

Third, the provisions enforce the patent listing requirements at the FDA by allowing a generic applicant, when it has been sued for patent infringement, to file a counterclaim to have the brand drug company delist the patent or correct the patent information in FDA's Orange Book.

Fourth, the generic provisions revamp the 180-day exclusivity incentive provided in the Hatch-Waxman Act. Under the act, the first generic drug company to challenge a patent on a brand drug has the exclusive right to market its drug for 6 months before any other generic can compete. This feature encourages generic applicants to challenge weak patents and brings consumers much quicker access to affordable generic drugs.

However, at times, brand and generic companies have abused this exclusivity period—both through collusive agreements and use of other tactics that allow the provision to act as a bottleneck to generic competition. The Gregg-Schumer provisions end this abuse because the generic company forfeits its exclusivity if it doesn't go to market in a timely manner.

The way the provision works, if another generic applicant has resolved patent disputes on the patents which earned the first to file its exclusivity—either through a court decision, settlement, dismissal because the brand company says it does not intend to sue, or withdrawal of the patent by the brand company—the first generic applicant has to go to market within 75 days or it forfeits its right to the exclusivity.

If it forfeits, then the exclusivity is lost and any other generic applicant that is ready to be approved and go to market can go. Either way, the provision ensures that consumers have access to a low-cost generic as soon as possible.

I am very pleased that the conferees preserved these important, pro-consumer cost containment provisions. Indeed, they are the only part of this bill where consumers, seniors, and taxpayers prevail over the big drug companies.

In closing, I had truly hoped this Congress would craft and pass a meaningful Medicare drug benefit for seniors—one which would have protected beneficiaries who have access to good coverage through other programs and which would have provided real relief to seniors with no other choice.

While it contains some good provisions, the package before us does neither. I think we can do better, and we owe it to the 40 million seniors in this nation who have waited decades for drug coverage under Medicare to do better than this.

Mr. ROCKEFELLER. Mr. President, on July 30, 1965, President Lyndon B. Johnson stood with President Harry Truman and, together, they delivered the Medicare program. They proudly addressed the American people as President Johnson proclaimed, ''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.'' Today, those words still move me and yet, if I am to be honest, they also haunt me as we consider the Medicare reform legislation before us. I know that this legislation charts a course that will begin to undo the good works of our former Presidents and of a program that is perhaps the single most effective public initiative in our nation's history. Medicare has literally saved the lives of our seniors, keeping them from poverty and providing the peace of mind that comes with security. For this reason, I have a heavy heart and a sense of near dread about this bill. My heart is heavy because I know that this bill to reform and ''improve'' Medicare is deeply, fundamentally flawed. This is not what Presidents Johnson and Truman wanted for the millions of our parents and grandparents who made America strong, and it is not what I want, either.

For many years, we have talked about the need for a prescription drug benefit under Medicare. For a brief moment, I believed we in the Senate were serious about delivering a meaningful benefit. However, I cannot support the Republican Medicare prescription drug bill because it forces seniors to choose between paying more for their own doctor or signing up with an HMO; leaves seniors to pay thousands in out of pocket costs; eliminates employer drug coverage for 2.7 million retirees; prevents efforts to keep drug costs down; and effectively prohibits seniors from importing cheaper drugs from Canada.

I recognize that this bill commits $400 billion to a Medicare prescription drug benefit and truly helps some low income seniors who are without coverage today, and I am glad that it gives a critical boost to rural hospitals and doctors. But the fine print matters and will have very dangerous consequences for how much seniors have to pay for their Medicare benefit, whether this drug benefit really serves seniors, and whether we are strengthening or weakening Medicare for the future. I have always said that a Medicare prescription drug bill must be voluntary, affordable and accessible to all Medicare beneficiaries; must truly help with the high cost of prescription drugs; and must strengthen the Medicare program for the future. This bill fails on all counts.

West Virginians and many of my colleagues know I have been working on Medicare for 20 years. I sat on the Medicare Commission for a year during which we debated the best way to improve Medicare. Before that, I chaired the U.S. Bipartisan Commission on Comprehensive Health Care, which discussed ways to address the problems of the uninsured and the need for long-term care reform in this country. Today, I am the ranking member of the health subcommittee of the Senate Finance Committee. I was a member of the conference committee on this bill—but in name only, not in practice. Nevertheless, my goal has always been, and continues to be, improving Medicare and the quality of health care available to all Americans. This bill does not improve this program. This bill harms this program—actually harms Medicare.

This bill is a tool to force seniors to leave the traditional Medicare program they know and trust in order to obtain the drug benefit they need and deserve. Many people have said that this plan is voluntary and, therefore, if a senior chooses to stay in traditional Medicare and get a drug benefit, he or she can do so. This legislation does not guarantee that in any way. Under this legislation, seniors will have two different options for receiving a drug benefit. The first option is to stay in traditional Medicare for their doctor and hospital services and enroll in a ''drug-only plan'' to receive their drugs. The second option is to give up traditional Medicare and enroll in a HMO or PPO for all of their health care services. You may ask: what is a drug-only plan and how does one work? The answer is that we have no idea because no such entity exists today. It is a completely new concept

which the Administrator of CMS said does not exist in nature and would probably not work in practice. The former head of the Health Insurance Association of America said that drug-only plans are like insuring against haircuts. So, it's completely uncertain whether these plans will emerge, but let's say for a moment that they do. Well, at least seniors should be assured that they can remain in traditional Medicare and get a prescription drug benefit, right? Wrong. There is no limit on what these drug-only plans can charge seniors none at all. These plans could charge seniors $100, $500, or even $1,000 per month. These premiums could be completely prohibitive. West Virginia seniors will certainly not be able to afford premiums that high. If that is the case, seniors will not really have the option to stay in traditional Medicare and get a prescription drug benefit. They will be forced to enroll in an HMO in order to get a drug benefit and that is not what our seniors want.

Again, to be fair, this bill has some provisions, including those affecting physician services and rural hospitals that will be helpful to my home State of West Virginia. I fully recognize that; in fact, I pushed for these because I understand that good care is critical to good health, and that we must adequately reimburse Medicare providers for that good care.

However, despite this, I have grave concerns about the compromise produced by the Conference Committee charged with reconciling differences between the House- and Senate-passed Medicare reform bills. I was on the conference committee. I understand the arguments on both sides. And now, more than ever, I believe that the Congress needs to pass a meaningful prescription drug benefit that gives seniors more for their money, not less. I do not want to privatize Medicare, undermine existing retiree coverage, or force seniors to flip-flop between plans. Unfortunately, this bill would do all of that and more. Today, 339,000 seniors live in West Virginia. Nearly 30,000 West Virginia seniors will lose their employer-sponsored prescription drug coverage simply because of the enactment of this bill. As health savings accounts (HSAs) created by this legislation select and cover healthier, younger seniors, employers will be left to cover sicker, older seniors. Employers will see their health care costs rise and they will be priced out of continuing to provide employees or retirees with coverage, leaving remaining retirees with a benefit that is less desirable than they had before. Meanwhile, 70,000 West Virginia seniors will fall into a $2,800 coverage gap, forcing them to bear the total cost of their drug themselves until they reach the end of that gap. In fact, the available benefit will be so stingy that many seniors will pay more for this drug plan than they will receive in actual drug benefits.

At the same time, private insurance plans will be assured even greater profits through a $12 billion ''slush fund'' created by this legislation. Proponents argue that this ''slush fund'' is necessary to bring HMOs into rural areas. The fact is that this additional funding is necessary because HMOs have overhead costs. They have to pay their investors, provide a return to their stockholders and they have to pay for good marketing materials because that's the best way to skim off the healthiest seniors. On average, private plans have administrative costs that are about 15 percent of total spending whereas Medicare's administrative costs are 2 to 3 percent of total spending. There is no way that private plans can be as efficient as Medicare. Yet I am not opposed to allowing them to compete fairly with Medicare. However, we should make them compete on a level playing field. We should make them compete by creating efficiencies. We shouldn't take money away from the highly efficient Medicare program and give it to the HMOs to help them instead of seniors. That is not the free-market at work. That is not real competition. And, while a ''premium support'' demonstration, which effectively allows a voucher system instead of a real Medicare prescription drug benefit, will take place in six metropolitan statistical areas (MSAs) initially, I believe we can safely assume that this demonstration is meant to be standard at some point. This demonstration is expected to raise monthly Medicare premiums by 26 percent.

Perhaps most disturbing, 45,000 ''dual eligible'' beneficiaries will pay more for every prescription drug they receive under this legislation. Dual eligibles are seniors who qualify for Medicaid by virtue of their income. They currently receive drug coverage under Medicaid. In my State of West Virginia, these seniors pay between $0.50 and $2.00 per prescription depending on the total cost of the drug. Under this legislation, they could be required to pay twice that much. I want to be clear on this point because I was among those insisting that the dual eligibles be included under the Medicare benefit and not left in Medicaid. I believe this conference report does the right thing by including these seniors in the Medicare benefit. However, this legislation precludes States from ''wrapping around'' Medicare. In other words, States will not receive any Federal dollars for assisting dual eligible beneficiaries with the costs not covered by Medicare. This is unprecedented. For every other benefit covered by Medicaid but not by Medicare, the states receive a Federal match to provide those benefits to our poorest seniors. For example, Medicaid covers long-term care but Medicare does not. So, for those seniors who are also eligible for Medicaid, the Federal Government provides matching dollars to states to provide long-term care to dual eligibles. This conference report completely twists that concept of protecting our poorest seniors against increased costs in an unprecedented way. This arrangement represents a fundamental change in the relationship between Medicare and Medicaid. Many predict that the individuals affected will choose to forgo the prescription drugs that they need rather than try to pay what they cannot afford.

In my judgment, this bill represents the greatest threat to the Medicare program since its enactment. While numerous opportunities existed to strengthen it, they were wasted. Instead of devoting $12 billion to closing the $2,800 coverage gap, this conference report gives it to HMOs. Instead of protecting the right of our seniors to stay in traditional Medicare and get a prescription drug benefit, this bill protects the rights of the private plans to charge any premium they want. Instead of shoring up retiree coverage for the two to three million beneficiaries across the United States who will lose drug coverage as a result of this bill, this bill includes tax shelters that threaten to undermine the entire employer-based system. This bill is a give-away to special interests, compiled in the dead of night, under wraps. It is shameful. Public policy, like life, is about choices and this bill makes all the wrong choices for our seniors.

While I have painted a bleak picture, I strongly believe that we can avoid disaster. We can do so by putting this bill aside and coming back to the table with a proposal that helps seniors and protects the long-term viability of what is a truly great program. We can take into account the seniors who won't benefit from the low-income provisions in the bill. We can protect retirees, and we can implement positive reform that is productive, not destructive, confusing, or manipulative. It is not too late. It is not too late. I urge my colleagues to reject this bill and to immediately go back to work for the kind of Medicare drug benefit seniors deserve.

Mr. COLEMAN. Mr. President, we stand here today at a historic moment in this country as we begin consideration of the Medicare prescription drug bill. This bill is a triumph not for a party or a President but for America's seniors and their families. This is an incredibly hopeful day for all Americans who long for a national government that can get things done for people.

I campaigned on a promise to get things done—deliver to the American people what they need to live better lives and what they are looking to Congress to accomplish to make America a stronger country. Prescription drugs, energy, partial-birth abortion were all at the top of the list of issues that most Americans were looking for Congress to take action. Their seemingly simple request was for us here in Washington to put politics aside and do what is right for the American public.

I am proud to say we are seeing that happen with this Medicare bill. This is a bipartisan effort that, although not

perfect, makes a good start at addressing the needs of Minnesota's seniors and health care providers as well as those across this country.

This is the largest and most comprehensive rural health care improvement package ever contemplated by this body. Last year, as I campaigned across Minnesota and spent many hours talking to our rural health care providers, it was apparent to me that most of our hospitals and doctors had given up hope for fair Medicare reimbursement.

Thanks to the strong leadership of Chairman GRASSLEY, we have a bill before us that has $26 billion—or $2.6 billion each year for 10 years—for rural providers, something that one short year ago seemed nearly impossible.

Quality rural health care is one of the foundations of our rural communities—this isn't simply about making sure our rural hospitals are adequately reimbursed. This is about preserving a way of life in America.

Without rural hospitals and physicians, it is tough to raise a family and hard to attract new businesses to rural communities. Without access to health care, many of our out-state towns simply couldn't exist.

This bill seeks to eliminate many of the disparities in reimbursement rates that have existed too long and crippled the rural health system. Hospitals, physicians, and ambulances, as well as all of those health professionals who work within these systems will not see Medicare reimbursement rates that better reflect the realities of the costs of providing care in rural communities.

As I look back on the accomplishments of the first session of the 108th Congress, addressing the rural health care payment disparity under the Medicare program will undoubtedly be one of the most meaningful achievements to Minnesotans. Many said it couldn't be done, and today I have the great opportunity to come to the Senate floor and tell my constituents that we will be voting on a bill that takes a major step in providing equality with urban payments that will significantly improve their ability to provide quality care.

Minnesota has a long tradition of providing high quality care, but many of our seniors have not had access to this care because of the lack of prescription drug coverage under the Medicare program.

Again, I have the great honor coming here and announcing to the seniors back home that help is on the way.

Beginning in 2006, the 677,400 Medicare beneficiaries in Minnesota will have access to drug coverage for the first time in the history of the Medicare program, and 187,356 of these people would not otherwise have access to drug coverage.

That means access to new drug therapies that could never been imagined in 1965 when Medicare was created. It is time to bring this program in line with current medical practices. A 1965 Cadillac is a classic. A 1965 health care benefit is a travesty.

This bill will provide prescription drug coverage for 41 million people in this country—41 million people! Is this the perfect benefit? I'm not sure what the perfect benefit realistically looks like. But I do know that the average senior's drug costs will be cut roughly in half under this proposal. That is meaningful assistance for all seniors and the bill provides even more assistance for those low-income seniors who need us to shoulder even more of the burden.

Let's not let perfect be the enemy of good. In the words of the AARP, one of the largest senior associations, ''Millions of Americans can't afford to wait for perfect.''

And we know that drugs are most effective when used to prevent the onset of a health condition. Right now almost 93 percent of our health care dollars go to treat a person who is sick. While we have amazing screening and early detection capabilities, we have a program that waits for people to develop dangerous and costly conditions before they can receive care.

It appears to me that this is a 1965 model of care, not a model that belongs in a 2003 health care system. This bill for the first time includes a ''Welcome to Medicare'' physical that will allow beneficiaries to get an assessment of their health condition and possibly detect conditions that could possibly escalate over time. It also includes cardiovascular screening, blood tests and diabetes screening that will be available without deductibles or co-pays to encourage seniors to take advantage of these benefits.

I want to stop for a moment at the word ''encourage.'' It is absolutely critical for every senior to know that they don't have to take advantage of the preventive screenings, they are not required to participate in the prescription drug plan, and most importantly, no seniors under this proposal are forced into a private health plan. Every senior who chooses to remain in traditional Medicare has that equally important option under this bill.

This bill is about expanding choice. Time and time again I hear from seniors who have said they want to receive the same benefits that my colleagues and I here and in the House of Representatives enjoy. This bill is about giving seniors the option to participate in a plan that looks very close to the benefits that I and most individuals in the private sector enjoy.

This bill is good for our seniors, it is good for health providers, and it is good for the American public who are tired of the partisan battles that have characterized this Congress. I thank Senators GRASSLEY and BAUCUS and the members of the conference committee who have crafted this bipartisan Medicare package. This is a truly historic time in this body's history.

As we look toward completing our work for this first session, I am hopeful that the spirit of cooperation that has led to this bill will be extended to the many important issues we will leave unresolved this year.

The Thanksgiving season is upon us. Our work in this session is nearing completion. But our work will not be done until and unless we seize this historic opportunity and bring a prescription drug benefit and hopes for a better and healthier life and make this a Thanksgiving to remember for all the right reasons for our senior citizens and their families.

Mr. BYRD. Mr. President, the Republican leadership and even a member of the President's Cabinet twisted arms and bullied individual House Members late in the night and into the wee hours of Saturday morning. A roll call vote was held open for almost 3 hours—the longest House roll call vote in history—until enough Members ignored their conscience, cried ''mercy,'' and voted ''yes'' on the Medicare bill.

I believe most Americans would find such tactics repulsive and unbecoming of how Members of Congress should behave. One might expect to see such arm twisting and intimidation during a prisoner interrogation scene in an episode of ''Law & Order,'' not a voting session of Congress—especially on a vote of such great importance to the citizens of this country.

What happened the other night was nothing short of a subversion of the democratic process itself and a subversion of the democratic principles our Founders stood for. Is this the manner of legislating that our Founding Fathers had in mind when they so craftily designed the political institutions of this country? I do not believe it is the scenario our Founders envisioned when they created the Senate—to act as the ''saucer,'' as George Washington so wisely said, to absorb the overheated passions pouring out of the House of Representatives.

If ever there were a time for the Senate to act as that ''saucer,'' it is now. It is a time when the health care security of 40 million senior citizens, and millions of Americans for years to come, could be on the brink of collapse as a result of this bill. We may even be in a race toward the finish line of Medicare itself. And I am afraid that the race is driven by partisan politics, extreme ideological fervor, and blatant special-interest greed—all at the expense of our Nation's most vulnerable citizens. Will the Bush administration and Republican leadership of this Congress stop at nothing in order to get what they want?

I am bewildered as to why we are engaged in such a mad stampede to ram this bill through the Congress—especially when this legislation will not take effect until 2006. I have been around long enough in Congress to know that the actions of today's leadership smack of arrogant politics and calculated indifference.

The more I read through this Medicare bill, the more I become convinced

that history is again repeating itself. I can recall a painful experience during my majority leadership when an outraged citizenry, composed mostly of seniors, forced Congress to repeal the ill-fated Medicare Catastrophic Coverage Act back in 1989. The year before, Congress was engaged in a Medicare debate eerily similar to the one we are having today. An agreement was reached to make the most sweeping change in Medicare's ''then'' 23 years of existence.

At that time, Congress agreed to two key changes to the Medicare Program—a prescription drug benefit and a ''stop-loss'' protection from catastrophic medical bills. Facing deficits as we do today, Congress decided that beneficiaries should pay for the new benefits themselves, with the wealthiest paying the most. The new law included a complicated benefit that was too difficult to explain and a lengthy delay in the benefit's taking effect. In the end, seniors saw the bill, and wanted no part of it. After angry protests, it was repealed. We are poised to make the same mistake again.

I foresee a great deal of confusion and dismay occurring around kitchen tables across America when people actually start to read beyond the newspaper headlines and see the fine print of this plan three years from now. Seniors may not know whether to laugh or cry. And if seniors reject this new Medicare plan, it will fail and fail miserably.

When senior citizens wake up in 2006 and find out what this bill is really about, it will not be the turkey that needs to be eaten on Thanksgiving day, it will be all of us in Congress eating crow.

We should not let political ideology drive our Nation's Medicare policy when we are dealing with the health care and lives of the most vulnerable in the country. I am worried that this body is being asked to hand over one of the most popular Government programs in history to private insurance companies. I have been down this tortured road before during my 51-year tenure in Congress. My constituents and others around the Nation are reeling from public programs that have been turned over to the so-called free market. Utility rates, cable rates, airline rates, you name it, the free market has ensured exorbitant prices with diminished service. Pensions and retirement security have taken a similar beating.

So here we are again, this time being presented with a rosy scenario about how private industry competition will improve the Medicare program. The rhetoric is familiar: increased competition, lower costs, and greater services will be provided. Yes, the rhetoric is familiar, but so is the reality. This scheme will not deliver what it promises.

I fear that we are going to wind up with a patchwork across the country of differing coverages, differing plans, differing copays and differing premiums. No senior will know for sure what they can count on.

Analysis of the GOP Medicare bill estimates that 31,000 Medicare beneficiaries in West Virginia will lose their retiree health benefits as a direct result of this package. Nearly 45,000 Medicaid beneficiaries in West Virginia will pay more for the prescription drugs they need. As many as 27,700 fewer seniors in West Virginia will qualify for low-income protections because of the assets test and lower qualifying income levels. More than 7,500 Medicare beneficiaries in West Virginia will pay more in Medicare premiums because of income means-testing.

Let's slow down and take a better look at this legislation and the unintended consequences. We need more time to explain this plan to our elderly citizens. Don't we need their feedback? I doubt that our Nation's seniors will be excited about accepting a bill that poisons the well. Seniors will likely want no part of it—especially when they see how it will undermine the rest of Medicare down the road. Just like they did almost 15 years ago, they may revolt, and Members of Congress could be back here scratching their heads and scrambling to find a solution and save their seats.

This bill fails our seniors. It sells senior citizens out in exchange for big profits for prescription drug companies. America's senior citizens and disabled citizens deserve more than some new hocus-pocus scheme that leaves them naked to the whims of private insurance companies, and offers only a new-you-see-it, now-you-don't promise of coverage. Instead of selling illusions, Congress ought to go back to work and settle on a good, comprehensive, voluntary Medicare prescription drug benefit.

Let's not shortchange our seniors. We owe them much, much better.

Mr. CHAMBLISS. Mr. President, I rise today to voice my concerns with the conference agreement on H.R. 1, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

My original intentions were to work with this body to create and provide a fiscally responsible prescription drug benefit for seniors who are in need. My primary responsibility and obligation through this process was to make sure that Medicare beneficiaries with the lowest monthly income and the highest monthly drug bill were taken care of. That obligation has been fulfilled by this agreement.

This bill will provide almost 1 million Georgia seniors with completely voluntary access to a Medicare prescription drug benefit for the first time in the history of the Medicate program. Starting next year, low-income seniors will get drug cards that provide $600 worth of assistance for prescription drugs. Seniors will be covered with access to an initial physical and other new preventive benefits such as cholesterol and diabetes screenings. This legislation creates new Health Savings Accounts, HSAs, to pay for qualified medical expenses, available to all beneficiaries with contributions allowed from employers and family members.

Beginning in 2006, all Medicare beneficiaries will be eligible to get prescription drug coverage though a Medicare-approved plan. In exchange for a monthly premium of about $35, seniors who are now paying full retail price for prescription drugs will be able to cut their drug costs roughly in half. Lower-income seniors could qualify for more generous benefits, including reduced premiums, lower deductibles and coinsurance, with no gaps in coverage.

With Medicare beneficiaries receiving access to a prescription drug benefit, Medicare instead of Medicaid will be assuming the prescription drug cost of roughly 172,000 beneficiaries in Georgia. This could equal $469 million in added savings over the next eight years for the State of Georgia.

The bill also would increase Medicare funding for doctors, hospitals and other health care providers, particularly in rural areas, where reimbursement levels are far below what is paid in urban areas of the country. Additionally, the bill provides cost incentive to encourage companies to retain the health coverage they provide their retirees. I want to voice my support for all of these provisions.

Following my review of the conference report, however, I can't help but feel that this is not the best we could do. I feel like we missed the mark on trying to ensure Medicare's solvency. While we are trying to ensure that prescription drug coverage is provided for those seniors who need them, we should also ensure that future generations are not overburdened by the costs of this expanded entitlement program.

Attempts to cap the bill's cost have been diluted. Instead of putting cost containment provisions in the legislation, there is a vague transfer of power from today's lawmakers to future lawmakers to handle the cost when it becomes a problem. In 2007, the Congressional Budget Office has estimated that the bill will cost $40.2 billion. By 2013, that price tag hits $65.2 billion. I am not comfortable leaving these problems to be dealt with in the future. If we cannot logically solve them now, how do we expect future Congresses to tackle cost containment while this program is spiraling out of control?

Helping today's seniors with access to prescription drugs must be balanced with our responsibility to future generations, our own children and grandchildren. These generations will have to pay, literally, for our miscalculations. They will be able to look back and see clearly when and where we made mistakes. Today, future generations are a main concern of mine because I think this bill lacks some common sense regarding fiscal restraint. It

has the potential to expand our budget deficit for years to come. Placing the cost burden of an entitlement program on the shoulders of our children's generation seems very unfair. Shouldn't it be possible for this legislative body to create a prescription drug benefit plan that is fiscally responsible? Have we successfully done this? With a cost containment trigger we could have done just that and we have missed the opportunity.

In addition to the looming fiscal problems of this measure, I am also very concerned with cuts for the reimbursement of drugs for cancer treatment. Community oncology practices in Georgia and nationwide will be at risk of closing their doors because of these cuts. When approximately 1.4 million people are diagnosed with new cases of cancer each year and approximately 550,000 people die from cancer each year, why are we decreasing these drug reimbursements?

Our small town pharmacists may also experience financial risk as a result of the passage of this bill. They play a fundamental role in delivering these benefits to our seniors. Pharmacy Benefit Managers, PBMs, should be required to report all financial concessions they receive from manufacturers such as discounts, rebates, and indirect subsidies and should be audited to ensure accountability. I want to ensure that these pharmacists will be able to compete on the same level as the PBMs and purchasing by mail so that they can continue serving their patients. We also need to acknowledge and protect the role of medication counseling services provided by our pharmacists as this is a valuable benefit to the patient.

Another concern is the lack of flexibility within the Medicare program. Competition among private healthcare plans in Medicare will help ensure more up-to-date coverage and gives seniors the ability to choose the healthcare plan that best meets their personal health needs rather than a one-size-fits-all government plan. A Medicare-approved private healthcare plan needs flexibility in designing benefits so that seniors can have the option to choose the coverage that makes the most sense to them and best suits their health needs. Seniors deserve choice and flexibility within their benefits, and this bill does not give seniors the full extent of flexibility they deserve.

Lastly, the means testing provisions included in this bill are positive but are not strong enough. Our goal should be to help those seniors who cannot afford life saving drugs and currently have to make the difficult choice between putting food on their table and buying the prescriptions they need. We should not waste taxpayer money on subsidizing wealthy seniors who can easily afford to pay for their own medicines.

Individuals who fall into the category of 150 percent of Federal poverty level or those with a total income of $13,470 or less will receive great benefits. However, the gaps in coverage for the middle class will make this legislation somewhat effective or possibly even more costly for certain beneficiaries. Protecting those most in need is imperative, but we cannot sacrifice those folks that fall in the middle.

The decisions we will make today by voting for this measure will affect the health of every American and significantly impact future taxing and spending of generations to come. I stand before you today burdened by trying to make the best decision for America's seniors, for Medicare solvency, and for the financial security of our children and their future generations.

This bipartisan agreement is a necessary step to completing the promise we made to seniors, and that is to provide prescription drug coverage. It is for this reason only that I will vote for this conference report, but I will continuously seek ways to improve this program by seeking stronger cost containment provisions and increasing the flexibility for the plans.

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

Mr. KOHL. Mr. President, I rise today to oppose the Medicare conference report. Once again, the Senate is on the verge of passing a bill that is good for everyone—except the people the bill is supposed to help. Our Nation's seniors rely on Medicare and are asking for Congress' help with a real Medicare drug benefit. This bill doesn't give it to them. Instead, it is a dream package for drug companies, insurance companies, and the people who make TV ads for politicians. And it is a nightmare for too many Medicare beneficiaries.

Our elderly and disabled citizens rely on Medicare. They know it and they are comfortable with it. They know it will cover most of their health care needs whether they're healthier or sicker, middle class, affluent, or low income.

For years now our seniors have asked us to add a prescription drug benefit to Medicare to help them pay for the costs of their medication. It is a simple, straight-forward request that this bill meets with a confusing, costly, and damaging response. The bill changes Medicare from the reliable, popular program that has worked for seniors since 1965 to a Government subsidy program for private insurance companies.

The bill fundamentally changes the nature of Medicare. Instead of enhancing the current guaranteed benefit under Medicare with prescription drug coverage, the bill allocates billions to insurance companies to entice them to serve Medicare beneficiaries. In fact, the companies will be paid more than it costs traditional Medicare to cover seniors. And on top of that, there is a new $12 billion slush fund to beg them to enter the program.

And what will these insurance companies do with this extra money? They will design their plans to attract the healthiest, wealthiest seniors—and leave poorer, sicker seniors in traditional Medicare facing higher costs.

This is no small point. Medicare has worked for decades because it is a universal, reliable program. People believe in it, and it has worked well for them. But this bill, which was supposed to simply add a new prescription drug benefit, instead changes Medicare to a new system of winners and losers.

This fundamental weakening of the Medicare system is bad enough, but even worse is the process by which Congress is considering the changes. The conference report was put together by a small group behind closed doors. It is over a thousand pages long and is extremely complicated. But we're being given only four days to read and digest this massive bill—this massive shift in the way we provide health care to our seniors.

Why are we rushing to vote? Are we afraid of seniors learning the truth about what's really in this bill? This bill makes the most sweeping changes to Medicare since its creation, and we have barely had time to examine it. Our seniors deserve more than a cursory glance and crossed fingers that everything will work out.

Our seniors also deserve a real prescription drug benefit that gets the best prices for their medication. But this bill actually prohibits the Federal Government from negotiating with drug companies for lower prices. What a huge missed opportunity. What a waste of taxpayers' dollars. We could have used the tremendous purchasing power of the 41 million Medicare beneficiaries to make sure that prices are fair. Instead, this bill is a windfall for the drug industry. Just look at drug companies' stocks shooting up over the last few days; it is clear who the winners under this bill are.

The drug benefit itself is far less generous than seniors expect and deserve—and for many seniors, it will do more harm than good. Many seniors will still be responsible for most of their drug costs. Those with drug costs below $810 a year will actually pay more than they do today if they sign up for the drug benefit. Seniors with drug costs of $5,000 will still pay almost $4,000 themselves—almost 80 percent of the bill. There is a giant hole in the drug benefit—a gap in coverage where seniors continue to pay their monthly premiums but get absolutely no help from Medicare with their drug bills. I voted against the original Senate bill in part because of this gap. Now instead of closing the gap in conference, this bill actually doubles its size.

Even worse, this bill will cause many retirees who already have good drug coverage through their former employers to lose it. According to the Congressional Budget Office, 2.7 million seniors nationwide could lose their current coverage, including as many as 60,000 in Wisconsin. These seniors

worked hard to earn retiree health coverage. That coverage will now be in jeopardy.

In addition, while there is additional help for some low-income beneficiaries, millions of poorer seniors will be worse off because of this bill. Up to 6 million seniors who are eligible for both Medicare and Medicaid—the poorest of the poor—will have higher costs. Up to 110,000 dually eligible seniors in Wisconsin could be affected. In addition, the bill cuts out the extra help for millions of low-income seniors if they fail a restrictive asset test.

There are some good things in this bill. It includes an increase in Medicare payments to Wisconsin that will finally begin to level the playing field for Wisconsin's doctors, hospitals, and seniors. I am pleased that this was included.

I know there are some who say we can't afford to wait for a perfect bill. But I believe that this bill is not just far from perfect—it will actually do harm to many of our seniors and will waste billions of taxpayer dollars in a giveaway to the insurance industry and drug companies.

This drug benefit is nowhere close to what seniors have asked us to deliver. They wanted to pay less for their prescription drugs. We could have done tremendous good here. We could have brought the price of drugs down using bulk purchasing through Medicare, greater use of generic drugs, and allowing seniors to purchase less expensive drugs from Canada. Instead, we have a complicated and skimpy drug benefit, huge subsidies to drug and insurance companies, and a sea change in the Medicare Program. This is not what seniors asked for, and they will not be fooled. When they learn the details of this bill, they will rightly revolt.

There are those who say we have to pass this bill today because we'll never have another chance. That is ridiculous. We have only had four days to look at this 1,000-page bill. We haven't had any time to go back home and discuss this with out constituents. How can we represent the seniors in our States when not one of them has had a chance to see, digest or comment on this bill.

This bill doesn't even go into effect until 2006, so why the rush to pass it today? With a mere 4 days of study, we are about to enact historic, sweeping changes to Medicare. The people we represent deserve a much more serious effort.

I do not believe that this bill is our last and only chance. If this bill is defeated, we can't and won't give up on a real, effective and smart prescription drug benefit in Medicare. We can't and won't turn our backs on doctors, hospitals and health care providers. We can do better if we have the will and the courage to do it.

Mr. KENNEDY. Mr. President, I rise today to say a few words about Section 1101(d), a provision of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 relating to the Hatch-Waxman Act and the authority of Federal courts to entertain actions for declaratory judgments. This provision originally was added in the Senate, as part of the Greater Access to Affordable Pharmaceuticals Act, and formed Section 702(c) of S. 1, the bill passed by the Senate. I will discuss today some of the changes made to this subsection in conference, and what this provision is intended to accomplish.

Lower Federal courts typically have required that a declaratory judgment plaintiff satisfy the ''reasonable apprehension test'' before being allowed to bring declaratory judgment actions in Federal court.

Section 1101(d) provides that, so long as a generic drug company has filed an Abbreviated New Drug Application, ANDA, and the patentee has not filed suit within 45 days of receiving notice, ''the courts of the United States shall, to the extent consistent with the Constitution, have subject matter jurisdiction in any action * * * for a declaratory judgment that such patent is invalid or not infringed.'' This subsection will provide relief to alleged patent infringers—at least in the Hatch-Waxman context—in several ways.

First, this language sweeps away the type of discretionary barriers to a declaratory judgment action imposed in decisions such as EMC Corp. V. Norand Corp. The Federal Circuit in that case found that the district court actually had jurisdiction to entertain a declaratory-judgment suit. It nevertheless allowed the district court to dismiss the action, holding that district courts may do so unless ''there is no real prospect of non-judicial resolution of the dispute.'' The Federal Circuit apparently felt that a patentee should be able to use what may prove to be an invalid patent as a source of ''bargaining power'' in license negotiations.

This refusal to entertain a litigant's action where jurisdiction unquestionably exists is, of course, at odds with the rule, announced 182 years ago in Cohens v. Virginia, that the Federal courts ''have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'' Blame for this practice, however, cannot entirely be laid at the feet of the Federal Circuit. The Supreme Court, in the 1995 Wilton v. Seven Falls Company case, affirmed that Federal courts have ''unique and substantial discretion in deciding whether to declare the rights of litigants.'' Wilton identified two sources of this discretion: it found a ''textual commitment to discretion'' in the Declaratory Judgment Act, emphasizing the act's use of the word ''may.'' And it noted the courts' history of recognizing discretion to decline declaratory-judgment actions.

Section 1101(d) directly sweeps away the type of discretion allowed in the EMC Corp. case. First, and most importantly, it replaces the word ''May''—the textual source of the discretion identified in Wilton and EMC Corp.—with the word ''shall.'' Second, simply by creating a new source of authority to entertain declaratory judgments in the Hatch-Waxman context, section 1101(d) disentangles such actions from the tradition of discretion associated with the Declaratory Judgment Act. Armed with the word ''shall,'' this new section starts afresh, with no reason to be exempted from the usual (Colorado River) rule that Federal courts have a ''virtually unflagging obligation * * * to exercise the jurisdiction given them.'' With this new provision, generic-drug companies never will be denied access to a declaratory judgment action on the basis of pending or potential license negotiations, at least so long as the suit otherwise is constitutionally sufficient for presentation in an Article III court.

This last matter—when the case or controversy requirement for a declaratory judgment action is satisfied—is the subject of the second major aspect of section 1101(d). I and other Senate proponents of this subsection believe that the reasonable-apprehension test demands more than is required by the constitutional case-or-controversy requirement. We are fortified in this view by two letters received by the committee of jurisdiction from Professor John Yoo. Rather than repeat all of Professor Yoo's analysis, I will simply include his letters at the conclusion of my remarks. As Professor Yoo notes in his first letter, the reasonable-apprehension test is ''[not] demanded by the Supreme Court's interpretation of the Declaratory Judgment Act.'' He suggests that the test may be viewed as an exercise of the court's discretionary power.

Section 1101(d) shifts the focus of a court's inquiry to whether the requirements of Article III are satisfied. In deciding when a Hatch-Waxman declaratory judgment suit may meet the requirements of Article III, the courts should focus on the actual components of the case-or-controversy requirement. In the 1998 Steel Company decision, the Supreme Court reiterated that the ''triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement.'' In setting the constitutional standard for allowing declaratory judgments, the Supreme Court in its 1937 Aetna Life Ins. v. Haworth decision focused on the dispute's adverseness, definiteness, concreteness, and the specificity of the claims. this language inevitably invokes the injury-in-fact element of the Article III standing inquiry. It is from the injury-in-fact case law—which asks whether an injury is concrete and particularized, and actual or imminent—that the courts might draw new standards for a constitutionally adequate case or controversy in the declaratory judgment context.

It thus bears mention that the Supreme Court has not hesitated to find

actual Article III injury where a plaintiff forewent a legally cognizable benefit as a result of being actually and reasonably deterred from particular conduct. Just 3 years ago, for example, the court held that even where a defendant's environmental discharges caused no harm to the environment, environmentalist plaintiffs had standing where their ''reasonable concerns about the effects of those discharges, directly affected [their] recreational, aesthetic, and economic interests.'' And in 1979's Babbit v. United Farm Workers, the court found that plaintiffs deterred from constitutionally protected conduct had standing to challenge the offending statute where the threat of its enforcement was ''not imaginary or wholly speculative.'' The Court further specified that the plaintiffs were ''not without some reason in fearing prosecution'' where ''the State has not disavowed an intention'' of enforcement, a fact that rendered the positions of the parties ''sufficiently adverse, * * * to present a case of controversy within the jurisdiction'' of the Federal courts. And—closer to the context of a section 1101(d) plaintiff—the court has inquired, when evaluating commercial plaintiffs standing in 1975's Warth v. Seldin, whether the defendant's actions ''delayed or thwarted any project currently proposed.''

I would also note that some courts have applied case-or-controversy tests in the declaratory judgment context that, in their standards and focus, are not dissimilar from what is suggested by the Supreme Court's injury-in-fact caselaw. For example, in the 1974 case Blessings Corp. v. Altman, the district court for the Southern District of New York held that ''any lingering possibility of an infringement charge is sufficient to support the finding of an actual controversy so long as the plaintiff can demonstrate some actual harm to its business.'' Similarly, in the 1986 case Research Institute v. Wisconsin Alumni, the district court for the Western District of Wisconsin concluded that ''a perceived threat of infringement is real''—and would satisfy Article III requirements—so long as ''it would be a substantial factor for most business people in their choice to proceed in one direction and not in another.''

Congress, of course, does not presume that any of these cases sets the proper case-or-controversy standard in the context of a patent-infringement declaratory judgment action, or that 1970s standing decisions still are good law. Nevertheless, these cases do at least suggest the proper focus of inquiry: whether the would-be patent challenger has been reasonably and actually deterred from undertaking a profitable enterprise.

Finally, should the courts be unwilling to wholly abandon the reasonable apprehension test for purposes of analyzing the requirements of Article III, the conferees have left them options short of striking down section 1101(d). Unlike the Senate bill, the conference report does not gamble all on the hope that courts will find the filing of an ANDA—which automatically constitutes an act of infringement—to always qualify as a constitutionally adequate case or controversy. The final act leaves the courts with options short of striking down section 1101(d), if more is required. By including the language ''to the extent consistent with the Constitution,'' the conferees have allowed the courts to import as much of the reasonable-apprehension test as they feel is constitutionally necessary. As the report language makes clear, this may include the entire reasonable-apprehension test as currently construed by the Federal Circuit. As Federal Circuit Judge Gajarsa observed in his concurrence in the Minnesota Mining case, that test will ordinarily be satisfied in declaratory judgment actions brought by ANDA applicants with respect to patents listed in the Orange Book. In any event, the courts should impose prerequisites to seeking declaratory relief—whether reasonable apprehension, the standing tests suggested here, or any other requirements—only ''to the extent required by the Constitution.''

I ask unanimous consent that two letters from Professor Yoo be printed in the RECORD.

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

BOALT HALL SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA AT BERKELEY,

Berkeley, CA, June 14, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I have been asked by the Generic Pharmaceutical Association to provide my views concerning the constitutionality of a proposed amendment to the Hatch-Waxman Act. The amendment would allow a generic drug manufacturer who has filed an abbreviated new drug application (ANDA) to seek federal declaratory relief against potential patent infringement claims. It is my opinion that this provision is clearly constitutional.

Let me begin with a note of introduction. I have long worked on separation of powers issues involving the courts. It was my great honor to have served as the General Counsel to this Committee under your Chairmanship from 1995–96. I also recently served as Deputy Assistant Attorney General in the Office of Legal Counsel of the Department of Justice, which is charged in part with advising the executive branch on the constitutionality of proposed legislation. I have clerked for Judge Laurence Silberman of the U.S. Court of Appeals for the D.C. Circuit and for Justice Clarence Thomas of the U.S. Supreme Court. I am currently a visiting fellow at the American Enterprise Institute and a professor of law at the Boalt Hall School of Law, University of California at Berkeley, where I have taught and written in the fields of constitutional law, the separation of powers, and civil procedure since 1993. The conclusions expressed here are my own, and do not represent the views of the American Enterprise Institute or the University of California.

In order to evaluate the constitutionality of the proposed changes, it is necessary to first understand the statutory framework at issue. Under the Federal Food, Drug, and Cosmetic Act, a pharmaceutical company that seeks to manufacture a new drug must file a new drug application (NDA) with the FDA that includes information about the drug's safety and effectiveness. 21 U.S.C. §355(a). The NDA must also include a list of patents upon which the drug is based. If the FDA approves the NDA, it publishes the drug and the patents in the Approved Drug Products with Therapeutic Equivalence Evaluations (''the Orange Book'').

The Hatch-Waxman amendments created a streamlined process for the FDA to review applications by drug manufacturers to produce generic versions of drugs previously approved by the NDA process. Under an ANDA, a generic producer may rely in part on the NDA of the pioneer manufacturer by showing bioequivalence with the NDA-approved drug. 21 U.S.C. §355(j)(2)(A). Under Hatch-Waxman, it is not patent infringement to conduct actions necessary to prepare an ANDA, 35 U.S.C. §271(e)(1), but it is infringement to file the ANDA itself before the expiration of the patents that include the pioneer drug, id. §271(e)(2). An ANDA applicant must make one of four certifications as to the patents listed in the Orange Book for the pioneer drug it seeks to manufacture: i) no patent information has been submitted to the FDA; ii) the patent has expired; iii) the patent will expire on a specific date; iv) the patent is invalid and will not be infringed by the generic drug.

When an ANDA makes the fourth certification, known as a Paragraph IV certification, the applicant must give notice to the patent holder and explain why the patent is invalid, unenforceable, or not infringed. 21 U.S.C.§355(j)(2)(B)(i). The patent holder may sue for infringement within the next 45 days, id. §355(j)(5)(B)(iii), and if it does, the FDA may not approve the ANDA application until the courts have ruled on the suit, the relevant patents have expired, or thirty months have passed from the time of the original notice. Id. During that 45-day period, ''no action may be brought under section 2201 of Title 28 [the Declaratory Judgment Act], for a declaratory judgment with respect to the patent.'' Id.

The proposal before you would make clear what this last provision already implies. It would recognize that ''an actual controversy'' between an ANDA filer and a patent holder would exist ''sufficient to confer subject matter jurisdiction in the courts of the United States'' if, after 45 days have passed since the ANDA has been filed, the patent holder chooses not to bring a patent infringement action. I do not believe that this provision poses constitutional problems; in fact, it merely clarifies the proper application of existing law.

To understand why, it is necessary to review the Declaratory Judgment Act and its interaction with patents. Article III, Section 2 of the Constitution allows federal courts to exercise jurisdiction only over the enumerated list of cases or controversies. U.S. Const. art. III, §2 (listing cases or controversies). As Marbury v. Madison made clear, federal courts are courts of limited subject matter jurisdiction. For many years, it was uncertain whether declaratory judgment actions fell within the definition of an Article III case or controversy. Federal jurisdiction certainly extends to cases in which a plaintiff is entitled to a coercive remedy based on federal law. Substantial hardship arises, however, in cases involving ''an actual dispute about the rights and obligations of the parties, and yet the controversy may not have ripened to a point at which an affirmative remedy is needed. Conversely, this stage may have been reached, but the party entitled to seek the remedy may fail to take the

necessary steps.'' C. Wright & A. Miller, Federal Practice and Procedure §2751. In the area of patents, ''the owner of a patent might assert that a manufacturer was infringing the owner's monopoly, while the latter contended that his product was not an infringement or that the patent was invalid. The manufacturer was helpless, however, to secure an adjudication of the issue, but had to await suit for infringement, unless the manufacturer preferred to yield and discontinue the activity.'' Id.

Declaratory judgments acts first arose in the states, but uncertainty initially remained as to whether such cases could be heard in federal courts due to the case or controversy requirements of Article III of the Constitution. *Willing* v. *Chicago Auditorium Ass'n*, 277 U.S. 274 (1928). In 1927, however, the Court gave res judicata effect to a state declaratory judgment, *Fidelity Nat'l Bank & Trust Co.* v. *Swope*, 274 U.S. 123 (1927), and in 1933 it upheld a state court declaratory judgment, *Nasville, C. & St. L. Ry.* v. *Wallace*, 288 U.S. 249 (1933). Immediately after *Wallace*, Congress enacted the Declaratory Judgment Act: ''In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.'' Act of June 14, 1934, ch. 512, 48 Stat. 955, codified at 28 U.S.C. §2201(a). In essence, this act allows plaintiffs to bring suit against a defendant who would hold a federal right to seek a coercive remedy against the plaintiff, if the defendant had chosen to bring suit first. The legislative history of the Act reflects that Congress was concerned about the uncertainty in business and legal relations, including the case in which a patent holder chose to delay litigation for patent infringement.

The Supreme Court soon made clear that the Declaratory Judgment Act was constitutional, even though the statute extended federal jurisdiction to cases in which the holder of the federal right had not yet sought to enforce his federal right. Finding that declaratory judgment suits met Article III's case or controversy requirement, the Court explained: ''The Declaratory Judgment Act of 1934, in its limitation to 'cases of actual controversy,' manifestly has regard to the constitutional provision and is operative only in respect to controversies which are such in the constitutional sense. The word 'actual' is one of emphasis rather than of definition. Thus the operation of the Declaratory Judgment Act is procedural only. In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to established. . . . Exercising this control of practice and procedure the Congress is not confined to traditional forms or traditional remedies.'' *Aetna Life Insurance Company* v. *Haworth*, 300 U.S. 227, 240–41 (1937). In explaining more precisely why the Declaratory Judgment Act did not include cases that were actually unripe or moot, Chief Justice Hughes wrote: ''A 'controversy' in the sense must be one that is appropriate for judicial determination. . . . A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. . . . The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . . It must be real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. . . . Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. . . . And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required.'' Id. at 240–41. In the wake of *Aetna*, the lower courts regularly assumed jurisdiction over declaratory judgment suits by an alleged patent infringer for a declaration of non-infringement or patent invalidity, because the declaratory defendant could have brought a federal action against the declaratory plaintiff. *Edelamnn & Co.* v. *Triple-A Specialty Co.*, 88 F.2d 852 (7th Cir. 1937). In passing, the Supreme Court has approved this exercise of jurisdiction because a patent infringement suit by the declaratory defendant would have fallen with the Article III ''arising under'' jurisdiction. See *Franchise Tax Board of California* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 20 n. 19 (1983); *Graham* v. *John Deere Co*, 383 U.S. 1 (1966).

In light of these cases, it should be clear that Congress intended that potential patent infringers be able to seek a declaration of non-infringement, unenforceability, or invalidty of a patent. Further, the Supreme Court and the lower federal courts have interpreted the Declaratory Judgment Act to allow these suits, and they have also found such suits to fall within Article III's case or controversy requirement. The proposal before you clearly falls within the scope of the Declaratory Judgment Act. A generic drug company wishes to manufacture and sell a substance that mimics a pioneer drug for which patents are listed in the Orange Book. The enforcement of the patent could prevent the generic drug company from producing and selling its product, nullifying its investments in research and production, and potentially subjecting any profits to the uncertainty of a future lawsuit. In filing an ANDA, the generic drug company declares its intention and ability to produce the drug, which renders the dispute anything but hypothetical. The Hatch-Waxman amendments even find an ANDA filing to constitute patent infringement. Were the pioneer drug company to bring a patent infringement action, the case clearly would fall within Article III's arising under jurisdiction.

It is my view that such actions, as recognized by the proposed amendment before you, would fall within the proper application of the Declaratory Judgment Act and, as interpreted by the Supreme Court and the lower federal courts, within the Constitution's requirements for an actual case or controversy. As the Supreme Court explained in *Aetna*, ''[t]he controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'' 300 U.S. at 240–41. Here, there are clear adverse legal interests between the pioneer drug manufacturer and the generic drug manufacturer over the validity and application of a patent. The generic drug manufacturer has invested a substantial amount of resources to file an ANDA and to prepare and manufacture the generic drug; that investment could be lost through a patent infringement action brought by the pioneer drug company. It is difficult to conceive of a setting in which application of the Declaratory Judgment Act would not be more appropriate. Indeed, the proposal before you strikes me as simply a restatement of the proper interpretation of current law.

Some might argue, however, that the proposal could raise constitutional concerns under the case law of the U.S. Court of Appeals for the Federal Circuit. The Federal Circuit has developed a two-part test to determine whether a potential patent infringer's suit lies properly within the Declaratory Judgment Act: ''First, the plaintiff must actually produce or be prepared to produce an allegedly infringing product. Second, the patentee's conduct must have created an objectively reasonable apprehension on the part of the plaintiff that the patentee will initiate suit if the activity in question continues.'' *EMC Corp. v. Norand Corp.*, 89 F.3d 807, 811 (Fed. Cir. 1996), cert. denied, 117 S. Ct. 789 (1997); see also *Arrowhead Indus. Water, Inc.* v. *Ecolochem, Inc.*, 846 F.2d 731, 736, (Fed. Cir. 1988). The first prong is easily satisfied in ANDA declaratory judgment actions: by conducting the research and expending the resources necessary to complete an ANDA, the generic drug manufacturer has shown it is prepared to produce the allegedly infringing product. *DuPont Merck Pharmaceutical Co.* v. *Bristol-Myers Squibb Co.*, 62 F.3d 1397, 1401 (Fed. Cir. 1995).

Whether an action will meet the Federal Circuit's second prong will depend on the defendant's conduct. One might argue, I suppose, that a pioneer drug producer's refusal to initiate a lawsuit within the 45-day period could be taken as a sign that there is no ''objectively reasonable apprehension.'' This conclusion, however, seems doubtful to me. The Federal Circuit clearly employs a totality of the circumstances approach toward determining ''reasonable apprehension,'' one that looks at conduct that falls far short of simply filing a lawsuit. See *Shell Oil Co.* v. *Amoco Corp.*, 970 F.2d 885, 889 (Fed. Cir. 1992). In some cases, the Federal Circuit has looked to the activity of the patent holder in regard to third parties, *Arrowhead*, 846 F.2d at 736–39, express written or oral charges of infringement by the patent holder, id. at 736; *Shell Oil Co.*, 970 F.2d at 889, or a threat of a suit, *BP Chems. Ltd.* v. *Union Carbide Corp.*, 4 F.3d 975, 978 (Fed. Cir. 1993). The proposed amendment would make clear that conduct that falls short of filing a lawsuit is still sufficient to support a declaratory judgment action by a generic drug manufacturer concerned about potential patent infringement.

In any event, even if one were to conclude that the amendment is inconsistent with the Federal Circuit's two-prong test, this would not render the proposal unconstitutional. First, it does not appear to me that the Federal Circuit's approach is required by Article III of the Constitution, nor is it demanded by the Supreme Court's interpretation of the Declaratory Judgment Act. Indeed, the very point of the Declaratory Judgment Act was to allow parties concerned about the uncertainty in their business and legal activities created by the holder of a federal cause of action who refuses to sue. Nothing in the Supreme Court's case law, which has consistently upheld the constitutionality of the Declaratory Judgment Act, has suggested that a declaratory defendant's failure to bring a lawsuit itself within a certain time period eliminates the ''actual controversy'' required by both the statute and the Constitution. If anything, the case here is the reverse: it is because the declaratory defendant has not brought a lawsuit that a plaintiff must seek a federal declaratory action.

In this respect, it may be best to conceive of the Federal Circuit's two-prong test as an exercise of its discretionary powers under

the Declaratory Judgment Act, rather than as a true test of Article III justiciability. The Act itself states that a court ''may declare the rights and other legal relations'' of a party. 28 U.S.C. §2201 (emphasis added). The Supreme Court has interpreted this language as allowing the federal courts to decline to adjudicate a federal declaratory action even if case or controversy jurisdiction exists. *Public Serv. Comm'n* v. *Wycoff Co.*, 344 U.S. 237, 241 (1952); *Wilton* v. *Seven Falls Co.*, 515 U.S. 277, 286–87 (1995). It seems to me that the Federal Circuit's two-prong approach, which does not derive directly from Article III or the Supreme Court's interpretation of the Declaratory Judgment Act, therefore should be seen as an exercise of the Federal Circuit's discretionary authority. As such, it is clearly subject to Congress's authority to set the rules of procedure that govern the federal courts. Indeed, it is that same power that the Supreme Court found to justify the constitionality of the Declaratory Judgment Act itself. If Congress wishes to direct the federal courts to adjudicate Declaratory Judgment Act cases in certain circumstances, instead of declining as a matter of prudence to exercise jurisdiction, that is its prerogative. The proposed amendment may be seen as nothing more than an effort to do just that.

Even if the Federal Circuit's two-prong approach were thought to be an interpretation of the Article III case or controversy requirement, that would still not compel a conclusion that the amendment is unconstitutional. The Supreme Court has never passed on the Federal Circuit's ''reasonable apprehension'' test, and in its earlier cases it has approved more expansive approaches to jurisdiction under the Declaratory Judgment Act. As an independent, coordinate branch of government, Congress has the authority to make its own judgments about the meaning of the Constitution. Congress has the authority to refuse to enact legislation its believes to be unconstitutional, even if the courts think otherwise, and, conversely, it may pass legislation at odds with previous Supreme Court decisions, as it did in the Religious Freedom Restoration Act at issue in *City of Boerne* v. *Flores.* To be sure, the Supreme Court has long made clear that Congress does not have the authority to alter the boundaries of the federal judicial power as established in Article III of the Constitution. See *Lujan* v. *Defenders of Wildlife,* 504 U.S. 555 (1992). Nonetheless, Congress's authority to interpret the Constitution, which is fundamental to the separation of powers, certainly must include the ability to reject lower court decisions in order to spark Supreme Court review of whether these courts have properly interpreted Article III of the Constitution. Of course, this may be wholly unnecessary because the Federal Circuit has yet to hold that the absence of a suit during the 45-day period is sufficient per se to destroy an actual controversy in a declaratory judgment act by a generic drug manufacturer.

Please do not hesitate to contact me if I can provide further assistance. I may be reached at 202–862–5819, or at yoo@law.berkeley.edu.

Sincerely,

JOHN YOO,
Professor of Law.

BOALT HALL SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA AT BERKELEY,

Berkeley, CA, August 1, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I have been asked by the Generic Pharmaceutical Association to review the testimony provided to your committee by the Department of Justice on August 1, 2003, concerning the constitutionality of the declaratory judgment provisions of S. 1. The proposal would allow a generic drug manufacturer who has filed an abbreviated new drug application (ANDA) to seek relief under the federal Declaratory Judgment Act, 28 U.S.C. §2201, against potential patent infringement claims. This letter follows up on my June 16, 2003 and June 19, 2003 letters to the Senate Judiciary Committee and my congressional testimony of June 17, 2003 that concluded that the amendment in question is constitutional.

The Senate amendments to Hatch-Waxman would recognize that ''an actual controversy'' between an ANDA filer and a patent holder would exist ''sufficient to confer subject matter jurisdiction in the courts of the United States'' if, after 45 days have passed since the ANDA has been filed, the patent holder chooses not to bring a patent infringement action. DOJ's letter asserts that this amendment would unconstitutionally expand the jurisdiction of the federal courts beyond the limits set by Article III of the Constitution. I have reviewed DOJ's letter, and while I have the utmost respect for the attorneys who work in the Office of Legal Counsel (many of whom were my colleagues for the last two years during my service there as a deputy assistant attorney general), I disagree with their conclusion.

Both the Justice Department and I agree that Congress cannot expand the jurisdiction of the federal courts beyond Article III's case or controversy requirement. This is a principle of federal courts law that has existed ever since *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803). We also agree that the Declaratory Judgment Act is constitutional, and has been so upheld by the Supreme Court in *Aetna Life Insurance Company* v. *Haworth,* 300 U.S. 227 (1937). We also agree that many cases filed after the 45-day period would meet Article III's case or controversy requirement. In this class of cases, therefore, the application of the Senate's amendments to Hatch-Waxman would be clearly constitutional.

Where the Justice Department and I differ is whether Congress may extend federal subject matter jurisdiction to the remaining class of cases filed after the 45-day period. According to the Department, the Federal Circuit's ''reasonable apprehension'' test—so called because the plaintiff must have a reasonable apprehension that the patient holder will sue—will exclude a certain number of cases that are filed after the 45-day period. In fact, the Department seems to believe that plaintiffs who file after the 45 days will almost never satisfy this test, because ''in light of the statutory benefit conferred on the patent owner if it sues within the 45-day period, it is likely that a court would consider the applicant's reasonable apprehension to be diminished if the patent holder does not sue for infringement within that time.'' I believe that Congress may extend federal subject matter jurisdiction to this class of cases, and that since this category may not be large, the amendment to Hatch-Waxman could not be unconstitutional on its face but only as applied at best.

I believe that the Justice Department's opinion is in error because it does not properly understand why the Declaratory Judgment Act is constitutional, even though it permits suits to occur before the holder of the federal right has chosen to bring a lawsuit. The Act allows plaintiffs to bring suit against a defendant who would hold a federal right to seek a coercive remedy against the plaintiff, if the defendant had chosen to bring suit first. Declaratory judgments acts first arose in the states, but it was initially suggested that such cases could not be heard in federal courts due to the case or controversy requirements of Article III of the Constitution. *Willing* v. *Chicago Auditorium Ass'n*, 277 U.S. 274 (1928). In 1927, however, the Court gave res judicata effect to a state declaratory judgment, *Fidelity Nat'l Bank & Trust Co.* v. *Swope*, 274 U.S. 123 (1927), and in 1933 it upheld a state court declaratory judgment, *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U.S. 249 (1933). Immediately after *Wallace*, Congress enacted the Declaratory Judgment Act: ''In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.'' Act of June 14, 1934, ch. 512, 48 Stat. 955, codified at 28 U.S.C. §2201(a).

The legislative history of the Act shows that Congress was concerned about the uncertainty in business and legal relations, including the case in which a patent holder chose to delay litigation for patent infringement. Professor Edson R. Sunderland, and advocate of the Act, testified before Congress that: ''I assert that I have a right to use a certain patent. You claim that you have a patent. What am I going to do about it? There is no way that I can litigate my right, which I claim, to use that device, except by going ahead and using it, and you [the patent holder] can sit back as long as you please and let me run up just as high a bill of damages as you wish to have me run up, and then you may sue me for the damages, and I am ruined, having acted all the time in good faith and on my best judgment, but having no way in the world to find out whether I had a right to use that device or not.''

The Supreme Court soon made clear that the Declaratory Judgment Act was constitutional, even though the statute extended federal jurisdiction to cases in which the holder of the federal right had not yet sought to enforce it. Finding the declaratory judgment suits met Article III's case or controversy requirement, the Court explained: ''The Declaratory Judgment Act of 1934, in its limitation to 'cases of actual controversy' manifestly has regard to the constitutional provision and is operative only in respect to controversies which are such in the constitutional sense. The word 'actual' is one of emphasis rather than of definition. Thus the operation of the Declaratory Judgment Act is procedural only. In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to established. . . . Exercising this control of practice and procedure the Congress is not confined to traditional forms or traditional remedies.'' *Aetna Life Insurance Company* v. *Haworth,* 300 U.S. 227, 240–41 (1937). In explaining why the Act did not include cases that were actually unripe or moot, Chief Justice Hughes wrote: ''A 'controversy' in this sense must be one that is appropriate for judicial determination. . . . A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. . . . The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical

state of facts. . . Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. . . And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required.'' Id. at 240–41

The Justice Department's letter shows no understanding that the very purpose of the Declaratory Judgment Act is to allow relief in cases in which a potential patent infringer needs legal certainty concerning the scope of a patent before it can proceed with its activities. Indeed, the Department's approach would suggest that the Act itself is unconstitutional.

There are, however, obvious adverse legal interests between the patent holder and the generic drug manufacturer over the validity and application of a patent. The generic drug manufacturer has invested a substantial amount of resources to file an ANDA and to prepare and manufacturer the generic drug. The enforcement of the patent could prevent the generic drug company from producing and selling its product, nullifying its investments in research and production, and potentially subjecting any profits to the uncertainty of a future lawsuit. In filing an ANDA, the generic drug company declares its intention and ability to produce the drug, which renders the dispute anything but hypothetical. Were the pioneer drug company to bring a patent infringement action, the case clearly would fall within Article III's arising under jurisdiction.

By failing to understand why generic drug manufacturers would suffer uncertainty from the possible enforcement of a patent, the Department errs in concluding that the amendment would be unconstitutional. The Department asserts that the amendment ''can have no effect.'' This is because, apparently, many lawsuits brought after the 45-day period would meet the Article III's case or controversy requirement anyway, and those that did not could not fall within Article III jurisdiction thanks to passage of the amendment. But then the Department observes that the lack of a lawsuit within the 45-day period would suggest that there is no ''reasonable apprehension'' present. The Department's opinion assumes without question that the Federal Circuit's approach to the Declaratory Judgment Act in this context—the ''reasonable apprehension'' test—correctly includes all of the possible cases that would meet Article III's case or controversy requirement, and that application of this test to those who do no sue would likely find no reasonable apprehension. Therefore, according to the Department, cases in which no suit is filed within 45 days indicate that there is no reasonable apprehension of a lawsuit, and therefore that there is no Article III case or controversy requirement.

This view is erroneous, however, because it assumes that any patent holder who does not sue within 45 days will never sue. As Congress itself believed when it enacted the Declaratory Judgment Act, patent holders might choose not to sue in such circumstances for many reasons, such as allowing the generic drug manufacturer to run up potential damages while it risks little, creating uncertainty in the market and among distributors and buyers of the generic drug, and causing uncertainty about the value of investments and research by generic manufacturers. Indeed, testimony before Congress at the time of the passage of the Declaratory Judgment Act underscored that the more time that passed, the more damages that a patent holder could potentially accumulate. By passing the Act, Congress recognized that merely by refraining to exercise their Federal rights, regardless of the amount of time that passes, patent holders created sufficient legal and business uncertainty to harm manufacturers such as generic drug producers. It is this harm that brings such cases within the Article III case or controversy requirement. The Justice Department appears to have no theory as to why any Declaratory Judgment Act case satisfies the Article III requirement, and hence cannot judge whether any new application of the Act would be constitutional or not.

In enacting the Declaratory Judgment Act, Congress did not give any indication that it required plaintiffs to show they had a ''reasonable apprehension'' of a lawsuit, nor has the Supreme Court ever interpreted the Act to require such a result. Rather, Congress wanted to give those who could be subject to a lawsuit by the holder of a federal right the ability to seek legal certainty for all parties involved, so that business planning and activity could occur in an environment with clear legal rules.

As applied by the Federal Circuit, the ''reasonable apprehension'' test creates an effect opposite of that desired by Congress. The Federal Circuit appears to employ an inherently unpredictable totality of the circumstances approach to determining whether a potential patent infringer has a ''reasonable apprehension'' of lawsuit. Such approaches undermine the very purpose of having clear rules in the area of federal jurisdiction, and instead invite wasteful and excessive litigation merely to determine whether a case is appropriately brought in federal court. It is certainly within Congress's authority to seek to correct misinterpretations of its enactments where, as here, the courts have acted in a way that undermines the very purposes of the statute it has passed. By adopting the amendment, Congress would simply be making clear the original purposes of the Declaratory Judgment Act, which the Supreme Court, almost immediately after the Act's passage, had upheld as constitutional. By enacting the amendments to Hatch-Waxman, Congress is appropriately acting to correct a misinterpretation of the Declaratory Judgment Act that goes too far in narrowing its scope. By employing the reasonable apprehension test, the Federal Circuit may be allowing declaratory judgment actions in only a subset of the possible range of cases that could be permitted by Article III's case or controversy requirement. By enacting this amendment, Congress would be instructing the courts that it wishes to expand the exercise of federal subject matter jurisdiction under the Declaratory Judgment Act to the full extent permitted by the Constitution.

This brings me to another reason why the amendment is constitutional. As an independent and coordinate branch of government, Congress certainly has the authority to interpret the Constitution for itself and to base its enactments on that interpretation. This is exactly what happened with the original Declaratory Judgment Act: some doubted whether the potential defendants of enforcement actions could bring a suit seeking a declaration that their actions were legal. Yet, in order to create an environment in which all parties could conduct their activities with legal certainty, Congress enacted the Declaratory Judgment Act. In doing so, Congress acted on its own interpretation of the Article III case or controversy requirement that such suits were constitutional. The Supreme Court subsequently agreed. Congress has even fuller authority where, as here, the Supreme Court as the final arbiter within the federal judiciary has never examined whether Article III or the Declaratory Judgment Act impose any special requirements in patent infringement cases.

Please do not hesitate to contact me if I can provide further assistance. Also, please realize that the views I express in this letter are mine alone, and do not represent those of the American Enterprise Institute, where I am currently a visiting fellow, or of the University of California at Berkeley, where I have been a law professor since 1993. I may be reached at 202–862–5819, or at yoo@law.berkeley.edu.

Sincerely,

JOHN YOO,
Professor of Law.

Mr. NELSON of Nebraska. Mr. President, I rise today in support of the Medicare bill before the Senate. This is not a perfect bill, far from it. It is not the bill I would write. But it is a bill that will do more for our seniors and one we can build on in the future.

For the past decade this body has worked on adding a prescription drug benefit to Medicare. We all know it is desperately needed. The skyrocketing cost of drugs has put meaningful health care treatment out of the reach of many seniors. Medicare simply was not crafted with a prescription drug component. That is not to blame any of the creators of the landmark legislation that created Medicare. They could not have known that science would eventually put the treatments and cures for many diseases in pill form. They did the best they could with the knowledge they had at the time. And that system served seniors well for a very long time.

But it does not serve them well today. The lack of prescription drug coverage is a glaring omission in the current Medicare Program. It prevents many seniors from getting the treatments they need and undermines the promise of the Medicare Program—to provide health care benefits to our seniors.

And we do not have the excuse that we are unaware of the importance of drug treatments. We know how these medications can improve and prolong the lives of countless seniors. We know that seniors urgently need this benefit and the medicine it will provide.

As I said, the bill before us is not perfect, and many people have raised legitimate concerns about its shortcomings. Some have said it is too expensive; some have said it does not cover enough of the drug costs for seniors. There is truth to both statements. And both sides have worked to confuse our seniors. A lot of money has been spent by special interest groups to advance their opinions rather than accurately assess the impact of this bill.

Putting all the clutter and spin aside, in a time of rising Federal deficits, this bill does move the ball forward. It takes a concrete step toward providing meaningful coverage. And it does make some efforts to contain long-term costs.

This legislation is the first step in covering drug treatments and this is a

major step for seniors across the country. For example, in my home State of Nebraska, today there are 259,000 Medicare beneficiaries. Of these, about 90,000 do not currently have prescription drug coverage. Through this bill, beginning in 2006, they will all have coverage.

The average out-of-pocket cost for drugs for a typical Nebraskan, including premiums, will decrease 35 percent from $760 to $500 per year. Low-income Nebraskans receive a large benefit in this bill. Before the drug benefit is implemented in 2006, low-income Nebraskans will receive $600 a year for their drugs, resulting in Nebraskans receiving $83 million in prescription assistance. After the drug plan is implemented, 108,000 low-income Nebraskans will pay little to nothing in premiums, deductibles and coinsurance. Because Medicare is taking responsibility for dual eligibles, Nebraska will save $167 million over 8 years. And the benefits for Nebraska extend beyond the drug benefit.

This bill will provide additional reimbursements for rural hospitals and health care providers. Nebraska doctors will receive $57 million over 2 years. Critical access hospitals will receive $11.3 million, and the rest of Nebraska's hospitals will share an additional $108 million over 10 years. This funding will help keep rural health care vital and available to rural seniors.

Furthermore, this bill contains a pilot program I pushed to include that will create a new Medicare designation of ''rural community hospitals''. These hospitals will receive cost-based reimbursements for Medicare services. Seven Nebraska hospitals will take part in the 5-year program resulting in an additional $22.5 million for these hospitals to help them continue to provide high quality health care in their communities.

Rural community hospitals are currently unable to keep pace with their costs. They are too big to qualify for additional Critical Access Hospitals funds, yet too small to take advantage of the volume benefits of larger hospitals. This new pilot program will allow Nebraska's rural community hospitals to immediately benefit from cost-based reimbursements for inpatient services while testing the feasibility of extending the program to similar hospitals across the Nation.

The seven hospitals are Beatrice Community Hospital, Box Butte General Hospital in Alliance, Columbus Community Hospital, Community Hospital of McCook, Jennie Melham Memorial Medical Center in Broken Bow, Phelps Memorial Health Center in Holdrege and Tri County Hospital in Lexington.

Nationwide, this bill also takes steps to ensure that seniors do not lose their employer-sponsored health coverage. Originally, the conferees only handled this issue halfway through a subsidy covering 28 percent of costs to employers $250 and $1000. I, and others, did not believe this would do enough to protect these benefits. So we have made that subsidy non-taxable; increasing the value of the subsidy by a third. Because of this increase, the Congressional Budget Office has stated that the drop rate for seniors could decrease by half; saving these benefits for millions of seniors.

The bill before us is not perfect, but it is a start. I do not believe this bill is the beginning of the end of Medicare, nor do I believe that it is the final solution to the skyrocketing costs of health care.

With passage of this legislation, for the first time, seniors will have access to prescription drugs through Medicare. And we will be able to use this bill to build better coverage in the future. This bill goes fully into effect in 2 years; time that can be spent studying this coverage, adapting it and making sure it works for our seniors.

For too long, seniors have waited for this coverage. Many of those seniors are not here to see it happen today. They are no longer with us; they never got the drug coverage they needed. It is too late for them.

But it is not too late for millions of seniors across the country to benefit from this bill. We owe it to them to pass this and get a concrete start on this issue. We can make changes if we need to; but we can't get back the time we will have lost if we do not move forward now.

A vote against this bill will leave tens of thousands of seniors in Nebraska without a prescription drug benefit of any kind. Let's pass this bill before it is too late for today's seniors. We may not get an opportunity like this again.

Mr. BAUCUS. Mr. President, I want to speak for a moment today about the impact on States from this Medicare prescription drug bill. I have long been concerned about our States' fiscal crisis, and I have supported fiscal relief through the so-called ''FMAP'' increase, through increases in SSBG, and through general revenue sharing. And I am pleased that, in the long term, this bill is expected to result in substantial savings to States more than $17 billion by 2013.

But I remain concerned about the impact that this bill will have on States in the short term. Before this bill had been finalized, when there were early indications that States could be harmed by the so-called ''holdback'' formula in the first years of the drug benefit, I insisted that the formula be revised. We added $4.5 billion so that the impact on states of the ''woodwork effect,'' new administrative costs, and the ''holdback'' provisions would not ultimately put the States in the red in any year of the drug benefit.

As sometimes happens, preliminary budget estimates did not turn out exactly as expected. The overall impact on State Medicaid budgets in the first year of the drug benefit will still result in States spending more than they will save. While I regret that, I firmly believe that, in the long run, this bill will strengthen State budgets and take some pressure off of strained Medicaid programs.

If a longer term analysis shows that there are unexpected costs to States in the early years, or the expected costs are higher than we can know today, I pledge to work over the next 2 years to ensure that the States are not harmed when the Medicare drug benefit goes into effect.

Mr. President, one of the most important provisions in the rural package in this bill would reauthorize the Rural Hospital Flexibility Grant program for another 5 years. This grant program was created along with the Rural Hospital Flexibility Program, RHFP, in the Balanced Budget Act of 1997.

The RHFP is designed to help ensure continued access to medical services in rural and frontier areas of our Nation that otherwise could not sustain hospital services. The BBA created a new category of hospital called a Critical Access Hospital, CAH. In my State of Montana, 36 acute care hospitals have converted to CAH status.

The Rural Hospital Flexibility Grant program provides the tools States need to implement the RHFP. The purposes of this grant program are many.

First, it provides resources to cash-strapped rural hospitals to help them make the conversion to CAH status.

Second, it enables States to provide technical assistance to these facilities as they move through the conversion process.

Third, this grant program provides resources to help States further stabilize rural health care by fostering and developing networks of providers in rural areas.

Fourth, the program enables States to initiate a variety of other innovative approaches to stabilize and improve health care in rural areas. For example, in my State of Montana, Flex grant funds have enabled the State's CAHs to develop a pioneering quality improvement program.

There was strong support for reauthorization of this grant program among the conferees. There was also strong support for clarifying how these funds could be used to ensure that as much of this money as possible was used for the direct benefit of CAHs and other rural providers in the States.

In that regard, the bill was intended to specify that no more than 15 percent of a State's grant allocation be used for ''indirect'' administrative costs. However, in drafting the bill, the word ''indirect'' was inadvertently dropped from the language.

I would like to clarify the intention of the conference committee that this 15-percent restriction be applied only to the amount of funds that can be used for ''indirect'' administrative expenses.

Mr. KYL. Mr. President, the majority leader, Senator FRIST, joins me in this

explanation of why the conference agreement on the Medicare Prescription Drug and Modernization Act of 2003 does not allow increased importation of drugs from outside the United States. Our explanation provides important background information on this largely misunderstood issue that is vital to the health and safety of Americans.

Under current law, the Federal Food, Drug, and Cosmetic Act establishes a system under which prescription drugs must be approved by the FDA and properly labeled, packaged, tested, stored, and distributed pursuant to FDA regulatory requirements. This is the finest and most effective system in the world for ensuring drug safety, effectiveness, and quality.

To protect American consumers by ensuring the integrity of this system, the law generally prohibits the importation of prescription drugs. Section 801(a) of the Act prohibits importation of drugs that are unapproved, adulterated, or misbranded. Virtually all prescription drugs manufactured overseas for distribution in foreign countries fail one or more of these standards and, therefore, cannot legally be imported into the United States. It is important to note in this regard that just because a drug is manufactured in a facility that is subject to FDA inspection does not mean that the drug meets FDA approval or other requirements. Different countries have different manufacturing, testing, labeling, packaging, and other requirements from those imposed by the FDA, and in fact the composition of the drug product itself may vary from country to country. Manufacturers may use a single facility to manufacture a drug for several different countries, but they must vary their processes to ensure that each drug lot will satisfy the requirements of the intended destination country.

Some drugs available overseas are manufactured in the United States and then exported. Section 801(d) of the Act prohibits the importation—sometimes called reimportation—of these drugs. Congress added section 801(d) through the Prescription Drug Marketing Act in 1988 to close a loophole under which counterfeit and substandard drugs were being brought into this country. There is an exception to this prohibition for the original manufacturer, who is part of the U.S. system and subject at all times to FDA authority and oversight. The manufacturer's own importation of drugs that have never been outside its control is comparable to shipments between its manufacturing plants and warehouses within the United States, and is completely different from the importation of drugs that have been placed into the wholesale and retail distribution systems of foreign countries, where they are no longer subject to FDA jurisdiction.

In 2000, Congress authorized an additional exception to section 801(d) in the Medicine Equity and Drug Safety Act. This law added a new section 804 under which pharmacists and wholesalers would be permitted to import drugs from a list of designated countries, including Canada and the countries of the European Union. In order to protect American consumers, Congress provided that section 804 would not become effective until the Secretary of Health and Human Services demonstrates to Congress that its implementation will ''pose no additional risk to the public's health and safety'' and will ''result in a significant reduction in the cost of covered products to the American consumer.'' Secretary Shalala and Secretary Thompson both concluded that they could not make this demonstration.

FDA has a written policy under which it permits an individual to import a small quantity of a prescription drug for personal use, but only if the drug is not available in the United States. This policy is intended to allow seriously ill patients to obtain unapproved drugs to treat potentially life-threatening and similar conditions for which adequate treatment is unavailable in the United States. It does not apply to importation of drugs that are approved in the United States or to any commercial activities, such as Internet or print advertising or importation by persons other than individual patients. Moreover, even importation within the four corners of this policy remains technically illegal; the policy represents only a reasonable and limited exercise of FDA's enforcement discretion in the interest of individual patient treatment.

A final, and important, legal requirement is that a prescription drug can only be dispensed to the patient based on a valid prescription. Otherwise, the drug is misbranded and cannot be imported, or shipped domestically. There is extensive evidence documenting the fact that many foreign interest sites ship drugs without requiring any prescription at all, or with an invalid prescription based on a perfunctory questionnaire and without any genuine medical examination—co-signing of prescriptions by foreign physicians who have no relationship with the patient does not meet the legal requirements and presents serious risks, as both U.S. and foreign authorities have made clear. These activities put patients at risk by taking the licensed healthcare professional out of the process for deciding whether to initiate or continue treatment. Prescription drugs are classified as such because they cannot safely be used by laypersons without proper professional oversight. Drug importation commonly violates this basic safeguard.

Despite the existing prohibitions on drug importation, the volume of importation activity is growing as foreign pharmacies and domestic storefront facilitators advertise for business, and state and local governments and others explore ways to direct American consumers to foreign sources for their needed medicines. All of these activities are illegal, and they pose threats to our health and safety.

According to the FDA, imported drugs are too often unapproved, contaminated, counterfeit, and contain different ingredients from those required under agency regulations. These are not mere theoretical concerns. A recent series of spot inspections conducted jointly by the FDA and the U.S. Bureau of Customs and Border Protection found that 88 percent of more than 1,000 examined drug packages contained unapproved drugs and that they could pose ''clear safety problems.'' These included an unapproved blood thinner that could cause life-threatening bleeding; unapproved epilepsy, thyroid, and diabetes drugs that could cause life-threatening side effects; drugs that have been withdrawn from the U.S. market because of safety concerns; animal drugs not approved for human use; drugs with dangerous interactions; drugs improperly packaged in sandwich bags and tissue paper; and controlled substances. In another case involving a Web site purporting to ship FDA-approved drugs from Canada, a patient received an unapproved seizure medicine manufactured in India. In another case involving a U.S. storefront operation, the Web site shipped unrefrigerated insulin, which can degrade without changing its appearance and thereby put insulin-dependent diabetic patients at risk. Other examples abound, including deaths from overdoses of drugs obtained from foreign Internet sites, as documented in a recent press report of a year-long investigation into illegal drug importation, counterfeiting, and distribution.

Another recent study also concludes that drug importation increases the risk of terrorism against the United States. Huge volumes of packages, only a miniscule fraction of which can be inspected, present an inviting target for the deliberate introduction of contaminants and poisons. Last year, in the Public Health Security and Bioterrorism Preparedness and Response Act, Congress gave the FDA substantial new powers to protect the safety of the food supply against terrorist threats. FDA has been implementing this law through new rules requiring advance notice of food importations and similar measures. Imported drugs present comparable threats, yet there is neither an analogous set of prior-notice requirements nor adequate inspection resources to enforce existing legal standards.

Proponents of loosening the existing standards for drug importation have argued that we can rely on the Canadian drug regulatory system to ensure the safety of drugs exported from that country to the United States. This is simply wrong. Section 37 of the Canadian Food and Drug Act provides that it does not apply to exports. In a recent letter, the Canadian government made clear that it ''has never stated that it would be responsible for the safety and quality of prescription drugs exported

from Canada into the United States.'' Health Canada also has described its concerns with cross-border Internet pharmacy sales as relating to the health of Canadians themselves as it should be.

While we have no doubt that the Canadian system works for Canadians, FDA Commissioner McClellan has made clear that purchases of drugs by Americans from Canada present entirely different concerns:

Buying between the U.S. and Canadian systems is not the same thing as buying within each system. The U.S. and Canada do not have integrated systems for taking timely action to protect consumers in the event of a safety problem involving an illegally imported drug in the U.S. Protections to assure the appropriateness of a prescription, such as requirements for physician contact and monitoring, may differ. And each country has only limited resources to devote to their existing systems for assuring drug safety for their own populations, let alone to assuring the safety of an expanded scope and volume of drug imports. For example, Ontario, Canada's largest province . . . , has exactly one investigator tasked with policing all pharmacy operations there. . .

In addition, as also documented by the FDA many drugs purporting to come from Canada actually were manufactured in Third World countries and either transshipped through Canada or shipped directly from those countries to the United States, in either case without any oversight from Canadian health officials. Such transshipment is becoming increasingly common, with Canadian sites now obtaining their products from countries such as Bulgaria, Argentina, and Pakistan for sale into the United States.

Importation supporters also have suggested that anticounterfeiting technologies can be used to assure the safety of imported drugs. This, too, is a false promise. Optical anticounterfeiting measures are used in our paper currency, yet they have proven inadequate. Even the new $20 bill, which incorporates multiple anticounterfeiting measures, is being counterfeited less than a month after its introduction. Counterfeit drugs, of course, present far greater concerns. The FDA is exploring anticounterfeiting technologies for drugs but, as Commissioner McClellan has made clear, ''there isn't any magic bullet available today,'' and these technologies are ''no substitute for a comprehensive, multi-part system for assuring the safety of the actual drug product.'' Moreover, even the ineffective anticounterfeiting technologies that are available would be very expensive, raising drug costs by an estimated $2 billion in the first year alone.

Finally, the question of legal liability for adulterated or counterfeit drugs remains unresolved. American companies should not be held legally responsible for drugs they did not manufacture, or that were adulterated after leaving their control or that they manufactured to comply with foreign country requirements rather than for sale in the United States. The U.S. Government should not be held legally responsible for drugs that it did not actually test and approve, or that were adulterated after the approval process was complete and the drugs were no longer subject to FDA oversight.

In short, drug importation presents a wide range of serious safety concerns. We cannot meet these challenges merely by writing prohibitions into the law. The law already requires that drugs be FDA-approved, yet it is abundantly clear that unapproved and other violative products are streaming across our borders every day. Changes in the law to relax the current prohibitions on importation will only increase this cross-border traffic and, in the absence of new legal protections and new resources to effectively to enforce them, increase the threat to the American public.

The United States has every right under our international agreements to enforce legitimate regulatory requirements relating to the health and safety of our citizens. There is no question that the drug importation provisions of the Federal Food, Drug, and Cosmetic Act meet this standard.

Canada and other foreign countries impose price controls on pharmaceuticals as part of their high-tax social welfare systems. No reasonable concept of free trade requires that our country open its borders to drugs whose prices are kept artificially low under these systems. In fact, a leading scholar and supporter of free trade rights, Professor Richard Epstein of the University of Chicago Law School, has described drug importation as ''a perversion of the basic principle of free trade.''

Pharmaceutical price controls are a trade issue that must be urgently addressed by our government so that foreign countries and their citizens bear a fair share of research and development costs for new medicines. Price and access controls imposed by foreign countries constitute trade barriers within the meaning of our existing trade laws, and we urge the administration to use the full extent of its authority in bilateral and multilateral negotiations to remove these barriers for the benefit of all Americans. In fact, the legislation we consider today requires the U.S. Trade Representative to develop a strategy for negotiating the elimination of price controls and requires timely Congressional briefings on the subject.

Drug coverage, particularly for Medicare beneficiaries as established by this bill, is the most important step we can take to ensure access. For those without coverage, drug importation imposes only great risks and offers little or nothing in the way of savings.

There is no evidence to suggest that drug importation actually will save money for American consumers. As the FDA has stated, ''it is likely that the intended cost-savings for consumers would be absorbed by fees charged by exporters, pharmacists, wholesalers, and testing labs.'' This is confirmed by the European experience with parallel importation, which demonstrates that the only real beneficiaries are middlemen in the distribution chain, not the ultimate consumers. Recent experience in Canada also makes clear that Canadians will act to protect the integrity and availability of drug supplies for their own citizens if these are threatened by importation, which will lead to higher prices for imported drugs—as well as increased transshipment from third-world drug supply sources, as discussed above.

In any event, claims of enormous cross-border price differentials are widely exaggerated because they do not reflect intelligent comparative shopping or appropriate adjustments for currency and standard-of-living differences. Surveys of legitimate American pharmacy Internet sites and retailers show that substantial discounts can be obtained right here in the United States, with full confidence in product safety, quality, and integrity.

The myriad of questions and concerns we have raised here explain why, rather than allow importation of drugs, this legislation calls for a comprehensive study of the risks and benefits of importing drugs and of how trade negotiations can be used to begin bringing down price controls, so that Americans and everyone else in the developed world share fairly in the costs of drug research and development.

Mr. VOINOVICH. Mr. President, I rise before the Senate in support of the conference report accompanying the Medicare Prescription Drug and Modernization Act. While the conference report before the Senate is not a perfect bill, it is a good bill that will finally provide seniors a voluntary prescription drug benefit through Medicare.

After years of having to carry the burden of high prescription drug costs without any assistance from Medicare, the bill that is before the Senate now, which has the full support of the AARP, will finally provide 40 million Medicare beneficiaries nationwide, 1.6 million in Ohio, access to affordable prescription drugs.

I would like to applaud the work of our Leader, Senator FRIST; our Finance Committee Chairman, Senator GRASSLEY; and the Finance Committee Ranking Member, Senator BAUCUS. Through their leadership, the Senate is poised to finally move past politics and provide seniors with a real prescription drug benefit.

Unfortunately, we have fiddled around with the issue of Medicare reform for far too long in Washington. The truth is, even if the Senate passes the bill before us today, its full implementation will not occur until 2006. For those of my colleagues who have said that we are moving too quickly in adding a prescription drug benefit, the fact of the matter is that the Senate has not moved quickly enough.

As with the rest of the Nation, currently, Ohio's seniors are paying too

much out-of-pocket for their prescription drugs. The cost of these life-saving drugs is increasingly becoming a large burden for seniors, with some even traveling to Canada to find cheaper drugs. Seniors should not have to go to a foreign country to receive the drugs that their doctors prescribe. It is time seniors receive access to affordable prescription drugs in the United States.

This legislation will finally provide Medicare beneficiaries with a voluntary prescription drug benefit. This is especially important to the 400,232 Medicare beneficiaries in Ohio that currently have no public or private prescription drug coverage.

For those beneficiaries that already have coverage through another source, such as through a former employer, and would like to keep that coverage, this legislation supports that choice as well.

As my colleagues know, approximately 12 million of the 40 million Medicare beneficiaries currently have prescription drug coverage through former employer-based retiree health plans.

Many Ohioans that I have spoke to have concerns that the creation of a new Medicare drug benefit may cause many of them to lose their retiree coverage. However, the bipartisan conference report encourages employers to continue to provide coverage to their retirees by providing assistance for retirees' health care costs, including their prescription drugs costs.

In fact, the conference report provides $86 billion in subsidies to assist employers who continue to provide their retirees with health care coverage. This is critical because scores of retirees have lost their health care benefits over the past several years. The bottom line is that this bill will help employers to continue to provide their retirees with health care security.

Not only will seniors have access to affordable prescription drugs with this bill, they will have access to benefits that a modern health plan should have, such as preventive care and disease management—options that Medicare currently does not provide.

Moreover, these additional benefits are provided by giving seniors a choice and control over their prescription drug plans and health care providers.

While the Senate is on the brink of finally strengthening and modernizing Medicare, I would be remiss if I did not take a step back and point out the roadmap that has lead us to this point.

The President has led the way to providing seniors with access to affordable prescription drugs. If my colleagues recall, at the beginning of the year, the President provided in his budget $400 billion for Medicare reform, which included adding a prescription drug benefit. This substantial amount illustrated his commitment to our nation's seniors. That was the first step.

Following the President was the action taken by Congress to lay out a blueprint for Medicare. During the prescription drug debate in 2002, the Senate operated without a budget resolution—the first time the Senate has not done so since 1974. However, this year Congress operated under a budget resolution.

Through these efforts, and those of the Finance Committee, a bill stands before the Senate that strikes a balance between providing seniors and the disabled access to needed prescription drugs today and doing so in a fiscally sensible way that will allow benefits to extend to future generations.

And while opponents of the bill claim that the benefits provided are not large enough, $400 billion does buy an awful lot.

Beginning in 2004, seniors will receive a prescription drug discount card that will provide immediate savings of 10 to 25 percent on most prescription drug purchases. On top of these discounts, the Federal Government would annually purchase the first $600 in prescription drug costs for those seniors below 135 percent of poverty.

The implementation of the full program, which will include a new Medicare Part D and a Medicare Advantage program, will begin in January 2006. All Medicare beneficiaries will receive substantial subsidies through these new benefits. However, low-income seniors will receive additional assistance on top of these subsidies. In Ohio, this means 624,416 seniors will receive additional assistance.

For the 152,470 neediest seniors in my State of Ohio, those who qualify for both Medicare and Medicaid, under this bill they would pay: nothing in premiums; nothing in deductibles; and a nominal cost-share of no more than $1 for a generic drug and no more than $3 for a name-brand drug.

For the 492,872 seniors in my State of Ohio with incomes below 135 percent of poverty, and assets of no more than $6,000 per individual and $9,000 per couple, under this bill they would pay: nothing in premiums; nothing in deductibles; and A nominal cost-share of $2 for a generic drug and $5 for a name-brand drug.

For those 131,544 seniors in my State of Ohio with incomes between 135 and 150 percent of poverty, and assets of no more than $10,000 per individual and $20,000 per couple, under this bill they would pay: premiums based on a sliding scale but NO MORE than $35 per month; $50 annual deductible; and 15 percent co-payments up to $3,600 after $3,600, seniors would pay a nominal cost-share of $2 for a generic drug and $5 for a name-brand drug.

For seniors over 150 percent of poverty, the standard subsidized benefit would include: $250 annual deductible; $35 average monthly premium; the government would pick up 75 percent of beneficiary out-of-pocket costs for drug expenses up to $2,250; between $2,251 and $3,600, beneficiaries cover all drug expenses out-of-pocket; and the government would pick up 95 percent of beneficiary out-of-pocket costs for drug expenses above $3,600.

In addition to the stand-alone benefit under traditional Medicare, the conference report would establish the Medicare Advantage program. All Medicare Advantage plans will be required to offer at least the standard drug benefit established in H.R. 1 and would be encouraged to offer beneficiaries enhanced access to the latest in health care technology through disease management, chronic care, and quality improvement programs.

These plans have the opportunity to provide seniors with better coverage at affordable prices. To help ensure participation in rural and urban areas equally, Medicare Advantage plans would submit bids to the Centers on Medicare and Medicaid Services on a regional basis. The Federal Government will share the risk with insurance companies and these plans.

It should also be noted that while the thrust of this bill is to provide seniors with access to affordable prescription drugs, the bill also ensures that seniors will continue to have access to current Medicare benefits as well.

For instance, while the relationship between a senior and their physician is paramount, last year, Medicare was scheduled to cut physician payments by 4.4 percent, which threatening seniors' access to their doctors. Physicians had already received a 5.4 percent cut in 2002.

Congress temporarily fixed the formula in 2003 and doctors received a modest increase of 1.6 percent instead of a cut. For 2004, physicians were again scheduled to take a 4.5 percent cut. However, to ensure that seniors have access to their physician of choice, this bill includes modest increase in payments of 1.5 percent for both 2004 and 2005.

Additionally, physicians and their staffs have become increasingly inundated with regulations and paperwork from Medicare. Provisions are included in the bill to streamline some of this paperwork so that doctors can spend more time with their patients rather than filling out reams and reams of Government forms.

Seniors in rural areas will also be assured of continual access to Medicare benefits. One of the most important aspects of the bill is the rural provider provisions. Through the bill, providers in rural areas will be placed on an equal footing to that of their urban counterparts. Some of the specific rural provisions include: equalization of the urban and rural payments for inpatient hospital services under Medicare; revision of the labor-related share of the wage index used in Medicare's payment system. Rural hospitals, because their local wage levels are lower than urban areas, are adversely affected by a high labor-related share; increase in payments to home health agencies by five percent for services furnished in rural areas; and increase in payment for physicians that serve

beneficiaries in counties where there are a scarcity of physicians.

The House of Representatives has already acted and the President is waiting to sign the bill into law. It is time that the Senate act and pass the Medicare Prescription Drug and Modernization Act.

Mr. SPECTER. Mr. President, since Medicare was established in 1965, people are living longer and living better. Today Medicare covers more than 40 million Americans, including 35 million over the age of 65 and nearly 6 million younger adults with permanent disabilities.

Congress now has the opportunity to modernize this important Federal entity to create a 21st century Medicare Program that offers comprehensive coverage for pharmaceutical drugs and improves the Medicare delivery system.

The Medicare Prescription Drug and Modernization Act would make available a voluntary Medicare prescription drug plan for all seniors. If enacted, Medicare beneficiaries would have access to a discount card for prescription drug purchases starting in 2004. Projected savings from cards for consumers would range between 10 to 25 percent. A $600 subsidy would be applied to the card, offering additional assistance for low-income beneficiaries defined as 160 percent or below the Federal poverty level. Effective January 1, 2006, a new optional Medicare prescription drug benefit would be established under Medicare Part D.

This bill has the potential to make a dramatic difference for millions of Americans living with lower incomes and chronic health care needs. Low-income Medicare beneficiaries, who make up 44 percent of all Medicare beneficiaries, would be provided with prescription drug coverage with minimal out-of-pocket costs. In Pennsylvania, this benefit would be further enhanced by including the Prescription Assistance Contract for the Elderly (PACE) program which will work in coordination with Medicare to provide increased cost savings for low-income beneficiaries.

For medical services, Medicare beneficiaries will have the freedom to remain in traditional fee-for-service Medicare, or enroll in a Health Maintenance Organization (HMO) or a Preferred Provider Organization (PPO), also called Medicare Advantage. These programs offer beneficiaries a wide choice of health care providers, while also coordinating health care effectively, especially for those with multiple chronic conditions. Medicare Advantage health plans would be required to offer at least the standard drug benefit, available through traditional fee-for-service Medicare.

We already know that there are many criticisms directed to this bill at various levels. Many would like to see the prescription drug program cover all of the costs without deductibles and without copays. There has been allocated in our budget plan $400 billion for prescription drug coverage. That is, obviously, a very substantial sum of money. There are a variety of formulas which could be worked out to utilize this funding. The current plan, depending upon levels of income has several levels of coverage from a deductible to almost full coverage under a ''catastrophic'' illness. One area of concern is the so-called ''donut hole'' which requires a recipient to pay the entire cost of rug coverage.

As I have reviewed these projections and analyses, it is hard to say where the line ought to be drawn. It is a value judgment as to what deductibles and what the copays ought to be and for whom. Though I am seriously troubled by the so-called donut hole, it is calculated to encourage people to take the medical care they really need, and be affordable for those with lower levels of income. Then, when the costs move into the ''catastrophic'' illness range, the plan would pay for nearly all of the medical costs.

I am pleased that this bill contains a number of improvements for the providers of health care to Medicare beneficiaries. Physicians who are scheduled to receive cuts in 2004 and 2005 will receive a 1.5 percent increase over that time. Moreover, rural health care providers will receive much needed increases in Medicare reimbursement through raises to disproportionate share hospitals and standardized amounts, and a decrease in the labor share in the Medicare reimbursement formula. Hospitals across Pennsylvania will benefit from upgrades to the hospital market basket update and increases in the Indirect Medical Education. Furthermore, the bill will provide $900 million for hospitals in metropolitan statistical areas with high labor costs due to their close proximity to urban areas that provide a disproportionately high wage. These hospitals may apply for wage index reclassification for three years starting in 2004.

I would note that I do have concerns with this legislation with regard to oncological Medicare reimbursement and the premium support demonstration project for Medicare Part B coverage. Proposed reductions in the average wholesale price for oncological pharmaceuticals may have a grave effect on oncologists' ability to provide cancer care to Medicare Beneficiaries. Every Medicare beneficiary suffering from cancer should have access to oncologists that they desperately need. I will pay close attention to the effects that this provision has on the quality and availability of cancer care for beneficiaries and oncologists' ability to provide that care. Further, the premium support demonstration project for Medicare Part B premiums poses a concern. Some metropolitan areas may face up to a five percent higher premium for fee-for-service care than neighboring areas. While these provisions remain troublesome, we cannot let the perfect become the enemy of the good with this piece of legislation.

The Medicare Prescription Drug legislation has been worked on for many years. I believe this bill will provide a significant improvement to the vital health care seniors so urgently need. I congratulate the members of the conference committee including Majority Leader FRIST, Senator GRASSLEY, Chairman of the Finance Committee, and the Ranking Member, Senator BAUCUS, for the outstanding work which they have done on an extraordinary complex bill.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I have a unanimous consent request to clarify plans for at least early in the morning. I ask unanimous consent that when the Senate resumes the conference report to accompany H.R. 1 on Tuesday at 8:15 a.m., the time until 9:15 be equally divided between the chairman or his designee and the Democrat leader or his designee; further, I ask consent at 9:15 the Senate proceed to a vote on the adoption of the conference report, with no intervening action or debate.

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

Mr. DURBIN. If the majority leader will yield for a question, is it the intention of the majority leader to adjourn after that vote?

Mr. FRIST. Mr. President, through the Chair, we are currently still negotiating and working on the omnibus, and we will continue to work for the next probably 6 to 7 hours. So I will not be able to comment definitively until probably first thing in the morning. Again, we continue to work. Initially, we hoped to make progress even tonight on the omnibus, but we were unable to do that. So we will not be adjourning right afterwards. We will likely be in through tomorrow and would like to get as far as we can with the omnibus at that time.

Mr. DURBIN. Mr. President, if the majority leader will yield for another question, will there be an effort to extend unemployment compensation benefits before we adjourn?

Mr. FRIST. Mr. President, at this point I really cannot comment intelligently until we further have our discussions through the night in terms of what the plans will be over the course of tomorrow.

Mr. DURBIN. I thank the majority leader.

Mr. FRIST. Mr. President, over the past few days, we have heard a number of criticisms of the bill. And there is one criticism in particular that I want to address.

Opponents have claimed that the bill fails to contain prescription drug costs. I can only presume that this criticism reflects a misunderstanding—because the bipartisan agreement includes a number of critical provisions to lower prescription drug costs.

Under the Hatch-Waxman law, generic approval is allowed when a new

drug's patent and market exclusivity protection expires, or when a 30-month stay terminates. The intent is to provide incentives to develop valuable new drug treatments through patent protection, but also to facilitate access to generic versions of the drug after the innovator's patent expires. However, access to generic drugs has sometimes been improperly delayed.

Earlier this Summer, the Senate voted 94–1 in favor of reforms developed by Senators GREGG and SCHUMER to close existing loopholes in the law. And the bipartisan agreement retains these critical reforms, ensuring speedier access to generic drugs for all Americans. Under the bipartisan agreement, a new drug applicant will receive only one 30-month stay of approval of a generic's application, for patents submitted to FDA prior to the generic application. The agreement also takes additional steps to reduce or eliminate the delays in the movement of generic drugs to the marketplace.

As a result, patients will benefit from grater access to safe, effective, low-cost generic alternatives to brand name medicines. That's why this bill is supported by the Generic Pharmaceutical Association and the Coalition for a Competitive Pharmaceutical Market. I would like to submit their letters of support for the RECORD.

The competition in this bill achieves significant ''bang for the buck'' because it relies on drug plans to negotiate discounts. CBO says the private insurance model has a cost management factor of 25 percent—the effect of price discounts, rebates, utilization controls, and other tools that a PDP might use to control spending. By relying on the bargaining power of drug plans, this bill will drive down the costs of prescription drugs.

The bipartisan agreement enhances research on the comparative clinical effectiveness of prescription drugs. This information will be quickly disseminated. By giving patients, health care professionals, health plans and the Medicare program better information on the comparative effectiveness of treatment options, this provision will ensure that patients and health care consumers get the most value for their money.

The bill includes other key cost containments. Prescription drug negotiations will not be subject to the Medicaid ''best price'' rules. Competing plans will get even better prices for seniors and disabled persons. Last year, the Congressional Budget Office estimated that exempting Medicare from best price rules would save $18 billion between 2003 and 2012.

The bipartisan Medicare agreement will lower prescription drug costs. That is why it has been endorsed by pro-consumer groups including the American Association of Retired Persons and the Coalition for a Competitive Pharmaceutical Market.

However, opponents have claimed that this language ''prevents'' the Federal Government from negotiating drug prices.

The bill specifies that the government ''may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors'' and ''may not require a particular formulary or institute a price structure.'' In fact, this provision first appeared in May 2000 in a Democratic bill. The provision protects patients by keeping the government out of decisions about which medicines they will be able to receive.

Through this bill, we are giving seniors new access to affordable prescription drugs. We are speeding the pace of cheaper generic drugs to the market. We are providing for research on the comparative effectiveness of prescription drugs. We are providing a drug discount card and greater relief for low-income seniors. And we are unleashing powerful new market forces that will drive down the costs of prescription drugs.

But some continue to advocate for so-called ''reimportation.'' This is unnecessary and unsafe. The FDA has much evidence of counterfeit, expired, mislabeled, subpotent and superpotent drugs shipped into the United States from all over the world. Health Canada is on the record saying that they will not guarantee the safety of drugs sold to Americans. Numerous current and former FDA and law enforcement officials have testified that this is not safe. Just last month, the Washington Post ran a detailed series revealing a vast, complicated network of ''criminal profiteers, unscrupulous wholesalers, rogue Internet sites, and foreign pharmacies.'' The result has been deadly.

In St. Charles Missouri, a 61-year-old breast cancer patient was unknowingly sold diluted cancer medication by her local drugstore. Seven months after being sold the phony batch, she was dead. In Sacramento, a wife found her 47-year-old husband on the living room couch dead of an overdose of painkillers. He had obtained the pills from multiple pharmacies all over the world.

These disturbing reports bear directly upon the importation of prescription drugs. There is the faulty notion that this is a solution to drug costs. But as real life illustrates, the black market in pharmaceuticals is a very dangerous place.

In 2000, Congress passed the Medicine Equity and Drug Safety Act. But in the 3 years and two administrations since the law has been in effect, no Health and Human Services Secretary—either Democrat or Republican—has been willing to verify its safety. So this bill requires the Department of Health and Human Services to undertake an in-depth study on whether there is a safe way to reimport drugs from Canada.

What we need are sensible policies. And in the Medicare legislation we have them. The Medicare bill under consideration will make sure that seniors get the prescription drugs they need, with the safety they expect.

Mr. President, Medicare beneficiaries have waited too long for this debate. The practice of medicine has changed dramatically since the inception of the Medicare Program in 1965. Unfortunately, the program has seen few changes or improvements.

Today we finally consider providing 41 million seniors and Americans with disabilities with access to prescription drug coverage. Currently, 9.9 million Medicare beneficiaries have NO drug coverage and many more have only limited coverage.

Prescription drugs have become integral in the practice of Medicine and this legislation is critical to the health of current and future beneficiaries. Beginning next year under this bill, seniors will receive immediate, voluntary assistance with their drug costs. All Medicare beneficiaries would receive a discount drug card that will help bring down the cost of prescription drugs by 10–25 percent. Moreover, low-income seniors will receive $600 to help with their drug costs.

In 2006, beneficiaries will have access to a comprehensive prescription drug benefit. Seniors with incomes above 150 percent of the Federal poverty level will see savings of about half of their drug costs as a result of this coverage.

Low-income seniors will no longer be forced to rely on Medicare for help with their drug costs. This legislation will provide coverage for drug costs for even our lowest-income seniors under the Medicare program. Seniors with incomes below 150 percent of the Federal poverty level will receive coverage for all but a small percentage of their drug costs.

Prescription drugs not only treat disease, but they can help to prevent disease when used as part of therapeutic treatment. For this reason I am proud to say that prescription drug coverage is only one of the major improvements we will make to the Medicare Program. For the first time, the Medicare Program will put an emphasis on chronic care coordination and disease management. Beneficiaries will receive coverage for a welcome to Medicare physical. The preventive physical visit is one of the best opportunities physicians have to measure health status, screen for various diseases and educate patients about their health needs.

The legislation will also add coverage for screenings for heart disease and diabetes. Moreover, this bill directs the Secretary to integrate disease management and chronic care coordination into the basic Medicare program. Beginning immediately upon enactment with a large-scale pilot program, the Secretary will test methods to help beneficiaries with chronic conditions, ensuring they receive preventive tests, procedures and treatments to better manage their disease and improve their health status and quality of life.

This program will put the emphasis on prevention and treatment, rather than acute episodes of care. This is one of the most important reforms in the

conference agreement. Beneficiaries with multiple chronic conditions account for the greatest share of Medicare spending. And low-income beneficiaries are more likely to suffer from multiple chronic diseases and to have poorer health outcomes than higher income seniors.

Diabetes is a good example of how prescription drug coverage and prescription drug therapy along with a regular care regiment promise more effective treatment and outcomes. Approximately 17 million Americans suffer from diabetes and another 16 million adults are at risk for developing diabetes. Undiagnosed and improperly treated, diabetes can and will result in a host of complications that can result in disability and even death. These complications include kidney failure, blindness, heart disease and loss of limb. According to the American Diabetes Association, $91.9 billion dollars was spent last year in direct medical expenses for diabetics.

Since 1995, five new classes of medicines have been introduced to treat diabetes. These medicines, coupled with health management and coordinated care programs, are powerful tools to increase health status and reduce complications. For example, a comprehensive disease management program for approximately 7,000 diabetic patients produced savings of $50 per diabetic patient per month. While pharmaceutical costs increased under the program, total health care spending declined. This was due to substantially fewer inpatient hospitalizations and reduced lengths of stay.

All that stands between seniors and prescription drug coverage, disease management and improved health coverage is the upcoming Senate vote. I am confident that we will pass this conference report and send the legislation to the President's desk. Seniors deserve no less.

Mr. President, millions of Americans experience serious health disparities based on ethnicity, race, gender, or a lack of access to health care. Great progress has been made in narrowing health disparities. Through advances in medical research and public policy, we are working to ensure better access to quality health care for all of our citizens. More, however, needs to be done. Let me list a few examples of where there are still serious disparities in health.

The number of diabetes cases among African Americans has tripled since the 1960s. Moreover, African Americans experience higher rates of diabetes' most serious complications: blindness, amputation and kidney failure.

One of seven Hispanics have diagnosed or undiagnosed diabetes and the prevalence of type-2 diabetes is twice as high in Hispanic Americans as in non-Hispanic whites.

American Indians and Alaska Natives are 2.3 times as likely to have diabetes as non-Hispanic whites of similar age. Diabetes cases are more concentrated among American Indians in the southeastern United States.

Asian Americans and other Pacific Islanders are approximately two times as likely to be diagnosed with diabetes as compared to their white counterparts.

When it comes to cardiovascular disease, African Americans have the highest rate of high blood pressure of all groups and tend to develop it younger than others.

Stroke is the only leading cause of death for which mortality is higher for Asian-American males.

Breast and cervical cancer also hit African American women more often than their white counterparts.

Although deaths caused by breast cancer have decreased among white women since the 1980s, African American women continue to have higher rates of mortality from breast and cervical cancer. African Americans are more likely to develop cancer than whites and are about 30 percent more likely to die of cancer than whites.

In the Medicare legislation before us, we have an opportunity to address the problem of health disparities head on. Today, roughly 20 percent of all Medicare beneficiaries are members of minority groups. And the Census projects that, by 2025, minorities will compose 35 percent of all seniors. Racial and ethnic minorities covered by Medicare suffer from more illnesses and are more apt to live in poverty than white beneficiaries.

So I am pleased that this bill particularly benefits racial and ethnic minorities, and assures that minority seniors and disabled people have access to needed medicines at affordable prices.

The bipartisan Medicare agreement will ensure better Medicare coverage for minorities through new disease management services, a new ''welcome to Medicare physical'' and new cardiovascular disease and diabetes screening programs. Beginning in 2005, each year, nearly 360,000 newly enrolled minority Medicare beneficiaries will be covered for an initial physical examination. The initial preventive physical exam includes measurement of height, weight and blood pressure, and an electrocardiogram, as well as education, counseling and referral related to other preventive services.

The bipartisan Medicare agreement includes new cardiovascular and diabetes screening blood tests that do not have deductibles or co-pays, so beneficiaries with limited resources who might not otherwise access these benefits are not deterred by the cost.

Disease Management is being introduced into the original Medicare program to provide beneficiaries the tools and support systems to help them manage their chronic illnesses. Through these new benefits, conditions such as obesity, diabetes, heart disease, and asthma could be made far less severe for millions of Medicare beneficiaries, including those racial and ethnic minorities who suffer most from these conditions.

The bipartisan agreement provides immediate help to those who need it most: low-income Medicare beneficiaries who do not have prescription drug coverage and do not qualify for Medicaid. This starts with the prescription drug discount card and builds on it to provide needed relief to low-income seniors with a generously subsidized drug benefit in 2006.

Over 13 million beneficiaries under 65, across all racial/ethnic groups, have very limited financial means. But these limitations are particularly acute among some populations. In 1999, 46 percent of African Americans and 55 percent of Hispanics had incomes below the Federal poverty level, compared with 15 percent of white beneficiaries. Nearly two-thirds of African-American and Latino beneficiaries have incomes below twice the poverty level, compared with 41 percent of whites.

Starting in 2006, more than 1.5 million minority beneficiaries will gain access to new drug coverage, including over a half million Hispanic and nearly 700,000 African-American Medicare beneficiaries. The Bipartisan Agreement will help cut their prescription drug bills in half. The poorest seniors—including nearly 2 million minority beneficiaries—with incomes below 100 percent of the Federal poverty level who are eligible for Medicaid would pay no premiums or deductibles, and would pay only nominal cost-sharing of $1 for a generic drug or a preferred multiple source drug and $3 for all other drugs.

2.5 million low-income minority beneficiaries with incomes below 135 percent of the Federal poverty level would pay no premiums or deductibles, and would only pay nominal cost-sharing of $2 for a generic drug or a preferred multiple source drug and $5 for any other drug. More than 400,000 minority beneficiaries, with incomes below 150 percent of the Federal poverty level would get sliding scale subsidies for their premiums, and pay both a lower deductible and lower cost-sharing compared to the standard benefit.

In addition to the low-income benefit, the bill provides that the Federal Government will assume the costs of dual-eligible beneficiaries, allowing them to receive their medicines through a private-sector drug plan, remove the stigma of Medicaid coverage, and provide fiscal relief to the States that currently pay for them.

Because only a third of African Americans and a quarter of Hispanics have Medigap or employer-sponsored retiree benefits, compared to two-thirds of white beneficiaries, they are more likely to rely on Medicaid to supplement Medicare. In fact, 43 percent of dually-eligible beneficiaries are minorities.

The bipartisan Medicare agreement improves services available to individuals suffering from these diseases. The agreement particularly improves access to prescription drugs and new services for low-income individuals,

many of whom are racial and ethnic minorities.

The agreement includes critical provisions to study and disseminate the latest research on the comparative clinical effectiveness of prescription drugs and other health care services—including among specific patient subpopulations. This will ensure that patients and providers can make informed choices about their treatment options. It will also make prescription drugs more affordable for all Americans through important provisions, speeding generic drugs to market.

Ultimately, by adding much-needed prescription drug coverage to services already covered by Medicare, the agreement ensures that these individuals have access to more comprehensive, higher quality health care and treatment options.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I sincerely hope we do something about unemployment compensation benefits. We will be gone for 2 months. Nine million Americans are out of work. Three million have lost their jobs since this President took office. Frankly, many of them have seen their unemployment benefits expire.

Historically, traditionally, on a bipartisan basis, we have extended those unemployment benefits. I think it is a sad situation if we adjourn before this holiday season leaving literally millions of American workers without the basics they need to keep their families together. I hope if we do nothing else, we achieve that.

Those who may be following this debate may wonder why, at 20 minutes to 10 this evening, on November 24, Senators are still on the floor speaking about this legislation. This bill, which in its totality is about 1,100 pages long—and the sponsor of it, Senator GRASSLEY, my friend, has admonished me not to say that the bill is 1,100 pages long but that the bill and its committee report is that length—is a historic piece of legislation.

There are some of us who believe, if this bill passes tomorrow, in the morning, as it is likely to do, that, frankly, for years to come people will be asking questions about how various Senators felt, how they voted, and what they did during the course of this debate. Those who support it believe it will be good and they take great pride in it. Those of us on the other side believe this legislation is an abomination. When we consider the opportunity we had and the challenge we had when this legislation was brought before us, this bill fails to meet the test.

It fails in this respect: We started off saying we need to help senior citizens pay for prescription drugs. Medicare did not include that benefit, and it should have. We know now that prescription drugs keep seniors healthy and strong and independent. We should give them a helping hand to pay for those expensive drugs. I think everybody agreed with that premise.

Then, when we started the debate, things started to change, because in order to achieve that goal many of us thought the Government would have to step in with some money to help seniors but also we would have to say to the drug companies, you have to charge reasonable prices for your drugs. I think those two go together.

To think that the Federal Government is going to somehow subsidize the cost of prescription drugs and do nothing to bring those costs down, frankly, is counterproductive. We cannot appropriate enough money to keep up with the meteoric rise in the cost of prescription drugs that seniors and other families across America face.

Sadly, the Senate passed a bill, supported by Democrats and Republicans, which at least moved in the direction of change but did not move far enough. It did not contain any cost containment. It did not challenge the drug companies in America to treat Americans fairly.

That bill passed and went to conference committee. We hoped it would be improved, but it was not. In fact, the bill was worsened in many respects.

As a result of that, many of us who had hoped for a prescription drug benefit for seniors are going to oppose this particular legislation because it does not achieve that goal.

Sadly, it brings another element to the debate, for which many of us never bargained. There are those in the Congress who believe we have to basically dismantle and fundamentally change Medicare.

Medicare, a system of health insurance for seniors across America for over 40 years, has given seniors quality of life and quality health care, and statistics prove that it has worked. Seniors live longer. They are more independent. They are healthier. Medicare has proven that if we have Federal leadership, we can have doctors and hospitals providing the best care to our mothers and fathers and our grandmothers and grandfathers.

But there are some who opposed it from the beginning, calling it socialized medicine, and others who do not want to meet the obligations of Medicare as the baby boom generation qualifies to receive it. So they have set upon a path to basically change Medicare as we know it.

That was never part of the bargain. This was supposed to be about prescription drugs and seniors. Instead, it switched into a new realm. The House Republican leadership pushed into this conference committee a dramatic, and some say drastic, change in Medicare for its future. That has forced many of us to not only oppose this bill but to oppose it strongly, believing our first obligation is to protect Medicare and our second obligation is to give seniors the benefit they need for prescription drugs.

This bill has failed. This bill will raise Medicare premiums for millions of senior citizens. It will force many senior citizens into HMOs. I do not have to explain HMOs to people who have tried to live with them. A health maintenance organization or similar insurance company basically rations care. It picks the doctor, not the individual covered or insured. But the HMO will pick your doctor and pick your hospital.

I think we have all heard the horror stories about HMOs that basically have denied care, denied basic medical procedures because they do not believe it is a worthwhile economic undertaking. So doctors make decisions about what you need to stay healthy, and HMOs overrule the doctors.

Senator KENNEDY, who is on the floor, and will speak after I do, has been a leader in this Senate, in the Congress, on a Patients' Bill of Rights. Why did we have to create a Patients' Bill of Rights? Because of the abuses of HMOs. And that is no surprise to people who have tried to live with them.

Now, this bill, pushed by the Republican leadership, wants to move America's seniors out of Medicare and into these HMOs. They believe that is a better way to go, to ration health care through HMOs. They want the HMOs to pick the doctors and the hospitals. They do not want the seniors to choose them, as they do now under the Medicare plan.

The original argument was that these private insurance companies, because they would be competing in the open market, would provide more economical care for seniors. But, of course, that premise was destroyed by this bill because they included in the bill a $12 billion slush fund, $12 billion of Federal tax dollars that will go to subsidize the HMOs. In other words, they not only do not have to prove profitability; they can enjoy a Federal subsidy as they try to lure the healthier seniors out of Medicare, leaving behind poorer and sicker Medicare recipients who will drive up the unit cost of care under that traditional program, making it more expensive to Congress and the American people, and its critics hope will lead it into a period of unpopularity and perhaps abandonment.

I believe that is their ultimate goal. I think that is what they are setting out to do. They want to force seniors into HMOs, subsidized, incidentally, by Federal tax dollars. They want to undercut full Government funding of Medicare.

That is not why I signed up for this debate. It is not the reason most Senators got involved in it. It, frankly, represents a distorted view of what we were setting out to do.

It also is going to eliminate drug coverage for millions of retirees. The Congressional Budget Office, which makes projections, tells us that 2.7 million retirees in America who currently have health care benefits, including prescription drugs—2.7 million will lose that coverage because of this bill.

There is already a trend in America to take away health coverage for retirees. It is expensive. Many of the companies would like to get rid of it, if they can. The CBO tells us, the Congressional Budget Office tells us, this bill will create a lure and a force to draw these retirees out of their current health care benefits in retirement into a situation where they are not insured—2.7 million.

In my home State of Illinois, 100,000 retirees will lose their health care benefits because of this bill. Was that ever part of the bargain? Did we go into the debate saying, we are going to provide prescription drug coverage to seniors but in the process 100,000 in my State are going to lose their health care coverage?

That is the result, and not a result on which we are speculating. It is from the Congressional Budget Office, as they reported it to us.

There is another element here as well. There is an element that I think really tells the story about why this bill is so popular in some quarters in Washington—not among seniors but with some special interest groups.

You should have seen the area right outside the Senate Chamber this afternoon when the key votes were coming down. You could not even walk through. It was packed with lobbyists.

Now, there is nothing wrong with lobbyists. Lobbyists perform a valuable function when they come to Government and tell us both sides of the story. As a Member of the House and Senate, I value lobbyists who are honest and tell me their side of the story.

But if you took a look at the lobbyists in the hallway outside on this vote, you noticed, overwhelmingly, they were lobbyists supporting this bill and lobbyists representing pharmaceutical companies and HMOs.

Why would pharmaceutical companies support a bill that is supposed to lower prescription drug prices for seniors?

The obvious reason is that under this bill there is no cost control. There is no cost containment. There is no restraint on those drug companies charging even higher prices. In two particular areas, this bill is going to keep drug prices high, not just for seniors but for families across America. This bill virtually prohibits the reimportation of United States-made drugs from Canada and other countries. We have seen the news reports. Seniors in Minnesota, Michigan, and New England are traveling into Canada to buy drugs, American drugs, at a fraction of the cost. We put a provision in the House version of the bill and the Senate version of the bill to allow that trade to continue so that seniors could take advantage of the lower prices.

I have always said that we are not importing drugs from Canada, we are importing political leadership from Canada. Canada and its Government stood up for its people and its senior citizens. Canada said to the drug companies, represented in our hallways by the lobbyists: You can't charge whatever you want to charge. You have to keep your charges reasonable.

Because Canada imposed these standards and would not allow the prices to go sky high, they deeply discount the same drugs sold in America. This bill virtually closes the door for importation from Canada. It is the answer to the prayer of our pharmaceutical companies that don't want cheaper drugs coming to this country so they can sell more expensive drugs to Americans currently living here.

Also, this bill prohibits Medicare from negotiating lower drug prices. When we started this debate on prescription drugs, virtually every senior I talked to said: Senator, I don't understand why it is taking so long to see the obvious. If Medicare as a program offered prescription drugs, that would be the best approach. It would be a universal voluntary program covering everyone under Medicare. Medicare as a program could bargain for lower drug prices and say to America's drug companies: If you want to sell us a drug for high blood pressure, then you have to give us a reasonable price or we will look to another company with a comparable drug. We do that with the Veterans' Administration. We could have done it with Medicare. But this bill expressly prohibits Medicare from entering into these negotiations to lower prices. Why? Because the same drug companies that fought reimportation of drugs don't want to bargain with Medicare. As a consequence, the seniors are the losers. That is basically what we are going to deal with. We are going to continue to see outrageously high prescription drug costs.

Let me give an illustration of one element that I am not sure has been addressed during the course of this debate. That may be hard to believe after 3 full days and more of debate. This bill lacks any serious attempt to lower the cost of prescription drugs. We can reasonably assume that prescription drug prices will continue to rise about 15 percent annually as they have in the past. It is one of the most inflated costs in our health care menu of opportunities, prescription drug prices. One major employer in Illinois, Caterpillar Tractor Company, self-insured for health insurance, told me the price of prescription drugs was the biggest single problem they are facing for employees and retirees.

Consider the example of a senior citizen struggling to make ends meet, the kind of senior we were supposed to help with this bill, a senior who in 2006, when this bill will first go into effect, has an income of $20,000 a year. That is probably in the high end for many seniors. Some survive on much less. But for purposes of illustration, this senior has an income of $20,000 and is struggling to devote 25 percent of their income to paying a $5,000-a-year pharmaceutical bill. Five thousand a year is a little more than $400 a month. Believe me, I have met seniors who are paying an awful lot more than that.

So here we have a senior, $20,000 in retirement income, and $5,000 in annual drug costs. Now let's consider what this bill is going to mean to that senior. This bill steps in and cuts that senior's costs by $1,080. That is not much. That is about 22 percent of the senior's costs. I think it ought to do more, but it is something, to cut the $5,000 bill by $1,080. That is what this bill does. But what happens when year after year the senior's income goes up at the rate of inflation, roughly 3 percent, while the pharmaceutical companies' charges for prescription drugs increase at 15 percent a year? Income going up 3 percent; cost of drugs going up 15 percent a year.

By the year 2015, 9 years after this bill goes into effect, the senior's income will have grown 30 percent to $26,000. The drug costs of $5,000 when it started will have mushroomed to $17,600, a 15 percent increase unchecked versus a 3 percent increase in income. Do you know how much of that $17,600 will be paid by the Government under this bill when we have this period of time, 9 years after it goes into effect? I can tell you: It is $3,800—22 percent of what the senior is supposed to pay. So the senior's out-of-pocket prescription drug costs, not paid by the Government, would be $13,800, 53 percent of the senior's income. So even with the assistance under this bill, unchecked prescription drug inflation will drive seniors in a decade or more from spending a fourth of their income on prescription drugs to spending more than half of their income under the scenario I have just described.

Why? Senior citizens' out-of-pocket drug costs go up even with this bill because the bill does nothing to rein in unsustainable inflation in prescription drug costs. That doesn't help seniors. They need us to take action to bring down the cost of medication.

If you take a look at the pharmaceutical companies and their approach on this bill, here is what they wanted when we started this debate. They wanted private-insurer-administered drug benefits that dilute purchasing power. They got it. They wanted financial incentives for HMOs, another step away from Medicare. They got it. They wanted a prohibition on Medicare negotiating prices. They received it, which I think is the fatal flaw in this legislation. They wanted meaningless reimportation. They got it. So getting drugs from Canada becomes even more difficult. They wanted watered down generic drug access provisions. They were successful. They wanted no public scrutiny of secret PhRMA-insurer kickback arrangements. They got that protection. And, finally, they wanted huge windfall profits, and they will get it.

Wall Street has already costed this out. Pharmaceutical stocks, which were already the most profitable in America, will continue to be such. The

loser will be senior citizens who were supposed get the help. That is why the pharmaceutical companies line up outside the door to the Chamber cheering for those who want to vote for this bill—because they know it means more money in the bank.

What I have given you here is not an extreme example; $5,000 a year for prescription drugs for a senior is sadly a reality. The seniors who will face this without a helping hand from the Government in terms of paying these inflated costs of drugs are going to struggle, and they may not succeed in paying for those drugs.

Let me show you this, too. Here are the compensation levels of those who run HMO insurance companies I described earlier. Remember what I said: The intent of this bill is to move seniors out of Medicare into HMOs. These are compensation levels: For companies such as Aetna, here is their CEO, he received $8.9 million; Anthem, $6.8 million; CIGNA, $5.9 million; Coventry, $21.6 million compensation for their CEO; Health Net, $6 million; Humana, $1.6 million; Oxford, $76 million for Mr. Norman Payson, not a bad year; PacifiCare, $3 million; Sierra Health, $4.7 million; and then we get down to United Health Group, this group with a CEO by the name of Mr. Channing Wheeler; he received $9.5 million in compensation.

I would like to stay with United Health Group for just a moment. This is not just another HMO, this is an HMO that is extraordinarily blessed by this bill. Let me tell you why. In addition to $12 billion in a slush fund to subsidize and underwrite HMOs that are going to compete with Medicare, there is an additional provision in here that gives $6 billion for a theory of health insurance called health savings accounts. If you have followed the debate in Washington, you may know that some 9 years ago, a company based in Lawrenceville, IL, the Golden Rule Insurance Company, dreamed up this basic insurance idea that said: We will say to people that if you will take a high deductible health insurance policy and do not use all that you could in terms of health expenses during the course of the year, we will refund some of your money at the end of the year; so it is not only health insurance lite but a chance to recoup your money. They called it medical savings accounts. This was the darling of then-Speaker Newt Gingrich and his conservative Republicans.

They believed this was the answer to America's prayers for health insurance. We have eventually put in a demonstration project and said let's at least try this concept and see how many people want to buy into it. It was a dismal failure. Very few people signed up. That didn't stop the efforts to include some provisions to help that concept of medical savings accounts—now called health savings accounts—in this bill—not just to help them get started but a $6 billion slush fund of Federal tax dollars to underwrite health savings accounts.

Let me say, it is not a one-way street. In order to win the attention of Congress and $6 billion in Federal subsidy, Golden Rule, over the past 12 years, has been extraordinarily generous to political candidates. They donated $3.6 million to political parties in candidates—90 percent to the Republican Party. Mr. Gingrich received more campaign contributions from Golden Rule than any other Federal officeholder over the past 12 years. In fact, he became their poster child and appeared on their television advertisements. The list goes on and on about Golden Rule and all the political contributions they have made.

This bill contains $6 billion for health savings accounts, such as those that have been devised by Golden Rule. This is how it works. Consumers or employers buy high-deductible policies. The deductible is at least $1,000 for individuals, $2,000 for families. The consumer or employer can put as much as $5,000 a year for an individual and $10,000 for a couple into the account. The contributions are tax deductible. Money can accumulate tax free. Withdrawal of the money is also tax free. It is virtually an unprecedented tax shelter that is being added here and subsidized with $6 billion. The funds can be withdrawn to pay medical expenses, including items not normally covered, such as cosmetic surgery.

The problems are numerous. First, it compromises the current health insurance system. People who purchase high-deductible health insurance policies are the healthiest among us. As they opt out of traditional plans, the risk pools in those traditional plans are compromised, leaving people behind to pay higher premiums.

Past research by Rand, the Urban Institute, and the American Academy of Actuaries have found that premiums for comprehensive insurance could more than double if these health insurance accounts become widely used.

Second, wealthy Americans are likely to use these as tax shelters.

In 1996, HIPAA established a demonstration project of health savings accounts. The GAO evaluation of the investigation showed that investment firms such as Merrill Lynch entered the health savings account market because of insurer perceptions that HSA enrollees were using their accounts primarily as tax-sheltered savings vehicles rather than sources of tax-sheltered funds for paying medical expenses.

So here we are setting a new precedent in tax policy. The financial service industry loves it—$6 billion. Now you might ask yourself: What do health savings accounts have to do with prescription drugs for seniors? The answer is nothing. Well, what do health savings accounts have to do with Medicare and seniors in general? The answer is nothing. The $6 billion subsidy in this bill for health savings accounts is making good on a promise by Republican leadership to reward their friends—in this case, Golden Rule. But wait, there is more to the story.

Golden Rule as an insurance company doesn't exist anymore. It sold out. The purchaser was United Health Group. R. Channing Wheller is their CEO who made $9.5 million. They are basically the architects of the health savings account, this HMO.

The story gets even more interesting. This is a publication of AARP. It comes from October of this year. AARP makes a lot of money by selling insurance to seniors. If you open here, this is page 24 and 25, those two pages, you will see three advertisements from AARP on behalf of United Health Care Insurance Company's insurance plans. What is the connection? AARP receives millions of dollars from the sale of health insurance policies and stands to gain under this bill. The AARP insurance-related revenues made up a quarter of their operating revenues last year and one-third in 2001. They receive royalties from policies marketed by United Health Group, the one that purchased Golden Rule. Last year they earned $3.7 billion in premium revenue from their offerings to AARP members—$3.7 billion. This one company.

The royalties AARP earned as a result of that amounted to $123 million; access fees, $10 million; quality control fees, almost a million dollars. AARP also earns investment income on the premiums received from members. That is a total of $161.7 million in revenue from insurance. According to Advertising Age Magazine, AARP and United Health Group hired a direct marketing agency in May to conduct a marketing campaign that could cost $100 million.

United Health Group is going to be one of the biggest winners under this bill we are considering and will vote on tomorrow. It will be a big winner in at least two different directions: First, as an HMO, it is entitled to part of the $12 billion slush fund to lure seniors out of Medicare into their HMO. Secondly, because they have now bought Golden Rule, they will be authors of insurance policies called health savings accounts, which receive another $6 billion subsidy; and guess who is in on it as well. Our friends at AARP.

It is curious to me when seniors who belong to AARP have been asked whether they like this bill, they overwhelmingly say no. Let me get this figure right; I don't want to misstate it. When asked last week whether they supported this bill—AARP members nationally, in a poll conducted—56 percent opposed it and 18 percent supported it; 56 percent of the seniors in AARP opposed it and 18 percent supported it.

Yet Mr. Bill Novelli and AARP have been leading the charge to pass this bill. If it is not that popular among AARP members, what is going on? There is money to be paid. AARP is

going to be selling insurance through the United Health Group with a massive Federal subsidy, and through the old Golden Rule health savings account with another massive Federal subsidy. They are not listening to seniors; they are listening to the insurance companies, to the HMOs, and that is a sad thing.

This bill squanders $6 billion that should have been paid for retiree coverage of prescription drugs, creating these new health savings accounts that ordinary Americans cannot afford, undermining employer-based coverage, $6 billion that should have been used to prevent the loss of retiree coverage. As I mentioned earlier, some 25 percent of the revenues going to AARP came off of insurance royalties.

So you ask yourself if the membership of this organization doesn't care for this plan and opposes this plan, by a margin of more than three to one, why then is AARP front and center running ads in newspapers, television, and radio across America? Because, frankly, the ads are paid for by HMOs and pharmaceutical companies and represent an effort by the current leadership of AARP to jam down the throats of senior citizens a proposal they do not support.

What I suggest to seniors across America who are following this televised debate is this: If you belong to AARP, call them first thing in the morning at 1–800–424–3410 and tell them to stand up for seniors, don't stand up for the insurance companies. Don't stand up for pharmaceutical companies, stand up for seniors across America.

I, frankly, went back to Chicago this weekend and met with many people who said they have had it with AARP. They have no idea what happened to an organization created to serve seniors and, frankly, is turning its back on the seniors who needed help the most. That, to me, is a sad commentary. Someone said, basically, if you want to know about legislation, whether it is good or bad, ask the basic question: Who wants it? Who wants this bill, this 1,100-page monstrosity?

It isn't senior citizens. Overwhelmingly across America they say we don't want it. They are calling my office and every office on Capitol Hill. They want help to pay for prescription drugs they can understand. They want it under Medicare so the costs can be contained. They didn't want a full-scale attack on the Medicare system itself, and that is what has happened.

Sadly, we know who really wants this bill: the pharmaceutical companies that stand to make outrageous profits into the future without any competition, and the HMOs that, with their Federal subsidies, will be luring these seniors out of Medicare.

This was an extraordinary and historic opportunity for the Senate and the Congress to do something meaningful. Forty years ago, when we created Medicare, the doctors across America opposed it saying it was socialized medicine. They did not want the Government involved. A few years after the fact, they realized Medicare was not only great for seniors but not bad for the medical profession either. They have been able to expand their practices, create more hospital care, and make for a healthier America.

It worked to everyone's advantage, but the special interest group at the time, the AMA, was opposed to it. Today this is a product of special interest groups. This is not a product that was designed for seniors. It was a product that was designed to reward friends—the pharmaceutical companies that have spent $139 million lobbying Congress over the past 6 months, as well as the HMOs, Golden Rule, and all the old buddy network.

They may win tomorrow, but this I will predict: When this bill goes into effect in 2006, conveniently after the next Presidential election so that all of the bad impact of it won't be realized, when this bill goes into effect and seniors across America realize they have been had, the telephone calls that Congressmen and Senators are receiving today will pale in comparison.

Woe to those Senators and Congressmen who stand for reelection having voted for this bill when it goes into effect in 2006. When the seniors realize how complicated it is, how unfair it is, the gaps in coverage, the fact there is no control on the price of drugs, the fact that the cost of Medicare is going to increase and that they are going to be forced into HMOs with no choice of doctor or hospital, there is going to be a reaction which you will not forget.

I served in the House when we passed something called catastrophic insurance. We thought it was a pretty good idea. I voted for it. The seniors read the fine print and rejected it. When they rejected it, we were forced to repeal that law. It is the only time I recall in my congressional career we have done that.

Trust me, after this goes into effect in 2006, this Congress is going to be scrambling to repeal the most outrageous portions of this bill. And all those who think we are going to get by with a slogan about prescription drugs for seniors are in for a rude awakening.

The seniors across America are men and women who have worked hard all their lives, people of common sense who are not going to fall for what the AARP and so many organizations are now pushing in their faces and saying they must accept. They are going to reject it, and when they reject it, they will reject those who voted for it. I hope my colleagues will think twice before they vote tomorrow morning.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). Who seeks time? The Senator from Massachusetts.

Mr. KENNEDY. There was a time in America when our citizens worked hard their entire lives and prepared themselves as well as they could for their own retirement. But for millions of Americans, retirement meant misery, poverty and abandonment. They were on their own with no financial security and no health care in what was called, with great irony, the golden years of their lives. But all that changed in the wake of the Great Depression.

The scandalous neglect and serious hardship of the elderly was no longer tolerable. In the 1930s, Congress and the administration made a promise to our people. We guaranteed that any American who works hard, plays by the rules, and pays taxes will earn well-deserved financial security in retirement. A generation later, we added health care to that commitment. And ever since, the two most successful and beloved programs in the nation have been Social Security and Medicare.

The legislation before us today is a shameful attempt to break that promise. It's a right wing Republican assault on Medicare in the guise of a prescription drug program, and Republicans know it. They know that this bill will force millions of seniors into HMOs, and deny them their choice of doctor and hospital. They know that this bill does nothing to control the skyrocketing cost of prescription drugs. They know that it's a fat deal for HMOs and pharmaceutical companies—and a raw deal for the elderly. They know it's a dress rehearsal for the coming assault on social security.

It's a con job on America's seniors, and they are trying to rush it through Congress before anyone knows what's going on.

Why else would Republicans rig a vote to pass it in the House of Representatives in the dead of night?

Why else would they shamelessly ram it through the Senate over a weekend?

Why else would they vote to overturn the senate rules so that this conference report can pass?

In the few hours of this debate, the proponents of this flawed legislation have described their proposal in the most benign—and misleading—terms. They say that this bill gives seniors the freedom to choose among competing plans. They say at least it gives protection to the poorest of seniors. They say it will lower drug prices through competition. They are absolutely wrong on all of these points.

This partisan proposal has been carefully and coldly calculated, not to protect Medicare but to destroy it, and leave the millions of senior citizens who rely on it today without a lifeline in the future.

It is the first step towards a total dismantling of Medicare. In exchange for destroying Medicare, it offers senior citizens a limited and inadequate drug benefit. The moment it is implemented, it will make nine million senior citizens—almost one quarter of all senior citizens—worse off than they are today.

Seniors already have the most important choice they want—the choice of

the doctors and hospitals they trust. That it the choice they will lose if they are forced to join HMOs or other programs that say an insurance company will choose their doctor for them.

Senior citizens already have the choice to join a private insurance plan competing with Medicare if they choose. But nine out of ten prefer to keep their Medicare. The bipartisan bill that passed the Senate earlier this year provided a reasonable additional choice—to receive prescription drug coverage under Medicare, or to receive that coverage through a private-sector drug plan.

But the conference report adopted the unacceptable House approach of ending Medicare as we know it. It establishes a massive demonstration program that will subject seven million senior citizens—one out of every six—to a so-called premium support program. The only purpose of premium support is to raise the premium in regular Medicare so that senior citizens will have to join HMOs to get affordable health care. That's not competition. That's compulsion.

If that weren't bad enough, the conference report lavishes massive subsidies on HMOs and other private insurers to help them ''compete.'' For every senior citizen who joins an HMO, the government will pay a 25 percent mark-up—almost $2,000—more than it would cost to provide that same senior citizen with the same service under Medicare. As a result of this bill, insurance company revenues will increase by $150 billion a year. That's not competition. It's corporate welfare. It's robbing Medicare and robbing senior citizens to enrich powerful special interests and big campaign contributors. It's creating a grossly tilted playing field on which Medicare cannot compete and senior citizens will be the losers.

Proponents of this plan admit that the benefits for most seniors are small. But, they say, look at how much we are helping low income seniors. What they don't say is that 6 million of the poorest of the poor senior citizens and disabled beneficiaries who currently receive drug benefits under this bill will actually be worse off. Medicaid will be prohibited from supplementing Medicare coverage. These poorest of the poor will find the cost of the drugs they need increased and their access to needed medicines reduced. Their rates of hospitalization, injury, and even death will go up.

In addition, almost 3 million seniors, many with low incomes, with good retirement drug coverage today will lose it as the result of this bill. That's not progress. It's a massive retreat. As the old saying goes, our Republican Colleagues really do love the poor, because they are creating so many of them.

Some low income seniors may get better drug coverage under this plan, but only at the price of the destruction of the Medicare that all seniors love, low and moderate income alike. No senior citizen should be faced with this Sophie's choice between the drug benefits they need and the dismantled Medicare they will face under the GOP plan. We passed a bipartisan bill in the Senate and that did not sacrifice Medicare on the altar of right-wing ideology. If we voted down the destructive, partisan bill before us, the Senate will have another opportunity to do the job right.

The drug industry too will reap a bonanza under this bill. If prescription drug prices continue to rise at double-digit rates, the minimal savings this bill provides to the average senior will be wiped out in no time by higher drug costs. This bill does nothing meaningful to hold prices down. In fact, far from moderating increases in drug costs, the Congressional Budget Office estimates that they will actually rise as the result of this legislation. No wonder the stock of our four leading drug companies went up $8 billion today.

It doesn't allow drugs to be imported from Canada. It even bans the Secretary of HHS from bargaining for better drug prices for Medicare.

The Senate is on trial today, and we will soon vote on whether to stop this charade. I urge my colleagues to stand up and fight. Fight it for the worker who paid into his company's' retirement fund for 20 years. Fight for the three million retirees like him who will lost their health insurance because of this bill.

Fight for city workers like those in Springfield, MA, whose brave mayor plans to obtain cheaper prescription drugs for them from Canada.

Fight it for the elderly grandmother on Medicaid, and the 7 million poor Americans like her, who count every penny, who can't begin to pay for their prescription drugs under this bill.

Fight for the 36 million seniors who want to stay in the Medicare they love, and with the doctors and hospitals they choose.

Fight it to keep billions and billions of Medicare dollars that come out of your paycheck from lining the pocketbooks of big drug companies and HMOs. That's your money going to your Medicare, and it should pay for your prescription drugs, not inflated profits of the drug industry and the insurance industry.

Fight for a nation that keeps its commitments to our seniors—who fought our wars, raised our families, and built our economy. How can we turn our backs on them now?

The more the American people learn about this legislation, the more they dislike it. The more senior citizens learn about it, the more they oppose it. Let us not turn our back on Medicare now. Let us not turn our back on senior citizens so that insurance companies and pharmaceutical companies can earn higher profits. Let us vote no on the disgraceful bill, and come back and do the job right.

And we will do that job right, even if it takes the election of a new Congress and a new President to do it.

The Democratic Party fought for years to enact Medicare. We will fight for as long as it takes to save Medicare and to provide senior citizens the comprehensive prescription drug benefit they need.

We will fight today. We will fight this year. We will fight next year. We will fight this issue in every State and congressional district in 2004—and we'll keep fighting until, once again, the fundamental values of compassion and justice rate higher than more wealth for those who are already wealthy, and more power for those who are already powerful.

For those who have not been following this debate in detail, let me review the particulars of this conference report. The more the American people understand what this bill does, the more they will demand that it be rejected.

Medicare is a solemn commitment between the government and the people. It says, ''Pay into the system during your working years, and we will guarantee you affordable, quality health care in your retirement years.'' For 40 years, a fundamental part of that commitment is a guarantee that senior citizens can choose the doctors and hospitals they trust to provide them the medical care they need.

Today, there are those who want to break that commitment. They want to force the elderly into HMOs, where insurance company bureaucrats, not patients, choose the doctor. They want to replace the solid guarantee of affordable Medicare anywhere in the country with a system where what you pay depends where you live. They want to take our country back to the 19th century, when Government was by the wealthy and powerful and for the wealthy and powerful—and the weak, the poor, the members of working families, and the elderly were left out and left behind.

For a number of years, we have been working to improve Medicare by adding a much-needed prescription drug benefit. Democrats and Republicans alike have campaigned on that issue. Democrats and Republicans alike have promised senior citizens and their families to fill the largest gap in Medicare protection—its failure to cover the high cost of prescription drugs. How in the world, the American people are asking, did we get from that non-partisan objective of improving the Medicare program with a prescription drug benefit to a partisan proposal to radically alter Medicare for the benefit of the insurance industry?

In July, the United States Senate passed a bipartisan program to add prescription drug coverage to Medicare. Seventy-six members of the Senate, Republicans and Democrats alike voted for the legislation. Ten Republicans and 10 Democrats voted no.

By contrast, the House of Representatives passed a bill to radically change Medicare.

It included prescription drug coverage—but only as a trojan horse for

the radical changes that were their real objective. Their bill was designed to privatize Medicare, to force senior citizens to join HMOs and other private insurance plans, and to benefit the wealthy and powerful at the expense of senior citizens. It was a radical program designed to by those who, in their arrogance, believe they know what is best for senior citizens. Senior citizens may not want to join HMOs or other private insurers—but in the view of the writers of this legislation, that's because they just don't know what's good for them.

The House bill picked up where President Bush left off. The President proposed that senior citizens couldn't get a prescription drug benefit at all unless they joined an HMO or other private insurance plan. That plan generated such a wave of public outrage that Republicans had to withdraw it. But the House bill achieved the same objective by proposals that were less blatant but equally effective.

Because the House bill was about radically restructuring Medicare according to the right wing blueprint, it could not command bipartisan support. It passed by the House by a narrow partisan majority of a single vote.

The report the conference produced—with all but two of the Democratic conferees excluded from the deliberations—was the partisan House proposal all over again. That's why the vote in the House this morning was just as partisan, just as narrow, and only achieved by the most extraordinary perversion of House rules. Now it is up to the Senate to prevent this travesty from becoming law.

This is no longer a bill to provide senior citizens a drug benefit. It is a bill to reward powerful special interest and to force senior citizens into the unloving arms of HMOs and insurance companies. It is a right wing program to privatize and voucherize Medicare. It asks the elderly to swallow unprecedented and destructive changes to the Medicare program in return for a limited, inadequate, small prescription drug benefit. It does nothing to drug costs. It gives the pharmaceutical industry a free ride—and sticks senior citizens with the bill. And this conference report is so ill-conceived that not only does it put the whole Medicare program at risk; it makes nine million seniors—almost one-quarter of the Medicare population worse off the day this program is implemented than they are today.

One of the most important of these destructive changes is a concept called ''premium support.'' It should really be called senior citizen coercion support, or maybe it's called ''premium support'' because it uses Medicare premiums to support HMO profits. It replaces the stable, reliable premium that senior citizens pay for Medicare today with an unstable, unaffordable premium.

Here's how it works. Today, Medicare premiums are set at 75 percent of the costs for Part B of the Medicare program, the part that pays for doctor care. Beneficiaries pay the remaining 25 percent. The premium is the same no matter where you live. It increases from year to year at the same rate as Medicare doctor costs. It is a stable, reliable amount.

Premium support stands this system on its head. The Government contribution to private plans would no longer be based on a fixed amount. Neither would the charges to Medicare beneficiaries. Instead, the Government contribution to both private plans and Medicare would be based on the average of what plans charge and Medicare costs. If plan charges were lower than Medicare costs, the Government payment to Medicare will go down—and Medicare premiums will go up. And instead of Medicare premiums being a single, reliable, fixed amount that goes up only with increases in Medicare costs, Medicare premiums will be different in every county in the country.

And they will fluctuate wildly from year to year, depending on what private plans choose to do and how many people enroll in them.

We all know what is going on. Insurance companies can make big money by offering low-cost health insurance to healthy senior citizens. This program will drain healthy seniors from Medicare, and leave behind those who are sick and need help the most. It will send Medicare premiums through the roof—and it leave the elderly and disabled in the cellar holding the bag.

Under premium support, the administration's own estimates show that average Medicare premiums will initially jump 25 percent. Several years ago, the estimate was a whopping 47 percent. The truth is that no one really knows how high Medicare premiums could rise. But we do know this. Over time, the increase will become higher and higher. And that's just average premiums. Under premium support, how much you pay will depend on where you live and the amount could change dramatically from year to year.

In my own state of Massachusetts, a senior citizen who happens to live in Barnstable county will pay $500 a year more for their Medicare than one who lives in Hampden County.

In Florida, you will pay $900 in Osceola and $2,000 if you live in Dade County. And it's the same all over the country. In Washington State, you'll pay $1,225 if you live in San Juan and $700 if you live in Clark. In California, you'll pay $1,700 if you live in Los Angeles and $775 if you live in Yolo. In Oregon, you'll pay $1,325 if you live in Yamhill and $675 if you live in Columbia.

Why would anyone want to make these destructive changes to the Medicare program that has served senior citizens so well for almost forty years? The answer is a radical ideology that says Medicare is bad. HMOs and PPOs are good. And if senior citizens don't agree, we'll make sure that their premiums keep going up until they are forced to give up the doctors they trust to get the medical care they need.

Some of supporters of this program claim it is just a demonstration—nothing to get excited about. But it's not a demonstration. It is a vast social experiment using senor citizens as guinea pigs. Under the terms of the demonstration, 7 million senor citizens could be forced into this program. That's one out of every six seniors in the country. Half the States in this chamber have local areas where senior citizens could be forced to take part in this demonstration.

And that is just today. Tomorrow, the proponents of this misguided policy will ram through changes that will force 10 million senior citizens, or 20 million, or the whole country into this plan. If we pass this bill, we're not just putting the camel's nose under the tent. We're putting the head and the hump in, too.

The people who support this program make no secret of what they want to do. They are on record as thinking the Medicare is outdated, that it should be scrapped, and that seniors should be forced into HMOs. That's the same philosophy the President embraced when he initially proposed to give senior citizens a drug benefit only if they joined an HMO or PPO. I respect their opinions, but it is wrong to use senior citizen's need for prescription drugs as a club to force through a radical change in Medicare that could never pass muster on its own.

Premium support is only one of the ways that this plan would privatize Medicare and force senior citizens to choose between the doctors they trust and the prescription drugs they need. The conference report pumps up the payment to private plans to a level where Medicare could be uncompetitive.

It's fiscally irresponsible and unfair. It's using the elderly's own Medicare money to destroy the program they depend on.

The bill lavishes largesse on the private sector by stealing from Medicare in three ways.

First, the payment formula in the conference report is the same as the House's—and it raises payments to private plans so that they are 109 percent of Medicare's costs for caring for the same person.

Is that not odd? The private sector is supposed to be more efficient and save Medicare money—but Medicare, under this report, is paying them 9 percent more than it would provide Medicare to cover the same services.

But that is only the beginning. According to the CMS's own studies, Medicare pays an additional 16 percent in excess of Medicare's own costs to private insurance companies because the senior citizens who join Medicare HMOs are healthier than those who do not.

So under this bill, Medicare is going to be paying a 25 percent markup for

every senior citizen that goes into an HMO—nine percent for the payment differential put into this bill and 16 percent for the health differential—and that is before you add in a $12 billion slush fund for PPOs that this bill also contains.

The Medicare trust fund—that today's retirees paid into and rely on—will be robbed to lavish billions of dollars on HMOs and insurance companies. Senior citizens will pay for this largesse not only in the depletion of the Medicare trust fund, not only in lesser resources for benefits they need, but in higher Medicare premiums. Why? So HMOs and insurance companies can profit.

Last week, I released a new report by the staff of the Health Committee analyzing the impact of this program on HMO and insurance industry revenues and profits.

The data is drawn from the projections of the Medicare actuary, the Medicare Trustee's report, and publicly reported data on the insurance industry. The results are sobering. As the result of this bill, annual revenues of the insurance industry will increase by an incredible $150 billion a year. Profits from Medicare business will increase by 500 percent. And this huge bonanza to the private insurance industry will, in the words of the Medicare actuary, ''increase Medicare costs significantly.''

I ask unanimous consent that the study be printed in the RECORD.

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

THE IMPACT OF REPUBLICAN MEDICARE PROPOSALS ON INSURANCE INDUSTRY REVENUES AND PROFITS

A SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS MINORITY STAFF REPORT, NOVEMBER 20, 2003

H.R. 1, the House Medicare Prescription Drug and Modernization Bill passed by the House of Representatives earlier this year, includes a number of provisions described by its sponsors as intended to enhance Medicare beneficiary choices and encourage competition. Most of the relevant provisions of the proposed conference report are identical to H.R. 1. This report by the minority staff of the Senate Committee on Health, Education, Labor and Pensions examines the impact of these proposals on the revenues and profits of Health Maintenance Organizations (HMOs), Preferred Provider Organizations (PPOs), and the private health insurance industry.

The report concludes that Medicare revenues of HMOs and PPOs will increase from $31 billion this year to $181 billion in 2010 under the Republican plan. Profits will increase by $4.4 billion based on an average profit margin, or $18 billion based on profits of the most successful plans. Overall, Medicare revenues and profits of the private insurance industry will increase by 490 percent in 2010 under the Republican plan. Increases under the premium support program, which begins in 2010, will be even higher.

Background

Competition with the Private Sector in the Medicare Program Today

Senior citizens already have a choice today between Medicare and private insurance plans offering Medicare benefits through the Medicare+Choice program. The program is open to most types of insurance plans—HMOs, PPOs, and fee-for-service indemnity plans—but almost all the participating plans are HMOs. Eleven percent of Medicare beneficiaries are enrolled in Medicare+Choice plans.

Under Medicare+Choice, participating plans must offer Medicare benefits. They receive a payment from Medicare that is supposed to represent what it would have cost Medicare to serve the same enrollees under the regular Medicare program. Originally, the Medicare payment was set at 95 percent of Medicare's cost, on the theory that those who would enroll in private sector plans were healthier than the average Medicare beneficiary. As a result of subsequent modifications in the payment formula, Medicare payments to private sector plans now average 103 percent of Medicare costs.

Adjusting for the fact that those who enroll in private sector plans are healthier than the average Medicare enrollee, the extra cost to Medicare when a beneficiary enrolls in a private plan is substantially higher than three percent. According to a study by the Department of Health and Human Services, Medicare+Choice plans are overpaid by 16.3 percent, solely because their enrollees are healthier than those who remain in traditional Medicare. The combination of the current payment formula and the difference in health between those who receive services from traditional Medicare and those who enroll in Medicare HMOs means that private insurance plans are paid almost 20 percent more than it costs Medicare to provide the same services.

Competition with the private sector under Conference proposal

The conference proposal changes the terms of competition between Medicare and the private sector in three ways: It establishes a new category of private plans—regional PPOs—eligible to enroll Medicare beneficiaries and receive Medicare payments for their care. It increases Medicare payments to private plans to an average of 109 percent of Medicare costs, compared to 103 percent today. Beginning in 2010, it establishes a new system of payments for both private plans and Medicare called ''premium support.''

Under the premium support system, the Medicare payment to private plans and the Medicare contribution to the cost of the Medicare Part B program are no longer fixed amounts Instead, they are based on a weighted average of the Medicare ''benchmark''—the payment that would be made to private plans under the old system—and the charges of the private plans. If the charges of the private charges and Medicare will contribute less to the cost of those who enroll in Medicare—raising the premiums that Medicare would otherwise charge to beneficiaries. In addition, since the Medicare premium is now based on the charges of private plans in the same area, the Medicare premium will vary depending on where the beneficiaries live. It will no longer be a uniform nationwide premium.

Revenues and Profits of HMOs and Private Health Insurers

In 2003, the revenues of HMOs and other private health insurers are estimated to be $580 billion. Profits are estimated to be $16.8 billion, and the industry average profit will be 2.9 percent. Some HMOs have significantly higher profit margins than the industry average. United HealthCare's profit margin averaged 8.7 percent in 2002, and profits are expected to increase by more than a third for 2003, to 12 percent.

Impact of Conference Proposal on Revenues and Profits of HMO and Private Health Insurers

Revenues. The CMS Medicare Actuary has estimated that if H.R. 1 is enacted, 43 percent of all Medicare beneficiaries will be enrolled in private health plans by 2010, an increase from their current 11 percent enrollment. The relevant provisions included in the conference report are similar to H.R. 1. Medicare payments to private health plans are expected to increase by $150 billion to a total of $181 billion.

Profits. Under the average profit assumption, Medicare profits of the industry will increase by 490 percent to $5.3 billion in 2010. Under the higher profit assumption, Medicare profits of the industry will increase by 2316 percent to $21.7 billion. Industry analysts estimate even higher potential additional profits of $25 billion.

Cost to Government. The Medicare Actuary has not provided an estimate of the impact of H.R. 1 on this cost. However, in a letter to Congressman Thomas, Chairman of the House Ways and Means Committee, dated June 4, 2003, the Actuary states that these provisions of the bill ''would increase Medicare costs significantly.''

Premium Support. The Medicare Actuary has not provided an estimate of the proportion of Medicare beneficiaries who would enroll in private insurance plans under the premium support program. Since the Actuary has estimated that premium support would raise average Medicare premiums by as much as 25 percent however, it is reasonable to assume that a larger proportion of beneficiaries would leave Medicare and join HMOs or other private insurance plans under a full-blown premium support program, further increasing industry revenues and profits.

Mr. KENNEDY. Mr. President, there you have it. This legislation is by the insurance industry, for the insurance industry, and of the insurance industry. It is about privatizing Medicare so that HMOs can improve their bottom line and raise their stock prices. Senior citizens should not be forced to give up the doctors they trust to get the medical care they need. The only rationale for this misguided policy is an ideology that says higher profits for powerful special interests is the highest public good.

No wonder President Bush and the Republic leadership is fighting so hard for this bill. No wonder they are insisting on radical changes to Medicare that have nothing to do with prescription drug coverage for senior citizens. And no wonder senior citizens all over this country—and the organizations that represent them—are outraged and urging members of Congress to vote no.

The two most beloved and effective programs our government has ever created are Medicare and Social Security. Every American should understand that this debate is the dress rehearsal for the coming assault on Social Security. If the Republicans are successful with the legislation we are considering, they will have turned over Medicare to the insurance industry, so that their powerful friends can reap huge profits at the expense of senior citizens. But that is just the beginning. Once the HMOs and health insurance companies get their cut, it will be time for the stock brokers and the bankers.

A story in the Washington Post yesterday exposed the Republican plan. It said:

President Bush's aides are reviving his long-shelved plan to let workers divert some Social Security taxes into stocks as a reelection issue, gambling that market drops have not soured voters on the politically risky idea.

It goes on:

A Republican official said the White House has signaled Capital Hill that Bush's campaign ''wants to spend a lot of money'' on advertising promoting the issue. A presidential advisor says that Bush is intent on being able to say that reworking Social Security is ''part of my mandate.''

Aides said Karl Rove, Bush's senior advisor, has argued internally and to the President's key supporters that recent polling and election results show that changing Social Security is no longer the ''third rail of American politics.''

The article concludes:

Republican leadership aides on capital hill said [the Social Security issue] is more likely to be a winner if Congress passes the G.O.P. plan to add a prescription drug benefit to Medicare.

There it is, in the Republicans own words. Hold on to your hat. Today, Medicare, Tomorrow, Social Security.

It is no wonder that the Republican leadership wants to rush this bill through. It is no wonder that the House leadership violated its pledge to allow the members three days to review it. This bill can't stand the light of day. Every hour that passes, we find more outrageous provisions tucked away in this 600 plus page bill.

Let me review for the members some of the things that have been uncovered in just the last twenty-four hours.

The legislation the Senate approved earlier this year included an effective guarantee that seniors who wanted to remain in traditional Medicare would have a choice of at least two prescription drug only plans. If this simple two-plan test was not met for any reason, the Federal government would provide a fallback plan. This assured that seniors who wanted to stay in Medicare would have a choice of plans to provide their drug benefit—or the Federal Government would provide the benefit directly, as it does other Medicare benefits.

The supporters of the conference report claim that they have guaranteed that every senior could stay in Medicare and get their prescription drugs from the government if the private sector doesn't provide a choice of two plans. What they don't say is that their two-plan requirement would be fulfilled if there is only one drug only plan and one PPO in an area.

That means that seniors have to take what one-drug only plan offers—no matter how high-priced, no matter how inadequate the formulary, no matter how poor the service—or be forced to leave Medicare. It looks like President Bush's plan to deny senior citizens drug coverage unless they give up their Medicare and their right to choose a doctor hasn't been scrapped; it has just been repackaged.

The supporters of this conference report tout the limited $600 benefit that some very low income senior citizens will get next year along with their prescription drug card. But what they don't say is that the price of getting this benefit is your loss of personal privacy. Major corporations will have unfettered access to your tax records—without so much as a ''by your leave?'' All those of you who think that's a good idea will love this bill—but anyone who thinks that drug companies and insurance companies have no business prying into your financial records had better call your Senator to tell them to reject this legislation.

To comply with the bill's requirement that these drug benefits are tied to a person's income, the bill allows HHS to disclose a senior's tax records to any ''offices, employees, or contractors'' of the Department of Health and Human Services. That's practically anyone—including the huge corporations that run the drug card programs. In the words of the bill, just applying for the card ''shall be deemed consent'' for this monstrous invasion of privacy.

Another dirty little secret tucked away in this drug bill is the freedom it gives the insurance companies offering the drug benefit to construct their formularies so that senior citizens can be sure that there will be a drug to meet their needs on the formularies. The conference report says that there must at least two drugs on the formulary in each therapeutic class. The Senate bill says the therapeutic classes must be approved by the Secretary. The conference report says the plan gets to decide. The plan could decide to make a category as broad as pain-killers and leave the senior citizen with a choice of aspirin or Tylenol—and no access to the more sophisticated drugs that so many must use.

Whether the issue is choice of drug plans, or privacy of tax records, or availability of drugs the senior needs, or the size of the PPO slush fund, this bill is not what has been advertised. No wonder Republicans want to get the legislation off the Senate floor and onto the President's desk before all the rocks are turned over.

One of the most troubling aspects of this legislation is that a program that is supposed to improve the lives of senior citizens will make almost one-quarter of them worse off the day it is implemented.

Six million senior citizens and disabled people on Medicaid—the poorest of the poor—will be victimized. Their out-of-pocket payment for drugs will be raised, and they may not even have coverage for the drugs they need the most.

The people we are talking about are truly the poorest of the poor. In most cases, their incomes are well below poverty. And the impact of even small co-payments is devastating. Study after study finds that when the poor have to pay more for drugs, they end up hospitalized, in nursing homes, or dead.

You couldn't make up some of the provisions that are actually in this bill. It sounds like something out of Charles Dickens to say that the law might force a widow to give up her jewelry or sign away the burial fund she has scraped together to get the prescription medication she needs. People wouldn't believe you if you told them the that Congress is considering a law to force some of America's senior citizens to make those kind of choices.

I think everyone would acknowledge that the drug benefit contained in this legislation is inadequate to meet the needs of senior citizens. It has a high deductible and a coverage gap of thousands of dollars. Overall, we are providing only $400 billion toward the $1.8 trillion in drug costs our senior citizens and disabled will incur in the next 10 years.

Given the limitations on the new Medicare benefit, the last thing we should be doing is causing people with good, solid retirement health coverage to lose it. But that is exactly what this bill does, because it provides a discriminatory benefit. People who have retirement coverage get a lesser Medicare benefit than every other beneficiary. The result: employers will drop the coverage they now provide. The CBO and a new study just released by Professor Ken Thorpe of Emory University show that 2.7 million people—one retiree in four—will lose the good coverage they have today.

So between the 7 million poor people on Medicaid who will be worse off and the 3 million retirees who will lose their coverage—almost one-quarter of all Medicare beneficiaries will be worse off the day this bill is implemented than they are today. If this legislation passes, Americans will ask: What were they thinking of? Why would any Senator vote to make 9 million senior citizens and disabled people worse off and undermine Medicare to boot.

And finally, this program undermines the health insurance of all Americans.

It puts in place an unrestricted program of health savings accounts, what used to be called medical savings accounts. They provide billions of new tax breaks for the healthy and wealthy.

This program encourages the healthy and wealthy to take high deductible policies—policies that require you to pay thousands of dollars before you get benefits. That is fine for people who can afford to put money into a tax-free savings account, but it is not good for ordinary working Americans and people who are sick.

The Urban Institute and the American Academy of Actuaries have estimated that because the healthiest people are pulled out of the risk pool for regular, comprehensive policies by these health savings accounts, premiums for regular, comprehensive coverage will skyrocket. If this program becomes law and you want to keep your insurance policy, your premiums will increase 60 percent according to

the Urban Institute and 61 percent according to the American Academy of Actuaries.

Isn't that astounding? The Senate started out with a bipartisan program to add prescription drug coverage to Medicare, and now we are asked to vote on a conference report that not only undermines Medicare but could raise health insurance premiums through the roof for younger Americans.

Senior citizens do not want this bill. The disabled do not want this bill. This bill is not a drug program for senior citizens. It is an attack on Medicare—and the Senate has the duty to reject it.

Mr. President, 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. 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.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

QUARTERLY MASS MAIL REPORT FISCAL YEAR 2003

Mr. LOTT. Mr. President, in accordance with section 318 of Public Law 101–520 as amended by Public Law 103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and the quarterly summary tabulations of Senate mass mail costs for fiscal year 2003 to be printed in the RECORD. The official mail allocations are available for franked mail costs, as stipulated in Public Law 108–7, the Omnibus Appropriations Act 2003.

I ask unanimous consent that the materials be printed in the RECORD.

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

Fiscal Year 2003 - First Quarter

Senator	FY2003 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 12/31/02			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,511.00				
Alexander	$59,485.00				
Allard	$66,890.00				
Allen	$89,532.00				
Baucus	$34,918.00				
Bayh	$80,638.00				
Bennett	$42,610.00				
Biden	$32,700.00				
Bingaman	$42,481.00				
Bond	$78,078.00				
Boxer	$299,427.00				
Breaux	$67,100.00				
Brownback	$50,395.00				
Bunning	$63,533.00				
Burns	$34,918.00				
Byrd	$43,694.00				
Campbell	$66,890.00				
Cantwell	$80,016.00				
Carnahan	$19,519.00				
Carper	$32,700.00				
Chaffee, Lincoln	$34,714.00				
Chambliss	$76,226.00				
Cleland	$25,408.00				
Clinton	$178,446.00				
Cochran	$52,167.00				
Collins	$38,473.00				
Conrad	$31,389.00				
Cornyn	$158,727.00				
Corzine	$97,229.00				
Craig	$37,280.00				
Crapo	$37,280.00				
Daschle	$32,280.00				
Dayton	$69,123.00				
DeWine	$128,249.00				
Dodd	$56,011.00				
Dole	$78,970.00				
Domenici	$42,481.00				
Dorgan	$31,389.00	2,241	0.00351	$1,891.20	$0.00296
Durbin	$128,433.00				
Edwards	$105,294.00				
Ensign	$44,394.00				
Enzi	$30,700.00				
Feingold	$73,836.00				
Feinstein	$299,427.00				
Fitzgerald	$128,433.00				
Frist	$79,314.00				
Graham, Bob	$189,166.00				
Graham, Lindsey	$48,152.00				
Gramm	$52,909.00				
Grassley	$52,827.00				
Gregg	$37,046.00				
Hagel	$41,213.00				
Harkin	$52,827.00				
Hatch	$42,610.00				
Helms	$26,323.00				
Hollings	$64,203.00				
Hutchinson	$12,853.00				
Hutchison	$211,637.00				
Inhofe	$58,737.00				
Inouye	$35,511.00				
Jeffords	$31,735.00				
Johnson	$32,280.00	1,863	0.00268	$624.78	$0.00090
Kennedy	$82,450.00				

Kerry	$82,450.00				
Kohl	$73,836.00				
Kyl	$73,111.00				
Landrieu	$67,100.00				
Launtenberg	$72,921.00				
Leahy	$31,735.00				
Levin	$113,030.00	8,065	0.00087	$7,714.48	$0.00083
Lieberman	$56,011.00				
Lincoln	$51,412.00	3,684	0.00157	$3,182.83	$0.00135
Lott	$53,167.00				
Lugar	$80,638.00				
McCain	$73,111.00				
McConnell	$63,553.00				
Mikulski	$72,009.00				
Miller	$101,635.00				
Murkowski	$31,807.00				
Murkowski, Lisa	$31,798.00				
Murray	$80,016.00				
Nelson, Bill	$189,166.00				
Nelson, E. Benjamin	$41,213.00				
Nickles	$58,737.00				
Pryor	$38,559.00				
Reed	$34,714.00				
Reid	$44,394.00				
Roberts	$50,395.00				
Rockefeller	$43,694.00				
Santorum	$136,679.00				
Sarbanes	$72,009.00				
Schumer	$178,446.00				
Sessions	$68,425.00				
Shelby	$68,425.00				
Smith, Gordon	$58,008.00				
Smith, Robert	$9,261.00				
Snowe	$38,473.00				
Specter	$136,679.00				
Stabenow	$113,030.00				
Stevens	$31,798.00				
Sununu	$27,784.00				
Talent	$30,700.00				
Thomas	$30,700.00				
Thompson	$19,828.00				
Thurmond	$16,050.00				
Torricelli	$24,307.00	3,730	0.00048	$3,129.89	$0.00040
Voinovich	$138,249.00				
Warner	$89,532.00				
Wellstone	$17,280.00				
Wyden	$58,008.00				
Totals	$7,563,070.00	19,583	0.00911	$16,543.18	$0.00644

Fiscal Year 2003 - First Quarter

Other Offices	Committee mass mail totals for the quarter ending 12/31/02	
	Total Pieces	Total Cost
The Vice President	0	$0.00
The President Pro-Tempore	0	$0.00
The Majority Leader	0	$0.00
The Minority Leader	0	$0.00
The Assistant Majority Leader	0	$0.00
The Assistant Minority Leader	0	$0.00
Sec of Majority Conference	0	$0.00
Sec of Minority Conference	0	$0.00
Agriculture Committee	0	$0.00
Appropriations Committee	0	$0.00
Armed Services Committee	0	$0.00
Banking Committee	0	$0.00
Budget Committee	0	$0.00
Commerce Committee	0	$0.00
Energy Committee	0	$0.00
Environment Committee	0	$0.00
Finance Committee	0	$0.00
Foreign Relations Committee	0	$0.00
Governmental Affairs Committee	0	$0.00
Health, Education, Labor & Pensions	0	$0.00
Judiciary Committee	0	$0.00
Rules Committee	0	$0.00
Small Business Committee	0	$0.00
Veterans Affairs Committee	0	$0.00
Ethics Committee	0	$0.00
Indian Affairs Committee	0	$0.00
Intelligence Committee	0	$0.00
Aging Committee	0	$0.00
Joint Economic Committee	0	$0.00
Democratic Policy Committee	0	$0.00
Democratic Conference	0	$0.00
Republican Policy Committee	0	$0.00
Republican Conference	0	$0.00
Legislative Counsel	0	$0.00
Legal Counsel	0	$0.00
Secretary of the Senate	0	$0.00
Sergeant at Arms	0	$0.00
Narcotics Caucus	0	$0.00
Total	0	$0.00

Fiscal Year 2003 - Second Quarter

Senator	FY2003 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 3/31/03			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,511.00				
Alexander	$59,485.00				
Allard	$66,890.00				
Allen	$89,532.00				
Baucus	$34,918.00	6,965	0.00872	$5,716.46	$0.00715
Bayh	$80,638.00				
Bennett	$42,610.00				
Biden	$32,700.00				
Bingaman	$42,481.00				
Bond	$78,078.00				
Boxer	$299,427.00				
Breaux	$67,100.00				
Brownback	$50,395.00				
Bunning	$63,533.00				
Burns	$34,918.00				
Byrd	$43,694.00				
Campbell	$66,890.00				
Cantwell	$80,016.00				
Carnahan	$19,519.00				
Carper	$32,700.00				
Chaffee, Lincoln	$34,714.00	42,675	0.04253	$12,418.57	$0.01238
Chambliss	$76,226.00				
Cleland	$25,408.00				
Clinton	$178,446.00				
Cochran	$52,167.00				
Collins	$38,473.00				
Conrad	$31,389.00				
Cornyn	$158,727.00	1,376	0.00008	$450.96	$0.00003
Corzine	$97,229.00				
Craig	$37,280.00				
Crapo	$37,280.00				
Daschle	$32,280.00				
Dayton	$69,123.00				
DeWine	$128,249.00	1,433	0.00013	$1,179.73	$0.00011
Dodd	$56,011.00				
Dole	$78,970.00				
Domenici	$42,481.00				
Dorgan	$31,389.00	5,548	0.00869	$4,637.21	$0.00726
Durbin	$128,433.00				
Edwards	$105,294.00				
Ensign	$44,394.00				
Enzi	$30,700.00				
Feingold	$73,836.00				
Feinstein	$299,427.00				
Fitzgerald	$128,433.00				
Frist	$79,314.00				
Graham, Bob	$189,166.00				
Graham, Lindsey	$48,152.00				
Gramm	$52,909.00				
Grassley	$52,827.00				
Gregg	$37,046.00				
Hagel	$41,213.00	219,000	0.13875	$44,920.24	$0.02846
Harkin	$52,827.00				
Hatch	$42,610.00	1,448	0.00084	$320.07	$0.00019
Helms	$26,323.00				
Hollings	$64,203.00				
Hutchinson	$12,853.00				
Hutchison	$211,637.00				
Inhofe	$58,737.00				
Inouye	$35,511.00				
Jeffords	$31,735.00				
Johnson	$32,280.00				
Kennedy	$82,450.00				

Kerry	$82,450.00				
Kohl	$73,836.00				
Kyl	$73,111.00				
Landrieu	$67,100.00	1,580	0.00037	$1,328.44	$0.00031
Launtenberg	$72,921.00				
Leahy	$31,735.00	8,098	0.01439	$6,729.66	$0.01196
Levin	$113,030.00				
Lieberman	$56,011.00				
Lincoln	$51,412.00	1,770	0.00075	$801.77	$0.00034
Lott	$53,167.00				
Lugar	$80,638.00				
McCain	$73,111.00				
McConnell	$63,553.00				
Mikulski	$72,009.00	1,051	0.00022	$857.19	$0.00018
Miller	$101,635.00				
Murkowski	$31,807.00				
Murkowski, Lisa	$31,798.00				
Murray	$80,016.00				
Nelson, Bill	$189,166.00				
Nelson, E. Benjamin	$41,213.00				
Nickles	$58,737.00				
Pryor	$38,559.00				
Reed	$34,714.00				
Reid	$44,394.00	989	0.00082	$967.55	$0.00081
Roberts	$50,395.00				
Rockefeller	$43,694.00				
Santorum	$136,679.00				
Sarbanes	$72,009.00				
Schumer	$178,446.00				
Sessions	$68,425.00				
Shelby	$68,425.00				
Smith, Gordon	$58,008.00	619	0.00022	$520.50	$0.00018
Smith, Robert	$9,261.00				
Snowe	$38,473.00				
Specter	$136,679.00				
Stabenow	$113,030.00				
Stevens	$31,798.00				
Sununu	$27,784.00				
Talent	$30,700.00				
Thomas	$30,700.00				
Thompson	$19,828.00				
Thurmond	$16,050.00				
Torricelli	$24,307.00				
Voinovich	$138,249.00				
Warner	$89,532.00				
Wellstone	$17,280.00				
Wyden	$58,008.00				
Totals	$7,563,070.00	292,552	0.21651	$80,848.35	$0.06936

Fiscal Year 2003 - Second Quarter

Other Offices	Committee mass mail totals for the quarter ending 3/31/03	
	Total Pieces	Total Cost
The Vice President		
The President Pro-Tempore		
The Majority Leader		
The Minority Leader		
The Assistant Majority Leader		
The Assistant Minority Leader		
Sec of Majority Conference		
Sec of Minority Conference		
Agriculture Committee		
Appropriations Committee		
Armed Services Committee		
Banking Committee		
Budget Committee		
Commerce Committee		
Energy Committee		
Environment Committee		
Finance Committee		
Foreign Relations Committee		
Governmental Affairs Committee		
Health, Education, Labor & Pensions		
Judiciary Committee		
Rules Committee		
Small Business Committee		
Veterans Affairs Committee		
Ethics Committee		
Indian Affairs Committee		
Intelligence Committee		
Aging Committee		
Joint Economic Committee		
Democratic Policy Committee		
Democratic Conference		
Republican Policy Committee		
Republican Conference		
Legislative Counsel		
Legal Counsel		
Secretary of the Senate		
Sergeant at Arms		
Narcotics Caucus		
Total	0	$0.00

Fiscal Year 2003 - Third Quarter

Senator	FY2003 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 6/30/03			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,511.00				
Alexander	$59,485.00				
Allard	$66,890.00				
Allen	$89,532.00				
Baucus	$34,918.00				
Bayh	$80,638.00				
Bennett	$42,610.00				
Biden	$32,700.00				
Bingaman	$42,481.00				
Bond	$78,078.00				
Boxer	$299,427.00				
Breaux	$67,100.00				
Brownback	$50,395.00				
Bunning	$63,533.00				
Burns	$34,918.00				
Byrd	$43,694.00				
Campbell	$66,890.00				
Cantwell	$80,016.00				
Carnahan	$19,519.00				
Carper	$32,700.00				
Chaffee, Lincoln	$34,714.00				
Chambliss	$76,226.00				
Cleland	$25,408.00				
Clinton	$178,446.00				
Cochran	$52,167.00				
Collins	$38,473.00				
Conrad	$31,389.00				
Cornyn	$158,727.00				
Corzine	$97,229.00				
Craig	$37,280.00				
Crapo	$37,280.00				
Daschle	$32,280.00				
Dayton	$69,123.00				
DeWine	$128,249.00	2,047	0.00019	$1,721.91	$0.00016
Dodd	$56,011.00				
Dole	$78,970.00				
Domenici	$42,481.00				
Dorgan	$31,389.00	7,524	0.01178	$5,513.55	$0.00863
Durbin	$128,433.00	1,088	0.0001	$1,065.15	$0.00009
Edwards	$105,294.00				
Ensign	$44,394.00				
Enzi	$30,700.00				
Feingold	$73,836.00				
Feinstein	$299,427.00				
Fitzgerald	$128,433.00				
Frist	$79,314.00				
Graham, Bob	$189,166.00				
Graham, Lindsey	$48,152.00				
Gramm	$52,909.00				
Grassley	$52,827.00				
Gregg	$37,046.00	1,115	0.00101	$934.89	$0.00084
Hagel	$41,213.00				
Harkin	$52,827.00	3,264	0.00118	$2,733.95	$0.00098
Hatch	$42,610.00				
Helms	$26,323.00				
Hollings	$64,203.00				
Hutchinson	$12,853.00				
Hutchison	$211,637.00				
Inhofe	$58,737.00				
Inouye	$35,511.00				
Jeffords	$31,735.00	530	0.00094	$131.00	$0.00023
Johnson	$32,280.00	1,399	0.00201	$1,162.55	$0.00167
Kennedy	$82,450.00				

Kerry	$82,450.00				
Kohl	$73,836.00				
Kyl	$73,111.00				
Landrieu	$67,100.00				
Launtenberg	$72,921.00				
Leahy	$31,735.00	1,188	0.00211	$998.65	$0.00177
Levin	$113,030.00				
Lieberman	$56,011.00				
Lincoln	$51,412.00				
Lott	$53,167.00				
Lugar	$80,638.00				
McCain	$73,111.00				
McConnell	$63,553.00				
Mikulski	$72,009.00				
Miller	$101,635.00				
Murkowski	$31,807.00				
Murkowski, Lisa	$31,798.00				
Murray	$80,016.00				
Nelson, Bill	$189,166.00				
Nelson, E. Benjamin	$41,213.00				
Nickles	$58,737.00	4,252	0.00135	$3,474.21	$0.00110
Pryor	$38,559.00				
Reed	$34,714.00				
Reid	$44,394.00				
Roberts	$50,395.00				
Rockefeller	$43,694.00				
Santorum	$136,679.00				
Sarbanes	$72,009.00				
Schumer	$178,446.00				
Sessions	$68,425.00				
Shelby	$68,425.00				
Smith, Gordon	$58,008.00	5,963	0.0021	$4,981.47	$0.00175
Smith, Robert	$9,261.00				
Snowe	$38,473.00				
Specter	$136,679.00				
Stabenow	$113,030.00	1,136	0.00012	$1,104.00	$0.00012
Stevens	$31,798.00				
Sununu	$27,784.00				
Talent	$30,700.00				
Thomas	$30,700.00				
Thompson	$19,828.00				
Thurmond	$16,050.00				
Torricelli	$24,307.00				
Voinovich	$138,249.00				
Warner	$89,532.00				
Wellstone	$17,280.00				
Wyden	$58,008.00				
Totals	$7,563,070.00	29,506	0.02289	$23,821.33	$0.01734

Fiscal Year 2003 - Third Quarter

Other Offices	Committee mass mail totals for the quarter ending 6/30/03	
	Total Pieces	Total Cost
The Vice President		
The President Pro-Tempore		
The Majority Leader		
The Minority Leader		
The Assistant Majority Leader		
The Assistant Minority Leader		
Sec of Majority Conference		
Sec of Minority Conference		
Agriculture Committee		
Appropriations Committee		
Armed Services Committee		
Banking Committee		
Budget Committee		
Commerce Committee		
Energy Committee		
Environment Committee		
Finance Committee		
Foreign Relations Committee		
Governmental Affairs Committee		
Health, Education, Labor & Pensions		
Judiciary Committee		
Rules Committee		
Small Business Committee		
Veterans Affairs Committee		
Ethics Committee		
Indian Affairs Committee		
Intelligence Committee		
Aging Committee		
Joint Economic Committee		
Democratic Policy Committee		
Democratic Conference		
Republican Policy Committee		
Republican Conference		
Legislative Counsel		
Legal Counsel		
Secretary of the Senate		
Sergeant at Arms		
Narcotics Caucus		
Total	0	$0.00

Fiscal Year 2003 - Fourth Quarter

	FY2003 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 9/30/03			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,511.00				
Alexander	$59,485.00	1,566	0.0032	$1,322.94	$0.00270
Allard	$66,890.00				
Allen	$89,532.00				
Baucus	$34,918.00				
Bayh	$80,638.00				
Bennett	$42,610.00				
Biden	$32,700.00				
Bingaman	$42,481.00				
Bond	$78,078.00				
Boxer	$299,427.00				
Breaux	$67,100.00				
Brownback	$50,395.00				
Bunning	$63,533.00				
Burns	$34,918.00				
Byrd	$43,694.00				
Campbell	$66,890.00				
Cantwell	$80,016.00	191,600	0.03937	$38,556.19	$0.00792
Carnahan	$19,519.00				
Carper	$32,700.00				
Chaffee, Lincoln	$34,714.00				
Chambliss	$76,226.00				
Cleland	$25,408.00				
Clinton	$178,446.00				
Cochran	$52,167.00				
Collins	$38,473.00				
Conrad	$31,389.00	336,800	0.52724	$55,944.78	$0.08758
Cornyn	$158,727.00				
Corzine	$97,229.00				
Craig	$37,280.00	6,322	0.00628	$1,296.88	$0.00129
Crapo	$37,280.00				
Daschle	$32,280.00				
Dayton	$69,123.00				
DeWine	$128,249.00				
Dodd	$56,011.00				
Dole	$78,970.00				
Domenici	$42,481.00				
Dorgan	$31,389.00	33,235	0.05203	$27,033.44	$0.04232
Durbin	$128,433.00				
Edwards	$105,294.00				
Ensign	$44,394.00				
Enzi	$30,700.00				
Feingold	$73,836.00				
Feinstein	$299,427.00				
Fitzgerald	$128,433.00				
Frist	$79,314.00				
Graham, Bob	$189,166.00				
Graham, Lindsey	$48,152.00				
Gramm	$52,909.00				
Grassley	$52,827.00	33,500	0.01206	$55,282.65	$0.01991
Gregg	$37,046.00				
Hagel	$41,213.00				
Harkin	$52,827.00	4,049	0.00146	$3,378.06	$0.00122
Hatch	$42,610.00				
Helms	$26,323.00				
Hollings	$64,203.00				
Hutchinson	$12,853.00				
Hutchison	$211,637.00	9,597	0.00056	$3,446.97	$0.00020
Inhofe	$58,737.00				
Inouye	$35,511.00				
Jeffords	$31,735.00				
Johnson	$32,280.00	309,000	0.44396	$52,657.24	$0.07566
Kennedy	$82,450.00				

Kerry	$82,450.00				
Kohl	$73,836.00				
Kyl	$73,111.00				
Landrieu	$67,100.00				
Launtenberg	$72,921.00				
Leahy	$31,735.00	12,600	0.02239	$3,325.43	$0.00591
Levin	$113,030.00				
Lieberman	$56,011.00				
Lincoln	$51,412.00				
Lott	$53,167.00				
Lugar	$80,638.00				
McCain	$73,111.00				
McConnell	$63,553.00				
Mikulski	$72,009.00				
Miller	$101,635.00				
Murkowski	$31,807.00				
Murkowski, Lisa	$31,798.00	306,000	0.55632	$50,789.63	$0.09234
Murray	$80,016.00				
Nelson, Bill	$189,166.00	75,000	0.0058	$11,325.61	$0.00088
Nelson, E. Benjamin	$41,213.00				
Nickles	$58,737.00				
Pryor	$38,559.00				
Reed	$34,714.00	5,860	0.00584	$4,820.14	$0.00480
Reid	$44,394.00	223,500	0.18599	$44,979.75	$0.03743
Roberts	$50,395.00				
Rockefeller	$43,694.00				
Santorum	$136,679.00				
Sarbanes	$72,009.00				
Schumer	$178,446.00				
Sessions	$68,425.00				
Shelby	$68,425.00				
Smith, Gordon	$58,008.00				
Smith, Robert	$9,261.00				
Snowe	$38,473.00				
Specter	$136,679.00				
Stabenow	$113,030.00	1,643	0.00018	$1,373.12	$0.00015
Stevens	$31,798.00				
Sununu	$27,784.00				
Talent	$30,700.00				
Thomas	$30,700.00	555	0.00122	$502.91	$0.00111
Thompson	$19,828.00				
Thurmond	$16,050.00				
Torricelli	$24,307.00				
Voinovich	$138,249.00				
Warner	$89,532.00				
Wellstone	$17,280.00				
Wyden	$58,008.00				
Totals	$7,563,070.00	1,550,827	1.86102	$356,035.74	$0.37899

Fiscal Year 2003 - Fourth Quarter

Other Offices	Committee mass mail totals for the quarter ending 9/30/03	
	Total Pieces	Total Cost
The Vice President		
The President Pro-Tempore		
The Majority Leader		
The Minority Leader		
The Assistant Majority Leader		
The Assistant Minority Leader		
Sec of Majority Conference		
Sec of Minority Conference		
Agriculture Committee		
Appropriations Committee		
Armed Services Committee		
Banking Committee		
Budget Committee		
Commerce Committee		
Energy Committee		
Environment Committee		
Finance Committee	1,370,000	$218,274.81
Foreign Relations Committee		
Governmental Affairs Committee		
Health, Education, Labor & Pensions		
Judiciary Committee		
Rules Committee		
Small Business Committee		
Veterans Affairs Committee		
Ethics Committee		
Indian Affairs Committee		
Intelligence Committee		
Aging Committee		
Joint Economic Committee		
Democratic Policy Committee		
Democratic Conference		
Republican Policy Committee		
Republican Conference		
Legislative Counsel		
Legal Counsel		
Secretary of the Senate		
Sergeant at Arms		
Narcotics Caucus		
Total	1,370,000	$218,274.81

QUARTERLY MASS MAIL REPORT 3RD AND 4TH QUARTER FISCAL YEAR 2001

Mr. LOTT. Mr. President, in accordance with section 318 of Public Law 101–520 as amended by Public Law 103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and summary tabulations of Senate mass mail costs for the third and fourth quarters of fiscal year 2001 to be printed in the RECORD. The third quarter of fiscal year 2001 covers the period of April 1, 2001, through June 30, 2001. The fourth quarter of fiscal year 2001 covers the period of July 1, 2001, through September 30, 2001. The official mail allocations are available for franked mail costs, as stipulated in Public Law 106–554, the Consolidated Appropriations Act 2001.

I ask unanimous consent that the materials be printed in the RECORD.

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

Fiscal Year 2001 - Third Quarter

Senator	FY2001 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 6/30/01			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,266.00				
Allard	$65,571.00				
Allen	$67,623.00				
Baucus	$34,375.00				
Bayh	$80,339.00				
Bennett	$42,465.00				
Biden	$32,353.00				
Bingaman	$42,668.00				
Bond	$78,611.00				
Boxer	$305,332.00				
Breaux	$67,023.00				
Brownback	$49,896.00				
Bunning	$64,242.00				
Burns	$34,132.00				
Byrd	$43,197.00				
Campbell	$65,571.00				
Cantwell	$60,939.00				
Carnahan	$58,958.00				
Carper	$24,264.00				
Chaffee, Lincoln	$34,653.00				
Cleland	$98,598.00				
Clinton	$137,537.00				
Cochran	$51,451.00				
Collins	$38,298.00				
Conrad	$31,258.00				
Corzine	$73,236.00				
Craig	$36,535.00				
Crapo	$36,535.00	8,800	0.00874	$1,620.20	$0.00161
Daschle	$32,149.00				
Dayton	$52,182.00				
DeWine	$131,841.00				
Dodd	$56,517.00				
Domenici	$42,668.00				
Dorgan	$31,258.00				
Durbin	$129,845.00				
Edwards	$104,861.00				
Ensign	$32,656.00				
Enzi	$30,012.00				
Feingold	$74,540.00				
Feinstein	$305,332.00				
Fitzgerald	$129,845.00				
Frist	$78,607.00				
Graham	$185,377.00				
Gramm	$206,157.00	2,000	0.00012	$585.55	$0.00003
Grassley	$52,627.00				
Gregg	$36,926.00				
Hagel	$40,693.00				
Harkin	$52,627.00				
Hatch	$42,465.00				
Helms	$104,861.00				
Hollings	$62,803.00				
Hutchinson	$50,961.00				
Hutchison	$206,157.00				
Inhofe	$57,917.00				
Inouye	$35,266.00				
Jeffords	$31,264.00				
Johnson	$32,149.00	4,140	0.00595	$3,309.15	$0.00475
Kennedy	$82,836.00				
Kerry	$82,836.00				
Kohl	$74,540.00				
Kyl	$72,497.00				
Landrieu	$67,023.00	632	0.00015	$520.47	$0.00012
Leahy	$31,264.00	14,512	0.02579	$3,685.16	$0.00655

Levin	$114,736.00				
Lieberman	$56,517.00				
Lincoln	$50,961.00				
Lott	$51,451.00				
Lugar	$80,339.00				
McCain	$72,497.00				
McConnell	$64,242.00				
Mikulski	$72,998.00				
Miller	$98,598.00				
Murkowski	$31,276.00				
Murray	$81,252.00				
Nelson, Bill	$139,032.00				
Nelson, E. Benjamin	$30,519.00				
Nickles	$57,917.00	4,347	0.00138	$3,782.65	$0.00120
Reed	$34,653.00				
Reid	$43,542.00				
Roberts	$49,896.00				
Rockefeller	$43,197.00				
Santorum	$138,787.00				
Sarbanes	$72,998.00				
Schumer	$183,383.00				
Sessions	$68,026.00				
Shelby	$68,026.00				
Smith, Gordon	$58,292.00				
Smith, Robert	$36,926.00				
Snowe	$38,298.00				
Specter	$138,787.00				
Stabenow	$86,052.00				
Stevens	$31,184.00				
Thomas	$30,044.00	651	0.00144	$204.07	$0.00045
Thompson	$78,239.00				
Thurmond	$62,273.00				
Torricelli	$97,508.00	2,577	0.00033	$2,118.74	$0.00027
Voinovich	$131,970.00	713	0.00007	$671.65	$0.00006
Warner	$89,627.00				
Wellstone	$69,241.00				
Wyden	$58,557.00				
Totals	$7,344,326.00	38,372	0.04396	$16,497.64	$0.01506

Fiscal Year 2001 - Third Quarter

Other Offices	Committee mass mail totals for the quarter ending 6/30/01	
	Total Pieces	Total Cost
The Vice President	0	$0.00
The President Pro-Tempore	0	$0.00
The Majority Leader	0	$0.00
The Minority Leader	0	$0.00
The Assistant Majority Leader	0	$0.00
The Assistant Minority Leader	0	$0.00
Sec of Majority Conference	0	$0.00
Sec of Minority Conference	0	$0.00
Agriculture Committee	0	$0.00
Appropriations Committee	0	$0.00
Armed Services Committee	0	$0.00
Banking Committee	0	$0.00
Budget Committee	0	$0.00
Commerce Committee	0	$0.00
Energy Committee	0	$0.00
Environment Committee	0	$0.00
Finance Committee	0	$0.00
Foreign Relations Committee	0	$0.00
Governmental Affairs Committee	0	$0.00
Health, Education, Labor & Pensions	0	$0.00
Judiciary Committee	0	$0.00
Rules Committee	0	$0.00
Small Business Committee	0	$0.00
Veterans Affairs Committee	0	$0.00
Ethics Committee	0	$0.00
Indian Affairs Committee	0	$0.00
Intelligence Committee	0	$0.00
Aging Committee	0	$0.00
Joint Economic Committee	0	$0.00
Democratic Policy Committee	0	$0.00
Democratic Conference	0	$0.00
Republican Policy Committee	0	$0.00
Republican Conference	0	$0.00
Legislative Counsel	0	$0.00
Legal Counsel	0	$0.00
Secretary of the Senate	0	$0.00
Sergeant at Arms	0	$0.00
Narcotics Caucus	0	$0.00
Total	0	$0.00

Fiscal Year 2001 - Fourth Quarter

Senator	FY2001 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 9/30/01			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,266.00				
Allard	$65,571.00				
Allen	$67,623.00	1,653	0.00027	$1,446.09	$0.00023
Baucus	$34,375.00	11,922	0.01492	$9,628.79	$0.01205
Bayh	$80,339.00				
Bennett	$42,465.00				
Biden	$32,353.00				
Bingaman	$42,668.00				
Bond	$78,611.00				
Boxer	$305,332.00				
Breaux	$67,023.00				
Brownback	$49,896.00				
Bunning	$64,242.00				
Burns	$34,132.00	5,980	0.00748	$4,800.99	$0.00601
Byrd	$43,197.00				
Campbell	$65,571.00				
Cantwell	$60,939.00				
Carnahan	$58,958.00				
Carper	$24,264.00				
Chaffee, Lincoln	$34,653.00				
Cleland	$98,598.00				
Clinton	$137,537.00				
Cochran	$51,451.00				
Collins	$38,298.00				
Conrad	$31,258.00	91,201	0.14277	$13,614.14	$0.02131
Corzine	$73,236.00				
Craig	$36,535.00				
Crapo	$36,535.00				
Daschle	$32,149.00				
Dayton	$52,182.00				
DeWine	$131,841.00	3,200	0.0003	$2,662.50	$0.00025
Dodd	$56,517.00				
Domenici	$42,668.00				
Dorgan	$31,258.00	5,936	0.00929	$4,767.28	$0.00746
Durbin	$129,845.00				
Edwards	$104,861.00				
Ensign	$32,656.00	38,468	0.03201	$10,410.98	$0.00866
Enzi	$30,012.00				
Feingold	$74,540.00				
Feinstein	$305,332.00				
Fitzgerald	$129,845.00				
Frist	$78,607.00				
Graham	$185,377.00	2,800	0.00022	$650.78	$0.00005
Gramm	$206,157.00				
Grassley	$52,627.00	325,339	0.11716	$45,872.80	$0.01652
Gregg	$36,926.00				
Hagel	$40,693.00				
Harkin	$52,627.00				
Hatch	$42,465.00	3,341	0.00194	$2,687.33	$0.00156
Helms	$104,861.00				
Hollings	$62,803.00				
Hutchinson	$50,961.00				
Hutchison	$206,157.00				
Inhofe	$57,917.00				
Inouye	$35,266.00				
Jeffords	$31,264.00				
Johnson	$32,149.00	247,252	0.35525	$49,017.50	$0.07043
Kennedy	$82,836.00				
Kerry	$82,836.00				
Kohl	$74,540.00				
Kyl	$72,497.00				
Landrieu	$67,023.00				
Leahy	$31,264.00	5,543	0.00985	$1,574.89	$0.00280

Levin	$114,736.00				
Lieberman	$56,517.00				
Lincoln	$50,961.00	3,765	0.0016	$771.45	$0.00033
Lott	$51,451.00				
Lugar	$80,339.00				
McCain	$72,497.00				
McConnell	$64,242.00				
Mikulski	$72,998.00				
Miller	$98,598.00				
Murkowski	$31,276.00				
Murray	$81,252.00				
Nelson, Bill	$139,032.00				
Nelson, E. Benjamin	$30,519.00				
Nickles	$57,917.00	4,060	0.00129	$3,555.42	$0.00113
Reed	$34,653.00				
Reid	$43,542.00	38,438	0.03199	$10,400.50	$0.00866
Roberts	$49,896.00	5,541	0.00224	$4,493.61	$0.00181
Rockefeller	$43,197.00	3,309	0.00185	$2,733.72	$0.00152
Santorum	$138,787.00				
Sarbanes	$72,998.00				
Schumer	$183,383.00				
Sessions	$68,026.00				
Shelby	$68,026.00				
Smith, Gordon	$58,292.00				
Smith, Robert	$36,926.00				
Snowe	$38,298.00				
Specter	$138,787.00				
Stabenow	$86,052.00	1,234	0.00013	$1,128.17	$0.00012
Stevens	$31,184.00				
Thomas	$30,044.00				
Thompson	$78,239.00				
Thurmond	$62,273.00				
Torricelli	$97,508.00				
Voinovich	$131,970.00				
Warner	$89,627.00				
Wellstone	$69,241.00				
Wyden	$58,557.00				
Totals	$7,344,326.00	798,982	0.73055	$170,216.94	$0.16090

Fiscal Year 2001 - Fourth Quarter

Other Offices	Committee mass mail totals for the quarter ending 9/30/01	
	Total Pieces	Total Cost
The Vice President		
The President Pro-Tempore		
The Majority Leader		
The Minority Leader		
The Assistant Majority Leader		
The Assistant Minority Leader		
Sec of Majority Conference		
Sec of Minority Conference		
Agriculture Committee	1,756	$561.22
Appropriations Committee		
Armed Services Committee		
Banking Committee		
Budget Committee		
Commerce Committee		
Energy Committee		
Environment Committee		
Finance Committee		
Foreign Relations Committee		
Governmental Affairs Committee		
Health, Education, Labor & Pensions		
Judiciary Committee		
Rules Committee		
Small Business Committee		
Veterans Affairs Committee		
Ethics Committee		
Indian Affairs Committee		
Intelligence Committee		
Aging Committee	1,196	$358.42
Joint Economic Committee		
Democratic Policy Committee		
Democratic Conference		
Republican Policy Committee		
Republican Conference		
Legislative Counsel		
Legal Counsel		
Secretary of the Senate		
Sergeant at Arms		
Narcotics Caucus		
Total	2,952	$919.64

QUARTERLY MASS MAIL REPORT FISCAL YEAR 2002

Mr. LOTT. Mr. President, in accordance with section 318 of Public Law 101–520 as amended by Public Law 103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and the quarterly summary tabulations of Senate mass mail costs for fiscal year 2002 to be printed in the RECORD. The official mail allocations are available for franked mail costs, as stipulated in Public Law 107–68, the Legislative Branch Appropriations Act of 2002.

I ask unanimous consent that the materials be printed in the RECORD.

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

Fiscal Year 2002 - First Quarter

Senator	FY2002 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 12/31/01			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,568.00				
Allard	$66,085.00				
Allen	$89,455.00				
Baucus	$34,915.00	959	0.00120	$780.18	0.00098
Bayh	$80,779.00				
Bennett	$42,461.00				
Biden	$32,688.00				
Bingaman	$42,553.00				
Bond	$78,207.00				
Boxer	$300,728.00				
Breaux	$67,337.00				
Brownback	$50,572.00				
Bunning	$63,501.00				
Burns	$34,915.00				
Byrd	$44,141.00				
Campbell	$66,085.00				
Cantwell	$79,851.00				
Carnahan	$78,207.00	523	0.00010	$433.73	0.00008
Carper	$32,688.00				
Chaffee, Lincoln	$34,814.00				
Cleland	$100,285.00				
Clinton	$180,807.00				
Cochran	$51,936.00				
Collins	$38,487.00				
Conrad	$31,427.00				
Corzine	$97,728.00				
Craig	$37,133.00				
Crapo	$37,133.00				
Daschle	$32,275.00				
Dayton	$68,948.00				
DeWine	$129,139.00				
Dodd	$56,400.00				
Domenici	$42,553.00				
Dorgan	$31,427.00				
Durbin	$128,755.00				
Edwards	$104,420.00				
Ensign	$43,766.00				
Enzi	$30,723.00				
Feingold	$73,647.00				
Feinstein	$300,728.00				
Fitzgerald	$128,755.00				
Frist	$79,045.00				
Graham	$187,517.00				
Gramm	$210,016.00				
Grassley	$52,858.00				
Gregg	$37,037.00	1,289	0.00116	$1,065.77	0.00096
Hagel	$41,320.00				
Harkin	$52,858.00				
Hatch	$42,461.00				
Helms	$104,420.00				
Hollings	$63,818.00				
Hutchinson	$51,422.00	14,900	0.00634	$2,830.68	0.00120
Hutchison	$210,016.00				
Inhofe	$58,895.00				
Inouye	$35,568.00				
Jeffords	$31,726.00				
Johnson	$32,275.00				
Kennedy	$82,718.00				
Kerry	$82,718.00				
Kohl	$73,647.00				
Kyl	$72,156.00				
Landrieu	$67,337.00				
Leahy	$31,726.00				

Levin	$113,193.00				
Lieberman	$56,400.00				
Lincoln	$51,422.00				
Lott	$51,936.00				
Lugar	$80,779.00				
McCain	$72,156.00				
McConnell	$63,501.00				
Mikulski	$72,069.00				
Miller	$100,285.00				
Murkowski	$31,807.00				
Murray	$79,851.00	750	0.00015	$170.34	0.00004
Nelson, Bill	$187,517.00				
Nelson, E. Benjamin	$41,320.00				
Nickles	$58,895.00				
Reed	$34,814.00	2,700	0.00269	$389.51	0.00039
Reid	$43,766.00				
Roberts	$50,572.00				
Rockefeller	$44,141.00				
Santorum	$138,388.00				
Sarbanes	$72,069.00				
Schumer	$180,807.00				
Sessions	$68,572.00				
Shelby	$68,572.00				
Smith, Gordon	$57,908.00				
Smith, Robert	$37,037.00				
Snowe	$38,487.00				
Specter	$138,388.00				
Stabenow	$113,193.00				
Stevens	$31,807.00				
Thomas	$30,723.00				
Thompson	$79,045.00				
Thurmond	$63,818.00				
Torricelli	$97,728.00	5,590	0.00072	$4,593.85	0.00059
Voinovich	$129,139.00	1,216	0.00011	$988.96	0.00009
Warner	$89,455.00				
Wellstone	$68,948.00				
Wyden	$57,908.00				
Totals	$7,599,992.00	27,927	0.01248	$11,253.02	$0.00433

Fiscal Year 2002 - First Quarter

Other Offices	Committee mass mail totals for the quarter ending 12/31/01	
	Total Pieces	Total Cost
The Vice President		
The President Pro-Tempore		
The Majority Leader		
The Minority Leader		
The Assistant Majority Leader		
The Assistant Minority Leader		
Sec of Majority Conference		
Sec of Minority Conference		
Agriculture Committee	550	$128.11
Appropriations Committee		
Armed Services Committee		
Banking Committee		
Budget Committee		
Commerce Committee		
Energy Committee		
Environment Committee		
Finance Committee		
Foreign Relations Committee		
Governmental Affairs Committee		
Health, Education, Labor & Pensions		
Judiciary Committee		
Rules Committee		
Small Business Committee		
Veterans Affairs Committee		
Ethics Committee		
Indian Affairs Committee		
Intelligence Committee		
Aging Committee		
Joint Economic Committee		
Democratic Policy Committee		
Democratic Conference		
Republican Policy Committee		
Republican Conference		
Legislative Counsel		
Legal Counsel		
Secretary of the Senate		
Sergeant at Arms		
Narcotics Caucus		
Total	550	$128.11

Fiscal Year 2002 - Second Quarter

Senator	FY2002 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 3/31/02			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,568.00				
Allard	$66,085.00				
Allen	$89,455.00				
Baucus	$34,915.00	9,200	0.01151	$1,925.37	0.00241
Bayh	$80,779.00				
Bennett	$42,461.00				
Biden	$32,688.00				
Bingaman	$42,553.00				
Bond	$78,207.00				
Boxer	$300,728.00				
Breaux	$67,337.00				
Brownback	$50,572.00				
Bunning	$63,501.00				
Burns	$34,915.00				
Byrd	$44,141.00				
Campbell	$66,085.00				
Cantwell	$79,851.00				
Carnahan	$78,207.00				
Carper	$32,688.00				
Chaffee, Lincoln	$34,814.00				
Cleland	$100,285.00				
Clinton	$180,807.00				
Cochran	$51,936.00				
Collins	$38,487.00				
Conrad	$31,427.00				
Corzine	$97,728.00				
Craig	$37,133.00	13,100	0.01301	$2,631.94	0.00261
Crapo	$37,133.00	7,000	0.00695	$5,645.96	0.00561
Daschle	$32,275.00				
Dayton	$68,948.00	1,410	0.00032	$1,173.04	0.00027
DeWine	$129,139.00				
Dodd	$56,400.00				
Domenici	$42,553.00				
Dorgan	$31,427.00				
Durbin	$128,755.00				
Edwards	$104,420.00				
Ensign	$43,766.00				
Enzi	$30,723.00				
Feingold	$73,647.00				
Feinstein	$300,728.00				
Fitzgerald	$128,755.00				
Frist	$79,045.00				
Graham	$187,517.00				
Gramm	$210,016.00				
Grassley	$52,858.00				
Gregg	$37,037.00				
Hagel	$41,320.00	201,100	0.12741	$38,783.07	0.02457
Harkin	$52,858.00	18,146	0.00654	$15,071.43	0.00543
Hatch	$42,461.00				
Helms	$104,420.00				
Hollings	$63,818.00				
Hutchinson	$51,422.00				
Hutchison	$210,016.00				
Inhofe	$58,895.00				
Inouye	$35,568.00				
Jeffords	$31,726.00				
Johnson	$32,275.00	5,205	0.00748	$4,388.76	0.00631
Kennedy	$82,718.00				
Kerry	$82,718.00				
Kohl	$73,647.00				
Kyl	$72,156.00				
Landrieu	$67,337.00				
Leahy	$31,726.00				

Levin	$113,193.00				
Lieberman	$56,400.00				
Lincoln	$51,422.00	916	0.00039	$817.99	0.00035
Lott	$51,936.00				
Lugar	$80,779.00				
McCain	$72,156.00				
McConnell	$63,501.00				
Mikulski	$72,069.00				
Miller	$100,285.00				
Murkowski	$31,807.00				
Murray	$79,851.00				
Nelson, Bill	$187,517.00				
Nelson, E. Benjamin	$41,320.00				
Nickles	$58,895.00				
Reed	$34,814.00				
Reid	$43,766.00				
Roberts	$50,572.00	2,301	0.00093	$1,866.26	0.00075
Rockefeller	$44,141.00	378,088	0.21081	$55,323.36	0.03085
Santorum	$138,388.00				
Sarbanes	$72,069.00				
Schumer	$180,807.00				
Sessions	$68,572.00	1,182	0.00029	$1,061.42	0.00026
Shelby	$68,572.00				
Smith, Gordon	$57,908.00	13,000	0.00457	$2,496.83	0.00088
Smith, Robert	$37,037.00				
Snowe	$38,487.00				
Specter	$138,388.00				
Stabenow	$113,193.00				
Stevens	$31,807.00				
Thomas	$30,723.00				
Thompson	$79,045.00				
Thurmond	$63,818.00				
Torricelli	$97,728.00	15,183	0.00196	$13,648.31	0.00176
Voinovich	$129,139.00	3,546	0.00033	$2,885.49	0.00027
Warner	$89,455.00				
Wellstone	$68,948.00				
Wyden	$57,908.00				
Totals	$7,599,992.00	669,377	0.39251	$147,719.23	$0.08232

Fiscal Year 2002 - Second Quarter

Other Offices	Committee mass mail totals for the quarter ending 3/31/02	
	Total Pieces	Total Cost
The Vice President		
The President Pro-Tempore		
The Majority Leader		
The Minority Leader		
The Assistant Majority Leader		
The Assistant Minority Leader		
Sec of Majority Conference		
Sec of Minority Conference		
Agriculture Committee	105,100	$17,455.48
Appropriations Committee		
Armed Services Committee		
Banking Committee		
Budget Committee		
Commerce Committee		
Energy Committee		
Environment Committee		
Finance Committee		
Foreign Relations Committee		
Governmental Affairs Committee		
Health, Education, Labor & Pensions		
Judiciary Committee		
Rules Committee		
Small Business Committee		
Veterans Affairs Committee		
Ethics Committee		
Indian Affairs Committee		
Intelligence Committee		
Aging Committee		
Joint Economic Committee		
Democratic Policy Committee		
Democratic Conference		
Republican Policy Committee		
Republican Conference		
Legislative Counsel		
Legal Counsel		
Secretary of the Senate		
Sergeant at Arms		
Narcotics Caucus		
Total	105,100	$17,455.48

Fiscal Year 2002 - Third Quarter

Senator	FY2002 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 6/30/02			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,568.00				
Allard	$66,085.00				
Allen	$89,455.00				
Baucus	$34,915.00	11,880	0.01487	$2,334.78	0.00292
Bayh	$80,779.00				
Bennett	$42,461.00				
Biden	$32,688.00				
Bingaman	$42,553.00				
Bond	$78,207.00				
Boxer	$300,728.00				
Breaux	$67,337.00				
Brownback	$50,572.00				
Bunning	$63,501.00				
Burns	$34,915.00	10,942	0.01369	$9,083.37	0.01137
Byrd	$44,141.00				
Campbell	$66,085.00				
Cantwell	$79,851.00				
Carnahan	$78,207.00	4,000	0.00078	$787.48	0.00015
Carper	$32,688.00				
Chaffee, Lincoln	$34,814.00	270,700	0.26977	$50,534.73	0.05036
Cleland	$100,285.00				
Clinton	$180,807.00				
Cochran	$51,936.00				
Collins	$38,487.00				
Conrad	$31,427.00				
Corzine	$97,728.00				
Craig	$37,133.00				
Crapo	$37,133.00	2,438	0.00242	$1,986.78	0.00197
Daschle	$32,275.00				
Dayton	$68,948.00				
DeWine	$129,139.00				
Dodd	$56,400.00				
Domenici	$42,553.00				
Dorgan	$31,427.00	9,583	0.01500	$7,936.22	0.01242
Durbin	$128,755.00				
Edwards	$104,420.00				
Ensign	$43,766.00				
Enzi	$30,723.00				
Feingold	$73,647.00				
Feinstein	$300,728.00				
Fitzgerald	$128,755.00				
Frist	$79,045.00				
Graham	$187,517.00				
Gramm	$210,016.00	2,100	0.00012	$459.78	0.00003
Grassley	$52,858.00				
Gregg	$37,037.00				
Hagel	$41,320.00	2,618	0.00166	$2,151.77	0.00136
Harkin	$52,858.00	4,218	0.00152	$3,483.40	0.00125
Hatch	$42,461.00				
Helms	$104,420.00				
Hollings	$63,818.00				
Hutchinson	$51,422.00				
Hutchison	$210,016.00				
Inhofe	$58,895.00				
Inouye	$35,568.00				
Jeffords	$31,726.00				
Johnson	$32,275.00				
Kennedy	$82,718.00				
Kerry	$82,718.00				
Kohl	$73,647.00				
Kyl	$72,156.00				
Landrieu	$67,337.00				
Leahy	$31,726.00	19,340	0.03437	$4,336.72	0.00771

Levin	$113,193.00				
Lieberman	$56,400.00				
Lincoln	$51,422.00	1,129	0.00048	$332.18	0.00014
Lott	$51,936.00				
Lugar	$80,779.00				
McCain	$72,156.00				
McConnell	$63,501.00				
Mikulski	$72,069.00				
Miller	$100,285.00				
Murkowski	$31,807.00	301,500	0.54814	$51,572.67	0.09376
Murray	$79,851.00				
Nelson, Bill	$187,517.00				
Nelson, E. Benjamin	$41,320.00				
Nickles	$58,895.00				
Reed	$34,814.00	10,418	0.01038	$8,423.21	0.00839
Reid	$43,766.00				
Roberts	$50,572.00	3,216	0.00130	$2,600.61	0.00105
Rockefeller	$44,141.00				
Santorum	$138,388.00				
Sarbanes	$72,069.00	7,467	0.00156	$1,458.36	0.00031
Schumer	$180,807.00				
Sessions	$68,572.00				
Shelby	$68,572.00				
Smith, Gordon	$57,908.00				
Smith, Robert	$37,037.00	15,527	0.01400	$13,805.45	0.01245
Snowe	$38,487.00				
Specter	$138,388.00				
Stabenow	$113,193.00				
Stevens	$31,807.00				
Thomas	$30,723.00				
Thompson	$79,045.00				
Thurmond	$63,818.00				
Torricelli	$97,728.00	7,810	0.00101	$6,595.63	0.00085
Voinovich	$129,139.00	829	0.00008	$679.76	0.00006
Warner	$89,455.00				
Wellstone	$68,948.00				
Wyden	$57,908.00				
Totals	$7,599,992.00	685,715	0.93114	$168,562.90	$0.20655

Fiscal Year 2002 - Third Quarter

Other Offices	Committee mass mail totals for the quarter ending 6/30/02	
	Total Pieces	Total Cost
The Vice President		
The President Pro-Tempore		
The Majority Leader		
The Minority Leader		
The Assistant Majority Leader		
The Assistant Minority Leader		
Sec of Majority Conference		
Sec of Minority Conference		
Agriculture Committee	1,200	$359.67
Appropriations Committee		
Armed Services Committee		
Banking Committee		
Budget Committee		
Commerce Committee		
Energy Committee		
Environment Committee		
Finance Committee		
Foreign Relations Committee		
Governmental Affairs Committee		
Health, Education, Labor & Pensions		
Judiciary Committee		
Rules Committee		
Small Business Committee		
Veterans Affairs Committee		
Ethics Committee		
Indian Affairs Committee		
Intelligence Committee		
Aging Committee		
Joint Economic Committee		
Democratic Policy Committee		
Democratic Conference		
Republican Policy Committee		
Republican Conference		
Legislative Counsel		
Legal Counsel		
Secretary of the Senate		
Sergeant at Arms		
Narcotics Caucus		
Total	1,200	$359.67

Fiscal Year 2002 - Fourth Quarter

Senator	FY2002 Official Mail Allocation	Senate quarterly mass mail volumes and costs for the quarter ending 9/30/02			
		Total Pieces	Pieces Per Capita	Total Cost	Cost Per Capita
Akaka	$35,568.00				
Allard	$66,085.00				
Allen	$89,455.00				
Baucus	$34,915.00	7,745	0.00969	$6,435.48	0.00805
Bayh	$80,779.00				
Bennett	$42,461.00				
Biden	$32,688.00				
Bingaman	$42,553.00				
Bond	$78,207.00				
Boxer	$300,728.00				
Breaux	$67,337.00				
Brownback	$50,572.00				
Bunning	$63,501.00				
Burns	$34,915.00	945	0.00118	$792.13	0.00099
Byrd	$44,141.00				
Campbell	$66,085.00				
Cantwell	$79,851.00				
Carnahan	$78,207.00	852	0.00017	$726.28	0.00014
Carper	$32,688.00				
Chaffee, Lincoln	$34,814.00				
Cleland	$100,285.00				
Clinton	$180,807.00				
Cochran	$51,936.00				
Collins	$38,487.00				
Conrad	$31,427.00	104,266	0.16322	$19,768.17	0.03095
Corzine	$97,728.00				
Craig	$37,133.00	20,000	0.01987	$5,613.04	0.00558
Crapo	$37,133.00	1,853	0.00184	$1,533.38	0.00152
Daschle	$32,275.00				
Dayton	$68,948.00				
DeWine	$129,139.00				
Dodd	$56,400.00				
Domenici	$42,553.00				
Dorgan	$31,427.00	1,632	0.00255	$1,381.97	0.00216
Durbin	$128,755.00				
Edwards	$104,420.00				
Ensign	$43,766.00				
Enzi	$30,723.00				
Feingold	$73,647.00				
Feinstein	$300,728.00				
Fitzgerald	$128,755.00				
Frist	$79,045.00				
Graham	$187,517.00				
Gramm	$210,016.00				
Grassley	$52,858.00	119,282	0.04296	$25,646.18	0.00924
Gregg	$37,037.00				
Hagel	$41,320.00				
Harkin	$52,858.00	19,715	0.00710	$16,733.65	0.00603
Hatch	$42,461.00				
Helms	$104,420.00				
Hollings	$63,818.00				
Hutchinson	$51,422.00				
Hutchison	$210,016.00				
Inhofe	$58,895.00				
Inouye	$35,568.00				
Jeffords	$31,726.00	2,733	0.00486	$611.40	0.00109
Johnson	$32,275.00	170,091	0.24438	$38,342.73	0.05509
Kennedy	$82,718.00				
Kerry	$82,718.00				
Kohl	$73,647.00				
Kyl	$72,156.00				
Landrieu	$67,337.00				
Leahy	$31,726.00	8,380	0.01489	$4,475.56	0.00795

Levin	$113,193.00	1,000	0.00011	$319.93	0.00003
Lieberman	$56,400.00				
Lincoln	$51,422.00				
Lott	$51,936.00				
Lugar	$80,779.00	5,330	0.00096	$1,130.87	0.00020
McCain	$72,156.00				
McConnell	$63,501.00				
Mikulski	$72,069.00				
Miller	$100,285.00				
Murkowski	$31,807.00				
Murray	$79,851.00				
Nelson, Bill	$187,517.00				
Nelson, E. Benjamin	$41,320.00				
Nickles	$58,895.00	8,033	0.00255	$6,555.42	0.00208
Reed	$34,814.00				
Reid	$43,766.00	95,300	0.07931	$19,104.83	0.01590
Roberts	$50,572.00				
Rockefeller	$44,141.00				
Santorum	$138,388.00				
Sarbanes	$72,069.00				
Schumer	$180,807.00				
Sessions	$68,572.00				
Shelby	$68,572.00				
Smith, Gordon	$57,908.00	145,000	0.05101	$28,971.23	0.01019
Smith, Robert	$37,037.00	44,020	0.03968	$37,110.60	0.03346
Snowe	$38,487.00				
Specter	$138,388.00				
Stabenow	$113,193.00				
Stevens	$31,807.00				
Thomas	$30,723.00				
Thompson	$79,045.00				
Thurmond	$63,818.00				
Torricelli	$97,728.00	183,100	0.02363	$152,804.95	0.01972
Voinovich	$129,139.00				
Warner	$89,455.00				
Wellstone	$68,948.00				
Wyden	$57,908.00				
Totals	$7,599,992.00	939,277	0.70997	$368,057.80	$0.21038

Fiscal Year 2002 - Fourth Quarter

Other Offices	Committee mass mail totals for the quarter ending 9/30/02	
	Total Pieces	Total Cost
The Vice President		
The President Pro-Tempore		
The Majority Leader		
The Minority Leader		
The Assistant Majority Leader		
The Assistant Minority Leader		
Sec of Majority Conference		
Sec of Minority Conference		
Agriculture Committee		
Appropriations Committee		
Armed Services Committee		
Banking Committee		
Budget Committee		
Commerce Committee		
Energy Committee		
Environment Committee		
Finance Committee		
Foreign Relations Committee		
Governmental Affairs Committee		
Health, Education, Labor & Pensions		
Judiciary Committee		
Rules Committee		
Small Business Committee		
Veterans Affairs Committee		
Ethics Committee		
Indian Affairs Committee		
Intelligence Committee		
Aging Committee		
Joint Economic Committee		
Democratic Policy Committee		
Democratic Conference		
Republican Policy Committee		
Republican Conference		
Legislative Counsel		
Legal Counsel		
Secretary of the Senate		
Sergeant at Arms		
Narcotics Caucus		
Total	0	$0.00

JAMES OBERWETTER'S SELECTION TO BE U.S. AMBASSADOR TO SAUDI ARABIA

Mr. SCHUMER. Mr. President, I am deeply disappointed by the President's choice of James Oberwetter to be the next U.S. Ambassador to Saudi Arabia. My disappointment does not stem from doubts about Mr. Oberwetter's integrity or professional accomplishment. Indeed, in both categories he has my respect and admiration. However, I simply do not believe that Mr. Oberwetter possesses the proper experience to assume what has become one of the most important posts in our Nation's fight against terrorism. And while I will not stand in the way of Mr. Oberwetter's appointment, I believe it is important that the record show that the President's choice could certainly have been better.

Saudi Arabia is one of the primary battlegrounds in the war on terror. This is not simply because 15 of the 19 hijackers from 9/11 were Saudi. Top anti-terror officials tell us that Saudi Arabia is also a hub for terrorist financing and extremist incitement. The inflammatory content of its educational textbooks promotes anti-American sentiment in the Kingdom and its support for extremist madrassas schools in Pakistan, southeast Asia and Africa gives life to institutions that are incubators for the next generation of terrorists abroad.

Given this sad state of affairs, there are several reasons why Mr. Oberwetter should not be our nation's next Ambassador to the Kingdom of Saudi Arabia. First, he has absolutely no official diplomatic or anti-terror experience. As I have said many times before, we live in a post-9/11 world where the old rules simply do not apply. Given that Saudi Arabia is one of the most important fronts in the war on terror, our top representative there can no longer be a run-of-the mill political appointee; rather, the American Ambassador to Saudi Arabia must be a seasoned diplomatic expert and someone with an extensive background in combating terrorist financing and religious extremism.

Mr. Oberwetter's more than 25 years as an oil industry insider provide him with no background to assume this key position in the fight against terrorism. Indeed, his oil industry pedigree is another reason why he is an inappropriate choice to serve as Ambassador. While I have no doubts about Mr. Oberwetter's personal integrity, his proximity to the oil industry suggests that commercial rather than security interests appear to have taken precedence in the administration's decision-making.

I simply do not understand this business-as-usual approach to diplomatic appointments when American lives are at stake. Surely there is someone more qualified than an oil executive that we could choose from the distinguished ranks of our Nation's diplomatic and security corps to occupy this important post in the war on terror. Mr. Oberwetter's nomination is a disappointment and does a disservice to our national security.

ON YESTERDAY'S ATTACK IN MOSUL

Mr. ALEXANDER. Mr. President, I express my outrage at events that transpired this weekend in Iraq. No one expects terrorists to follow the rules, but what they did to two soldiers from the 101st Airborne Division this weekend in Mosul is beyond the pale. We have lost 431 men and women in the conflict in Iraq; my heart goes out to the families and friends of each and every one.

Here is how the Associated Press describes what happened, as reported in The Tennessean and a number of other papers across the country:

> Iraqi teenagers dragged two bloodied 101st Airborne soldiers from a wrecked vehicle and pummeled them with concrete blocks yesterday, witnesses said . . .
>
> Witnesses to the Mosul attack said gunmen shot two soldiers driving through the city center, sending their vehicle crashing into a wall. The 101st Airborne Division said the soldiers were driving to another garrison.
>
> About a dozen swarming teenagers dragged the soldiers out of the wreckage and beat them with concrete blocks, the witnesses said.
>
> ''They lifted a block and hit them with it on the face,'' Younis Mahmoud, 19, said.
>
> It was unknown whether the soldiers were alive or dead when pulled from the wreckage.

That is what the Associated Press wrote. I ask unanimous consent the article be printed in full in the RECORD following my remarks.

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

Mr. ALEXANDER. One can't help but feel a sense of anger when reading a story like that. CSM Jerry Wilson and SP Rel Ravago were on their way from one garrison to another. The terrorists laid waiting for the soldiers to drive by, and ambushed them. Even worse, they made every effort to be as brutal and bloody as possible. It makes me sick to my stomach.

At the same time, we also remember how many of our troops have lost their lives in this struggle. 431 men and women from our Armed Forces have given their lives since Operation Iraqi Freedom commenced. Forty-eight of them were from the 101st Airborne, based in Fort Campbell on the border of Kentucky and Tennessee. 2,067 have been wounded overall. And as much as we all wish it weren't the case, more will follow.

Nothing can prepare you for the loss of a loved one, especially loved ones as young as those that are serving our country in Iraq. We can only hope the knowledge that these soldiers died fighting to keep us safe will provide some comfort in this time of grief. To those families, we can only say this: the hopes and prayers of a grateful nation are with you.

But in the midst of this sorrow, we must remember why our troops are in Iraq. We must strengthen our resolve. Iraq is freer today than it has been for more than a generation. An evil dictator has been toppled, his regime is gone. The people of Iraq, by and large, are grateful; according to polls, the vast majority of them support continued American presence in their country.

In fact, in the horrible incident involving the two soldiers in Mosul, U.S. troops were alerted to the attack by sympathetic Iraqis.

We are making progress in Iraq: the power is on, schools are re-opened, markets are buzzing, the southern port is open. But danger lurks.

And we must labor on. A stable, democratic Iraq in the midst of the Middle East could become our greatest ally in the War on Terror. It would change the world. But if we give up and throw in the towel, an unstable Iraq would quickly become a hotbed of terrorism far worse than Afghanistan. The stakes are high. Failure is not an option.

Our troops and their families bear the burden of this cause more than any other. Their sacrifice will never be forgotten.

In a few days, we will celebrate Thanksgiving. In the first Thanksgiving proclamation, President George Washington ''recommend[ed] to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God, as a people, with devout reverence and affectionate gratitude.''

Ours is a blessed nation, and we have much to be grateful for. This Thanksgiving we should be especially grateful for the men and women of our Armed Forces, fighting the terrorists over there so fewer can attack us here, at home. Whether helping to open a new school in Kirkuk or securing the area around Baghdad International Airport; our troops are standing in harms way. They are doing it for us.

For thousands of families, the Thanksgiving table will have an empty space this year. It will be hard. We should all save a place in our hearts for those military families this Thanksgiving. We give thanks for their courage, too.

So today, I say thank you to the men and women of our Armed Forces. We stand in awe of your strength. We are humbled by your sacrifice. We are grateful for your courage.

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

[From the TENNESSEAN, Nov. 24, 2003]

TWO 101ST SOLDIERS DIE IN AMBUSH

MOSUL, IRAQ—Iraqi teenagers dragged two bloodied 101st Airborne soldiers from a wrecked vehicle and pummeled them with concrete blocks yesterday, witnesses said, describing the killings as a burst of savagery in a city once safe for Americans.

Another soldier was killed by a bomb, and a U.S.-allied police chief was assassinated.

The U.S.-led coalition also said it grounded commercial flights after the military confirmed that a missile struck a DHL cargo plane that landed Saturday at Baghdad International Airport with its wing aflame.

Nevertheless, American officers insisted they were making progress in bringing stability to Iraq, and the U.S.-appointed Governing Council named an ambassador to Washington—an Iraqi-American woman who spent the past decade lobbying U.S. lawmakers to promote democracy in her homeland.

Witnesses to the Mosul attack said gunmen shot two soldiers driving through the city center, sending their vehicle crashing into a wall. The 101st Airborne Division said the soldiers were driving to another garrison.

About a dozen swarming teenagers dragged the soldiers out of the wreckage and beat them with concrete blocks, the witnesses said. ''They lifted a block and hit them with it on the face,'' Younis Mahmound, 19, said. It was unknown whether the soldiers were alive or dead when pulled from the wreckage.

Initial reports said the soldiers' throats were cut. But another witness, teenager Bahaa Jassim, said the wounds appeared to have come from bullets. ''One of the soldiers was shot under the chin, and the bullet came out of his head. I saw the hole in his helmet. The other was shot in the throat,'' Jassim said.

Some people looted the vehicle of weapons, CDs and a backpack, Jassim said. ''They remained there for over an hour without the Americans knowing anything about it,'' he said. ''I. . . went and told other troops.''

Television footage showed the soldiers' bodies splayed on the ground as U.S. troops secured the area. One victim's foot appeared to have been severed.

The frenzy recalled the October 1993 scene in Somalia, when locals dragged the bodies of Marines killed in fighting with warlords through the streets.

In Baqouba, just north of Baghdad, insurgents detonated a roadside bomb as a 4th Infantry Division convoy passed, killing one soldier and wounding two others, the military said.

In Baghdad, Brig. Gen. Mark Kimmitt confirmed the Mosul deaths but would not provide details. ''We're not going to get ghoulish about it,'' he said.

The savagery of the attack was unusual for Mosul, once touted as a success story in sharp contrast to the anti-American violence seen in Sunni Muslim areas north and west of Baghdad.

In recent weeks, however, attacks against U.S. troops have increased in Mosul, raising concerns that the insurgency is spreading. Simultaneously, attacks have accelerated against Iraqis considered to be supporting Americans—such as policemen and politicians working for the interim Iraqi administration.

Yesterday gunmen killed the Iraqi police chief of Latifiyah, 20 miles south of Baghdad, and his bodyguard and driver, American and Iraqi officials said. No more details were released. The assassination occurred one day after suicide bombers struck two police stations northeast of Baghdad within 30 minutes, killing at least 14 people. Gunmen Saturday also killed an Iraqi police colonel protecting oil installations in Mosul.

In Samara, about 75 miles north of Baghdad, Iraqi police said six U.S. Apache helicopter gunships blasted marshland after four rocket-propelled grenades were fired at the American military garrison at the city's northern end. One Iraqi passer-by was killed in the air attack, police said.

In Kirkuk, 150 miles north of Baghdad, a bomb exploded at an oil compound, injuring three American civilian contractors from the U.S. firm Kellogg Brown & Root. The three suffered facial cuts from flying glass, U.S. Lt. Col. Matt Croke said. KBR, a subsidiary of Halliburton, also has a significant presence at Baghdad's Palestine Hotel, which was rocketed by insurgents Friday, wounding one civilian. ''We all know that Americans are being threatened,'' Croke said.

Kimmitt told reporters in Baghdad that witnesses saw two surface-to-air missiles fired Saturday at a cargo plane operated by the Belgium-based package service DHL as it left for Bahrain. The plane was the first civilian airliner hit by insurgents, who have shot down many military helicopters with shoulder-fired rockets. The coalition authority ordered DHL and Royal Jordanian, the only commercial passenger airline flying into Baghdad, to suspend flights.

Despite the ongoing violence, U.S. officials said the occupation was going well. ''If you look at the accomplishments of the coalition since March of this year, it has been enormous,'' Marine Gen. Peter Pace, vice chairman of the Joint Chiefs of Staff, said in Tikrit. He is touring Afghanistan and Iraq.

Despite the surge in the scope and ferocity of the attacks, Kimmitt dismissed any threat posed by the guerrillas, whom he described as occasionally clever but overall ''a pretty poor group of insurgents.''

''We have nothing at this point that causes us to be concerned,'' he said. ''This is not an enemy that can defeat us militarily.''

Also yesterday, Iraqi Foreign Minister Hoshyar Zebari said veteran Washington lobbyist Rend Rahim Francke was appointed Iraq's ambassador to the United States. Francke, an Iraq native who has spent most of her life abroad, led the Iraq Foundation, a Washington-based pro-democracy group and has helped plan Iraq's transition from Saddam Hussein's rule. The appointment will renew the diplomatic ties between Washington and Baghdad severed in 1990 when Saddam invaded Kuwait.

EMPLOYEE FREE CHOICE ACT

Mr. KENNEDY. Mr. President, on Friday, I was pleased to introduce the Employee Free Choice Act, which is sponsored by 24 Members of the Senate.

For decades, labor unions have led the fight for the 8-hour day, and the 40-hour week, for overtime pay, for the minimum wage, for safe and healthy workplaces, for health insurance, for retirement security, and many other basic rights. Millions of union members in communities across America benefit today from the long hard battles of the past.

Union workers earn wages 25 percent higher than nonunion workers. Union workers are more than four times as likely to have a secure pension plan. Union workers are 40 percent more likely to have health insurance coverage.

These and many other longstanding benefits of union membership are undisputed. But too many workers who want to be members of a union are unable to do so. The reason is clear. Too often, employers discourage it in any way they can.

For years, illegal employer tactics have been common whenever employees attempt to form a union. Each year, employers are charged with over 20,000 instances of violating workplace labor rights. In over half of these claims, a worker was punished or even fired for union activity. A recent survey found that employers illegally fire employees in one quarter of all union organizing drives.

Even employees who manage to form a union often can't get a contract, because employers refuse to bargain. Only half of the unions who win an election are able to get a first contract.

Often, companies hire expensive consultants and launch campaigns to intimidate workers and keep them from supporting a union.

Anti-union companies often give their managers pamphlets with titles like ''A Manager's Toolbox to Remaining Union Free.''

They close down departments that succeed in unionizing. Employers spy on workers and use one-on-one confrontations to intimidate workers or break the union.

Too often, Federal labor laws intended to protect workers from coercion have no teeth. If workers are fired, they may not get their jobs back for years. At most, the employer will owe back wages. Companies treat such payments as just another cost of doing business.

America's workers deserve better. American democracy deserves better.

That is why we are here today to introduce the Employee Free Choice Act. Free Choice means: the freedom to associate freely in the workplace; the freedom to choose your own labor representative; and the freedom to bargain for better wages, better health care, and other benefits.

Our bill recognizes a specific right of workers to choose a union through a process called a card check. If a majority of employees sign a card asking for representation by a union, the employer must comply.

The bill also requires employers to come to the table to negotiate a first contract. And it levels the playing field for employees who are attempting to organize a union or obtain a first contract. It provides for court orders to stop employers from firing or threatening these workers. The bill also puts real teeth in the law by strengthening the penalties in current law for workers that support a union.

These protections are long overdue. For too long, we have acquiesced in the anti-labor, anti-worker, anti-union tactics that are far too prevalent in the workplace. We like to think that workers are free to join a union, but too often that basic aspect of freedom is denied in our modern society, because hard-line corporate managers succeed in denying a fair choice by workers.

At a critical time like this when we are fighting for the basic freedoms of other peoples in other lands, we cannot fail to take a stand for the basic freedoms of the millions of American workers who depend on us to protect their rights at home.

EXTENSION OF TEMPORARY UNEMPLOYMENT COMPENSATION PROGRAM

Mr. VOINOVICH. Mr. President, I rise to express my support for extending the Temporary Unemployment Compensation Program.

As we approach the holiday season, many unemployed workers are approaching the end of their eligibility for unemployment insurance. Unemployed workers who exhaust their benefits between now and the end of the year will be eligible for 13 weeks of extended benefits but those who exhaust their eligibility after December 31 will be out of luck. The program will have terminated and they will not be eligible for extended benefits.

According to the most recent reports from the Department of Labor, there are 337,000 people unemployed in Ohio, an increase of 39 percent from November 1999. In Michigan, 379,000 are unemployed, up 105 percent from November 1999. Another 177,000 are looking for work in Wisconsin, an increase of 90 percent. To put these numbers in perspective, during the last recession from November 1987 to November 1992, unemployment in Ohio increased by 21 percent, Michigan unemployment increased by 17 percent and in Wisconsin unemployment actually fell by 7 percent.

Even these numbers do not fully describe the challenges facing low and semi-skilled workers in the midwest. Although the Labor Department's household survey indicates more than 337,000 individuals are unemployed in Ohio, our state Department of Jobs and Family Services report that only about 130,000 are collecting unemployment insurance benefits. The remaining 200,000 workers have either exhausted their benefits or never qualified for them in the first place because they have been existing on a series of part time and temporary jobs that do not count toward unemployment compensation. DJFS reports also indicate that 2,000 to 2,500 individuals per week exhaust their state level unemployment benefits and apply for TEUC benefits. The number of individuals receiving TEUC benefits—about 25,000—has remained almost unchanged since July of 2002, indicating that as one cadre of individual leaves the system, another group takes their place.

Although the recent employment numbers from the Department of Labor appear hopeful, they may promise more than they deliver. Over the past 4 years, summer and fall employment gains in Ohio have been followed by winter and spring job losses. This cycle has remained consistent for the past 4 years. Equally important, the data appear to indicate that even if weekly unemployment claims are leveling out, they are doing so at twice the level of comparable times of the year in 1999. Consequently, unless we extend the TEUC program, many individuals will exhaust their state unemployment benefits during the most difficult period of the year to find employment but have no eligibility for TEUC benefits to tide them over until hiring picks up in the summer.

The dead of winter is a particularly difficult time to be out of work in Ohio. Jobs are more difficult to locate and heating bills drive up household expenses. This is not the time to be making life more difficult for the low- and semi-skilled workers who are having the most difficult time readjusting to the realities of the new economy. Although I hope and pray the improving economy will generate new jobs for Ohio workers, we continue to have about 130,000 individuals collecting unemployment insurance each week. Unless we extend the TEUC program, many individuals will exhaust their state unemployment benefits just when they need them the most. We need to address this issue before Congress adjourns to ensure that people receive the help they need.

FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

Mr. SARBANES. Mr. President, Saturday evening the Senate passed by voice vote the Fair and Accurate Credit Transactions Act of 2003. I want to congratulate Chairman SHELBY, Chairman OXLEY and Congressman FRANK and all the conferees on the successful completion of the conference on this bill. This is an important piece of legislation and, as I have previously done, I want to acknowledge the thorough examination of these important issues provided by the comprehensive series of six hearings on this subject that Chairman SHELBY held in the Banking Committee. The bill passed unanimously out of the Banking Committee on a voice vote on September 23, 2003 and was adopted 95–2 on the floor on November 5, 2003. These votes, I believe, are a testament to our chairman's willingness to work on a bipartisan basis.

I believe the same can be said of Chairman OXLEY and Congressman FRANK. Their bill was voted out of the House Financial Services Committee by 63–3 on July 24, 2003, and was passed overwhelmingly on the floor 392–30 on September 10, 2003. The conference report was passed on the floor of the House on Friday night on a vote of 379–49.

While there were a number of differences between the Senate and House passed versions, I think the conference successfully took many of the best provisions from each bill. Although I would have liked to have gone further in a few areas—in the affiliate sharing section to provide more protection for the financial privacy of consumers, and also in preserving the rights of States to act—I believe a good compromise was reached. Among other things, this legislation provides consumers with free credit reports annually from the national credit bureaus and provides consumers with an easy method to obtain their free credit reports, and easier access to their credit scores; requires that consumers be given a summary of their right to opt out of prescreened offers; provides for accuracy guidelines; requires financial institutions to send their customers written notice prior to submitting negative information about them to a national consumer reporting agency; lengthens the statute of limitations for all Fair Credit Reporting Act violations; extends the situations in which consumers are notified when adverse actions have been taken against them; prohibits the sale, transfer, or collection of identity theft debt, so that such bad debt will not be perpetuated in the credit system; limits the sharing of medical information in the financial system; with certain limitations, provides consumers with the right to opt out of solicitations for marketing purposes that result from affiliate information sharing; and helps enhance the financial literacy of all Americans.

This legislation contains a number of important consumer protections, and I want to address some of these provisions more thoroughly.

First I would like to note a significant consumer right contained in the legislation—the right to obtain a free credit report annually. This legislation will, for the first time, allow consumers to make one request, and obtain their credit report free annually from each of the national credit bureaus. Financial institutions rely heavily on credit report information to make credit decisions, and it is extremely important that consumers be aware of the information contained in their credit reports. Providing consumers with the right to obtain this important information free is a major step forward in ensuring consumers' knowledge of, and control over, their financial information.

In addition to obtaining free reports, under this legislation consumers will be informed when negative information is added to their credit reports. This important provision, combined with the consumer's right to a free report, will help improve Americans' access to and understanding of information contained in their credit reports.

This legislation will also help ensure that consumers are aware of how to opt out of the prescreening process which results in many of the unsolicited offers of credit that consumers receive in the mail. Under the FCRA, credit reporting agencies may generate for creditors prescreened lists of individuals with certain characteristics to be targeted to receive a direct mailing. The success of the FTC's ''Do-Not-Call'' Registry has highlighted Americans' frustration with unsolicited telephone offers. Under this legislation, creditors making such unsolicited offers of credit to consumers by mail will be required to include a summary of consumers' right to opt-out of prescreening in their offers to consumers. The FTC in consultation with

the banking agencies and the National Credit Union Association will be required to write rules on the size and prominence of the disclosure of the opt-out telephone number that is included with offers of credit to consumers.

In order to ensure that consumers are aware of the many rights provided for them under the Fair Credit Reporting Act, this bill directs the FTC to undertake an educational campaign. The FTC is directed to actively publicize, and conspicuously post on its website, a number of important FCRA consumer rights. Among these are the right to obtain free credit reports annually, and other circumstances in which consumers may obtain free credit reports; the right of a consumer to dispute information in his or her credit report; the consumer's right to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score; and the consumer's right to opt out of prescreened lists, and the toll-free telephone number maintained by the national credit bureaus by which consumers may opt out. This FTC campaign will help ensure that Americans are informed of their rights under the FCRA, including the new rights afforded to them by this Act.

This legislation will also add a new provision to the FCRA that would provide consumers with a notice when they receive less favorable credit terms, based on their credit report. Receiving the notice would trigger the consumer's right to examine his or her credit report free of charge. Although the new provision would give the Federal Trade Commission and the Federal Reserve Board broad authority to make rules regarding the form and content of the notice and when it should be delivered, the notice, by its very logic, must be given after the terms of the offer have been set based on whole or in part on the credit report. The notice should be provided as early as practicable in the transaction after the terms have been set.

This legislation will also benefit consumers by requiring Federal agencies to provide greater oversight of the accuracy and integrity of credit reports. Under this act, Federal banking regulators and the Federal Trade Commission will, for the first time, establish and maintain guidelines regarding the accuracy and integrity of information provided by data furnishers to credit reporting agencies. The Act also requires these agencies to prescribe regulations requiring creditors and other furnishers of information to credit bureaus to establish reasonable policies and procedures for implementing these guidelines. For the purposes of this section, ''accuracy'' relates to whether the information that is provided by data furnishers to credit reporting agencies is factually correct. The term ''integrity'' relates to whether all relevant information that is used to assess credit risk and to grant credit is accurately provided. Integrity of information is not achieved when furnishers do not fully provide data that, by its absence, could have a positive or negative effect on a consumer's credit score, or on his or her ability to obtain credit under the most favorable terms for which he or she qualifies.

The bill also contains important provisions relating to financial companies' ability to market to their customers based on private financial information of the customers that has been shared among affiliates. For the first time, the bill will require affiliates who share customer information to make solicitations for marketing purposes to disclose this sharing to consumers, and to provide consumers with an opportunity to opt out of marketing resulting from such sharing. Exceptions are provided for pre-existing customers, solicitations based on existing shared data, solicitations contracted for by employers, compliance with State insurance laws, service providers, and responding to consumer requests.

In addition to providing an opt-out of marketing based on affiliate sharing, this legislation helps protect consumers' private financial information by including a number of important identity theft prevention and protection provisions. I want particularly to note Senator CANTWELL's leadership in the area of identity theft. Senator CANTWELL's identity theft legislation passed on the floor of the Senate last year, and several of the provisions from her bill have been incorporated in the FACT Act, including an extension of the statute of limitations, provisions allowing consumers to block identity theft information from appearing on their credit reports, and a provision allowing consumers to obtain copies of business records reflecting any transactions that have been carried out in their name by identity thieves. I believe that these provisions will be beneficial to identity theft victims, and I want to commend Senator CANTWELL's leadership in this area along with that of Senators ENZI and FEINSTEIN.

After careful consideration by the conferees, the conference report provides for preemption of the States with respect to conduct required by specific listed provisions of the Act on identity theft. This narrowly focused preemption will leave States free to supplement these protections and to develop additional approaches and solutions to identity theft.

I would also like to highlight the important steps this legislation takes to improve the financial literacy of consumers by establishing a Financial Literacy and Education Commission which will coordinate promotion of Federal financial literacy efforts, and will develop a national strategy to promote financial literacy and education. I want to commend Senators ENZI and STABENOW, along with Senators CORZINE, AKAKA and others, for their leadership in the Senate in this area. The House had a strong interest in the development of this title, and added, among other provisions, an authorization of $3 million dollars for the development of a national public service multimedia campaign that will be consistent with the national strategy.

In closing, I would like to take a moment to acknowledge the outstanding work done by the staff of the Committee on this legislation. On my staff, I would like to express my deep appreciation for the work done by Lynsey Graham as well as Dean Shahinian, Aaron Klein, Marty Gruenberg and Steve Harris.

It was a pleasure working with the staff of Chairman SHELBY who are to be congratulated for their outstanding work. I particularly want to acknowledge the work of Mark Oesterle, Doug Nappi and Chairman Shelby's staff director, Kathy Casey.

I would also like to thank Laura Ayoud from Senate Legislative Counsel, who has worked tirelessly and, as always, effectively, to put this package together.

I would also like to acknowledge the vital role played in developing this legislation by all of our Senate conferees: Senators BENNETT, ALLARD, ENZI, DODD and JOHNSON, and in particular by the Chairman, Senator SHELBY.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. 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 Enhancement 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 Naples, FL. In May of 2003, a 17-year-old reportedly drove around the parking lot of a downtown bar, yelling homosexual epithets while attempting to run one man down and to attack another. Michael R. Schmaeling was later arrested and charged with two counts of aggravated assault and one count of evidencing prejudice during an offense.

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.

REMEMBERING BILL SIMPSON

Mr. COCHRAN. Mr. President, the death of Bill Simpson on November 20 at the Veterans Medical Center here in Washington was very much like having a death in the family of the Senate.

Bill was known to many of us as the well-respected and effective Administrative Assistant of former Senator James O. Eastland of Mississippi. He

served for 10 years on Senator Eastland's staff and was widely known in Mississippi as the person to call to get things done in our State.

I first met him when he became a member of the staff of Governor Paul B. Johnson, Jr. Bill was a talented speech writer as well as an astute political tactician for Governor Johnson. They accomplished a great deal in that 4-year term because of the thoughtful leadership of Governor Johnson and the able assistance of Bill Simpson. The ''Shipyard of the Future'' was built by Litton Industries at Pascagoula and the Mississippi Research and Development Center was established in Jackson.

When I was elected to the Senate in 1978 to replace Senator Eastland, I tried to talk Bill Simpson into staying on as a member of my staff, but President Carter was more persuasive, and Bill left the Senate to serve as an assistant to Hamilton Jordan, the Chief of Staff in The White House.

Bill Simpson grew up on the Mississippi Gulf Coast and graduated from St. Stanislas College in Bay St. Louis and the U.S. Merchant Marine Academy at Kings Point, NY. His father served as Mayor of Pass Christian and his brother, Jim Simpson, Sr. was a 7-term member of the Mississippi House of Representatives.

Bill's nephew, Jim Simpson, Jr., carries on the family tradition in Mississippi politics as a respected member of the House of Representatives from Harrison county, and his son, Bill Simpson, Jr., serves on the staff of the Senate Appropriations Committee.

Bill enjoyed the love and support of a devoted family and the camaraderie of countless friends. As chairman of the board of the 116 Club he would hold court and tell stories about the Senate and our State of Mississippi with a twinkle in his eye and love in his heart.

We extend to his wife, Evelyn, and his children, Bill, Jr. and Ellen, and his three grandchildren, our sincerest condolences.

HONORING THE ARMED FORCES

SERGEANT MAJOR CORNELL W. GILMORE

Mr. WARNER. Mr. President, I seek recognition to honor a Virginia Soldier, Sergeant Major Cornell W. Gilmore, who was tragically killed in action in Iraq on Friday, November 7th, 2003. I want to express gratitude, on behalf of the Senate, for his service to our Nation. The American people, I am certain, join me in expressing their prayers and compassion to his family.

As the Sergeant Major of the Army's Judge Advocate General Corps, he served as the primary adviser to the judge advocate general on all matters concerning the health and welfare of all the enlisted soldiers within that command. A heavy responsibility that he bore freely and he served with great effect. He accompanied his commanding general, Major General Thomas J. Romig, to Iraq to ensure the soldiers legal needs were being met while away from home. Major General Romig stated that he was ''one of the most dynamic leaders I ever met.''

Sergeant Major Gilmore leaves behind his wife, Donna; his daughter, Dawnita; his son, Cornell, Jr.; his father William; and his mother, Louise.

Sergeant Major Gilmore was both an exceptional soldier and a caring citizen, giving his time freely to community and his church. At every post throughout his career he has been a mentor to many through his love of God and music, most recently serving as the music minister at the Shilo Christian Church in Stafford, VA. The local media reported that 100 former pupils served in the choir during his funeral service with more than 1300 mourners present.

His family members are brave Americans who have sacrificed so much for this Nation. We owe them and the other families who have lost their loved ones a debt of gratitude. Sergeant Major Gilmore was an exceptional man with a bright future and family in front of him. His wife stated, ''he lived and died doing what he loved best—being with soldiers.'' I cannot craft a finer eulogy, the Commonwealth of Virginia and the entire Nation shall mourn his loss.

NOBEL PEACE PRIZE WINNER RALPH BUNCHE

Mr. TALENT. I am pleased that the Senate unanimously approved a resolution to recognize the importance of Ralph Bunche as one of the great leaders of the United States. Mr. Bunche was the first African-American Nobel Peace Prize winner, an accomplished scholar, a distinguished diplomat, and a tireless campaigner for civil rights for people throughout the world.

He was of that generation of African-American leaders whose life and character broke the back of generations of prejudice, awoke the American conscience, and opened up opportunity for millions of people. This measure is an appropriate and fitting celebration of the 100th anniversary of his birth.

ACCESS TO JUSTICE IN FEDERAL COURTS

Mr. CORNYN. Mr. President, I am pleased to report that, last Friday, S. 1720 was presented to the President for his consideration, after receiving the unanimous approval of both the House and Senate. I sponsored S. 1720, joined by Senator HUTHINSON, because I believe that this legislation is necessary to ensure that all of the citizens of North Texas have access to justice in the Federal courts.

S. 1720 authorizes the United States District Court for the Eastern District of Texas to hold court in the City of Plano. Such legislation was first endorsed by the Judicial Conference of the United States and the Eastern District of Texas in 1991. Yet although, prior to this year, the House had already approved such legislation five times since 1991, it has never received the approval of the Senate Judiciary Committee and the Senate until this year.

Federal law does not currently authorize the Eastern District of Texas to hold court in Plano—making the Eastern District, of all 93 judicial districts across the United States, the only judicial district in which its largest city cannot hold Federal court. The nearest Eastern District judge is in the city of Sherman, a 100-mile or more roundtrip drive away. As a result, Federal prosecutors, public defenders, other attorneys, and law enforcement officials must waste precious time and resources conducting even the most simple court business. The people of the Eastern District of Texas are woefully underserved as a result.

S. 1720 enjoys strong support among officials across the State of Texas. Most notably, U.S. Attorney Matthew D. Orwing, First Assistant U.S. Attorney Rebecca Gregory, Chief Judge John Hannah, Jr., and Judge Richard A. Schell worked closely with my office in this effort, and I am grateful to each and every one of them for working with me to ensure that the people of North Texas enjoy adequate access to justice in the Federal courts.

The judges of the Eastern District firmly believe that this legislation is good for the citizens of Sherman as well as Plano. On June 13, 2003, on behalf of all the judges of the Eastern District, Chief Judge Hannah issued General Order No. 03–15, which resolves, ''if pending legislation passes that authorizes Plano as a place of holding court, to have half the Sherman Division caseload docketed and tried in Sherman, and the other half of the caseload docketed and tried in Plano. If Judge Brown ceases holding court in Sherman, a new resident judge shall be designated to hold court in Sherman as soon as possible, and pending the new judge's residing in Sherman, 50 percent of civil and criminal cases shall be docketed and tried in Sherman, and the clerk's office in Sherman shall remain staffed sufficiently to support a resident judge.''

Relying on this general order, the Grayson County Bar Association, which includes Sherman, and the Collin County Bar Association, which includes Plano, recently approved a joint resolution endorsing this legislation. Furthermore, consistent with the terms of the order, Congressman Ralph Hall inserted the following statement into the CONGRESSIONAL RECORD just moment before House approval of S. 1720 last Wednesday:

Both Sherman and Plano shall have a resident United States District Judge. Fifty percent of the cases filed in or transferred to the Sherman Division of the United States District Court for the Eastern District of Texas shall be assigned for trial and tried in Sherman by either the resident United States District Judge sitting in Sherman or

another United States District Judge assigned to hold court in Sherman. The remaining 50 percent of the cases shall be assigned for trial and tried in Plano by either the resident United States District Court Judge sitting in Plano or another United States District Judge assigned to hold court in Plano. If the resident judge in Sherman or Plano retires or dies, 50 percent of the cases shall continue to be tried in Sherman and 50 percent tried in Plano while a new resident judge is being assigned. This provision shall not prevent the transfer of a case to another judge or division of the United States District Court for the Eastern District of Texas or another United States District Court for trial, if such transfer is permitted by applicable law.

This language reflects the intentions of the judges of the Eastern District of Texas as stated in General Order No. 03–15—as confirmed by Chief Judge Hannah last week. Accordingly, I am pleased to join Congressman HALL in inserting this statement into the CONGRESSIONAL RECORD.

ADDITIONAL STATEMENTS

ON THE LIFE OF EDITH NASH

● Mr. FEINGOLD. Mr. President, I pay tribute today to a good friend and a great Wisconsinite who recently passed away, leaving behind an inspiring legacy of community leadership, of creativity, and of true benevolence.

In Wisconsin, Edith's enterprise was evident in both her dedication to the arts and her success in the private sector. A community leader, she served as a board member of the Meiklejohn Educational Association, as administrator of the Wisconsin Rapids Community Company of Players, and as a member of the Wisconsin Academy of Sciences, Arts and Letters. Privately, she was vice president and later president of her family's business, the Biron Cranberry Co.

Never one to stand still, Edith continued to reinvent herself time and time again, even late in life. After selling the Biron Company, Edith delved into poetry, publishing five books and founding a writers' group when she was well into her eighties.

Earlier in her life, Edith lived in Washington, DC, where she was dismayed and outraged at the state of the city's segregated public school system. So, with her husband Philleo, she founded one of the District's first integrated schools in 1945, the Georgetown Day School. Later, she served as the school's director for 14 years.

While at the Georgetown Day School, Edith challenged her new students by telling them that ''If you really don't like the idea of standing on your own two feet and beginning to be the master of your own life—if you'd rather be a chip in the ocean with the mammoth water raising and lowering you and you making no effort at all—don't come to Georgetown Day School. Ask your folks to help you find a regular school where you'll not have so much to do yourself.''

Edith followed her own words; as a poet, mother, philanthropist, academic, and businesswomen, she was no chip in the ocean. And even in her ninth decade, she continued to work hard and inspire new generations. Her work and ideas knew no bounds.

Edith Nash's death is a great loss to all of us who knew her, and all those whose lives were touched by her many good works. I am deeply saddened by her passing, but I know that her leadership, creativity and generosity have left a lasting mark on our State and our country.●

HONORING JACK K. NORRIS AND THE LATE JEAN DONKERS NORRIS

● Mr. CRAPO. Mr. President, I rise today to honor an Idahoan who will soon celebrate his 88th birthday, Payette native Jack K. Norris. Jack is a hero, not only for Idaho, but for the entire Nation. Jack was born in Payette, ID, on November 30, 1915, but he has spent much of his life in service to our country. He was a member of the Class of 1939, U.S. Military Academy at West Point, and served throughout the world during World War II. His numerous awards include: a Purple Heart, Silver Star with Oak Leaf Cluster and a V for Valor, Legion of Merit with Oak Leaf Cluster, Bronze Star with Oak Leaf Cluster, Combat Infantry Badge, Presidential Unit Citation, French Croix de Guerre, Belgian Order of the Crown, Belgian Croix de Guerre, and five European Tour of Duty campaign stars. These many honors speak to his exceptional service to country, and his outstanding military knowledge. This knowledge was cultivated and expanded through years of military courses and training including graduation from the Battalion Commander's Course, Command and General Staff College, British Staff College, Army War College, Army Aviation School-Senior Officers Course, fixed and rotary wing qualification, and Senior Officers Aircraft Maintenance and Logistics course. In his own words, Jack describes his decision to enlist in the Army as: ''probably the best thing that ever happened to me.''

After many years in the Armed Forces, Jack retired from the service. Unable to slow down, he began teaching at North Georgia College, where he was named Commandant of Cadets in the ROTC program. After leaving North Georgia College, and with an insatiable appetite for learning and accomplishment, Jack decided to study law. He received his license and practiced until 1983. Jack did all of these things while caring for the most important individuals in his life: his wife and three children. His tree sons have all made service to country a part of their lives, presumably as a result of their father's influence.

I also want to pay tribute to Jack's wife, Jean Donkers Norris, who passed away in 1983. Much of their lives together revolved around the military. She met her sweetheart at the Walter Reed Army Medical Center and married him at the Main Post Chapel in San Antonio, TX. Jean kept the home fires burning while Jack was away at war. She was the model military wife and moved frequently to accommodate Jack's career, and that required many sacrifices on her part. She was always ready to serve—whether it be a meal to a visiting officer or thirty, or to support other military spouses. I wanted to relate a couple of stories about Jean. Once she had to shovel coal for heat in the family's temporary quarters, and commented that she was grateful white gloves were in fashion so she could hide the coal stains on her hands when she had to go out.

When Jack was a post commander, he and Jean visited every soldier who was in the hospital or in jail on Christmas Day and brought them some of her homemade cookies. She was known for her compassion and dedication to her own family as well as the U.S. Army family.

Jack and Jean had a true partnership and were exceptional role models for their children and their daughters-in-law. In today's world, as we again see the necessity of American troops deployed and in action, people like Jack and Jean bring home to us the importance of dedication to family and country. Even during trying, testing times Jack and Jean showed their commitment to a cause and their commitment to each other. Their exceptional example is worthy of praise. I am profoundly grateful for their service to our country. I send Jack all of my best for a very Happy Birthday.●

SERVICE LEADERS SUMMIT

● Mr. BAYH. Mr. President, I rise today to tell you about the extraordinary young Hoosiers I recently had the privilege to meet. Last month, I hosted my first annual Service Leaders Summit to honor high school students from across Indiana for their service and dedication to their communities and hopefully to inspire them to continue serving throughout their lives.

The young men and women I met last month have answered the call to service. Some of them have helped build homes, some tutored and mentored younger students, and others have raised money for cancer research and to feed the hungry. Several of the young men and women started service clubs to address the problems in their schools and communities. Each one of the students I met spent hours making a difference in their hometowns and together they impacted the lives of thousands of Hoosiers.

The student leaders heard from Hoosiers of all backgrounds who have chosen to dedicate their lives to serving others. The speakers focused on the different aspects that go into a successful service project: inspiration, organization, dedication, evaluation and reflection. Following the speeches, the students broke up into different groups

and participated in service projects throughout Indianapolis. Some students distributed coats to children of needy families, while others planted trees in the rain, cleaned up a park and beautified a neighborhood. Through their work together, the leaders were able to experience the dramatic results of the power of service.

Robert F. Kennedy once said that ''Some men see things as they are and say 'Why?' I dream of things that never were and say, 'Why not?''§' Each one of the young men and women have already asked themselves ''why not?'' and have worked to make positive changes in their communities. These students represent a new generation of promise with the potential to make a real difference across Indiana and the nation.

I would like to thank each one of the following individuals for participating in the summit and for their service to their communities: Ruchika Agrawal, Brooke Allen, Santiago Alvarez, Ricky Anderson, Tracy Anderson, Mary Anderson-Clark, Todd William Ault, Audrey Ballinger, Katherine Ban Wyk, Brenda Banks, Meghan Beeman, Nicole Blauvelt, Stephanie Bobcek, Jared Michael Bond, Thomas Borders, Jason Born, Samantha Brown, Brittany Brumfield, Michael Brunsman, Jordan Bruse, Jeremy Burton, Danielle Cave, Brett Claxton, Erin Clifford, Heather Coffman, Sarah Copley, Donald Davenport, Adrienne Davis, Matthew J. Day, Emily DeCamp, Todd Dell'Aquila, Hallie Denstorff, Rachel Dickerson, Carrie L. Doherty, Megan Drudy, Bryan T. Engh, Kaylee Fagg, Patrick Fenning, Whitney Mariah Fish, Matthew Fosler, Josh Gilbert, Stephanie Giles, Laura Glasebrook, Emily Gordon, Ronald Derries Gordon, Nathan Daniel Graber, Philip Graves, Stephanie Grider, Leigh Gusky, Mathew Guiterrez, Angela Hagerman, Lauren Kathleen Hanger, Thomas Haynes, Keenan Hecht, Jason Heck, Rebecca Jean Helms, Breanna Herschelman, Marc Hertz, Lindsay Holliman, Rachel Howser, Kellen Hubert, Ana Maria Huffman, Jenny Jackaway, Jayne Jeffries, Adam Jochim, Kyle Keaffaber, James William Kepner, Sarah Kittle, Hannah Laughlin, Kevin Lavery, Claire Lawless, Natalie Leach, Devon Lee, Leah Danielle Lee, Jonathan Lough, Bethany Lynch, Amy Maple, Stephanie Marshall, Katelyn McCool, Nathan Alan McGuire, Jeanna McKinzie, Latisha McMichel, Megan Meyers, Jala Miller, Jessica Muehr, Suzanne Natz, Chenai Saaku Netty, Laura Nicholson, Amanda Niehaus, Colin Grant Northeatt, Kathleen M. O'Brien, Amanda Oldham, Sophia Percival, Cara Perry, Tyler Lee Phelps, Helen Pirrie, Emily Poe, Alex Pollock, Miranda Polston, Andrea Poppe, Frank Pottorff, Dustin William Potts, Joseph Andrew Powell, Kristin Pryor, LaTrea Reed, Alex Richardson, Bryan Rogers, Michael Joseph Root, Helanie Rosinko, Molli K. Schaeffer, Travis Schamber, Jennifer Schlatter, Jennifer Schoenle, Ryan Schroer, Jessica Schulert, James Scott, Ryne R. Shadday, Derek Shaul, Chad Sinclair, Anita Sivam, Christian Michael Smeltzer, Paul A. Smith, Ellen Eileen Sojka, Kala Spangle, Katie L. Strohm, Ashlie Sullivan, Brett Taylor, Laura Thurston, Kavya S. Vaidyanathan, Leigh A. Vanarsdall, Brittany Nicole Waddle, Melissa Wadley, Laura Wagner, Kathleen Waldrew, Jacquie Walker, Caitlin Walsh, Frank Walsh, Antonia Wang, Krista Warner, Andrew Wassel, Alison West, J.D. Willett, David Wood, Lili Xu, and Erin Youst.●

HONORING OF MATT KENSETH

● Mr. FEINGOLD. Mr. President, I rise today with great admiration, to recognize the 2003 Winston Cup Champion, Matt Kenseth. On November 16, Kenseth was crowned champion of NASCAR's 2003 Winston Cup Series.

Kenseth was born on March 10, 1972, in Cambridge, WI. For Kenseth, racing is a family tradition. When he was 13, his father, Roy purchased a race car and made Matt a deal. Roy would drive the car if Matt would work on it. When Matt turned 16, he could get in the driver's seat.

Kenseth started his stock car racing career at the young age of 16, winning his first event in only his third race. Within his first three seasons, Kenseth racked up 10 racing victories from all around Wisconsin. His name recognition grew in Wisconsin racing hotbeds like Slinger and Lake Geneva. In 1995, Kenseth took his racing skills to the South, the heart of American stock car racing. It didn't take long before Kenseth became noticed throughout the racing world. Kenseth had great success while racing in the Busch Grand National Series. In 1998, just his first full Busch Series season, Kenseth finished second in the standings. He followed that season up with a strong third place finish in 1999 while also making five Winston Cup starts. Kenseth's arrival to the Winston Cup Series was heard loud and clear as he won Rookie of the Year honors in 2000.

But the 2003 season was simply magical. Kenseth finished the season with 25 top 10 finishes, more than any other driver. He also set a record spending 33 straight weeks in the Winston Cup Standings No. 1 position, breaking the record of racing legend Dale Earnhardt. Wisconsin is very proud of Matt's accomplishments and we wish him the best of luck next season as he defends his championship.●

DR. TOM GOODWIN

● Mr. PRYOR. Mr. President, I rise today to pay tribute to one of Arkansas's and America's preeminent educators, Dr. Tom Goodwin of Hendrix College. Dr. Goodwin was honored last week with a United States Professor of the Year Award as the Outstanding Baccalaureate College Professor of the Year by the Council for the Advancement and Support of Education and the Carnegie Foundation for the Advancement of Teaching. He was one of four, in the entire Nation to be honored for their dedication to undergraduate education and teaching and their commitment to students.

It is not often, that one gets recognized for one's life's work. It is even less often that the recognition comes when the recipient is still at the height of his career. I wish to congratulate Dr. Goodwin on behalf of all Arkansans for this wonderful accomplishment. Dr. Goodwin has dedicated his entire professional life, over 25 years, to the education of young people. During a time when many are concerned with publishing, research, and the advancement of their own careers, Dr. Goodwin has remained focused on the reasons he entered academia—the fostering and development of the leaders and great thinkers of the next generation. And I, for one, agree with him. He has done what so many teachers try to do. Some are more successful than others. Some are outstanding researchers who make wonderful discoveries that further the scientific knowledge of mankind. Some are great administrators who manage the machinery from which these great discoveries are churned. Still, Dr. Goodwin has made the greatest discovery of all. He has discovered that all of the advancements of the human race, all of the great mechanizations from which these advancements come mean nothing without the continuity of people teaching other people. Knowledge in a vacuum, doesn't further the human condition. For the human condition to move forward, to change for the betterment of all, we must learn. We must teach. ''For the end of man is to know.'' That's one of my favorite literary quotes, from Robert Penn Warren's All The King's Men. The end of man keeps moving farther, just beyond the outstretched reach of our hands. To reach the ends, man must continue to know. Dr. Goodwin has found the best way to accomplish this; the best way to achieve the end is through a partnership between teacher and student. The disbursement of knowledge; what it is, how to get it, where to find it, becomes the primary objective for a multigenerational team working together. Dr. Goodwin has achieved this elusive goal. A seamless partnership between professor and student, with both benefiting from the contributions of the other, both contributing toward the end of man.

But don't take it from me. His colleagues and his students realize the impact Dr. Goodwin has had on the minds and motivations of young people. They refer to him not only as teacher and scholar, but also as mentor and friend. Dr. John Churchill, secretary of the Phi Beta Kappa Society and former Dean of Hendrix College notes, ''To see Tom Goodwin with students is to feel the power of his expectations. It is also

to feel the warm, personal support, extended toward their efforts. He epitomizes the tension of the best undergraduate liberal arts professors: demanding rigor and providing support. He takes a wide-ranging interest in his students' education. He helps them grow into well-rounded intellects.'' His colleagues in the Chemistry Department at Hendrix College, Dr. Liz Gron, testifies to the amount of time and attention Dr. Goodwin gives his work. ''He wants every student to succeed and he provides a number of different venues in order to support different learning styles. Tom schedules four help sessions a week, as well as time-independent exams to accommodate students that synthesize concepts more slowly.'' His students agree. ''Dr. Goodwin offered many, many hours of his personal time, both in the laboratory and the classroom, to help me conquer the very difficult subjects I was studying,'' says Daniel Mwanza, a former student at Hendrix. Many other former students agreed and wrote statements similar to Mr. Mwanza's in support of his nomination for this award. So you see, this man is important to his students, important to his colleagues and institution, and important to education across this country. I am proud to serve him and I am proud he is my constituent. Dr. Goodwin represents the highest tradition of education in this country. He inspires his students to achieve more than they would alone. He is deeply deserving of this award, and I wish to congratulate him for this monumental achievement.●

CHARLES ''CHARLIE'' EDWARD BYRD: IN MEMORIAM

● Mrs. BOXER. Mr. President, I share with my colleagues the memory of former Siskiyou County Sheriff Charles ''Charlie'' Edward Byrd who passed away on September 23, 2003 in Weed, CA. Charles Byrd had a remarkable career in law enforcement in Siskiyou County, and will be remembered as the first black sheriff in California.

A native and lifetime resident of Weed, Charles Byrd was born on July 6, 1947. He attended local schools and was a standout football player earning the ''Lineman of the Year'' honor from Weed High School in 1965. In 1967, while attending the College of the Siskiyous, Charles Byrd began his career in law enforcement as a reserve police officer with the Weed Police Department and became a full-time officer the following year. In April of 1975 he was promoted to Police Chief, and in 1986 he was elected Sheriff of Siskiyou County.

Charles Byrd's career in law enforcement broke color barriers as he was both the first black police officer in the town of Weed, and the first black sheriff in California. During his 16 years as Sheriff, Charlie Byrd's motto for the department was ''We Can.'' This motto led to countless improvements for Siskiyou County, including the development of the Siskiyou County Inter-Agency Narcotics Task Force, expansion of public safety programs, establishment of the Domestic Violence Response Team and Advisory Committee, formation of a detective bureau and expansion of technology and training within the department.

Dedication to his community was also a top priority for Charles Byrd. In addition to making the Sheriff's Department accessible to the community at public events, he was a member of several professional and community organizations. Among the many associations to which Sheriff Byrd devoted his time were: the California Peace Officers' Association, California Police Chiefs' Association, Weed Chamber of Commerce, Weed Rotary Club, Habitat for Humanity, Weed Baptist Church, College of the Siskiyous Auxiliary Foundation Board of Directors, California State Sheriffs' Association and Western States Sheriffs' Association.

Siskiyou County Supervisor LaVada Erickson commented, ''Sheriff Byrd looked upon Siskiyou County as an extension of his personal family, and we were treated as such. Law enforcement was his first pledge and commitment. He was very aware of our at-risk youth and was committed to encouraging the continuation of education for the enhancement it would bring to their lives. He was a quiet giant of a man with a heart that contained only the best for Siskiyou.''

Charles Byrd is survived by his mother, Eddie Byrd; sisters Ella Byrd, Charlene Byrd, Rose Applewhite; and brothers Larry Byrd, Arnold Byrd and Al Bearden.

Sheriff Charles Byrd will always be remembered for his many contributions to law enforcement and to the betterment of Siskiyou County. His legacy will be cherished by his community for years to come.●

33RD ANNIVERSARY OF THE FRESNO METRO MINISTRY IN FRESNO, CA

● Mrs. BOXER. Mr. President, I am pleased to recognize the 33rd anniversary of the Fresno Metro Ministry in Fresno, CA.

More than three decades ago, Fresno Metro Ministry began tackling some of Fresno's most difficult social problems. In the 1970's the ministry built a coalition of religious and secular organizations that worked to alleviate the hardships caused by racism through a variety of efforts, ranging from empowerment programs to community projects. Through its youth task force the ministry began the alternative sentencing program that provided young individuals with alternative punishments that worked to redirect their lives in a positive direction.

Understanding that a good home breeds a successful child the ministry developed ''Parenting With Justice'' training that helped minority parents teach their children to deal with challenges in their lives, thereby empowering the entire family.

As the ministry grew, so did its vision. With its success came a broader focus. In the 1980's the Fresno Metro Ministry began to focus on city wide issues. The ministry led in the creation of a City of Fresno Human Relations Commission that celebrates the rich cultural and religious diversity in the Fresno area and mediates differences between and among groups. The commission has worked to identify and address patterns of discrimination.

In the last decade, Fresno Metro Ministry became a leader in the community hunger coalition. It also helped break a log-jam that slowed progress on the construction of the new Regional Medical Center campus in downtown Fresno.

When Fresno and the Central Valley were suffering the effects of the 1998 freeze, the Fresno Metro Ministry coordinated with other groups to provide relief to people who had lost their jobs during this difficult time.

I also want to give special recognition to the leadership of the Reverend Walt Parry. For the last 18 years, under Reverend Parry's direction, the ministry has made a great difference in the lives of many people. He and the Fresno Metro Ministry deserve the recognition they are receiving during this 33rd anniversary observance.●

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 a nomination and a treaty which were referred to the appropriate committees.

(The nomination received today is printed at the end of the Senate proceedings.)

ENROLLED JOINT RESOLUTION SIGNED

The following enrolled joint resolution was signed on Friday, November 21, 2003 by the President pro tempore (Mr. STEVENS).

H.J. Res. 79. Joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 1940. An original bill to reauthorize the Head Start Act, and for other purposes (Rept. No. 108–208).

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany S. 710, a bill to amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad (Rept. No. 108–209).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1786. A bill to revise and extend the Community Services Block Grant Act, the Low-Income Home Energy Assistance Act of 1981, and the Assets for Independence Act (Rept. No. 108–210).

S. 573. A bill to amend the Public Health Service Act to promote organ donation, and for other purposes.

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 606. A bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1881. A bill to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments by the Medical Device User Fee and Modernization Act of 2002, and for other purposes.

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. BAUCUS (for himself, Mr. INHOFE, Mrs. DOLE, and Mr. ROCKEFELLER):

S. 1936. A bill to amend the Internal Revenue Code of 1986 to exclude from unrelated business taxable income the gain or loss on the sale or exchange of certain brownfield sites, and for other purposes; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. DASCHLE, Mr. CONRAD, and Mr. GRAHAM of Florida):

S. 1937. A bill to amend the Internal Revenue Code of 1986 to curtail the use of tax shelters, and for other purposes; to the Committee on Finance.

By Mr. CORZINE (for himself, Mr. SCHUMER, Mr. LAUTENBERG, and Mr. REED):

S. 1938. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal land, and to designate certain Federal land as Ancient forests, roadless areas, watershed protection areas, and special areas where logging and other intrusive activities are prohibited; to the Committee on Energy and Natural Resources.

By Mr. LEAHY:

S. 1939. A bill to require the Secretary of Health and Human Services to ensure that the public is provided adequate notice and education on the effects of exposure to mercury through the development of health advisories and by requiring that such appropriate advisories be posted, or made readily available, at all businesses that sell fresh, frozen, and canned fish and seafood where the potential for mercury exposure exists; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GREGG:

S. 1940. An original bill to reauthorize the Head Start Act, and for other purposes; from the Committee on Health, Education, Labor, and Pensions; placed on the calendar.

By Mr. DURBIN:

S. 1941. A bill to establish the Abraham Lincoln National Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CORZINE:

S. 1942. A bill to require the President to submit to Congress a quarterly report on the projected total cost of United States operations in Iraq, including military operations and reconstruction efforts, through fiscal year 2008; to the Committee on Armed Services.

By Mr. LEVIN:

S. 1943. A bill to provide extended unemployment benefits to displaced workers; to the Committee on Finance.

By Mr. ENSIGN (for himself, Mr. NELSON of Florida, Mr. COLEMAN, Mr. GRAHAM of South Carolina, Mr. CRAPO, Mr. REID, Mr. BAYH, Mr. EDWARDS, Mr. ALLARD, Mr. SMITH, Mr. ALLEN, and Mrs. BOXER):

S. 1944. A bill to enhance peace between the Israelis and Palestinians; to the Committee on Foreign Relations.

By Mr. MCCAIN (for himself, Mr. EDWARDS, and Mr. KENNEDY):

S. 1945. A bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CORZINE:

S. 1946. A bill to establish an independent national commission to examine and evaluate the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq and Operation Iraqi Freedom; to the Select Committee on Intelligence.

By Mr. LEAHY (for himself and Mr. HATCH):

S. 1947. A bill to prohibit the offer of credit by a financial institution to a financial institution examiner, and for other purposes; considered and passed.

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

S. 1948. A bill to provide that service of the members of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. BIDEN:

S. 1949. A bill to establish The Return of Talent Program to allow aliens who are legally present in the United States to return temporarily to the country of citizenship of the alien if that country is engaged in post-conflict reconstruction, and for other purposes; to the Committee on the Judiciary.

By Mr. DURBIN:

S. 1950. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices 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. BROWNBACK (for himself and Mr. BIDEN):

S. Res. 273. A resolution condemning the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003, expressing condolences to the families of the individuals murdered in the attacks, expressing sympathies to the individuals injured in the attacks, and expressing solidarity with the Republic of Turkey and the United Kingdom in the fight against terrorism; to the Committee on Foreign Relations.

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

S. Res. 274. A resolution to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs; considered and agreed to.

ADDITIONAL COSPONSORS

S. 68

At the request of Mr. INOUYE, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 68, a bill to amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and for other purposes.

S. 136

At the request of Mrs. DOLE, her name was added as a cosponsor of S. 136, a bill to amend the Tariff Act of 1930 to provide for an expedited antidumping investigation when imports increase materially from new suppliers after an antidumping order has been issued, and to amend the provision relating to adjustments to export price and constructed export price.

S. 401

At the request of Ms. LANDRIEU, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 401, a bill to amend title 10, United States Code, to increase to parity with other surviving spouses the basic annuity that is provided under the uniformed services Survivor Benefit Plan for surviving spouses who are at least 62 years of age; and for other purposes.

S. 427

At the request of Mr. AKAKA, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 427, a bill to amend the Homeland Security Act of 2002 to assist States and communities in preparing for and responding to threats to the agriculture of the United States.

S. 430

At the request of Mr. AKAKA, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 430, a bill to amend the Homeland Security Act of 2002 to enhance agricultural biosecurity in the United States through increased prevention, preparation, and response planning.

S. 451

At the request of Ms. SNOWE, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 451, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62

and older, to provide for a one-year open season under that plan, and for other purposes.

S. 460

At the request of Mrs. FEINSTEIN, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 460, a bill to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2004 through 2010 to carry out the State Criminal Alien Assistance Program.

S. 1109

At the request of Mr. TALENT, the names of the Senator from South Carolina (Mr. GRAHAM), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Virginia (Mr. ALLEN) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1109, a bill to provide $50,000,000,000 in new transportation infrastructure funding through Federal bonding to empower States and local governments to complete significant infrastructure projects across all modes of transportation, including roads, rail, transit, aviation, and water, and for other purposes.

S. 1129

At the request of Mrs. FEINSTEIN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 1129, a bill to provide for the protection of unaccompanied alien children, and for other purposes.

S. 1157

At the request of Mr. BROWNBACK, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 1157, a bill to establish within the Smithsonian Institution the National Museum of African American History and Culture, and for other purposes.

S. 1398

At the request of Mr. DEWINE, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1398, a bill to provide for the environmental restoration of the Great Lakes.

S. 1414

At the request of Mr. HATCH, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1414, a bill to restore second amendment rights in the District of Columbia.

S. 1557

At the request of Mr. MCCONNELL, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1557, a bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Armenia.

S. 1726

At the request of Mr. ALEXANDER, the names of the Senator from Missouri (Mr. BOND) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 1726, a bill to reduce the preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 1741

At the request of Mrs. DOLE, her name was added as a cosponsor of S. 1741, a bill to provide a site for the National Women's History Museum in the District of Columbia.

S. 1755

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1755, a bill to amend the Richard B. Russell National School Lunch Act to provide grants to support farm-to-cafeteria projects.

S. 1774

At the request of Mr. KENNEDY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1774, a bill to repeal the sunset provisions in the Undetectable Firearms Act of 1988.

S. 1786

At the request of Mr. ALEXANDER, the names of the Senator from New Hampshire (Mr. GREGG), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Illinois (Mr. DURBIN), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mr. PRYOR), the Senator from Michigan (Ms. STABENOW), the Senator from Maine (Ms. COLLINS) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S. 1786, a bill to revise and extend the Community Services Block Grant Act, the Low-Income Home Energy Assistance Act of 1981, and the Assets for Independence Act.

S. 1839

At the request of Mr. SMITH, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1839, a bill to extend the Temporary Extended Unemployment Compensation Act of 2002.

S. 1858

At the request of Mr. COCHRAN, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1858, a bill to authorize the Secretary of Agriculture to conduct a loan repayment program to encourage the provision of veterinary services in shortage and emergency situations.

S. 1879

At the request of Ms. MIKULSKI, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1879, a bill to amend the Public Health Service Act to revise and extend provisions relating to mammography quality standards.

S. 1920

At the request of Mr. LEAHY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1920, a bill to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted.

S. 1925

At the request of Mr. KENNEDY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1925, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 1926

At the request of Ms. STABENOW, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from Minnesota (Mr. DAYTON) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 1926, a bill to amend title XVIII of the Social Security Act to restore the medicare program and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS (for himself, Mr. INHOFE, Mrs. DOLE, and Mr. ROCKEFELLER):

S. 1936. A bill to amend the Internal Revenue Code of 1986 to exclude from unrelated business taxable income the gain or loss on the sale or exchange of certain brownfield sites, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I am pleased to join my colleague Senator INHOFE, and my other Senate colleagues in introducing the Brownfield Revitalization Act of 2003. Given the nature of this legislation—establishing tax incentives to encourage cleanup of environmentally contaminated property across the country—it is appropriate that this be a joint introduction between the Chairman of the Senate Environment and Public Works Committee and the Ranking Member of the Senate Finance Committee. This legislation is bipartisan, but it is also bicameral. A companion bill was introduced earlier this week in the House of Representatives by Congresswoman NANCY JOHNSON and Congressman XAVIER BECERRA.

Across the United States, environmentally contaminated sites endanger public health, impede economic development, and negatively impact tax rolls. The United States has an estimated 1,000,000 such properties scattered across our inner cities and rural areas alike.

In my own State of Montana, there are well over 5,000 such sites. This may seem surprising for a state like Montana that is relatively undeveloped and pristine. But we are by no means unaffected by the scourge of environmental contamination. In addition to contamination caused by leaking underground storage tanks and contamination caused by other light industries, Montana also has been impacted by significant contamination left behind by some of the very industries that built our great state.

Contaminated sediments can be found along the Clark Fork River from Butte, MT, downstream for 140 miles to Missoula and on into Idaho—a legacy of the copper mining and smelting operations at Butte and Anaconda.

Tremolite asbestos contamination is prevalent at numerous sites around Libby, MT, including the local high school and middle school tracks—a legacy from the Zonlite Mine that began operating in the 1920s and produced 80 percent of the world's supply of vermiculite. These industries created wealth and jobs for generations of Montanans. Today, however, contamination from wood processing facilities, abandoned mines, and numerous other activities have harmed human health and the environment and continue to stifle the development of new business in Montana. These sites are well known to Montanans: Sites such as Missoula Sawmill site and the White Pine Sash site in Missoula, the Missouri River Corridor site in Great Falls, and sites in Helena, Bozeman, Billings and numerous other communities all across Montana. We can and must do more to help revitalize these important areas.

Congress has undertaken a number of initiatives to address the brownfield problem in this country. I am proud to have been able to play a leadership role in passing the Brownfields Revitalization and Reinvestment Act of 2001. That bill has helped provide new Federal funds for evaluation and remediation of brownfield sites and has helped to resolve some of the liability issues that were inhibiting remediation of these contaminated properties.

But, We must do more. The U.S. Chamber of Commerce has estimated that at the current rate of cleanup, it will take 10,000 years for us to remediate all of the contaminated sites in America. The United States Environmental Protection Agency, in an analysis conducted with George Washington University, concluded that the remediation ''costs for all of the brownfields located within the United States have been estimated to exceed $650 billion,'' and that, consequently, ''it is imperative that private capital be attracted to the redevelopment of brownfields.''

Late last year, Senator GRASSLEY and I entered a colloquy in the CONGRESSIONAL RECORD expressing our concern that certain provisions in the tax code are having the unintended consequence of discouraging investment in the remediation and redevelopment of our nation's polluted sites. In that colloquy, we pledged to get our arms around this issue and to draft legislation to correct this problem. I am pleased that we are standing here today to introduce legislation to do just that.

Let me briefly describe the basis for this bill and the means by which this legislation will dramatically accelerate the remediation of contaminated lands in America.

Today, tax-exempt investors such as university endowments, private pension funds, and charitable foundations can invest their capital in the stock market and certain real estate transactions that do not clean the environment without fear of incurring an Unrelated Business Income Tax, or UBIT, on any gains they make from their investments.

Because UBIT-sensitive entities hold over $6 trillion dollars in financial assets and routinely deploy more capital in real estate projects than any other category of investor, the unintended consequence of UBIT has been to drive our nation's biggest and most active real estate investors away from projects focused on the remediation and redevelopment of polluted properties.

This bill seeks to address this problem by allowing eligible tax-exempt entities to invest in the cleanup and redevelopment of qualified contaminated properties without incurring unrelated business income tax at the time they sell the property.

The legislation accomplishes this goal by concentrating on three basic tasks: 1. focus investment on moderately and heavily polluted properties, 2. require taxpayers to work with the State authorities and the public to ensure adequate clean up, and 3. ensure that the legislation is tightly crafted to prevent abuse.

First, this bill focuses on moderately and heavily polluted properties.

Section 198 of the tax code contains a structure under which designated state environmental agencies certify contaminated property that is eligible for special rules concerning deductions of remediation costs. This bill uses this existing structure to identify and certify contaminated sites that are eligible for inclusion within this bill. Prior to requesting certification from a state agency, the taxpayer is required to provide the agency with site characterizations, assessments and other documentation illustrating the scope and character of the pollution problem at the target site.

The legislation maintains its focus on moderately and heavily contaminated properties by requiring taxpayers to expend on remediation of each site the greater of $550,000 or 12 percent of the fair market value of the site, assessed as though the site were not contaminated. These remediation thresholds have intentionally been set higher than he typical range of costs reported to the Environmental Protection Agency to clean up brownfield sites nationwide. By establishing such high remediation thresholds, the legislation excludes incidentally or trivially contaminated property and focuses new capital investment on those sites most in need of additional assistance.

Second, this bill requires taxpayers to work with affected states and the public to ensure adequate clean up.

In addition to requiring high levels of remediation expenditures on each site, the legislation contains numerous other safeguards designed to ensure that remediation of each site is performed to state specifications and with full public involvement.

Similar to the front-end certification that is required to classify properties as truly contaminated, the legislation requires the taxpayer to obtain a tail-end certification from the state agency indicating that the site has been cleaned up and is no longer considered a brownfield. Prior to applying for this certification, the taxpayer must provide the State agency with sufficient information and documentation to allow the state agency to make this determination. In particular, the taxpayer must certify and provide documentation that: there are no longer hazardous substances, pollutants or contaminants on the property that are complicating the redevelopment or reuse of the site, environmental remediation is complete or substantially complete in conformance with all applicable federal, state and local environmental laws and regulations, the property is suitable for more economically productive or environmentally beneficial uses than at the time of acquisition, if additional activities are required to complete remediation, sufficient financial assurances and institutional controls are in place to complete the remediation in as short a time as possible, and the public was notified and given the opportunity to comment on the remedial actions taken to clean up the property and, if necessary, on any longer-term remediation activities.

The provisions in this legislation are designed to create substantive thresholds that the tax-exempt entity must meet in order to qualify for the exemption from UBIT. This legislation does not alter the complex web of existing federal, state or local environmental laws, regulations or standards.

Third, this bill ensures that the legislation is tightly crafted to prevent abuse.

It is worth noting that this legislation has been drafted to contain numerous safeguards to prevent abuse of this program. The anti-abuse examples include the following. The taxpayer cannot be the party that has caused the pollution and cannot be otherwise related to the polluter. Also, all transactions, purchase of the property, sale of the property, expenditure of remediation funds, etc., must be arms-length transactions with parties unrelated to the taxpayer. Further, the taxpayer is not allowed to count any Federal funds, e.g. grants, etc., or other types of government payments and benefits toward and required remediation thresholds. There are also restrictions on how the taxpayer may treat costs across multiple properties, requiring that an election be made specifying when and which properties are considered for such purposes; this is intended to prevent cherry-picking among different properties once the election has been made. Moreover, the legislation contains special restrictions addressing the use of the legislation's provisions by partnerships and other pass-through entities including requiring that all partnerships under the bill be fractions-rule compliant.

Because this legislation is narrowly crafted, and because tax-exempt entities are not currently investing in these sites, and thus are not paying UBIT, the Joint Committee on Taxation has concluded that this legislation will actually generate revenue for the Federal treasury during the first three years after enactment and that it will cost $10 million over five years and $192 million over ten years.

Further, because the legislation will accelerate cleanup of brownfield sites, create jobs, stimulate the economy, reduce blight and public health concerns, and because the bill has an acceptable fiscal impact, this legislative approach has been endorsed by Environmental Defense, the U.S. Chamber of Commerce, the National Taxpayers Union, and the U.S. Conference of Mayors, as well as numerous local, state and regional organizations and municipalities.

Passage of this bill will dramatically increase the speed at which our country's contaminated properties are remediated and brought back into productive taxable use. This narrowly crafted legislation will create jobs, increase tax revenues, and protect the environment—all accomplished without creating new government programs or regulations and all at a minimal cost to the Federal treasury.

I am pleased to be introducing this legislation with my colleague from Oklahoma. I look forward to working together to enact this legislation into law.

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. 1936

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

SECTION 1. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES FROM UNRELATED BUSINESS TAXABLE INCOME.

(a) IN GENERAL.—Subsection (b) of section 512 of the Internal Revenue Code of 1986 (relating to unrelated business taxable income) is amended by adding at the end the following new paragraph:

''(18) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES..—

''(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

''(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'eligible taxpayer' means, with respect to a property, any organization exempt from tax under section 501(a) which—

''(I) acquires from an unrelated person a qualifying brownfield property, and

''(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

''(ii) EXCEPTION.—Such term shall not include any organization which is—

''(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

''(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

''(III) the result of a reorganization of a business entity which was so potentially liable.

''(C) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualifying brownfield property' means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

''(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

''(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

''(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

''(I) such property is transferred by the eligible taxpayer to an unrelated person, and

''(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

''(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

''(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

''(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

''(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

''(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

''(V) Public notice that such request for certification would be made was completed before the date of such request. Such notice shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

''(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

''(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'eligible remediation expenditures' means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

''(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

''(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

''(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

''(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or

regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

''(ii) EXCEPTIONS.—Such term shall not include—

''(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

''(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

''(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

''(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

''(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

''(G) SPECIAL RULES FOR PARTNERSHIPS.—

''(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer's distributive share of the qualifying partnership's gain or loss from the sale, exchange, or other disposition of such property.

''(ii) QUALIFYING PARTNERSHIP.—The term 'qualifying partnership' means a partnership which—

''(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

''(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if 'qualified partnership' is substituted for 'eligible taxpayer' each place it appears therein (except subparagraph (D)(iii)), and

''(III) is not an organization which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(ii).

''(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

''(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

''(I) the use of special allocations of gains or losses, or

''(II) changes in ownership of partnership interests held by eligible taxpayers.

''(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

''(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

''(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer's or qualifying partnership's timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

''(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

''(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

''(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II) by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

''(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

''(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

''(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting '25 percent' for '50 percent' each place it appears therein, and

''(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

(b) EXCLUSION FROM DEFINITION OF DEBT-FINANCED PROPERTY.—Section 514(b)(1) of the Internal Revenue Code of 1986 (defining debt-financed property) is amended by striking ''or'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ''; or'', and by inserting after subparagraph (D) the following new subparagraph:

''(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(18) in computing the gross income of any unrelated trade or business.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after the date of the enactment of this Act.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. DASCHLE, Mr. CONRAD, and Mr. GRAHAM of Florida):

S. 1937. A bill to amend the Internal Revenue Code of 1986 to curtail the use of tax shelters, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the Tax Shelter Transparency and Enforcement Act. I am pleased to be joined by my good friend, the Chairman of the Senate Finance Committee, Chairman GRASSLEY.

He and I introduced similar legislation in the last Congress. And, just this year, the Finance Committee approved this legislation as part of the CARE Act, the energy bill, the Jobs and Growth Act, and the Jumpstart Our Business Strength Act.

But why do we need this legislation? It has been more than 2 years since the collapse of Enron.

Since then, numerous other corporate scandals have come to light, thousands of employees have lost their jobs and pension savings, and the aftershock has yet to settle down in the stock market.

But there is one thing that has not happened. This Congress has failed to send to the President one single piece of tax legislation designed to shut down the kinds of abusive tax shelters we saw Enron use and that we know many others use.

Every day that we fail to address this scandal, honest taxpayers pay the bill.

A recent study commissioned by the IRS estimated that abusive corporate tax shelters alone cost honest taxpayers from $14 billion to $18 billion each year. That means up to $180 billion over ten years.

Simply put, this abuse of our tax laws has got to stop.

Abusive tax shelters are widespread—and not new.

As early as 1995, the Clinton Administration undertook a comprehensive, multi-faceted effort to tackle the problem of corporate tax shelters. This included legislative proposals to halt the

sale and marketing of shelters. Regulatory action to clamp down on illicit activity. And steps to better identify and pursue abusive transactions.

The current Administration has added to the list of identified tax shelters and supported legislative proposals to ensure greater disclosure.

This is not—and should not be—a partisan issue.

The proliferation of abusive tax shelters hurts the entire tax system. Specifically, it places a greater tax burden on those Americans who are honestly and patriotically paying their fair share of taxes—whether they are republican, democrat, or independent.

These shelters undermine the confidence of the American people in the fairness of the tax system. Abusive tax shelters place honest corporate competitors at a disadvantage.

And shutting down these abuses presents a great opportunity for Congress to restore fairness in the system.

We should do no less.

Let me take a few moments to discuss the nature of these tax shelters. Why they are wrong. And how purportedly reputable companies and professional advisors are participating in a disturbing race to the bottom.

First, what are these tax shelters?

Let me give you just one example of a tax shelter.

On October 20th, the Finance Committee held a hearing on tax shelters. This hearing was a follow-up to a hearing earlier this year to review the Committee's investigative report on the collapse of Enron.

At our hearing last month, we heard how some American corporations are purportedly buying and then leasing bridges, dams, subway systems, and other infrastructure through corporate tax shelters.

It's like the old line: If you think these tax shelter transactions are legitimate—or what Congress intended—have I got a bridge to sell you.

A former leasing industry executive, who testified before the Finance Committee, described complex transactions where U.S. companies make a single payment to a municipality to lease a bridge or other public infrastructure. These companies then lease the infrastructure back to the city. All along, the company takes a deduction on its U.S. taxes for the depreciation of the high valued asset.

The companies never pay any real lease payments to the cities. And the cities never pay any lease payments to the companies. The cities never risk losing control of the bridge, dam, or subway system.

But the companies—who include major banks and Fortune 500 companies—take millions and millions of dollars in deductions for what is essentially a paper transaction. And the American taxpayer is left holding the bill.

The witness testified: ''[M]uch of the old and new infrastructure throughout Europe has been leased to, and leased back from, American corporations.''

In essence, in these transactions, the American people, through their tax dollars, are providing these companies a subsidy, part of which the companies pocket, and part of which they transfer to these cities.

As Yale law school Professor Michael Graetz once said, a tax shelter is a ''deal done by very smart people, that, absent tax considerations, would be very stupid.''

This is nothing more than an unwarranted tax subsidy to U.S. companies courtesy of honest taxpayers. It is simply wrong. It rewards a transaction with no real economic substance.

This has got to stop. And it is up to Congress and the President to put an end to this kind of abuse.

So how did this tax shelter industry develop?

If there is one thing that we should have learned from the Enron scandal, it is the pervasive role of lawyers and accountants.

Why did some of the country's leading professional firms devote so much effort to spinning reported earnings out of nothing? And what does that say about the erosion of ethical standards for accountants and lawyers?

In 1908, the American Bar Association adopted its first code of ethics.

The preamble to their Model Rules states that a lawyer serves his client, but is also ''an officer of the legal system and a public citizen having special responsibility for the quality of justice.''

It also states that a lawyer should ''further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.''

In 1946, the Executive Director of the American Institute of Accountants—the predecessor to the American Institute of Certified Public Accountants—stated that:

> The very existence of the accounting profession depends on public confidence in the determination of certified public accountants to safeguard the public interest. This confidence can be maintained only by evidence of both technical competence and moral obligation. One item of evidence is promulgation and enforcement of rules of professional conduct.

So, why did the legal and accounting profession fail to follow their own principles. And, why did they fail to police themselves?

Part of the problem stems from the 1990s practices of investment bankers and venture capitalists—taking a piece of the deal or a piece of the upside performance. This behavior spread into almost every public company.

And, following their clients, accountants and lawyers also began adopting these practices. Add to this an enormous pressure on company executives to hit revenue and earnings targets on a quarterly basis.

Amidst this obsession with short-term results, no one was left to look after the company's long-term survival.

At the same time, lawyers and accountants faced their own profit pressures as their compensation was tied to their ''book of business'' and their success in cross-selling different services to their clients.

These cultural conflicts presented a threat to professional values.

For auditing firms, traditional professional values mean attesting to investors and lenders that the company's financial statements are properly prepared and reflect all material issues.

The business culture, however, encouraged the auditor to serve company executives—not only to refrain from pushing back, but also to affirmatively help them achieve their personal goals.

Furthermore, audit services themselves became more and more of a low-profit business, as audit firms battled each other to gain the inside audit position—which could help them market high-profit services. The big money was in selling tax-engineered products.

Finally, the private interests of the accounting professional and the corporate executive converged on one kind of activity that has proved particularly toxic—the proprietary financial maneuver that boosted reported earnings. That means, manipulate the bottom line of the financial statements.

Such maneuvers satisfied the executives' need to feed the markets and keep stock prices afloat.

They also satisfied the accountant's need for generating large profits for their firm and for their own bonus formula.

Similarly, for law firms, the traditional professional values are associated with loyalty to the client and advocacy of the client's interests within the bounds of the law.

Yet, loyalty to the corporate client and attention to corporate risks came to be sorely tested in many instances.

A company executive could well be more interested in getting a deal done—and getting the legal opinion needed to support the accounting analysis—than in gaining an accurate understanding of the legal merits of the issue and the associated risks to the company.

A law firm might even have its own stake in getting the deal done—because of a bonus or contingency fee associated with completing the deal—or because of having assisted a promoter in developing the deal.

In many accounting and tax schemes, executives simply did not want a frank assessment of legal merits and risks.

Instead, what they sought was a professional opinion that would justify hiding the true nature of a transaction from readers of financial reports and tax returns.

This was not legal advice on the merits—it was advice that was needed to justify hiding the ball.

Clearly, some accounting firms and law firms have abandoned ethics for the big dollar bonus.

As an extreme example, there were many people in the Arthur Andersen

Houston office who knew about the destruction of Enron documents. Not one appears to have realized that what they were doing was terribly wrong. Apparently, not one of these professionals even thought to check with anyone elsewhere in the firm about whether or not what they were doing was wrong.

Professional firms also have been all too willing to let themselves be compartmentalized. This way, they could say ''That wasn't my job'' when things went wrong.

Consider the case of prominent law firms that provided tax opinions for investment banks and other promoters to use in selling tax shelter products.

These opinions described the consequences of complicated tax maneuvers—based on the assumption that the future tax shelter purchaser would have a valid business purpose. And on the assumption that the transaction would not be tweaked further to reduce financial risk to almost nothing.

It may have been true that these firms were asked to provide advice based on those implausible assumptions. But that does not justify allowing the firm's professional reputation to be used to market tax shelters. The lawyers simply must have known that no purchaser could realistically be expected to supply the critical assumed facts.

The Enron case of using tax shelters to generate phantom financial earnings also seems to reflect a cycle of ''That wasn't my job'' role-playing.

The tax lawyers found a business purpose for the transaction because it generated financial earnings.

The accountants found financial earnings because the transaction promised future tax reductions. It all seems a bit circular.

And it all assumes that creating misleading earnings reports is in the real business interest of the corporation. Again, the professionals appear to have lost track of who their real client was.

Now, what do we need to do about this?

Congress and Federal regulators started to address these issues with the Sarbanes-Oxley Act of 2002.

For example, Sarbanes-Oxley calls for lawyers practicing before the SEC to report evidence of securities violations ''up the chain'' of their corporate clients—ultimately to corporate boards.

And the Act calls for auditors to report directly to the corporate board's audit committee. And, provide a number of safeguards to assure that audit committees have the independence and autonomy needed to represent corporate interests and not personal interests.

The Sarbanes-Oxley Act also addresses auditor independence in ways that respond to the business pressures that I described earlier.

Audit partners cannot be compensated based on cross-selling. Audit personnel must be rotated periodically. And a one-year cooling off period is required in the case of individuals moving between employment at an audit firm and employment at an audit client.

Public companies are prohibited from obtaining certain non-audit services from their auditor, and all other non-audit services require prior approval of the board's audit committee.

But these changes just nibble at the edges of the bigger problem. We have to reign in these lawyers, accountants, and investment bankers who are out there manipulating the tax code to come up with tax shelter schemes.

The tax shelter legislation that Chairman GRASSLEY and I introduce today goes to the heart of the tax schemes problem.

For example, the bill ensures that transactions are done for legitimate business purposes. That means that transactions must have economic substance and are not done merely to avoid taxes.

It makes it explicit that achieving a particular kind of financial accounting treatment does not provide the needed ''business purpose'' to satisfy tax requirements.

The bill also provides for stiff penalties that are needed to back up Treasury's new shelter disclosure requirements.

As a Treasury official pointed out, ''[I]f a promoter is comfortable with selling a transaction. If a practitioner is comfortable with advising that the transaction is proper. And if a taxpayer is comfortable with entering into that transaction. Then they should all be comfortable with the IRS knowing about the transaction.''

Our bill also broadens the IRS's ability to enjoin tax shelter promoters and allows the agency to impose monetary penalties—in addition to suspension or disbarment—on disreputable tax advisors or their firms.

And more may be needed, from both government and the private sector.

For one thing, we need to also pass Senator LEVIN's bill, S. 1767, the Auditor Independence and Tax Shelters Act. I am pleased to be an original co-sponsor of that legislation. The Auditor Independence and Tax Shelters Act compliments the legislation that I am introducing today.

Senator LEVIN's legislation shuts down tax shelter promotion from the audit and financial statement side of the equation. Specifically, S. 1767 would strengthen auditor independence by prohibiting them from providing tax shelter services to their audit clients.

The legislation would also reduce potential auditor conflicts of interest by codifying four auditor independence principles to guide the audit committees of the Board of Directors of a publicly traded company, when that committee is required by the Sarbanes-Oxley Act to decide whether the company may provide certain non-audit services to the corporation.

Next, the SEC and the new Public Accounting Oversight Board should devote significant resources to considering ways to improve the clarity of the tax footnote in the company's financial statements.

They should also undertake a comprehensive review of financial reporting of income taxation. These agencies should also ensure that they have tax experts to ensure proper oversight investigations and reviews of the financial statement tax disclosures.

The IRS should improve the clarity of the already-required reconciliation between book and tax earnings on the corporate tax return—the Schedule M–1.

And we need to have better communication and coordination between the various federal departments and agencies with oversight over lawyers, accountants and investment bankers. The Department of Treasury, the IRS, the Department of Justice, the SEC, and the Public Accounting Oversight Board should talk to each other and not fall into the ''it's not my job'' mindset.

The Sarbanes-Oxley Act also empowers the Public Company Accounting Oversight Board to describe new non-audit services that public companies could not acquire from their auditors, even if they are not explicitly described in the statute as a prohibited service.

The Accounting Oversight Board should review the record of SEC rulemaking in this area, as well as ongoing business practices, and take action if it is needed to assure the public interest in auditor independence.

Finally, professional firms need to cultivate professional cultures. The Enron scandal should serve as a wake-up call to all of us, but particularly the professionals.

Law firms and accounting firms must be sure that their members and employees understand the nature of corporate representation and who the client is.

Everyone who works at the firm needs to understand that the firm is committed to integrity and quality. And to understand that the firm's leaders will listen and react if legitimate questions arise.

Professionals should resist the tendency to avert their eyes to obvious issues on the grounds that they are technically someone else's responsibility.

In the best traditions of both the accounting and legal professions, the work of the professional must be guided by commitments to professional duty, fair dealing, and honesty.

I hope that the leaders of the accounting and legal professions understand how important this is, and take the actions needed to give new vitality to these great traditions.

Every Spring, Americans sit down at the kitchen table, or at their home computer, and figure out their taxes.

With quiet patriotism, these Americans step up and pay their fair share. They are counting on us to make sure

that sophisticated corporations pay their fair share as well.

I am simply unwilling to tell the school teacher in Montana that he needs to pony up a little more because Congress is unwilling to shut down a loophole that is costing tens of billions every year.

I look forward to continuing to work with the Chairman of the Finance Committee, Senator GRASSLEY, to see the Tax Shelter Transparency and Enforcement Act through to enactment.

I also urge all of my congressional colleagues—in the House and the Senate—to join forces to send tax shelter legislation to the President for his signature.

We need to act to close these tax shelters and restore professional ethics. And we need to act before the next big scandal comes. Congress cannot ignore the problem any longer.

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. 1937

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 ''Tax Shelter Transparency and Enforcement Act''.

(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.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

Sec. 101. Clarification of economic substance doctrine.
Sec. 102. Penalty for failing to disclose reportable transaction.
Sec. 103. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
Sec. 104. Penalty for understatements attributable to transactions lacking economic substance, etc.
Sec. 105. Modifications of substantial understatement penalty for nonreportable transactions.
Sec. 106. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
Sec. 107. Disclosure of reportable transactions.
Sec. 108. Modifications to penalty for failure to register tax shelters.
Sec. 109. Modification of penalty for failure to maintain lists of investors.
Sec. 110. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
Sec. 111. Understatement of taxpayer's liability by income tax return preparer.
Sec. 112. Penalty on failure to report interests in foreign financial accounts.
Sec. 113. Frivolous tax submissions.
Sec. 114. Regulation of individuals practicing before the Department of Treasury.
Sec. 115. Penalty on promoters of tax shelters.
Sec. 116. Statute of limitations for taxable years for which required listed transactions not reported.
Sec. 117. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.
Sec. 118. Authorization of appropriations for tax law enforcement.

TITLE II—OTHER CORPORATE GOVERNANCE PROVISIONS

Sec. 201. Affirmation of consolidated return regulation authority.
Sec. 202. Signing of corporate tax returns by chief executive officer.
Sec. 203. Denial of deduction for certain fines, penalties, and other amounts.
Sec. 204. Disallowance of deduction for punitive damages.
Sec. 205. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.

TITLE III—ENRON-RELATED TAX SHELTER PROVISIONS

Sec. 301. Limitation on transfer or importation of built-in losses.
Sec. 302. No reduction of basis under section 734 in stock held by partnership in corporate partner.
Sec. 303. Repeal of special rules for FASITs.
Sec. 304. Expanded disallowance of deduction for interest on convertible debt.
Sec. 305. Expanded authority to disallow tax benefits under section 269.
Sec. 306. Modification of interaction between subpart F and passive foreign investment company rules.

TITLE I—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

SEC. 101. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

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

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

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

''(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) 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.

In applying subclause (II), 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.

''(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) 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.

''(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

''(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

''(I) depreciation,

''(II) any tax credit, or

''(III) any other deduction as provided in guidance by the Secretary, and

''(ii) 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 the date of the enactment of this Act.

SEC. 102. 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. 103. 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 ASSERTION AND COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (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 disqualifying 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. 104. 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(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(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 (2), (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 the date of the enactment of this Act.

SEC. 105. 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. 106. 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. 107. 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, managing, 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) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), 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.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 108. 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 listed 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) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) 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. 109. 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. 110. 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. 111. 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. 112. 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. 113. 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. 114. 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 of the representative.''.

(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. 115. 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. 116. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) 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 time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

''(A) the date on which the Secretary is furnished the information so required; or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 117. 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 in taxable years beginning after the date of the enactment of this Act.

SEC. 118. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

TITLE II—OTHER CORPORATE GOVERNANCE PROVISIONS

SEC. 201. 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. 202. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by inserting after the first sentence the following new sentences: ''The return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the chief executive officer ensures that such return complies with this title and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).''.

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

SEC. 203. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by

suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution for damage or harm caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

''(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

''(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

''(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

''(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 204. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended by adding at the end the following new paragraph:

''(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 162(g) is amended—

(i) by striking ''If'' and inserting:

''(1) TREBLE DAMAGES.—If'', and

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(B) The heading for section 162(g) is amended by inserting ''OR PUNITIVE DAMAGES'' after ''LAWS''.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

''SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

''Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.''.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

''(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.''.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 91. Punitive damages compensated by insurance or otherwise.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 205. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

TITLE III—ENRON-RELATED TAX SHELTER 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 subparagraph 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 by a transferor 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 such 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 February 13, 2003.

SEC. 302. 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 (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such 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 in such manner as the Secretary may prescribe.

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 February 13, 2003.

SEC. 303. 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)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''.

(B) The last sentence of section 860G(a)(3) is amended by inserting '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property'' before the period at the end.

(6) Paragraph (3) 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).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''.

(8)(A) Section 860G(a)(3)(A) is amended by striking ''or'' at the end of clause (i), by inserting ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

''(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

''(II) occurs after the startup day, and

''(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.''.

(B) Section 860G(a)(7)(B) is amended to read as follows:

''(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

''(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

''(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3)(A).''.

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

(10) Section 1272(a)(6)(B) is amended by adding at the end the following new flush sentence:

''For purposes of clause (iii), the Secretary shall prescribe regulations permitting the use of a current prepayment assumption, determined as of the close of the accrual period (or such other time as the Secretary may prescribe during the taxable year in which the accrual period ends).''.

(11) 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).

(12) 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 take effect on February 14, 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 to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

(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. 304. 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) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

''(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.''.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

''(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.''.

(c) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(l) is amended—

(1) by striking ''or a related party'' in the material preceding subparagraph (A) and inserting ''or any other person'', and

(2) by striking ''or interest'' each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 305. 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 or persons acquire, directly or indirectly, control of 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,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.''.

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

SEC. 306. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

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

''Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

Mr. GRASSLEY. Mr. President, I rise today to co-sponsor legislation, the ''Tax Shelter Transparency and Enforcement Act″to address the continuing proliferation of tax shelters. This bill reflects tax shelter measures that have been passed by the Senate Finance Committee in the Jobs and Growth Tax Relief Act of 2003, the CARE Act, the JOBS Act, and the Energy bill. The full Senate has passed these shelters provisions twice this year.

We have known for many years that abusive tax shelters, which are structured to exploit unintended consequences of our complicated Federal income tax system, erode the federal tax base and the public's confidence in the tax system. Such transactions are patently unfair to the vast majority of taxpayers who do their best to comply with the letter and spirit of the tax law. The Finance Committee produced its first draft of tax shelter legislation in 1999, and has produced several subsequent bills, each of which were enhanced to attack new developments in abusive tax shelters. The most recent Finance Committee bill was the Tax Shelter Transparency Act in May 2002. Today's bill builds on that 2002 legislation by adding certain corporate governance provisions, the recommendations from the Finance Committee's tax shelter investigation of Enron, and a proposal to clarify the judicial economic substance doctrine.

The Finance Committee has worked exceedingly hard over many several years to develop a legislative response to tax shelters, and the bill we offer today may not be the final word in that response. Thoughtful and well-considered comments on the provisions in this bill have been greatly appreciated by the staff and members of the Finance Committee, and will be considered in further refining today's bill, particularly with respect to clarification of the economic substance doctrine.

In our ongoing efforts to end tax shelters, we have attacked the issue on several fronts. We have introduced numerous measures to end specific shelter abuses as they are discovered. We have offered legislation attacking corporate inversions, individual expatiations, and corporate deductions for phony leases of tax-payer funded subways, bridges, and water lines. I have pursued public disclosure of the differences in the income on financial statements reported by public companies to their shareholders, and the income the company reports to the IRS on its tax return. I have written to the President, Treasury and SEC to encourage them to consider this idea.

During the Senate's 2002 deliberation of the Sarbanes-Oxley bill, I attempted to add an amendment that would have prohibited auditors from opining on the financial statement results of tax shelters that they had sold to an audit client. I was blocked in my attempt to offer that amendment, with several members expressing skepticism about the need for such a measure. I suspect that today, however, few members would have such reservations.

On October 21st, 2003, the Senate Finance Committee conducted a hearing to determine if tax shelters were a continuing problem. Not only are they continuing, they are now expanding to mid-level companies and wealthy individuals, many of whom have been duped into engaging in shelter transactions. During our hearing, we heard testimony from taxpayers who relied on reputable tax professionals and accounting firms for sound tax advice, but unknowingly purchased tax shelters that were peddled by those trusted professionals through a web of collusion and deception. We also heard from employees of large accounting firms and major corporations who testified regarding the pressure exerted on them to bless transactions that, in their professional opinions, would constitute abusive tax shelters. The price for their integrity was the loss of their jobs and the ruin of their career. Tax shelter abuse must be stopped for the sake of fairness, the integrity of our tax system, and the protection of honest tax professionals.

Our years of work on this issue was recently reaffirmed in a hearing before the Permanent Subcommittee on Investigations, which explored abusive shelters that were promoted by purportedly reputable tax lawyers and accounting firms. Following that hearing, there has been considerable discussion of promoting an amendment similar to the one I offered in 2002 during the Sarbanes-Oxley debate, and I am appreciative of that effort. I hope we are able to construct a measure that can be readily enforced by the Public Accounting Oversight Board and the SEC, even though that agency lacks expertise in, or jurisdiction over, federal tax matters.

At its core, however, the problem is not an SEC matter, but is a problem of ongoing abuse of the tax code by very smart people doing some very ugly business. The only way to end this problem is to put it out in the open. Even the most cynical tax advisor does not want their dirty laundry in the public eye, particularly if that public includes the IRS. That is why disclosure of abusive or potentially abusive transactions is so important in solving this problem.

The Tax Shelter Transparency and Enforcement Act requires taxpayer disclosure of potentially abusive tax avoidance transactions. It is surprising and unfortunate that taxpayers, though required to disclose tax shelter transactions under present law, have refused to comply. The Tax Shelter Transparency and Enforcement Act will curb non-compliance by providing clearer and more objective rules for the reporting of potential tax shelters and by providing strong penalties for anyone who refuses to comply with the revised disclosure requirements.

The legislation has been carefully structured to reward those who are forthcoming with disclosure. I wholeheartedly agree with the remarks offered by a former Treasury Assistant Secretary for Tax Policy, that ''if a taxpayer is comfortable entering into a transaction, a promoter is comfortable selling it, and an advisor is comfortable blessing it, they all should be comfortable disclosing it to the IRS.'' Transparency is essential to an evaluation by the IRS and ultimately by the Congress of the United States as to whether the tax benefits generated by complex business transactions are appropriate interpretations of existing tax law.

It is time to get this bill done. The Finance Committee has worked on rooting out tax shelters for nearly five years, and we have debated the issue long enough. The time to act is now. I will vigorously pursue enactment of an anti-tax shelters bill in the upcoming year. I think we can all take pride in the Senate's consistent action of passing the measures in today's bill. We must press forward to put a final end to the seemingly endless abuse of tax shelters.

By Mr. CORZINE (for himself, Mr. SCHUMER, Mr. LAUTENBERG, and Mr. REED):

S. 1938. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal land, and to designate certain Federal land as Ancient forests, roadless areas, watershed protection areas, and special areas where logging and other intrusive activities are prohibited; to the Committee on Energy and Natural Resources.

Mr. CORZINE. Mr. President, today along with Senators SCHUMER, LAUTENBERG, and REED, I am introducing the Act to Save America's Forests. This important legislation is designed to protect our national forests from needless clearcutting, safeguard our roadless areas, and preserve the last remaining stands of Ancient forests in this country.

There used to be over one billion acres of forest on the land that is now

the United States. Over 95 percent of that original forest has been logged, and less than one percent is in a form large enough to support all the native plants and animals. This land is under continuous threat, and if we don't act now to protect these Ancient forests we might lose many of them forever.

Our national forests also are under attack by clearcutting. Removing huge groups of trees at once creates a blighted landscape, destroys wildlife habitats, increases soil erosion, and degrades water quality. In the last ten years, over a quarter-million acres of our national forests were clearcut. Clearcutting destroys a vibrant, ecologically diverse natural forest, which is usually replaced, if at all, with a single species tree farm: tightly packed rows of the most profitable trees. This is forest management focused solely on economics, not ecology. And it is not the way to save America's forests.

This bill is a balanced, scientific approach to forest management. It bans all logging operations in roadless areas, Ancient forests, and forests that have extraordinary biological, scenic, or recreational values. These are our most fragile ecosystems and need to be protected. This bill also bans clearcutting in our national forests except in specific cases where complete removal of non-native invasive tree species is ecologically necessary.

However, this bill does not ban all logging in our national forests. It allows a method of logging called ''selection management,'' which cuts individual trees instead of the whole forest, leaving a healthy, diverse woodland. Selection management is less harmful to the soil, less destructive to wildlife, and less disturbing to people who enjoy the scenic beauty of our forests. Selection management can be sustainable and profitable, as demonstrated by a number of private forests around the country.

This legislation emphasizes biodiversity and sustainable management, allowing ecologically sound logging practices in some of our national forestland and fully protecting the rest. That's why over 600 scientists, including Dr. Jane Goodall and Dr. E.O. Wilson, and the Union of Concerned Scientists, support this bill. I am proud to introduce this legislation to protect and restore America's public forests, and 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. 1938

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 ''Act to Save America's Forests''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
TITLE I—LAND MANAGEMENT
Sec. 101. Committee of scientists.
Sec. 102. Continuous forest inventory.
Sec. 103. Administration and management.
Sec. 104. Conforming amendments.
TITLE II—PROTECTION FOR ANCIENT FORESTS, ROADLESS AREAS, WATERSHED PROTECTION AREAS, AND SPECIAL AREAS
Sec. 201. Findings.
Sec. 202. Definitions.
Sec. 203. Designation of special areas.
Sec. 204. Restrictions on management activities in Ancient forests, roadless areas, watershed protection areas, and special areas.
TITLE III—EFFECTIVE DATE
Sec. 301. Effective date.
Sec. 302. Effect on existing contracts.
Sec. 303. Wilderness act exclusion.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Federal agencies that permit clearcutting and other forms of even-age logging operations include the Forest Service, the United States Fish and Wildlife Service, and the Bureau of Land Management;

(2) clearcutting and other forms of even-age logging operations cause substantial alterations in native biodiversity by—

(A) emphasizing the production of a limited number of commercial species, and often only a single species, of trees on each site;

(B) manipulating the vegetation toward greater relative density of the commercial species;

(C) suppressing competing species; and

(D) requiring the planting, on numerous sites, of a commercial strain of the species that reduces the relative diversity of other genetic strains of the species that were traditionally located on the same sites;

(3) clearcutting and other forms of even-age logging operations—

(A) frequently lead to the death of immobile species and the very young of mobile species of wildlife; and

(B) deplete the habitat of deep-forest species of animals, including endangered species and threatened species;

(4)(A) clearcutting and other forms of even-age logging operations—

(i) expose the soil to direct sunlight and the impact of precipitation;

(ii) disrupt the soil surface;

(iii) compact organic layers; and

(iv) disrupt the run-off restraining capabilities of roots and low-lying vegetation, resulting in soil erosion, the leaching of nutrients, a reduction in the biological content of soil, and the impoverishment of soil; and

(B) all of the consequences described in subparagraph (A) have a long-range deleterious effect on all land resources, including timber production;

(5) clearcutting and other forms of even-age logging operations aggravate global climate change by—

(A) decreasing the capability of the soil to retain carbon; and

(B) during the critical periods of felling and site preparation, reducing the capacity of the biomass to process and to store carbon, with a resultant loss of stored carbon to the atmosphere;

(6) clearcutting and other forms of even-age logging operations render soil increasingly sensitive to acid deposits by causing a decline of soil wood and coarse woody debris;

(7) a decline of solid wood and coarse woody debris reduces the capacity of soil to retain water and nutrients, which in turn increases soil heat and impairs soil's ability to maintain protective carbon compounds on the soil surface;

(8) clearcutting and other forms of even-age logging operations result in—

(A) increased stream sedimentation and the silting of stream bottoms;

(B) a decline in water quality;

(C) the impairment of life cycles and spawning processes of aquatic life from benthic organisms to large fish; and

(D) as a result of the effects described in subparagraphs (A) through (C), a depletion of the sport and commercial fisheries of the United States;

(9) clearcutting and other forms of even-age management of Federal forests disrupt natural disturbance regimes that are critical to ecosystem function;

(10) clearcutting and other forms of even-age logging operations increase harmful edge effects, including—

(A) blowdowns;

(B) invasions by weed species; and

(C) heavier losses to predators and competitors;

(11) by reducing the number of deep, canopied, variegated, permanent forests, clearcutting and other forms of even-age logging operations—

(A) limit areas where the public can satisfy an expanding need for recreation; and

(B) decrease the recreational value of land;

(12) clearcutting and other forms of even-age logging operations replace forests described in paragraph (11) with a surplus of clearings that grow into relatively impenetrable thickets of saplings, and then into monoculture tree plantations;

(13) because of the harmful and, in many cases, irreversible, damage to forest species and forest ecosystems caused by logging of Ancient and roadless forests, clearcutting, and other forms of even-age management, it is important that these practices be halted based on the precautionary principle;

(14) human beings depend on native biological resources, including plants, animals, and micro-organisms—

(A) for food, medicine, shelter, and other important products; and

(B) as a source of intellectual and scientific knowledge, recreation, and aesthetic pleasure;

(15) alteration of native biodiversity has serious consequences for human welfare, as the United States irretrievably loses resources for research and agricultural, medicinal, and industrial development;

(16) alteration of biodiversity in Federal forests adversely affects the functions of ecosystems and critical ecosystem processes that—

(A) moderate climate;

(B) govern nutrient cycles and soil conservation and production;

(C) control pests and diseases; and

(D) degrade wastes and pollutants;

(17)(A) clearcutting and other forms of even-age management operations have significant deleterious effects on native biodiversity, by reducing habitat and food for cavity-nesting birds and insectivores such as the 3-toed woodpecker and hairy woodpecker and for neotropical migratory bird species; and

(B) the reduction in habitat and food supply could disrupt the lines of dependency among species and their food resources and thereby jeopardize critical ecosystem function, including limiting outbreaks of destructive insect populations; for example—

(i) the 3-toed woodpecker requires clumped snags in spruce-fir forests, and 99 percent of its winter diet is composed of insects, primarily spruce beetles; and

(ii) a 3-toed woodpecker can consume as much as 26 percent of the brood of an endemic population of spruce bark beetle and reduce brood survival of the population by 70 to 79 percent;

(18) the harm of clearcutting and other forms of even-age logging operations on the natural resources of the United States and

the quality of life of the people of the United States is substantial, severe, and avoidable;

(19) by substituting selection management, as required by this Act, for clearcutting and other forms of even-age logging operations, the Federal agencies involved with those logging operations would substantially reduce devastation to the environment and improve the quality of life of the people of the United States;

(20) selection management—

(A) retains natural forest structure and function;

(B) focuses on long-term rather than short-term management;

(C) works with, rather than against, the checks and balances inherent in natural processes; and

(D) permits the normal, natural processes in a forest to allow the forest to go through the natural stages of succession to develop a forest with old growth ecological functions;

(21) by protecting native biodiversity, as required by this Act, Federal agencies would maintain vital native ecosystems and improve the quality of life of the people of the United States;

(22) selection logging—

(A) is more job intensive, and therefore provides more employment than clearcutting and other forms of even-age logging operations to manage the same quantity of timber production; and

(B) produces higher quality sawlogs than clearcutting and other forms of even-age logging operations; and

(23) the judicial remedies available to enforce Federal forest laws are inadequate, and should be strengthened by providing for injunctions, declaratory judgments, statutory damages, and reasonable costs of suit.

(b) PURPOSE.—The purpose of this Act is to conserve native biodiversity and protect all native ecosystems on all Federal land against losses that result from—

(1) clearcutting and other forms of even-age logging operations; and

(2) logging in Ancient forests, roadless areas, watershed protection areas, and special areas.

TITLE I—LAND MANAGEMENT

SEC. 101. COMMITTEE OF SCIENTISTS.

Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) is amended by striking subsection (h) and inserting the following:

''(h) COMMITTEE OF SCIENTISTS.—

''(1) IN GENERAL.—To carry out subsection (g), the Secretary shall appoint a committee composed of scientists—

''(A) who are not officers or employees of the Forest Service, of any other public entity, or of any entity engaged in whole or in part in the production of wood or wood products;

''(B) not more than one-third of whom have contracted with or represented any entity described in subparagraph (A) during the 5-year period ending on the date of the proposed appointment to the committee; and

''(C) not more than one-third of whom are foresters.

''(2) QUALIFICATIONS OF FORESTERS.—A forester appointed to the committee shall be an individual with—

''(A) extensive training in conservation biology; and

''(B) field experience in selection management.

''(3) DUTIES.—The committee shall provide scientific and technical advice and counsel on proposed guidelines and procedures and all other issues involving forestry and native biodiversity to promote an effective interdisciplinary approach to forestry and native biodiversity.

''(4) TERMINATION.—The committee shall terminate on the date that is 10 years after the date of enactment of the Act to Save America's Forests.''

SEC. 102. CONTINUOUS FOREST INVENTORY.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, each of the Chief of the Forest Service, the Director of the United States Fish and Wildlife Service, and the Director of the Bureau of Land Management (referred to individually as an ''agency head'') shall prepare a continuous inventory of forest land administered by those agency heads, respectively.

(b) REQUIREMENTS.—A continuous forest inventory shall constitute a long-term monitoring and inventory system that—

(1) is contiguous throughout affected Federal forest land; and

(2) is based on a set of permanent plots that are inventoried every 10 years to—

(A) assess the impacts that human activities are having on management of the ecosystem;

(B) gauge—

(i) floristic and faunistic diversity, abundance, and dominance; and

(ii) economic and social value; and

(C) monitor changes in the age, structure, and diversity of species of trees and other vegetation.

(c) DECENNIAL INVENTORIES.—Each decennial inventory under subsection (b)(2) shall be completed not more than 60 days after the date on which the inventory is begun.

(d) NATIONAL ACADEMY OF SCIENCES.—In preparing a continuous forest inventory, an agency head may use the services of the National Academy of Sciences to—

(1) develop a system for the continuous forest inventory by which certain guilds or indicator species are measured; and

(2) identify any changes to the continuous forest inventory that are necessary to ensure that the continuous forest inventory is consistent with the most accurate scientific methods.

(e) WHOLE-SYSTEM MEASURES.—At the end of each forest planning period, an agency head shall document whole-system measures that will be taken as a result of a decennial inventory.

(f) PUBLIC AVAILABILITY.—Results of a continuous forest inventory shall be made available to the public without charge.

SEC. 103. ADMINISTRATION AND MANAGEMENT.

The Forest and Rangeland Renewable Resources Planning Act of 1974 is amended by adding after section 6 (16 U.S.C. 1604) the following:

''SEC. 6A. CONSERVATION OF NATIVE BIODIVERSITY; SELECTION LOGGING; PROHIBITION OF CLEARCUTTING.

''(a) APPLICABILITY.—This section applies to the administration and management of—

''(1) National Forest System land, under this Act;

''(2) Federal land, under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

''(3) National Wildlife Refuge System land, under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

''(b) NATIVE BIODIVERSITY IN FORESTED AREAS.—The Secretary shall provide for the conservation or restoration of native biodiversity in each stand and each watershed throughout each forested area, except during the extraction stage of authorized mineral development or during authorized construction projects, in which cases the Secretary shall conserve native biodiversity to the maximum extent practicable.

''(c) RESTRICTION ON USE OF CERTAIN LOGGING PRACTICES.—

''(1) DEFINITIONS.—In this subsection:

''(A) AGE DIVERSITY.—The term 'age diversity' means the naturally occurring range and distribution of age classes within a given species.

''(B) BASAL AREA.—The term 'basal area' means the area of the cross section of a tree stem, including the bark, at 4.5 feet above the ground.

''(C) CLEARCUTTING.—The term 'clearcutting' means an even-age logging operation that removes all of the trees over a considerable portion of a stand at 1 time.

''(D) CONSERVATION.—The term 'conservation' means protective measures for maintaining native biodiversity and active and passive measures for restoring diversity through management efforts, in order to protect, restore, and enhance as much of the variety of species and communities as practicable in abundances and distributions that provide for their continued existence and normal functioning, including the viability of populations throughout their natural geographic distributions.

''(E) EVEN-AGE LOGGING OPERATION.—

''(i) IN GENERAL.—The term 'even-age logging operation' means a logging activity that—

''(I) creates a clearing or opening that exceeds ⅕ acre;

''(II) creates a stand in which the majority of trees are within 10 years of the same age; or

''(III) within a period of 30 years, cuts or removes more than the lesser of—

''(aa) the growth of the basal area of all tree species (not including a tree of a non-native invasive tree species or an invasive plantation species) in a stand; or

''(bb) 20 percent of the basal area of a stand.

''(ii) INCLUSION.—The term 'even-age logging operation' includes the application of clearcutting, high grading, seed-tree cutting, shelterwood cutting, or any other logging method in a manner inconsistent with selection management.

''(iii) EXCLUSION.—The term 'even-age logging operation' does not include the cutting or removal of—

''(I) a tree of a non-native invasive tree species; or

''(II) an invasive plantation species, if native longleaf pine are planted in place of the removed invasive plantation species.

''(F) GENETIC DIVERSITY.—The term 'genetic diversity' means the differences in genetic composition within and among populations of a species.

''(G) HIGH GRADING.—The term 'high grading' means the removal of only the larger or more commercially valuable trees in a stand, resulting in an alteration in the natural range of age diversity or species diversity in the stand.

''(H) INVASIVE PLANTATION SPECIES.—The term 'invasive plantation species' means a loblolly pine or slash pine that was planted or managed by the Forest Service or any other Federal agency as part of an even-aged monoculture tree plantation.

''(I) NATIVE BIODIVERSITY.—

''(i) IN GENERAL.—The term 'native biodiversity' means—

''(I) the full range of variety and variability within and among living organisms; and

''(II) the ecological complexes in which the living organisms would have occurred (including naturally occurring disturbance regimes) in the absence of significant human impact.

''(ii) INCLUSIONS.—The term 'native biodiversity' includes diversity—

''(I) within a species (including genetic diversity, species diversity, and age diversity);

''(II) within a community of species;

''(III) between communities of species;

''(IV) within a discrete area, such as a watershed;

''(V) along a vertical plane from ground to sky, including application of the plane to all the other types of diversity; and

''(VI) along the horizontal plane of the land surface, including application of the plane to all the other types of diversity.

''(J) NON-NATIVE INVASIVE TREE SPECIES.—

''(i) IN GENERAL.—The term 'non-native invasive tree species' means a species of tree not native to North America.

''(ii) INCLUSIONS.—The term 'non-native invasive tree species' includes—

''(I) Australian pine (Casaurina equisetifolia);

''(II) Brazilian pepper (Schinus terebinthifolius);

''(III) Common buckthorn (Rhamnus cathartica);

''(IV) Eucalyptus (Eucalyptus globulus);

''(V) Glossy buckthorn (Rhamnus frangula);

''(VI) Melaleuca (Melaleuca quinquenervia);

''(VII) Norway maple (Acer platanoides);

''(VIII) Princess tree (Paulownia tomentosa);

''(IX) Salt cedar (Tamarix species);

''(X) Silk tree (Albizia julibrissin);

''(XI) Strawberry guava (Psidium cattleianum);

''(XII) Tree-of-heaven (Ailanthus altissima);

''(XIII) Velvet tree (Miconia calvescens); and

''(XIV) White poplar (Populus alba).

''(K) SEED-TREE CUT.—The term 'seed-tree cut' means an even-age logging operation that leaves a small minority of seed trees in a stand for any period of time.

''(L) SELECTION MANAGEMENT.—

''(i) IN GENERAL.—The term 'selection management' means a method of logging that emphasizes the periodic, individual selection and removal of varying size and age classes of the weaker, nondominant cull trees in a stand and leaves uncut the stronger dominant trees to survive and reproduce, in a manner that works with natural forest processes and—

''(I) ensures the maintenance of continuous high forest cover where high forest cover naturally occurs;

''(II) ensures the maintenance or natural regeneration of all native species in a stand;

''(III) ensures the growth and development of trees through a range of diameter or age classes to provide a sustained yield of forest products including clean water, rich soil, and native plants and wildlife; and

''(IV) ensures that some dead trees, standing and downed, shall be left in each stand where selection logging occurs, to fulfill their necessary ecological functions in the forest ecosystem, including providing elemental and organic nutrients to the soil, water retention, and habitat for endemic insect species that provide the primary food source for predators (including various species of amphibians and birds, such as cavity nesting woodpeckers).

''(ii) EXCLUSION.—

''(I) IN GENERAL.—Subject to subclause (II), the term 'selection management' does not include an even-age logging operation.

''(II) FELLING AGE; NATIVE BIODIVERSITY.—Subclause (I) does not—

''(aa) establish a 150-year projected felling age as the standard at which individual trees in a stand are to be cut; or

''(bb) limit native biodiversity to that which occurs within the context of a 150-year projected felling age.

''(M) SHELTERWOOD CUT.—The term 'shelterwood cut' means an even-age logging operation that leaves—

''(i) a minority of the stand (larger than a seed-tree cut) as a seed source; or

''(ii) a protection cover remaining standing for any period of time.

''(N) SPECIES DIVERSITY.—The term 'species diversity' means the richness and variety of native species in a particular location.

''(O) STAND.—The term 'stand' means a biological community of trees on land described in subsection (a), comprised of not more than 100 contiguous acres with sufficient identity of 1 or more characteristics (including location, topography, and dominant species) to be managed as a unit.

''(P) TIMBER PURPOSE.—

''(i) IN GENERAL.—The term 'timber purpose' means the use, sale, lease, or distribution of trees, including the felling of trees or portions of trees.

''(ii) EXCEPTION.—The term 'timber purpose' does not include the felling of trees or portions of trees to create land space for a Federal administrative structure.

''(Q) WITHIN-COMMUNITY DIVERSITY.—The term 'within-community diversity' means the distinctive assemblages of species and ecological processes that occur in various physical settings of the biosphere and distinct locations.

''(2) PROHIBITION OF CLEARCUTTING AND OTHER FORMS OF EVEN-AGE LOGGING OPERATIONS.—No clearcutting or other form of even-age logging operation shall be permitted in any stand or watershed.

''(3) MANAGEMENT OF NATIVE BIODIVERSITY.—On each stand on which an even-age logging operation has been conducted on or before the date of enactment of this section, and on each deforested area managed for timber purposes on or before the date of enactment of this section, excluding areas occupied by existing buildings, the Secretary shall—

''(A) prescribe a shift to selection management; or

''(B) cease managing the stand for timber purposes, in which case the Secretary shall—

''(i) undertake an active restoration of the native biodiversity of the stand; or

''(ii) permit the stand to regain native biodiversity.

''(4) ENFORCEMENT.—

''(A) FINDING.— Congress finds that all people of the United States are injured by actions on land to which subsection (g)(3)(B) and this subsection applies.

''(B) PURPOSE.—The purpose of this paragraph is to foster the widest and most effective possible enforcement of subsection (g)(3)(B) and this subsection.

''(C) FEDERAL ENFORCEMENT.—The Secretary of Agriculture, the Secretary of the Interior, and the Attorney General shall enforce subsection (g)(3)(B) and this subsection against any person that violates 1 or more of those provisions.

''(D) CITIZEN SUITS.—

''(i) IN GENERAL.—A citizen harmed by a violation of subsection (g)(3)(B) or this subsection may bring a civil action in United States district court for a declaratory judgment, a temporary restraining order, an injunction, statutory damages, or other remedy against any alleged violator, including the United States.

''(ii) JUDICIAL RELIEF.—If a district court of the United States determines that a violation of subsection (g)(3)(B) or this subsection has occurred, the district court—

''(I) shall impose a damage award of not less than $5,000;

''(II) may issue 1 or more injunctions or other forms of equitable relief; and

''(III) shall award to the plaintiffs reasonable costs of bringing the action, including attorney's fees, witness fees, and other necessary expenses.

''(iii) STANDARD OF PROOF.—The standard of proof in all actions under this subparagraph shall be the preponderance of the evidence.

''(iv) TRIAL.—A trial for any action under this subsection shall be de novo.

''(E) PAYMENT OF DAMAGES.—

''(i) NON-FEDERAL VIOLATOR.—A damage award under subparagraph (D)(ii) shall be paid to the Treasury by a non-Federal violator or violators designated by the court.

''(ii) FEDERAL VIOLATOR.—

''(I) IN GENERAL.—Not later than 40 days after the date on which judgment is rendered, a damage award under subparagraph (D)(ii) for which the United States is determined to be liable shall be paid from the Treasury, as provided under section 1304 of title 31, United States Code, to the person or persons designated to receive the damage award.

''(II) USE OF DAMAGE AWARD.—A damage award described under subclause (I) shall be used by the recipient to protect or restore native biodiversity on Federal land or on land adjoining Federal land.

''(III) COURT COSTS.—Any award of costs of litigation and any award of attorney fees shall be paid by a Federal violator not later than 40 days after the date on which judgment is rendered.

''(F) WAIVER OF SOVEREIGN IMMUNITY.—

''(i) IN GENERAL.—The United States (including agents and employees of the United States) waives its sovereign immunity in all respects in all actions under subsection (g)(3)(B) and this subsection.

''(ii) NOTICE.—No notice is required to enforce this subsection.''.

SEC. 104. CONFORMING AMENDMENTS.

Section 6(g)(3) of the Forest and Rangeland Renewable Resource Planning Act of 1974 (16 U.S.C. 1604(g)(3)) is amended—

(1) in subparagraph (D), by inserting ''and'' after the semicolon at the end;

(2) in subparagraph (E), by striking ''; and'' and inserting a period; and

(3) by striking subparagraph (F).

TITLE II—PROTECTION FOR ANCIENT FORESTS, ROADLESS AREAS, WATERSHED PROTECTION AREAS, AND SPECIAL AREAS

SEC. 201. FINDINGS.

Congress finds that—

(1) unfragmented forests on Federal land, unique and valuable assets to the general public, are damaged by extractive logging;

(2) less than 10 percent of the original unlogged forests of the United States remain, and the vast majority of the remnants of the original forests of the United States are located on Federal land;

(3) large, unfragmented forest watersheds provide high-quality water supplies for drinking, agriculture, industry, and fisheries across the United States;

(4) the most recent scientific studies indicate that several thousand species of plants and animals are dependent on large, unfragmented forest areas;

(5) many neotropical migratory songbird species are experiencing documented broad-scale population declines and require large, unfragmented forests to ensure their survival;

(6) destruction of large-scale natural forests has resulted in a tremendous loss of jobs in the fishing, hunting, tourism, recreation, and guiding industries, and has adversely affected sustainable nontimber forest products industries such as the collection of mushrooms and herbs;

(7) extractive logging programs on Federal land are carried out at enormous financial costs to the Treasury and taxpayers of the United States;

(8) Ancient forests continue to be threatened by logging and deforestation and are rapidly disappearing;

(9) Ancient forests help regulate atmospheric balance, maintain biodiversity, and provide valuable scientific opportunity for monitoring the health of the planet;

(10) prohibiting extractive logging in the Ancient forests would create the best conditions for ensuring stable, well distributed, and viable populations of the northern spotted owl, marbled murrelet, American marten, and other vertebrates, invertebrates, vascular plants, and nonvascular plants associated with those forests;

(11) prohibiting extractive logging in the Ancient forests would create the best conditions for ensuring stable, well distributed, and viable populations of anadromous salmonids, resident salmonids, and bull trout;

(12) roadless areas are de facto wilderness that provide wildlife habitat and recreation;

(13) large unfragmented forests, contained in large part on roadless areas on Federal land, are among the last refuges for native animal and plant biodiversity, and are vital to maintaining viable populations of threatened, endangered, sensitive, and rare species;

(14) roads cause soil erosion, disrupt wildlife migration, and allow nonnative species of plants and animals to invade native forests;

(15) the mortality and reproduction patterns of forest dwelling animal populations are adversely affected by traffic-related fatalities that accompany roads;

(16) the exceptional recreational, biological, scientific, or economic assets of certain special forested areas on Federal land are valuable to the public of the United States and are damaged by extractive logging;

(17) in order to gauge the effectiveness and appropriateness of current and future resource management activities, and to continue to broaden and develop our understanding of silvicultural practices, many special forested areas need to remain in a natural, unmanaged state to serve as scientifically established baseline control forests;

(18) certain special forested areas provide habitat for the survival and recovery of endangered and threatened plant and wildlife species, such as grizzly bears, spotted owls, Pacific salmon, and Pacific yew, that are harmed by extractive logging;

(19) many special forested areas on Federal land are considered sacred sites by native peoples; and

(20) as a legacy for the enjoyment, knowledge, and well-being of future generations, provisions must be made for the protection and perpetuation of the Ancient forests, roadless areas, watershed protection areas, and special areas of the United States.

SEC. 202. DEFINITIONS.

In this title:

(1) ANCIENT FOREST.—The term ''Ancient forest'' means—

(A) the northwest Ancient forests, including—

(i) Federal land identified as late-successional reserves, riparian reserves, and key watersheds under the heading ''Alternative 1'' of the report entitled ''Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, Vol. I.'', and dated February 1994; and

(ii) Federal land identified by the term ''medium and large conifer multi-storied, canopied forests'' as defined in the report described in clause (i);

(B) the eastside Cascade Ancient forests, including—

(i) Federal land identified as ''Late-Succession/Old-growth Forest (LS/OG)'' depicted on maps for the Colville National Forest, Fremont National Forest, Malheur National Forest, Ochoco National Forest, Umatilla National Forest, Wallowa-Whitman National Forest, and Winema National Forest in the report entitled ''Interim Protection for Late-Successional Forests, Fisheries, and Watersheds: National Forests East of the Cascade Crest, Oregon, and Washington'', prepared by the Eastside Forests Scientific Society Panel (The Wildlife Society, Technical Review 94–2, August 1994);

(ii) Federal land east of the Cascade crest in the States of Oregon and Washington, defined as ''late successional and old-growth forests'' in the general definition on page 28 of the report described in clause (i); and

(iii) Federal land classified as ''Oregon Aquatic Diversity Areas'', as defined in the report described in clause (i); and

(C) the Sierra Nevada Ancient forests, including—

(i) Federal land identified as ''Areas of Late-Successional Emphasis (ALSE)'' in the report entitled, ''Final Report to Congress: Status of the Sierra Nevada'', prepared by the Sierra Nevada Ecosystem Project (Wildland Resources Center Report #40, University of California, Davis, 1996/97);

(ii) Federal land identified as ''Late-Succession/Old-Growth Forests Rank 3, 4 or 5'' in the report described in clause (i); and

(iii) Federal land identified as ''Potential Aquatic Diversity Management Areas'' on the map on page 1497 of Volume II of the report described in clause (i).

(2) EXTRACTIVE LOGGING.—The term ''extractive logging'' means the felling or removal of any trees from Federal forest land for any purpose.

(3) IMPROVED ROAD.—The term ''improved road'' means any road maintained for travel by standard passenger type vehicles.

(4) ROADLESS AREA.—The term ''roadless area'' means a contiguous parcel of Federal land that is—

(A) devoid of improved roads, except as provided in subparagraph (B); and

(B) composed of—

(i) at least 1,000 acres west of the 100th meridian (with up to ½ mile of improved roads per 1,000 acres);

(ii) at least 1,000 acres east of the 100th meridian (with up to ½ mile of improved roads per 1,000 acres); or

(iii) less than 1,000 acres, but share a border that is not an improved road with a wilderness area, primitive area, or wilderness study area.

(5) SECRETARY.—The term ''Secretary'', with respect to any Federal land in an Ancient forest, roadless area, watershed protection area, or special area, means the head of the Federal agency having jurisdiction over the Federal land.

(6) SPECIAL AREA.—The term ''special area'' means an area of Federal forest land designated under section 3 that may not meet the definition of an Ancient forest, roadless area, or watershed protection area, but that—

(A) possesses outstanding biological, scenic, recreational, or cultural values; and

(B) is exemplary on a regional, national, or international level.

(7) WATERSHED PROTECTION AREA.—The term ''watershed protection area'' means Federal land that extends—

(A) 300 feet from both sides of the active stream channel of any permanently flowing stream or river;

(B) 100 feet from both sides of the active channel of any intermittent, ephemeral, or seasonal stream, or any other nonpermanently flowing drainage feature having a definable channel and evidence of annual scour or deposition of flow-related debris;

(C) 300 feet from the edge of the maximum level of any natural lake or pond; or

(D) 150 feet from the edge of the maximum level of a constructed lake, pond, or reservoir, or a natural or constructed wetland.

SEC. 203. DESIGNATION OF SPECIAL AREAS.

(a) IN GENERAL.—

(1) FINDING.—A special area shall possess at least 1 of the values described in paragraphs (2) through (5).

(2) BIOLOGICAL VALUES.—The biological values of a special area may include the presence of—

(A) threatened species or endangered species of plants or animals;

(B) rare or endangered ecosystems;

(C) key habitats necessary for the recovery of endangered species or threatened species;

(D) recovery or restoration areas of rare or underrepresented forest ecosystems;

(E) migration corridors;

(F) areas of outstanding biodiversity;

(G) old growth forests;

(H) commercial fisheries; and

(I) sources of clean water such as key watersheds.

(3) SCENIC VALUES.—The scenic values of a special area may include the presence of—

(A) unusual geological formations;

(B) designated wild and scenic rivers;

(C) unique biota; and

(D) vistas.

(4) RECREATIONAL VALUES.—The recreational values of a special area may include the presence of—

(A) designated national recreational trails or recreational areas;

(B) areas that are popular for such recreation and sporting activities as—

(i) hunting;

(ii) fishing;

(iii) camping;

(iv) hiking;

(v) aquatic recreation; and

(vi) winter recreation;

(C) Federal land in regions that are underserved in terms of recreation;

(D) land adjacent to designated wilderness areas; and

(E) solitude.

(5) CULTURAL VALUES.—The cultural values of a special area may include the presence of—

(A) sites with Native American religious significance; and

(B) historic or prehistoric archaeological sites eligible for listing on the national historic register.

(b) SIZE VARIATION.—A special area may vary in size to encompass the outstanding biological, scenic, recreational, or cultural value or values to be protected.

(c) DESIGNATION OF SPECIAL AREAS.—There are designated the following special areas, which shall be subject to the management restrictions specified in section 204:

(1) ALABAMA.—

(A) SIPSEY WILDERNESS HEADWATERS.—Certain land in the Bankhead National Forest, Bankhead Ranger District, in Lawrence County, totaling approximately 22,000 acres, located directly north and upstream of the Sipsey Wilderness, and directly south of Forest Road 213.

(B) BRUSHY FORK.—Certain land in the Bankhead National Forest, Bankhead Ranger District, in Lawrence County, totaling approximately 6,200 acres, bounded by Forest Roads 249, 254, and 246 and Alabama Highway 33.

(C) REBECCA MOUNTAIN.—Certain land in the Talladega National Forest, Talladega Ranger District, Talladega County and Clay County, totaling approximately 9,000 acres, comprised of all Talladega National Forest lands south of Forest Roads 621 and 621 B, east of Alabama Highway 48/77 and County

Highway 308, and north of the power transmission line.

(D) AUGUSTA MINE RIDGE.—Certain land in the Talladega National Forest, Shoal Creek Ranger District, Cherokee County and Cleburn County, totaling approximately 6,000 acres, and comprised of all Talladega National Forest land north of the Chief Ladiga Rail Trail.

(E) MAYFIELD CREEK.—Certain land in the Talladega National Forest, Oakmulgee Ranger District, in Rail County, totaling approximately 4,000 acres, and bounded by Forest Roads 731, 723, 718, and 718A.

(F) BEAR BAY.—Certain land in the Conecuh National Forest, Conecuh District, in Covington County, totaling approximately 3,000 acres, bounded by County Road 11, Forest Road 305, County Road 3, and the County Road connecting County Roads 3 and 11.

(2) ALASKA.—

(A) TURNAGAIN ARM.—Certain land in the Chugach National Forest, on the Kenai Peninsula, totaling approximately 100,000 acres, extending from sea level to ridgetop surrounding the inlet of Turnagain Arm, known as ''Turnagain Arm''.

(B) HONKER DIVIDE.—Certain land in the Tongass National Forest, totaling approximately 75,000 acres, located on north central Prince of Wales Island, comprising the Thorne River and Hatchery Creek watersheds, stretching approximately 40 miles northwest from the vicinity of the town of Thorne Bay to the vicinity of the town of Coffman Cove, generally known as the ''Honker Divide''.

(3) ARIZONA: NORTH RIM OF THE GRAND CANYON.—Certain land in the Kaibab National Forest that is included in the Grand Canyon Game Preserve, totaling approximately 500,000 acres, abutting the northern side of the Grand Canyon in the area generally known as the ''North Rim of the Grand Canyon''.

(4) ARKANSAS.—

(A) COW CREEK DRAINAGE, ARKANSAS.—Certain land in the Ouachita National Forest, Mena Ranger District, in Polk County, totaling approximately 7,000 acres, known as ''Cow Creek Drainage, Arkansas'', and bounded approximately—

(i) on the north, by County Road 95;

(ii) on the south, by County Road 157;

(iii) on the east, by County Road 48; and

(iv) on the west, by the Arkansas-Oklahoma border.

(B) LEADER AND BRUSH MOUNTAINS.—Certain land in the Ouachita National Forest, Montgomery County and Polk County, totaling approximately 120,000 acres, known as ''Leader Mountain'' and ''Brush Mountain'', located in the vicinity of the Blaylock Creek Watershed between Long Creek and the South Fork of the Saline River.

(C) POLK CREEK AREA.—Certain land in the Ouachita National Forest, Mena Ranger District, totaling approximately 20,000 acres, bounded by Arkansas Highway 4 and Forest Roads 73 and 43, known as the ''Polk Creek area''.

(D) LOWER BUFFALO RIVER WATERSHED.—Certain land in the Ozark National Forest, Sylamore Ranger District, totaling approximately 6,000 acres, including Forest Service land that has not been designated as a wilderness area before the date of enactment of this Act, located in the watershed of Big Creek southwest of the Leatherwood Wilderness Area, Searcy County and Marion County, and known as the ''Lower Buffalo River Watershed''.

(E) UPPER BUFFALO RIVER WATERSHED.—Certain land in the Ozark National Forest, Buffalo Ranger District, totaling approximately 220,000 acres, comprised of Forest Service that has not been designated as a wilderness area before the date of enactment of this Act, known as the ''Upper Buffalo River Watershed'', located approximately 35 miles from the town of Harrison, Madison County, Newton County, and Searcy County, upstream of the confluence of the Buffalo River and Richland Creek in the watersheds of—

(i) the Buffalo River;

(ii) the various streams comprising the Headwaters of the Buffalo River;

(iii) Richland Creek;

(iv) Little Buffalo Headwaters;

(v) Edgmon Creek;

(vi) Big Creek; and

(vii) Cane Creek.

(5) CALIFORNIA: GIANT SEQUOIA PRESERVE.—Certain land in the Sequoia National Forest and Sierra National Forest, known as the ''Giant Sequoia Preserve'', comprised of 3 discontinuous parcels and approximately 442,425 acres, located in Fresno County, Tulare County, and Kern County, in the Southern Sierra Nevada mountain range, including—

(A) the Kings River Unit (145,600 acres) and nearby Redwood Mountain Unit (11,730 acres), located approximately 25 miles east of the city of Fresno; and

(B) the South Unit (285,095 acres), located approximately 15 miles east of the city of Porterville.

(6) COLORADO: COCHETOPA HILLS.—Certain land in the Gunnison Basin area, known as the ''Cochetopa Hills'', administered by the Gunnison National Forest, Grand Mesa National Forest, Uncompahgre National Forest, and Rio Grand National Forest, totaling approximately 500,000 acres, spanning the continental divide south and east of the city of Gunnison, in Saguache County, and including—

(A) Elk Mountain and West Elk Mountain;

(B) the Grand Mesa;

(C) the Uncompahgre Plateau;

(D) the northern San Juan Mountains;

(E) the La Garitas Mountains; and

(F) the Cochetopa Hills.

(7) GEORGIA.—

(A) ARMUCHEE CLUSTER.—Certain land in the Chattahoochee National Forest, Armuchee Ranger District, known as the ''Armuchee Cluster'', totaling approximately 19,700 acres, comprised of 3 parcels known as ''Rocky Face'', ''Johns Mountain'', and ''Hidden Creek'', located approximately 10 miles southwest of Dalton and 14 miles north of Rome, in Whitfield County, Walker County, Chattooga County, Floyd County, and Gordon County.

(B) BLUE RIDGE CORRIDOR CLUSTER, GEORGIA AREAS.—Certain land in the Chattahoochee National Forest, Chestatee Ranger District, totaling approximately 15,000 acres, known as the ''Blue Ridge Corridor Cluster, Georgia Areas'', comprised of 5 parcels known as ''Horse Gap'', ''Hogback Mountain'', ''Blackwell Creek'', ''Little Cedar Mountain'', and ''Black Mountain'', located approximately 15 to 20 miles north of the town of Dahlonega, in Union County and Lumpkin County.

(C) CHATTOOGA WATERSHED CLUSTER, GEORGIA AREAS.—Certain land in the Chattahoochee National Forest, Tallulah Ranger District, totaling 63,500 acres, known as the ''Chattooga Watershed Cluster, Georgia Areas'', comprised of 7 areas known as ''Rabun Bald'', ''Three Forks'', ''Ellicott Rock Extension'', ''Rock Gorge'', ''Big Shoals'', ''Thrift's Ferry'', and ''Five Falls'', in Rabun County, near the towns of Clayton, Georgia, and Dillard, South Carolina.

(D) COHUTTA CLUSTER.—Certain land in the Chattahoochee National Forest, Cohutta Ranger District, totaling approximately 28,000 acres, known as the ''Cohutta Cluster'', comprised of 4 parcels known as ''Cohutta Extensions'', ''Grassy Mountain'', ''Emery Creek'', and ''Mountaintown'', near the towns of Chatsworth and Ellijay, in Murray County, Fannin County, and Gilmer County.

(E) DUNCAN RIDGE CLUSTER.—Certain land in the Chattahoochee National Forest, Brasstown and Toccoa Ranger Districts, totaling approximately 17,000 acres, known as the ''Duncan Ridge Cluster'', comprised of the parcels known as ''Licklog Mountain'', ''Duncan Ridge'', ''Board Camp'', and ''Cooper Creek Scenic Area Extension'', approximately 10 to 15 miles south of the town of Blairsville, in Union County and Fannin County.

(F) ED JENKINS NATIONAL RECREATION AREA CLUSTER.—Certain land in the Chattahoochee National Forest, Toccoa and Chestatee Ranger Districts, totaling approximately 19,300 acres, known as the ''Ed Jenkins National Recreation Area Cluster'', comprised of the Springer Mountain, Mill Creek, and Toonowee parcels, 30 miles north of the town of Dahlonega, in Fannin County, Dawson County, and Lumpkin County.

(G) GAINESVILLE RIDGES CLUSTER.—Certain land in the Chattahoochee National Forest, Chattooga Ranger District, totaling approximately 14,200 acres, known as the ''Gainesville Ridges Cluster'', comprised of 3 parcels known as ''Panther Creek'', ''Tugaloo Uplands'', and ''Middle Fork Broad River'', approximately 10 miles from the town of Toccoa, in Habersham County and Stephens County.

(H) NORTHERN BLUE RIDGE CLUSTER, GEORGIA AREAS.—Certain land in the Chattahoochee National Forest, Brasstown and Tallulah Ranger Districts, totaling approximately 46,000 acres, known as the ''Northern Blue Ridge Cluster, Georgia Areas'', comprised of 8 areas known as ''Andrews Cove'', ''Anna Ruby Falls Scenic Area Extension'', ''High Shoals'', ''Tray Mountain Extension'', ''Kelly Ridge-Moccasin Creek'', ''Buzzard Knob'', ''Southern Nantahala Extension'', and ''Patterson Gap'', approximately 5 to 15 miles north of Helen, 5 to 15 miles southeast of Hiawassee, north of Clayton, and west of Dillard, in White County, Towns County, and Rabun County.

(I) RICH MOUNTAIN CLUSTER.—Certain land in the Chattahoochee National Forest, Toccoa Ranger District, totaling approximately 9,500 acres, known as the ''Rich Mountain Cluster'', comprised of the parcels known as ''Rich Mountain Extension'' and ''Rocky Mountain'', located 10 to 15 miles northeast of the town of Ellijay, in Gilmer County and Fannin County.

(J) WILDERNESS HEARTLANDS CLUSTER, GEORGIA AREAS.—Certain land in the Chattahoochee National Forest, Chestatee, Brasstown and Chattooga Ranger Districts, totaling approximately 16,500 acres, known as the ''Wilderness Heartlands Cluster, Georgia Areas'', comprised of 4 parcels known as the ''Blood Mountain Extensions'', ''Raven Cliffs Extensions'', ''Mark Trail Extensions'', and ''Brasstown Extensions'', near the towns of Dahlonega, Cleveland, Helen, and Blairsville, in Lumpkin County, Union County, White County, and Towns County.

(8) IDAHO.—

(A) COVE/MALLARD.—Certain land in the Nez Perce National Forest, totaling approximately 94,000 acres, located approximately 30 miles southwest of the town of Elk City, and west of the town of Dixie, in the area generally known as ''Cove/Mallard''.

(B) MEADOW CREEK.—Certain land in the Nez Perce National Forest, totaling approximately 180,000 acres, located approximately 8 miles east of the town of Elk City in the area generally known as ''Meadow Creek''.

(C) FRENCH CREEK/PATRICK BUTTE.—Certain land in the Payette National Forest, totaling

approximately 141,000 acres, located approximately 20 miles north of the town of McCall in the area generally known as ''French Creek/Patrick Butte''.

(9) ILLINOIS.—

(A) CRIPPS BEND.—Certain land in the Shawnee National Forest, totaling approximately 39 acres, located in Jackson County in the Big Muddy River watershed, in the area generally known as ''Cripps Bend''.

(B) OPPORTUNITY AREA 6.—Certain land in the Shawnee National Forest, totaling approximately 50,000 acres, located in northern Pope County surrounding Bell Smith Springs Natural Area, in the area generally known as ''Opportunity Area 6''.

(C) QUARREL CREEK.—Certain land in the Shawnee National Forest, totaling approximately 490 acres, located in northern Pope County in the Quarrel Creek watershed, in the area generally known as ''Quarrel Creek''.

(10) MICHIGAN: TRAP HILLS.—Certain land in the Ottawa National Forest, Bergland Ranger District, totaling approximately 37,120 acres, known as the ''Trap Hills'', located approximately 5 miles from the town of Bergland, in Ontonagon County.

(11) MINNESOTA.—

(A) TROUT LAKE AND SUOMI HILLS.—Certain land in the Chippewa National Forest, totaling approximately 12,000 acres, known as ''Trout Lake/Suomi Hills'' in Itasca County.

(B) LULLABY WHITE PINE RESERVE.—Certain land in the Superior National Forest, Gunflint Ranger District, totaling approximately 2,518 acres, in the South Brule Opportunity Area, northwest of Grand Marais in Cook County, known as the ''Lullaby White Pine Reserve''.

(12) MISSOURI: ELEVEN POINT-BIG SPRINGS AREA.—Certain land in the Mark Twain National Forest, Eleven Point Ranger District, totaling approximately 200,000 acres, comprised of the administrative area of the Eleven Point Ranger District, known as the ''Eleven Point-Big Springs Area''.

(13) MONTANA: MOUNT BUSHNELL.—Certain land in the Lolo National Forest, totaling approximately 41,000 acres, located approximately 5 miles southwest of the town of Thompson Falls in the area generally known as ''Mount Bushnell''.

(14) NEW MEXICO.—

(A) ANGOSTURA.—Certain land in the eastern half of the Carson National Forest, Camino Real Ranger District, totaling approximately 10,000 acres, located in Township 21, Ranges 12 and 13, known as ''Angostura'', and bounded—

(i) on the northeast, by Highway 518;

(ii) on the southeast, by the Angostura Creek watershed boundary;

(iii) on the southern side, by Trail 19 and the Pecos Wilderness; and

(iv) on the west, by the Agua Piedra Creek watershed.

(B) LA MANGA.—Certain land in the western half of the Carson National Forest, El Rito Ranger District, at the Vallecitos Sustained Yield Unit, totaling approximately 5,400 acres, known as ''La Manga'', in Township 27, Range 6, and bounded—

(i) on the north, by the Tierra Amarilla Land Grant;

(ii) on the south, by Canada Escondida;

(iii) on the west, by the Sustained Yield Unit boundary and the Tierra Amarilla Land Grant; and

(iv) on the east, by the Rio Vallecitos.

(C) ELK MOUNTAIN.—Certain land in the Santa Fe National Forest, totaling approximately 7,220 acres, known as ''Elk Mountain'' located in Townships 17 and 18 and Ranges 12 and 13, and bounded—

(i) on the north, by the Pecos Wilderness;

(ii) on the east, by the Cow Creek Watershed;

(iii) on the west, by the Cow Creek; and

(iv) on the south, by Rito de la Osha.

(D) JEMEZ HIGHLANDS.—Certain land in the Jemez Ranger District of the Santa Fe National Forest, totaling approximately 54,400 acres, known as the ''Jemez Highlands'', located primarily in Sandoval County.

(15) NORTH CAROLINA.—

(A) CENTRAL NANTAHALA CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Nantahala National Forest, Tusquitee, Cheoah, and Wayah Ranger Districts, totaling approximately 107,000 acres, known as the ''Central Nantahala Cluster, North Carolina Areas'', comprised of 9 parcels known as ''Tusquitee Bald'', ''Shooting Creek Bald'', ''Cheoah Bald'', ''Piercy Bald'', ''Wesser Bald'', ''Tellico Bald'', ''Split White Oak'', ''Siler Bald'', and ''Southern Nantahala Extensions'', near the towns of Murphy, Franklin, Bryson City, Andrews, and Beechertown, in Cherokee County, Macon County, Clay County, and Swain County.

(B) CHATTOOGA WATERSHED CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Nantahala National Forest, Highlands Ranger District, totaling approximately 8,000 acres, known as the ''Chattooga Watershed Cluster, North Carolina Areas'', comprised of the Overflow (Blue Valley) and Terrapin Mountain parcels, 5 miles from the town of Highlands, in Macon County and Jackson County.

(C) TENNESSEE BORDER CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Nantahala National Forest, Tusquitee and Cheoah Ranger Districts, totaling approximately 28,000 acres, known as the ''Tennessee Border Cluster, North Carolina Areas'', comprised of the 4 parcels known as the ''Unicoi Mountains'', ''Deaden Tree'', ''Snowbird'', and ''Joyce Kilmer-Slickrock Extension'', near the towns of Murphy and Robbinsville, in Cherokee County and Graham County.

(D) BALD MOUNTAINS.—Certain land in the Pisgah National Forest, French Broad Ranger District, totaling approximately 13,000 acres known as the ''Bald Mountains'', located 12 miles northeast of the town of Hot Springs, in Madison County.

(E) BIG IVY TRACT.—Certain land in the Pisgah National Forest, totaling approximately 14,000 acres, located approximately 15 miles west of Mount Mitchell in the area generally known as the ''Big Ivy Tract''.

(F) BLACK MOUNTAINS CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Pisgah National Forest, Toecane and Grandfather Ranger Districts, totaling approximately 62,000 acres, known as the ''Black Mountains Cluster, North Carolina Areas'', comprised of 5 parcels known as ''Craggy Mountains'', ''Black Mountains'', ''Jarrett Creek'', ''Mackey Mountain'', and ''Woods Mountain'', near the towns of Burnsville, Montreat and Marion, in Buncombe County, Yancey County, and McDowell County.

(G) LINVILLE CLUSTER.—Certain land in the Pisgah National Forest, Grandfather District, totaling approximately 42,000 acres, known as the ''Linville Cluster'', comprised of 7 parcels known as ''Dobson Knob'', ''Linville Gorge Extension'', ''Steels Creek'', ''Sugar Knob'', ''Harper Creek'', ''Lost Cove'', and ''Upper Wilson Creek'', near the towns of Marion, Morgantown, Spruce Pine, Linville, and Blowing Rock, in Burke County, McDowell County, Avery County, and Caldwell County.

(H) NOLICHUCKY, NORTH CAROLINA AREA.—Certain land in the Pisgah National Forest, Toecane Ranger District, totaling approximately 4,000 acres, known as the ''Nolichucky, North Carolina Area'', located 25 miles northwest of Burnsville, in Mitchell County and Yancey County.

(I) PISGAH CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Pisgah National Forest, Pisgah Ranger District, totaling approximately 52,000 acres, known as the ''Pisgah Cluster, North Carolina Areas'', comprised of 5 parcels known as ''Shining Rock and Middle Prong Extensions'', ''Daniel Ridge'', ''Cedar Rock Mountain'', ''South Mills River'', and ''Laurel Mountain'', 5 to 12 miles north of the town of Brevard and southwest of the city of Asheville, in Haywood County, Transylvania County, and Henderson County.

(J) WILDCAT.—Certain land in the Pisgah National Forest, French Broad Ranger District, totaling approximately 6,500 acres, known as ''Wildcat'', located 20 miles northwest of the town of Canton, in Haywood County.

(16) OHIO.—

(A) ARCHERS FORK COMPLEX.—Certain land in the Marietta Unit of the Athens Ranger District, in the Wayne National Forest, in Washington County, known as ''Archers Fork Complex'', totaling approximately 18,350 acres, located northeast of Newport and bounded—

(i) on the northwest, by State Highway 26;

(ii) on the northeast, by State Highway 260;

(iii) on the southeast, by the Ohio River; and

(iv) on the southwest, by Bear Run and Danas Creek.

(B) BLUEGRASS RIDGE.—Certain land in the Ironton Ranger District on the Wayne National Forest, in Lawrence County, known as ''Bluegrass Ridge'', totaling approximately 4,000 acres, located 3 miles east of Etna in Township 4 North, Range 17 West, Sections 19 through 23 and 27 through 30.

(C) BUFFALO CREEK.—Certain land in the Ironton Ranger District of the Wayne National Forest, Lawrence County, Ohio, known as ''Buffalo Creek'', totaling approximately 6500 acres, located 4 miles northwest of Waterloo in Township 5 North, Ranger 17 West, sections 3 through 10 and 15 through 18.

(D) LAKE VESUVIUS.—Certain land in the Ironton Ranger District of the Wayne National Forest, in Lawrence County, totaling approximately 4,900 acres, generally known as ''Lake Vesuvius'', located to the east of Etna in Township 2 North, Range 18 West, and bounded—

(i) on the southwest, by State Highway 93; and

(ii) on the northwest, by State Highway 4.

(E) MORGAN SISTERS.—Certain land in the Ironton Ranger District of the Wayne National Forest, in Lawrence County, known as ''Morgan Sisters'', totaling approximately 2,500 acres, located 1 mile east of Gallia and bounded by State Highway 233 in Township 6 North, Range 17 West, sections 13, 14, 23 and 24 and Township 5 North, Range 16 West, sections 18 and 19.

(F) UTAH RIDGE.—Certain land in the Athens Ranger District of the Wayne National Forest, in Athens County, known as ''Utah Ridge'', totaling approximately 9,000 acres, located 1 mile northwest of Chauncey and bounded—

(i) on the southeast, by State Highway 682 and State Highway 13;

(ii) on the southwest, by US Highway 33 and State Highway 216; and

(iii) on the north, by State Highway 665.

(G) WILDCAT HOLLOW.—Certain land in the Athens Ranger District of the Wayne National Forest, in Perry County and Morgan County, known as ''Wildcat Hollow'', totaling approximately 4,500 acres, located 1 mile east of Corning in Township 12 North, Range 14 West, sections 1, 2, 11–14, 23 and 24 and Township 8 North, Range 13 West, sections 7, 18, and 19.

(17) OKLAHOMA: COW CREEK DRAINAGE, OKLAHOMA.—Certain land in the Ouachita National Forest, Mena Ranger District, in Le Flore County, totaling approximately 3,000 acres, known as ''Cow Creek Drainage, Oklahoma'', and bounded approximately—

(A) on the west, by the Beech Creek National Scenic Area;

(B) on the north, by State Highway 63;

(C) on the east, by the Arkansas-Oklahoma border; and

(D) on the south, by County Road 9038 on the south.

(18) OREGON: APPLEGATE WILDERNESS.—Certain land in the Siskiyou National Forest and Rogue River National Forest, totaling approximately 20,000 acres, approximately 20 miles southwest of the town of Grants Pass and 10 miles south of the town of Williams, in the area generally known as the ''Applegate Wilderness''.

(19) PENNSYLVANIA.—

(A) THE BEAR CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Elk County, totaling approximately 7,800 acres, and comprised of Allegheny National Forest land bounded—

(i) on the west, by Forest Service Road 136;

(ii) on the north, by Forest Service Roads 339 and 237;

(iii) on the east, by Forest Service Road 143; and

(iv) on the south, by Forest Service Road 135.

(B) THE BOGUS ROCKS SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 1,015 acres, and comprised of Allegheny National Forest land in compartment 714 bounded—

(i) on the northeast and east, by State Route 948;

(ii) on the south, by State Route 66;

(iii) 0n the southwest and west, by Township Road 370;

(iv) on the northwest, by Forest Service Road 632; and

(v) on the north, by a pipeline.

(C) THE CHAPPEL FORK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 10,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the south and southeast, by State Road 321;

(ii) on the south, by Chappel Bay;

(iii) on the west, by the Allegheny Reservoir;

(iv) on the north, by State Route 59; and

(v) on the east, by private land.

(D) THE FOOLS CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, Warren County, totaling approximately 1,500 acres, and comprised of Allegheny National Forest land south and west of Forest Service Road 255 and west of FR 255A, bounded—

(i) on the west, by Minister Road; and

(ii) on the south, by private land.

(E) THE HICKORY CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, Warren County, totaling approximately 2,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the east and northeast, by Heart's Content Road;

(ii) on the south, by Hickory Creek Wilderness Area;

(iii) on the northwest, by private land; and

(iv) on the north, by Allegheny Front National Recreation Area.

(F) THE LAMENTATION RUN SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 4,500 acres, and—

(i) comprised of Allegheny National Forest land bounded—

(I) on the north, by Tionesta Creek;

(II) on the east, by Salmon Creek;

(III) on the southeast and southwest, by private land; and

(IV) on the south, by Forest Service Road 210; and

(ii) including the lower reaches of Bear Creek.

(G) THE LEWIS RUN SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 500 acres, and comprised of Allegheny National Forest land north and east of Forest Service Road 312.3, including land known as the ''Lewis Run Natural Area'' and consisting of land within Compartment 466, Stands 1–3, 5–8, 10–14, and 18–27.

(H) THE MILL CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Elk County, totaling approximately 2,000 acres, and comprised of Allegheny National Forest land within a 1-mile radius of the confluence of Red Mill Run and Big Mill Creek and known as the ''Mill Creek Natural Area''.

(I) THE MILLSTONE CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 30,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by State Route 66;

(ii) on the northeast, by Forest Service Road 226;

(iii) on the east, by Forest Service Roads 130, 774, and 228;

(iv) on the southeast, by State Road 3002 and Forest Service Road 189;

(v) on the south, by the Clarion River; and

(vi) on the southwest, west, and northwest, by private land.

(J) THE MINISTER CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, Warren County, totalling approximately 6,600 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by a snowmobile trail;

(ii) on the east, by Minister Road;

(iii) on the south, by State Route 666 and private land;

(iv) on the southwest, by Forest Service Road 420; and

(v) on the west, by warrants 3109 and 3014.

(K) THE MUZETTE SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 325 acres, and comprised of Allegheny National Forest land bounded—

(i) on the west, by 79°16′ longitude, approximately;

(ii) on the north, by Forest Service Road 561;

(iii) on the east, by Forest Service Road 212; and

(iv) on the south, by private land.

(L) THE SUGAR RUN SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 8,800 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by State Route 346 and private land;

(ii) on the east, by Forest Service Road 137; and

(iii) on the south and west, by State Route 321.

(M) THE TIONESTA SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford and Marienville Ranger Districts, Elk, Forest, McKean, and Warren Counties, totalling approximately 27,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the west, by private land and State Route 948;

(ii) on the northwest, by Forest Service Road 258;

(iii) on the north, by Hoffman Farm Recreation Area and Forest Service Road 486;

(iv) on the northeast, by private land and State Route 6;

(v) on the east, by private land south to Forest Road 133, then by snowmobile trail from Forest Road 133 to Windy City, then by private land and Forest Road 327 to Russell City; and

(vi) on the southwest, by State Routes 66 and 948.

(20) SOUTH CAROLINA.—

(A) BIG SHOALS, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 2,000 acres, known as ''Big Shoals, South Carolina Area'', 15 miles south of Highlands, North Carolina.

(B) BRASSTOWN CREEK, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 3,500 acres, known as ''Brasstown Creek, South Carolina Area'', approximately 15 miles west of Westminster, South Carolina.

(C) CHAUGA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 16,000 acres, known as ''Chauga'', approximately 10 miles west of Walhalla, South Carolina.

(D) DARK BOTTOMS.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 4,000 acres, known as ''Dark Bottoms'', approximately 10 miles northwest of Westminster, South Carolina.

(E) ELLICOTT ROCK EXTENSION, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 2,000 acres, known as ''Ellicott Rock Extension, South Carolina Area'', located approximately 10 miles south of Cashiers, North Carolina.

(F) FIVE FALLS, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 3,500 acres, known as ''Five Falls, South Carolina Area'', approximately 10 miles southeast of Clayton, Georgia.

(G) PERSIMMON MOUNTAIN.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 7,000 acres, known as ''Persimmon Mountain'', approximately 12 miles south of Cashiers, North Carolina.

(H) ROCK GORGE, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 2,000 acres, known as ''Rock Gorge, South Carolina Area'', 12 miles southeast of Highlands, North Carolina.

(I) TAMASSEE.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 5,500 acres, known as ''Tamassee'', approximately 10 miles north of Walhalla, South Carolina.

(J) THRIFT'S FERRY, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 5,000 acres, known as ''Thrift's Ferry, South Carolina Area'', 10 miles east of Clayton, Georgia.

(21) SOUTH DAKOTA.—

(A) BLACK FOX AREA.—Certain land in the Black Hills National Forest, totaling approximately 12,400 acres, located in the upper

reaches of the Rapid Creek watershed, known as the ''Black Fox Area'', and roughly bounded—

(i) on the north, by FDR 206;

(ii) on the south, by the steep slopes north of Forest Road 231; and

(iii) on the west, by a fork of Rapid Creek.

(B) BREAKNECK AREA.—Certain land in the Black Hills National Forest, totaling 6,700 acres, located along the northeast edge of the Black Hills in the vicinity of the Black Hills National Cemetery and the Bureau of Land Management's Fort Meade Recreation Area, known as the ''Breakneck Area'', and generally—

(i) bounded by Forest Roads 139 and 169 on the north, west, and south; and

(ii) demarcated along the eastern and western boundaries by the ridge-crests dividing the watershed.

(C) NORBECK PRESERVE.—Certain land in the Black Hills National Forest, totaling approximately 27,766 acres, known as the ''Norbeck Preserve'', and encompassed approximately by a boundary that, starting at the southeast corner—

(i) runs north along FDR 753 and United States Highway Alt. 16, then along SD 244 to the junction of Palmer Creek Road, which serves generally as a northwest limit;

(ii) heads south from the junction of Highways 87 and 89;

(iii) runs southeast along Highway 87; and

(iv) runs east back to FDR 753, excluding a corridor of private land along FDR 345.

(D) PILGER MOUNTAIN AREA.—Certain land in the Black Hills National Forest, totaling approximately 12,600 acres, known as the ''Pilger Mountain Area'', located in the Elk Mountains on the southwest edge of the Black Hills, and roughly bounded—

(i) on the east and northeast, by Forest Roads 318 and 319;

(ii) on the north and northwest, by Road 312; and

(iii) on the southwest, by private land.

(E) STAGEBARN CANYONS.—Certain land in the Black Hills National Forest, known as ''Stagebarn Canyons'', totaling approximately 7,300 acres, approximately 10 miles west of Rapid City, South Dakota.

(22) TENNESSEE.—

(A) BALD MOUNTAINS CLUSTER, TENNESSEE AREAS.—Certain land in the Nolichucky and Unaka Ranger Districts of the Cherokee National Forest, in Cocke County, Green County, Washington County, and Unicoi County, totaling approximately 46,133 acres, known as the ''Bald Mountains Cluster, Tennessee Areas'', and comprised of 10 parcels known as ''Laurel Hollow Mountain'', ''Devil's Backbone'', ''Laurel Mountain'', ''Walnut Mountain'', ''Wolf Creek'', ''Meadow Creek Mountain'', ''Brush Creek Mountain'', ''Paint Creek'', ''Bald Mountain'', and ''Sampson Mountain Extension'', located near the towns of Newport, Hot Springs, Greeneville, and Erwin.

(B) BIG FROG/COHUTTA CLUSTER.—Certain land in the Cherokee National Forest, in Polk County, Ocoee Ranger District, Hiwassee Ranger District, and Tennessee Ranger District, totaling approximately 28,800 acres, known as the ''Big Frog/Cohutta Cluster'', comprised of 4 parcels known as ''Big Frog Extensions'', ''Little Frog Extensions'', ''Smith Mountain'', and ''Rock Creek'', located near the towns of Copperhill, Ducktown, Turtletown, and Benton.

(C) CITICO CREEK WATERSHED CLUSTER TENNESSEE AREAS.—Certain land in the Tellico Ranger District of the Cherokee National Forest, in Monroe County, totaling approximately 14,256 acres, known as the ''Citico Creek Watershed Cluster, Tennessee Areas'', comprised of 4 parcels known as ''Flats Mountain'', ''Miller Ridge'', ''Cowcamp Ridge'', and ''Joyce Kilmer-Slickrock Extension'', near the town of Tellico Plains.

(D) IRON MOUNTAINS CLUSTER.—Certain land in the Cherokee National Forest, Watauga Ranger District, totaling approximately 58,090 acres, known as the ''Iron Mountains Cluster'', comprised of 8 parcels known as ''Big Laurel Branch Addition'', ''Hickory Flat Branch'', ''Flint Mill'', ''Lower Iron Mountain'', ''Upper Iron Mountain'', ''London Bridge'', ''Beaverdam Creek'', and ''Rodgers Ridge'', located near the towns of Bristol and Elizabethton, in Sullivan County and Johnson County.

(E) NORTHERN UNICOI MOUNTAINS CLUSTER.—Certain land in the Tellico Ranger District of the Cherokee National Forest, in Monroe County, totaling approximately 30,453 acres, known as the ''Northern Unicoi Mountain Cluster'', comprised of 4 parcels known as ''Bald River Gorge Extension'', ''Upper Bald River'', ''Sycamore Creek'', and ''Brushy Ridge'', near the town of Tellico Plains.

(F) ROAN MOUNTAIN CLUSTER.—Certain land in the Cherokee National Forest, Unaka and Watauga Ranger Districts, totaling approximately 23,725 acres known as the ''Roan Mountain Cluster'', comprised of 7 parcels known as ''Strawberry Mountain'', ''Highlands of Roan'', ''Ripshin Ridge'', ''Doe River Gorge Scenic Area'', ''White Rocks Mountain'', ''Slide Hollow'' and ''Watauga Reserve'', approximately 8 to 20 miles south of the town of Elizabethton, in Unicoi County, Carter County, and Johnson County.

(G) SOUTHERN UNICOI MOUNTAINS CLUSTER.—Certain land in the Hiwassee Ranger District of the Cherokee National Forest, in Polk County, Monroe County, and McMinn County, totaling approximately 11,251 acres, known as the ''Southern Unicoi Mountains Cluster'', comprised of 3 parcels known as ''Gee Creek Extension'', ''Coker Creek'', and ''Buck Bald'', near the towns of Etowah, Benton, and Turtletown.

(H) UNAKA MOUNTAINS CLUSTER, TENNESSEE AREAS.—Certain land in the Cherokee National Forest, Unaka Ranger District, totaling approximately 15,669 acres, known as the ''Unaka Mountains Cluster, Tennessee Areas'', comprised of 3 parcels known as ''Nolichucky'', ''Unaka Mountain Extension'', and ''Stone Mountain'', approximately 8 miles from Erwin, in Unicoi County and Carter County.

(23) TEXAS: LONGLEAF RIDGE.—Certain land in the Angelina National Forest, in Jasper County and Angelina County, totaling approximately 30,000 acres, generally known as ''Longleaf Ridge'', and bounded—

(A) on the west, by Upland Island Wilderness Area;

(B) on the south, by the Neches River; and

(C) on the northeast, by Sam Rayburn Reservoir.

(24) VERMONT.—

(A) GLASTENBURY AREA.—Certain land in the Green Mountain National Forest, totaling approximately 35,000 acres, located 3 miles northeast of Bennington, generally known as the ''Glastenbury Area'', and bounded—

(i) on the north, by Kelly Stand Road;

(ii) on the east, by Forest Road 71;

(iii) on the south, by Route 9; and

(iv) on the west, by Route 7.

(B) LAMB BROOK.—Certain land in the Green Mountain National Forest, totaling approximately 5,500 acres, located 3 miles southwest of Wilmington, generally known as ''Lamb Brook'', and bounded—

(i) on the west, by Route 8;

(ii) on the south, by Route 100;

(iii) on the north, by Route 9; and

(iv) on the east, by land owned by New England Power Company.

(C) ROBERT FROST MOUNTAIN AREA.—Certain land in the Green Mountain National Forest, totaling approximately 8,500 acres, known as ''Robert Frost Mountain Area'', located northeast of Middlebury, consisting of the Forest Service land bounded—

(i) on the west, by Route 116;

(ii) on the north, by Bristol Notch Road;

(iii) on the east, by Lincoln/Ripton Road; and

(iv) on the south, by Route 125.

(25) VIRGINIA.—

(A) BEAR CREEK.—Certain land in the Jefferson National Forest, Wythe Ranger District, known as ''Bear Creek'', north of Rural Retreat, in Smyth County and Wythe County.

(B) CAVE SPRINGS.—Certain land in the Jefferson National Forest, Clinch Ranger District, totaling approximately 3,000 acres, known as ''Cave Springs'', between State Route 621 and the North Fork of the Powell River, in Lee County.

(C) DISMAL CREEK.—Certain land totaling approximately 6,000 acres, in the Jefferson National Forest, Blacksburg Ranger District, known as ''Dismal Creek'', north of State Route 42, in Giles County and Bland County.

(D) STONE COAL CREEK.—Certain land in the Jefferson National Forest, New Castle Ranger District, totaling approximately 2,000 acres, known as ''Stone Coal Creek'', in Craig County and Botetourt County.

(E) WHITE OAK RIDGE: TERRAPIN MOUNTAIN.—Certain land in the Glenwood Ranger District of the Jefferson National Forest, known as ''White Oak Ridge—Terrapin Mountain'', totaling approximately 8,000 acres, east of the Blue Ridge Parkway, in Botetourt County and Rockbridge County.

(F) WHITETOP MOUNTAIN.—Certain land in the Jefferson National Forest, Mt. Rodgers Recreation Area, totaling 3,500 acres, known as ''Whitetop Mountain'', in Washington County, Smyth County, and Grayson County.

(G) WILSON MOUNTAIN.—Certain land known as ''Wilson Mountain'', in the Jefferson National Forest, Glenwood Ranger District, totaling approximately 5,100 acres, east of Interstate 81, in Botetourt County and Rockbridge County.

(H) FEATHERCAMP.—Certain land in the Mt. Rodgers Recreation Area of the Jefferson National Forest, totaling 4,974 acres, known as ''Feathercamp'', located northeast of the town of Damascus and north of State Route 58 on the Feathercamp ridge, in Washington County.

(26) WISCONSIN.—

(A) FLYNN LAKE.—Certain land in the Chequamegon-Nicolet National Forest, Washburn Ranger District, totaling approximately 5,700 acres, known as ''Flynn Lake'', in the Flynn Lake semi-primitive nonmotorized area, in Bayfield County.

(B) GHOST LAKE CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Great Divide Ranger District, totaling approximately 6,000 acres, known as ''Ghost Lake Cluster'', including 5 parcels known as ''Ghost Lake'', ''Perch Lake'', ''Lower Teal River'', ''Foo Lake'', and ''Bulldog Springs'', in Sawyer County.

(C) LAKE OWENS CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Great Divide and Washburn Ranger Districts, totaling approximately 3,600 acres, known as ''Lake Owens Cluster'', comprised of parcels known as ''Lake Owens'', ''Eighteenmile Creek'', ''Northeast Lake'', and ''Sugarbush Lake'', in Bayfield County.

(D) MEDFORD CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Medford-Park Falls Ranger District, totaling approximately 23,000 acres, known as the ''Medford Cluster'', comprised of 12 parcels known as ''County E Hardwoods'', ''Silver Creek/Mondeaux River Bottoms'', ''Lost Lake

Esker'', ''North and South Fork Yellow Rivers'', ''Bear Creek'', ''Brush Creek'', ''Chequamegon Waters'', ''John's and Joseph Creeks'', ''Hay Creek Pine-Flatwoods'', ''558 Hardwoods'', ''Richter Lake'', and ''Lower Yellow River'', in Taylor County.

(E) PARK FALLS CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Medford-Park Falls Ranger District, totaling approximately 23,000 acres, known as ''Park Falls Cluster'', comprised of 11 parcels known as ''Sixteen Lakes'', ''Chippewa Trail'', ''Tucker and Amik Lakes'', ''Lower Rice Creek'', ''Doering Tract'', ''Foulds Creek'', ''Bootjack Conifers'', ''Pond'', ''Mud and Riley Lake Peatlands'', ''Little Willow Drumlin'', and ''Elk River'', in Price County and Vilas County.

(F) PENOKEE MOUNTAIN CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Great Divide Ranger District, totaling approximately 23,000 acres, known as ''Penokee Mountain Cluster'', comprised of—

(i) the Marengo River and Brunsweiler River semi-primitive nonmotorized areas; and

(ii) parcels known as ''St. Peters Dome'', ''Brunsweiler River Gorge'', ''Lake Three'', ''Hell Hole Creek'', and ''North Country Trail Hardwoods'', in Ashland County and Bayfield County.

(G) SOUTHEAST GREAT DIVIDE CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Medford Park Falls Ranger District, totaling approximately 25,000 acres, known as the ''Southeast Great Divide Cluster'', comprised of parcels known as ''Snoose Lake'', ''Cub Lake'', ''Springbrook Hardwoods'', ''Upper Moose River'', ''East Fork Chippewa River'', ''Upper Torch River'', ''Venison Creek'', ''Upper Brunet River'', ''Bear Lake Slough'', and ''Noname Lake'', in Ashland County and Sawyer County.

(H) DIAMOND ROOF CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Lakewood-Laona Ranger District, totaling approximately 6,000 acres, known as ''Diamond Roof Cluster'', comprised of 4 parcels known as ''McCaslin Creek'', ''Ada Lake'', ''Section 10 Lake'', and ''Diamond Roof'', in Forest County, Langlade County, and Oconto County.

(I) ARGONNE FOREST CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Eagle River-Florence Ranger District, totaling approximately 12,000 acres, known as ''Argonne Forest Cluster'', comprised of parcels known as ''Argonne Experimental Forest'', ''Scott Creek'', ''Atkins Lake'', and ''Island Swamp'', in Forest County.

(J) BONITA GRADE.—Certain land in the Chequamegon-Nicolet National Forest, Lakewood-Laona Ranger District, totaling approximately 1,200 acres, known as ''Bonita Grade'', comprised of parcels known as ''Mountain Lakes'', ''Temple Lake'', ''Second South Branch'', ''First South Branch'', and ''South Branch Oconto River'', in Langlade County.

(K) FRANKLIN AND BUTTERNUT LAKES CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Eagle River-Florence Ranger District, totaling approximately 12,000 acres, known as ''Franklin and Butternut Lakes Cluster'', comprised of 8 parcels known as ''Bose Lake Hemlocks'', ''Luna White Deer'', ''Echo Lake'', ''Franklin and Butternut Lakes'', ''Wolf Lake'', ''Upper Ninemile'', ''Meadow'', and ''Bailey Creeks'', in Forest County and Oneida County.

(L) LAUTERMAN LAKE AND KIEPER CREEK.—Certain land in the Chequamegon-Nicolet National Forest, Eagle River-Florence Ranger District, totaling approximately 2,500 acres, known as ''Lauterman Lake and Kieper Creek'', in Florence County.

(27) WYOMING: SAND CREEK AREA.—

(A) IN GENERAL.—Certain land in the Black Hills National Forest, totaling approximately 8,300 acres known as the ''Sand Creek area'', located in Crook County, in the far northwest corner of the Black Hills.

(B) BOUNDARY.—Beginning in the northwest corner and proceeding counterclockwise, the boundary for the Sand Creek Area roughly follows—

(i) forest Roads 863, 866, 866.1B;

(ii) a line linking forest roads 866.1B and 802.1B;

(iii) forest road 802.1B;

(iv) forest road 802.1;

(v) an unnamed road;

(vi) Spotted Tail Creek (excluding all private land);

(vii) forest road 829.1;

(viii) a line connecting forest roads 829.1 and 864;

(ix) forest road 852.1; and

(x) a line connecting forest roads 852.1 and 863.

(d) COMMITTEE OF SCIENTISTS.—

(1) ESTABLISHMENT.—The Secretaries concerned shall appoint a committee consisting of scientists who—

(A) are not officers or employees of the Federal Government;

(B) are not officers or employees of any entity engaged in whole or in part in the production of wood or wood products; and

(C) have not contracted with or represented any entity described in subparagraph (A) or (B) in a period beginning 5 years before the date on which the scientist is appointed to the committee.

(2) RECOMMENDATIONS FOR ADDITIONAL SPECIAL AREAS.—Not later than 2 years of the date of the enactment of this Act, the committee shall provide Congress with recommendations for additional special areas.

(3) CANDIDATE AREAS.—Candidate areas for recommendation as additional special areas shall have outstanding biological values that are exemplary on a local, regional, and national level, including the presence of—

(A) threatened or endangered species of plants or animals;

(B) rare or endangered ecosystems;

(C) key habitats necessary for the recovery of endangered or threatened species;

(D) recovery or restoration areas of rare or underrepresented forest ecosystems;

(E) migration corridors;

(F) areas of outstanding biodiversity;

(G) old growth forests;

(H) commercial fisheries; and

(I) sources of clean water such as key watersheds.

(4) GOVERNING PRINCIPLE—The committee shall adhere to the principles of conservation biology in identifying special areas based on biological values.

SEC. 204. RESTRICTIONS ON MANAGEMENT ACTIVITIES IN ANCIENT FORESTS, ROADLESS AREAS, WATERSHED PROTECTION AREAS, AND SPECIAL AREAS.

(a) RESTRICTION OF MANAGEMENT ACTIVITIES IN ANCIENT FORESTS.—On Federal land located in Ancient forests—

(1) no roads shall be constructed or reconstructed;

(2) no extractive logging shall be permitted; and

(3) no improvements for the purpose of extractive logging shall be permitted.

(b) RESTRICTION OF MANAGEMENT ACTIVITIES IN ROADLESS AREAS.—On Federal land located in roadless areas (except military installations)—

(1) no roads shall be constructed or reconstructed;

(2) no extractive logging shall be permitted except of non-native invasive tree species, in which case the limitations on logging in title I shall apply; and

(3) no improvements for the purpose of extractive logging shall be permitted.

(c) RESTRICTION OF MANAGEMENT ACTIVITIES IN WATERSHED PROTECTION AREAS.—On Federal land located in watershed protection areas—

(1) no roads shall be constructed or reconstructed;

(2) no extractive logging shall be permitted except of non-native invasive tree species, in which case the limitations on logging in title I shall apply; and

(3) no improvements for the purpose of extractive logging shall be permitted.

(d) RESTRICTION OF MANAGEMENT ACTIVITIES IN SPECIAL AREAS.—On Federal land located in special areas—

(1) no roads shall be constructed or reconstructed;

(2) no extractive logging shall be permitted except of non-native invasive tree species, in which case the limitations on logging in title I shall apply; and

(3) no improvements for the purpose of extractive logging shall be permitted.

(e) MAINTENANCE OF EXISTING ROADS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the restrictions described in subsection (a) shall not prohibit the maintenance of an improved road, or any road accessing private inholdings.

(2) ABANDONED ROADS.—Any road that the Secretary determines to have been abandoned before the date of enactment of this Act shall not be maintained or reconstructed.

(f) ENFORCEMENT.—

(1) FINDING.—Congress finds that all people of the United States are injured by actions on land to which this section applies.

(2) PURPOSE.—The purpose of this subsection is to foster the widest possible enforcement of this section.

(3) FEDERAL ENFORCEMENT.—The Secretary and the Attorney General of the United States shall enforce this section against any person that violates this section.

(4) CITIZEN SUITS.—

(A) IN GENERAL.—A citizen harmed by a violation of this section may enforce this section by bringing a civil action for a declaratory judgment, a temporary restraining order, an injunction, statutory damages, or other remedy against any alleged violator, including the United States, in any district court of the United States.

(B) JUDICIAL RELIEF.—If a district court of the United States determines that a violation of this section has occurred, the district court—

(i) shall impose a damage award of not less than $5,000;

(ii) may issue 1 or more injunctions or other forms of equitable relief; and

(iii) shall award to each prevailing party the reasonable costs of bringing the action, including attorney's fees, witness fees, and other necessary expenses.

(C) STANDARD OF PROOF.—The standard of proof in all actions under this paragraph shall be the preponderance of the evidence.

(D) TRIAL.—A trial for any action under this section shall be de novo.

(E) PAYMENT OF DAMAGES.—

(i) NON-FEDERAL VIOLATOR.—A damage award under subparagraph (B)(i) shall be paid by a non-Federal violator or violators designated by the court to the Treasury.

(ii) FEDERAL VIOLATOR.—

(I) IN GENERAL.—Not later than 40 days after the date on which judgment is rendered, a damage award under subparagraph (B)(i) for which the United States is determined to be liable shall be paid from the Treasury, as provided under section 1304 of title 31, United States Code, to the person or persons designated to receive the damage award.

(II) USE OF DAMAGE AWARD.—A damage award described under subclause (I) shall be used by the recipient to protect or restore native biodiversity on Federal land or on land adjoining Federal land.

(III) COURT COSTS.—Any award of costs of litigation and any award of attorney fees shall be paid by a Federal violator not later than 40 days after the date on which judgment is rendered.

(5) WAIVER OF SOVEREIGN IMMUNITY.—

(A) IN GENERAL.—The United States (including agents and employees of the United States) waives its sovereign immunity in all respects in all actions under this section.

(B) NOTICE.—No notice is required to enforce this subsection.

TITLE III—EFFECTIVE DATE

SEC. 301. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on the date of enactment of this Act.

SEC. 302. EFFECT ON EXISTING CONTRACTS.

This Act and the amendments made by this Act shall not apply to any contract for the sale of timber that was entered into on or before the date of enactment of this Act.

SEC. 303. WILDERNESS ACT EXCLUSION.

This Act and the amendments made by this Act shall not apply to any Federal wilderness area designated under the Wilderness Act (16 U.S.C. 1131 et seq.).

By Mr. CORZINE:

S. 1942. A bill to require the President to submit to Congress a quarterly report on the projected total cost of United States operations in Iraq, including military operations and reconstruction efforts, through fiscal year 2008; through fiscal year 2008; to the Committee on Armed Services.

Mr. CORZINE. Mr. President, I am introducing today a bill that will ensure that we properly budget for what we are now learning will be a long and costly war in Iraq. This legislation, which requires the President to submit a report every 90 days on the projected total costs of military operations and reconstruction efforts to Iraq is identifcal to an amendment I offered to the supplemental appropriations bill to October. That announcement was agreed to by unanimously consent. Unfortunately, it was removed in conference.

In recent days, the Administration has finally begun to acknowledge what Secretary of Defense Donald Rumsfeld wrote in an internal memorandum last month: that Iraq will be a ''long, hard slog.'' This past Thursday, November 20, President Bush told us that quote, ''We could have less troops in Iraq, we could have the same number of troops in Iraq, we could have more troops in Iraq, whatever is necessary to secure Iraq.'' The following day, the New York Times, citing a ''senior Army officer,'' reported that the Army was planning to keep about 100,000 troops in Iraq through early 2006.

For over a year, this Administration has downplayed the costs of the war in Iraq. Last September, after White House economic advisor Lawrence Lindsay put the figure at between $100 billion and $200 billion, OMB Director Mitch Daniels insisted that that estimate was, quote: ''very, very high.'' Mr. Lindsay, whose candor reportedly cost him his job, was the Administration official to provide anything close to a realistic estimate. In December, Director Daniels put the figure at $50 billion to $60 billion. A few weeks later, Secretary of Defense Donald Rumsfeld told us that the war would cost under $50 billion.

As the Administration planned for war, it stopped making any public estimates at all. As Deputy Defense Secretary Wolfowitz said in February, quote: ''I think it's necessary to preserve some ambiguity of exactly where the numbers are.'' Administration officials also insisted repeatedly that Iraq would pay for its own reconstruction. To quote Deputy Secretary Wolfowitz again: ''There's a lot of money there, and to assume that we're going to pay for it is just wrong.''

The Administration failed to include any military or reconstruction costs in its Fiscal Year 2004 budget estimate, and refused to submit to Congress a budget amendment. As a result, we passed a budget resolution that included enormous, fiscally irresponsible tax cuts but no money for a war that was already upon us. Even after President Bush had issued his ultimatum to Saddam Hussein, the Administration, along with my Republican colleagues, opposed a series of efforts to put aside between $80 billion and $100 billion for the war. Only the following week, after the budget resolution was passed, did we receive the first supplemental request, for nearly $75 billion, of which nearly $60 billion was for defense and nearly two and a half billion was for the reconstruction of Iraq.

Even with the war having begun, the Administration continued to downplay the expected costs of reconstruction. On March 27, Deputy Secretary Wolfowitz stated, quote: ''We're dealing with a country that can really finance its own reconstruction, and relatively soon.'' And, on April 10, Secretary Rumsfeld said, quote: ''I don't know that there's much reconstruction to do.''

These reassurances were contradicted flatly by outside experts. In March, a panel led by former Nixon and Ford Secretary of Defense James Schlesinger estimated that the cost of post-war reconstruction would be at least $20 billion a year. The panel, which included the first President Bush's ambassador to the United Nations, Thomas Pickering, former Chairman of the Joint Chiefs of Staff John Shalikashvili, and former Reagan U.N. ambassador Jeanne Kirkpatrick, concluded that President Bush had failed, quote: ''to fully describe to Congress and the American people the magnitude of the resources that will be required to meet the post-conflict needs'' of Iraq.

But the Administration continued to insist otherwise. In April, USAID Administrator Andrew Natsios was asked whether the Administration was sticking to its estimate of total costs. He responded, quote: ''That is our plan and that is our intention. And these figures, outlandish figures I've seen, I have to say, there a little bit of hoopla involved in this. Three months later, OMB Director Josh Bolton promised, quote: ''We don't anticipate requesting anything additional for the balance of the year.''

Then we got the bill: a second supplemental request for $87 billion, of which more than $20 billion was for the reconstruction of Iraq.

This war—which I opposed—has been far more costly to the American taxpayer than was necessary. The Administration's blind assumption that we would be greeted as liberators has resulted in unnecessary costs. The failure to prevent looting, for example, or to anticipate sabotage, has made reconstruction more expensive than the Administration promised.

The Bush Administration's unilateral approach to the war has also cost U.S. taxpayers. It is worth remembering that while the first Persian Gulf War cost more than $61 billion, our allies paid for all but $4.7 billion. Had President Bush managed to enlist more of our friends and allies in this effort, the American taxpayer would not be footing this enormous bill practically alone.

We are also paying for the vast majority of reconstruction costs, and may be paying more in the future. The World Bank has estimated Iraq's reconstruction costs to be $56 billion. Iraq also has $120 billion in debts that have not yet been restructured. Outside contributions have been relatively meager. The recent donors' conference in Madrid produced pledges of $13 billion, but two thirds of that amount was in the form of loans. As for Iraqi oil, next year's revenues will be used entirely for government operations, leaving nothing for reconstruction.

It is long past time for the Administration to be more forthcoming about the future costs of operations in Iraq. Right now, the only estimates come from outside sources, such as the Congressional Budget Office, which earlier this month estimated that with 67,000 to 106,000 military personnel in Iraq, the annual cost of the occupation would be between $14 billion and $19 billion. Given recent revelations about the Army's current planning, we might now expect those upper range costs, at least through 2006. And even these figures seem low considering that we are now spending in Iraq at the rate of $4 billion a month, which would translate into $48 billion per year.

We cannot continue to play guessing games with the war in Iraq, our national defense, or our children's future. The Congressional Budget Office has estimated the Fiscal Year 2004 ''on-budget deficit'' to be $644 billion. We have serious domestic needs in everything from health care, to education, to the environment. We are not adequately protecting ourselves against terrorism, denying our first responders

the resources they need and leaving critical infrastructure such as chemical facilities unguarded. We are underfunding veterans' benefits at a time when thousands of new veterans are returning home from Iraq wounded and disabled. And we are overstretching our troops and may have to consider a significant increase in end-strength. All of these priorities are put at risk so long as we fail to budget for future costs of the war and occupation in Iraq.

The Senate clearly recognized the seriousness of this problem when it agreed unanimously last month to this legislation. There is simply no reason why we should not expect the Administration to plan for the future costs of the occupation of Iraq, to budget accordingly, and to keep Congress and the American people informed.

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. 1942

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 ''Future Iraq Costs Act''.

SEC. 2. REPORT ON PROJECTED TOTAL COST OF UNITED STATES OPERATIONS IN IRAQ.

(a) QUARTERLY REPORT.—Not later than 30 days after the date of the enactment of this Act, and every 90 days thereafter, the President shall submit to each Member of Congress a report on the projected total cost of United States operations in Iraq, including military operations and reconstruction efforts, through fiscal year 2008.

(b) EXPLANATION OF CHANGES IN PROJECTED COST.—The President shall include in each report submitted under subsection (a) after the initial report under that subsection an explanation for any change in the total projected total cost of United States operations in Iraq from the projected total cost of such operations stated in the preceding report.

(c) TERMINATION OF REPORTING REQUIREMENT IN FISCAL YEAR 2008.—No report is required under this section after December 31, 2007.

By Mr. ENSIGN (for himself, Mr. NELSON of Florida, Mr. COLEMAN, Mr. GRAHAM of South Carolina, Mr. CRAPO, Mr. REID, Mr. BAYH, Mr. EDWARDS, Mr. ALLARD, Mr. SMITH, Mr. ALLEN, and Mrs. BOXER):

S. 1944. A bill to enhance peace between the Israelis and Palestinians; to the Committee on Foreign Relations.

Mr. ENSIGN. Mr. President, a lot has changed in the climate of the Middle East since I was there in 1995, but unfortunately not enough has changed.

In 1995, the Oslo Accords were signed and suicide bombers detonated themselves on buses around Jerusalem. Eight years later, Israelis continue to face the daily threat of terrorism on their buses, in their grocery stores, in their restaurants, and in their cafes. For them, every single day is September 11. It's hard to imagine that kind of reality and the strength it takes to continue each day not knowing where the next attack will occur.

I think about September 11 here in the United States, and the shock many Americans felt—not just at the terrible loss of life, but the fact that terrorists had targeted our people here in our own country—where they live and work. I remember one commentator back then said—today, every American learned what it is like to be an Israeli.

We came together as a nation to comfort each other, but also to do whatever we could to prevent another attack on our soil and to eliminate the world of the evil terrorists who had targeted our innocent victims. In those moments and days that followed, leaders from around the world called to express their condolences. There were no calls to the United States to show restraint in responding to the terrorists. And it there were, they would have fallen on deaf ears. The world knew that President Bush and the United States would do whatever it took to keep our citizens safe. The security of our nation would always be our priority.

But when September 11 happens on a daily basis in Israel, the calls they get are not to express sympathy, but to urge restraint in responding to the attack. Not only is Israel criticized for doing exactly what the United States has done—respond to attacks against its citizens by going after the terrorists where they hide—Israel is even criticized for taking steps to secure its homeland security and prevent further attacks.

So where do we go from here?

Well, the legislation I am introducing with my colleagues, the junior Senator from Florida, focuses on the fact that Israel has a right to make the security of their country a priority and that such security is a major and enduring national security interest of the United States.

The bipartisan Israeli-Palestinian Peace Enhancement Act of 2003 contains strong, unequivocal expressions of the Senate's support for the President's June 24, 2002, speech and the vision of two states living side-by-side in peace and security.

However, it expresses the Senate's expectation that the Palestinian Authority must meet certain conditions before a Palestinian state is recognized, including: a leadership not compromised by terrorism; a firm commitment to peace with Israel; the dismantling of terrorist infrastructures in the West Bank and Gaza; sustained security cooperation with Israel; and an end to anti-Israel incitement.

It provides concrete, positive incentives for the Palestinians to achieve the reforms called for by President Bush and a negotiated peace with Israel by authorizing significant United States assistance, and a commitment to organize international assistance, to build the new state when it comes into being and has been recognized by the United States and Israel—conditions that can only occur in the absence of terrorism.

Ambiguous promises of non-aggression are not enough. Lasting peace means the absence of terror. Without legitimate guarantees for the security of the state of Israel, there can be no lasting peace in the region.

Words are cheap—and nowhere are they cheaper than in the Middle East. Until there is Palestinian leadership that is committed to eliminating the terrorist infrastructure, that is serious about making peace with Israel, and that envisions two states existing together, peace will not be known.

Who can we trust to support Israel in this hour of crisis?

Well, I believe we can trust President Bush. Particularly after September 11, the President understands thee can be no peace without security. He made that clear on June 24, 2002, when he gave an address in the Rose Garden that went above and beyond any other official United States position on the Middle East. He made clear that unless and until Israel has a trustworthy partner on the Palestinian side, there can be no lasting peace. And he emphasized that a Palestinian state could become a reality only after new leaders—not compromised by terror—were elected and a practicing democracy, based on tolerance and liberty was built.

That statement should be the road map to peace. That is why we have taken the principles the President laid out in his June 24 speech, and turned them into legislation.

In closing, I would like to thank the original cosponsors of the Israeli-Palestinian Peace Enhancement Act of 2003, including Senator BILL NELSON, Senator COLEMAN, Senator LINDSEY GRAHAM, Senator CRAPO, Senator REID, Senator BAYH, Senator EDWARDS, Senator ALLARD, Senator GORDON SMITH, Senator ALLEN, and Senator BOXER for joining me in working toward a lasting and true peace in the Middle East.

By Mr. CORZINE:

S. 1946. A bill to establish an independent national commission to examine and evaluate the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq and Operation Iraqi Freedom; to the Select Committee on Intelligence.

Mr. CORZINE. Mr. President, I am introducing today a bill to establish an independent, bipartisan commission to examine intelligence issues related to Iraq. This commission is necessary because what we have discovered on the ground in Iraq has shown our intelligence to be wrong. It is necessary because Administration officials misused intelligence—that is, they made public statements and submitted reports to Congress that the Administration knew at the time to be unsupported by the available intelligence. And it is necessary because inaccurate and misused intelligence played a role in leading us to war.

Accurate, objective, and credible intelligence is a fundamental cornerstone of our national security, particularly in an age of shadowy terrorist networks and clandestine weapons programs. Unless we improve our intelligence, we risk failing to identify serious threats to the United States and being distracted by lesser dangers at the expense of larger and more urgent security concerns.

This effort must include not only the collection and analysis of intelligence, but the use, reporting, and dissemination of intelligence assessments. If the American people are asked to go to war to preempt an attack, or—as in the case of Iraq—to prevent a possible future threat from emerging, it is critical that the public statements of our officials be supported by the available intelligence. If members of Congress are to consider authorizing the use of force, particularly against countries that have not attacked the United States, they must be provided with honest and complete intelligence. And if our allies are to be asked to join us in confronting these threats, the intelligence that we share with them and that we rely on to bolster our case must be credible in the eyes of the world.

I first proposed an independent commission to examine intelligence related to Iraq last summer, when it became clear that President Bush had made an important but unsubstantiated claim in his January 2002 State of the Union address. That claim was, quote: ''The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.''

Although this statement has been dismissed as the ''16 words,'' its significant cannot be overstated. The State of the Union address is the most important, the most scrutinized speech the President delivers. The statement concerned the most important topic a President can discuss—whether to send Americans to war. And this claim was the most important element of the President's argument for war: that there was evidence that Saddam Hussein might have the necessary materials to produce a nuclear bomb. As for the reference to the British government, it is hard to imagine how the use of the word ''learned'' could imply anything other than that the United States independently believed that the claim was true.

It turns out that the Bush Administration had ample reason to know at the time that what the President was telling the nation could not be substantiated. The CIA had sought to dissuade the White House from making claims about uranium purchases. And on February 5, a week after the State of the Union address, Secretary of State Powell made a presentation to the Untied Nations in which he omitted the claim precisely because it was not supported by the available intelligence.

Despite this knowledge, the Administration never issued a clarification. As a result, the President's statement stood, as an important element of the Administration's case for war. Only last summer, after Americans learned from Ambassador Joe Wilson and others what Administration officials knew at the time, did the Administration acknowledge that the uranium allegation should never have been included in the State of the Union Address.

The case generated outrage across party lines. Republicans as well as Democrats expressed serious concern about the credibility of the Administration and the country. They stressed that cabinet members, the vice president, and the entire administration are responsible for honestly representing intelligence. They called for someone in the Administration to be held accountable. The Senate passed a resolution by voice vote. The chairman of the Senate Intelligence Committee promised to undertake a, quote ''very aggressive review.'' And the Bush Administration insisted that it would cooperate. As White House spokesman Ari Fleischer stated on June 11, quote: ''The Administration welcomes the review. It's important.''

In July, when I first sought to establish this commission, there was no dispute that the use of intelligence, as well as the collection and analysis of intelligence, should be examined. Republicans who voted against the commission did so, they said, because the commission would intrude on the jurisdiction of the Intelligence Committee. I was, and remain supportive of efforts by the committee to look into the use of intelligence related to Iraq, an inquiry that is clearly included within the committee's jurisdiction. But it was and is my belief that an independent, bipartisan commission, building on the findings of Congressional and other investigations, could undertake the most thorough, depoliticized review possible.

Now, however, it seems an independent commission is the only remaining means left to examine the use, or misuse, of intelligence. On November 13, the Chairman of the Intelligence Committee announced that there would be no examination of how intelligence was used by policymakers. I deeply regret this decision by the chairman and fervently hope the committee will ultimately exercise its role, established in the resolution laying out its jurisdiction, in overseeing the, quote: ''use or dissemination'' of intelligence. In the meantime, I would expect that an independent commission would receive strong bipartisan support.

It is now beyond question that our intelligence on Iraq was inaccurate. After months of searching, investigative teams have yet to find stockpiles of chemical or biological weapons. David Kay, who heads up the Iraqi Survey Group, has stated that Iraq's nuclear program was only at the, quote: ''very most rudimentary level.'' The Administration has yet to produce evidence of the high-level ties between Iraq and al Qaeda that it warned of prior to the war. And now, tragically, we must add to the list of intelligence failures the inability to anticipate the current resistance to U.S. occupation. Clearly, the facts and circumstances surrounding these failings warrant a detailed and systematic review.

But what of the use of intelligence? As important as the State of the Union address was, that speech was only part of a larger case made by the Administration for war. Administration officials made many claims—particularly those related to chemical and biological weapons—that were expressed in terms that were more specific and more certain than the intelligence may have supported. Most troubling, however, were the highly dubious assessments and suggestions related to nuclear programs and terrorism with which the Administration built its most powerful and emotionally potent argument. That argument had three elements: 1. That Iraq had a nuclear weapons program, and possibly even a nuclear weapon; 2. that Saddam Hussein was allied with al Qaeda, and that he may have been involved with the terrorist attacks of September 11; and 3. that the threat was imminent.

The Administration began to make its argument in the summer of 2002. As vice President Cheney stated in an August 26 speech, quote: ''Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction.'' In an indication of how Administration officials would make their case over the next seven months, the vice president insisted that the intelligence indicated no doubt, no internal disagreement, and no uncertainty.

Then, on September 12, President bush, in his speech to the United Nations, went further, stating, quote: ''right now, Iraq is expanding and improving facilities that were used for the production of biological weapons.'' the President also made two statements regarding Iraq's alleged nuclear program. The first was that Iraq had made, quote: ''several attempts to buy high-strength aluminum tubes used to enrich uranium for a nuclear weapon.'' He failed to mention that neither the Department of Energy nor the Department of State's Bureau of Intelligence and Research believed that the tubes were intended for that purpose. The President's second statement added the missing ingredient: the uranium itself. As the President stated, quote: ''Should Iraq acquire fissile material, it would be able to build a nuclear weapon within year.'' This was the context for the President's claim made in the State of the Union address that Iraq had sought to purchase uranium from Africa.

The Administration continued making its case throughout the fall of 2002, adding claims concerning ties between Saddam Hussein and al Qaeda. One of many examples was Secretary Rumsfeld's September 26 statement that the

Administration had, quote: ''very reliable reporting of senior level contacts going back a decade.''

As Congress deliberated whether to authorize the use of force against Iraq, the Administration officials made increasingly alarming statements about Iraq's ties to al Qaeda and about its nuclear weapons program. On October 7, three days before the vote in the House of Representatives and four days before the vote in the Senate, President Bush gave a speech in which he said, unequivocally, that, quote: ''We know that Iraq and al Qaeda have had high-level contacts that go back a decade,'' and, quote: ''The evidence indicates the Iraq is reconstituting its nuclear weapons program.'' He repeated the allegations about uranium tubes and the warning about purchases of uranium. Then the President put it all together—the implication that Iraq was connected to the September 11 attacks, the implication that Iraq could have a nuclear bomb at any time, and the warning that Saddam Hussein could decide on any day to explode a nuclear bomb in the United States. Here is what the President said: ''Why do we need to confront it [Saddam] now? And there's a reason. We've experienced the horror of September the 11th. We have seen that those who hate America are willing to crash airplanes into buildings full of innocent people. Our enemies would be no less willing, in fact, they would be eager, to use biological or chemical, or a nuclear weapon. Knowing these realities, America must not ignore the threat gathering against us. Facing clear evidence of peril, we cannot wait for the final proof—the smoking gun—that could come in the form of a mushroom cloud.''

This was the most powerful, dire, and convincing warning a President could give. And it was based on one inference that the President has acknowledged he never had any evidence of, that Saddam was tied to September 11, and another which had already been refuted by many within the Administration, that Iraq was reconstituting its nuclear program.

Later statements included Secretary of Defense Rumsfeld's claims to specific knowledge of the whereabouts and movements of biological and chemical weapons. On March 11, he stated, quote: ''We know he continues to hide biological and chemical weapons, moving them to different locations as often as every 12 to 24 hours, and placing them in residential neighborhoods.'' On March 30, he said, quote: ''We know where they are. They're in the area around Tikrit and Baghdad and east, west, south and north somewhat.''

The Administration also continued to insist that the threat was imminent—a claim that served to counter arguments that the United Nations should be given more time. On February 6, the day after Secretary of State Powell made his presentation to the UN, Secretary of Defense Rumsfeld made an appeal for immediate action. ''Why now?'' he asked. ''The answer is that every week that goes by, his weapons of mass destruction programs become more mature.'' That same day, Deputy Secretary Wolfowitz stated, quote: ''Connections with terrorists, which go back decades, and which started some 10 years ago with al Qaeda, are growing every day.''

Finally, on March 16, the day before President Bush's ultimatum to Saddam Hussein, Vice President CHENEY went beyond claims that Iraq had the intent to produce nuclear weapons, and even beyond the claims that Iraq was seeking centrifuge equipment or uranium. Rather, the vice president stated flatly, quote: ''We believe he has, in fact, reconstituted nuclear weapons.'' This assertion, which the vice president has recently acknowledged was a misstatement, was not corrected. Instead, it was allowed to stand as nearly the final word on why we were going to war.

Questions surrounding the Administration's use of intelligence extend beyond public statements, to include reports to and testimony before Congress. One example of unsubstantiated reporting was the January 20 report to Congress, mandated by the use of force resolution, that cited Iraq's failure to declare its, quote: ''attempts to acquire uranium and the means to enrich it''—the same unsubstantiated claim made in the President's State of the Union address.

This commission would be authorized to examine other intelligence issues related to Iraq, as well. The Administration made claims related to weapons delivery systems, including President Bush's assertion on October 7 that, quote: ''Iraq has a growing fleet of manned and unmanned aerial vehicles that could be used to disperse chemical or biological weapons across broad areas,'' and that Iraq could use them for, quote: ''missions targeting the United States.'' There has never been evidence that Iraq had UAVs with ranges of thousands of miles.

Administration officials made claims related to the occupation, including Vice President CHENEY's March 16 assertion that, quote: ''I really do believe that we will be greeted as liberators,'' and Deputy Defense Secretary Wolfowitz's November 17 analogy to, quote: ''post-liberation France.''

The Administration also downplayed the costs of the occupation. Despite White House economic advisor Lawrence Lindsey's estimate that the occupation would cost between $100 and $200 billion—an estimate for which he was apparently fired—Secretary of Defense Rumsfeld on January 19 put the figure at, quote: ''something under $50 billion,'' On February 27, Deputy Defense Secretary Wolfowitiz stated that, quote: ''there's a lot of money there, and to assume that we're going to pay for it is just wrong.'' And, on March 27, Deputy Secretary Wolfowitz stated, quote: ''We're dealing with a country that can really finance its own reconstruction, and relatively soon.''

The independent commission I propose would be authorized to examine the relationship between policy makers and the intelligence community. Were members of the intelligence community pressured to produce analyses that conformed to the Administration's policies? Did Administration officials seek to bypass the normal analysis process by cherry-picking bits of intelligence that suited their agenda, through the Office of Special Plans in the Department of Defense or through other special or ad hoc arrangements? Did the Administration base its analyses on foreign intelligence sources of dubious credibility? These questions must be answered, and corrective measures undertaken, if our intelligence community is to be as effective and objective as we need it to be.

Perhaps the most egregious undermining, indeed betrayal, of the intelligence community was the identification by senior Administration officials of a covert CIA operative. The operative is the spouse of a person who has been called a national hero by President George H.W. Bush but who questioned the current Administration's statements regarding Iraq. The leak of this operative's identity sent an implicit warning to others in the intelligence community who might disagree with the Administration's positions. It potentially endanged the life of the operative and those with whom the operative worked. And it rendered the operative's skills, experience and sources permanently useless, thus wasting precisely the kind of intelligence asset that the United States so desperately needs right now.

The purpose of this commission is to identify ways in which we can learn from past mistakes and thus improve our collection, analysis, reporting, use and dissemination of intelligence. The commission's members, who will come from both parties, will be prominent Americans with experience in intelligence, the armed forces and other relevant areas. Their work will build on relevant Congressional and other investigations.

The commission, through an objective, independent, highly professional examination process, will help depoliticize an extremely complicated and sensitive topic. By reviewing intelligence related to Iraq beginning in 1998, it will draw conclusions about the use of intelligence by a Democratic as well as Republican Administration. And by reporting its recommendations directly to the President and to Congress, it will serve as a valuable resource outside the context of open political debate. In this respect, I disagree with the Chairman of the Intelligence Committee who has stated that the full Congress and the public could ''decide for themselves whether the intelligence was accurately represented by government officials.''

This issue is far too serious to simply ignore. Over one hundred thousand brave Americans are currently serving

in Iraq, facing challenges that require accurate and objective intelligence. We have an obligation to pursue every opportunity to improve that intelligence. Meanwhile, the United States faces other threats—from despotic regimes with nuclear, chemical, or biological weapons, from terrorism, and from the horrible possibility that terrorists could acquire these weapons. Our ability to confront these threats requires that our intelligence be accurate and objective. And, as we seek to enlist our friends and allies in our efforts to address these common threats, we must ensure that our intelligence is credible.

Unless we identify and correct the mistakes of the past, we will not be safer.

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. 1946

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 ''Independent Iraq Intelligence Commission Act''.

SEC. 2. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Iraq Intelligence (in this Act referred to as the ''Commission'').

SEC. 3. PURPOSES.

The purposes of the Commission are as follows:

(1) To examine and evaluate the performance of the United States intelligence community with respect to the collection of intelligence, and the quality of intelligence obtained, on the weapons of mass destruction and related delivery systems capabilities of Iraq in the period from 1998 until the conclusion of military operations against Iraq under Operation Iraqi Freedom.

(2) To examine and evaluate the performance of the United States intelligence community with respect to the collection of intelligence, and the quality of intelligence obtained, on the connections and support, if any, of Iraq with and for the plans and intentions of terrorist groups to attack the United States or United States interests abroad during the period referred to in paragraph (1).

(3) To examine and evaluate the performance of the United States intelligence community with respect to the collection of intelligence, and the quality of intelligence obtained, during and after the period referred to in paragraph (1), on matters relating to—

(A) the conduct of military and intelligence operations against Iraq;

(B) the search for and securing of weapons of mass destruction, related delivery systems capabilities, and conventional weapons in Iraq; and

(C) the military, political, and economic aspects of the occupation of Iraq.

(4) To examine and evaluate the quality of the analysis by the United States intelligence community of the available intelligence related to the matters referred to in paragraphs (1) through (3), including intelligence from foreign intelligence services, that served as a basis during the period referred to in paragraph (1) for—

(A) reports, testimony, and presentations to policymakers in the Executive Branch and Congress, and to United Nations bodies and other consumers; and

(B) assessments that were used or disseminated by the Executive Branch.

(5) To examine and evaluate the effect, if any, on the United States intelligence community of the actions of Executive Branch officials regarding the collection, analysis, and reporting on intelligence matters referred to in paragraphs (1) through (3).

(6) To examine and evaluate the relevant facts and circumstances relating to the use and dissemination by Executive Branch officials of intelligence and intelligence analyses underlying assessment of intelligence matters referred to in paragraphs (1) through (3) during the period referred to in paragraph (1), including assessments contained in public speeches, statements, and interviews, reports to and testimony before Congress, and communications with and reports and presentations to United Nations bodies.

(7) To build on the investigations of other entities, and avoid unnecessary duplication, by reviewing the work, findings, conclusions, and recommendations of other Executive Branch, Congressional, or independent commission investigations into the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq by the United States.

(8) Based on the examinations and evaluations under paragraphs (1) through (6) and the work, findings, conclusions, and recommendations of other investigations referred to in paragraph (7), to identify corrective measures to improve the collection, analysis, reporting, use, and dissemination of intelligence by the Executive Branch, and to report to the President and Congress on the examinations, evaluations, findings, and conclusions of the Commission and on the recommendations of the Commission with respect to such corrective measures.

SEC. 4. COMPOSITION OF COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 1 member shall be appointed by the President, who shall serve as co-chairman of the Commission;

(2) 1 member shall be appointed by the leader of the Senate (majority or minority leader, as the case may be) of the Democratic Party, in consultation with the leader of the House of Representatives (majority or minority leader, as the case may be) of the Democratic Party, who shall serve as co-chairman of the Commission;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party;

(4) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Republican Party;

(5) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party; and

(6) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party.

(b) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, the armed services, law, intelligence, and foreign affairs.

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than one month after the date of the enactment of this Act.

(5) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the joint call of the co-chairmen or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 5. FUNCTIONS OF COMMISSION.

The functions of the Commission are—

(1) to conduct an investigation into the relevant facts and circumstances relating to the collection, analysis, reporting, use, and dissemination by the United States intelligence community and others in the Executive Branch of intelligence relating to Iraq and Operation Iraqi Freedom, including—

(A) an examination and evaluation of the quantity and quality of United States intelligence underlying assessments made during the period referred to in section 3(1) of—

(i) weapons of mass destruction and delivery systems capabilities of Iraq;

(ii) connections and support, if any, of Iraq with and for the plans and intentions of terrorist groups to attack the United States or United States interests abroad;

(B) an examination and evaluation of the quantity and quality of United States intelligence underlying assessments made during after the period referred to in section 3(1) on intelligence matters relating to—

(i) the conduct of military and intelligence operations against Iraq;

(ii) the search for and securing of weapons of mass destruction, related delivery systems capabilites, and conventional weapons in Iraq; and

(iii) the military, political, and economic aspects of the occupation of Iraq;

(C) an examination and evaluation regarding whether the analytical judgments in the assessments referred to in subparagraphs (A) and (B) were thorough, timely, objective, independent, and reasonable, based upon intelligence collection;

(D) an examination and evaluation of the accuracy of the assessments referred to in subparagraphs (A) and (B) when compared with the results of the investigative efforts of the Iraq Survey Group and other relevant Executive Branch and Congressional entities, and with relevant assessments of the United Nations and other multilateral bodies, foreign governments, nongovernmental organizations, and other institutions and individuals;

(E) an examination and evaluation of the quality of the intelligence on Iraq that was provided to the United States intelligence community and Executive Branch policymakers, including by foreign intelligence services, that served as a basis during the period referred to in section 3(1) for—

(i) reports, testimony, and presentations to policymakers in the Executive Branch and Congress, and to United Nations bodies and other consumers; and

(ii) assessments that were used or disseminated by the Executive Branch;

(F) a determination of the extent, if any, to which elements of the United States intelligence community were inappropriately pressured by members of the Executive Branch to produce intelligence consistent with such members policy objectives, and of the extent, if any, to which intelligence was manipulated or misrepresented by members of the Executive Branch or elements under their control;

(G) an assessment of the extent to which Congress was kept fully and currently informed about intelligence related to Iraq and Operation Iraqi Freedom;

(H) a determination of the extent to which the intelligence of the United States intelligence community, and of the United States Armed Forces and coalition forces, were sufficiently accurate, thorough, timely, objective, and independent to prepare such forces to conduct effective military and intelligence operations against Iraq, including the search for and securing of weapons of mass destruction and conventional weapons in Iraq, and to prepare such forces and other United States and coalition entities to successfully carry out the military, political, and economic aspects of the occupation of Iraq; and

(I) an examination, evaluation, and assessment of such other related facts and circumstances that the Commission considers appropriate;

(2) to identify, review, and evaluate the lessons learned from issues related to the collection, analysis, reporting, use, and dissemination of intelligence relating to Iraq and Operation Iraqi Freedom;

(3) to investigate the facts and circumstances relating to disclosures, if any, by Executive Branch officials of the identify of a covert Central Intelligence Agency official; and

(4) to submit to the President and Congress the reports provided for by section 11.

SEC. 6. POWERS OF COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this Act—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) subject to paragraph (2)(A), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—

(i) IN GENERAL.—A subpoena may be issued under this subsection only—

(I) by the joint agreement of the co-chairmen; or

(II) by the affirmative vote of 5 members of the Commission.

(ii) SIGNATURE.—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of a co-chairman or any member designated by 5 members of the Commission, and may be served by any person designated by a co-chairman or by a member designated by 5 members of the Commission.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this Act.

(c) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Commission may secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this Act. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by a co-chairman, the chairman or co-chairman of any subcommittee created by 5 members of the Commission, or any member designated by 5 members of the Commission.

(2) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 7. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

(a) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(b) PUBLIC MEETINGS AND RELEASE OF PUBLIC VERSIONS OF REPORTS.—The Commission shall—

(1) hold public hearings and meetings to the extent appropriate; and

(2) release public versions of the reports provided for by subsections (a) and (b) of section 11.

(c) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

SEC. 8. STAFF OF COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The co-chairmen, acting jointly and in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 9. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 10. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this Act without the appropriate security clearances.

SEC. 11. REPORTS OF COMMISSION; TERMINATION.

(a) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such examinations, evaluations, findings, and conclusions of the Commission, and such recommendations with respect to corrective measures (including changes in policies, practices, organizational structures, and arrangements), as have been agreed to by a majority of Commission members.

(b) FINAL REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to the President and Congress a final report containing such examinations, evaluations, findings, and conclusions of the Commission, and such recommendations with respect to corrective measures (including changes in

policies, practices, organizational structures, and arrangements), as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this Act, shall terminate 60 days after the date on which the final report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

SEC. 12. FUNDING.

(a) IN GENERAL.—Of the amounts authorized to be appropriated for the intelligence and intelligence-related activities of the United States Government for fiscal year 2004, $15,000,000 shall be available for transfer to the Commission for purposes of the activities of the Commission under this Act.

(b) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (a) shall remain available until the termination of the Commission.

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

S. 1948. A bill to provide that service of the members of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

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

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

S. 1948

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 ''United States Cadet Nurse Corps Equity Act of 2003''.

SEC. 2. SERVICE DEEMED TO BE ACTIVE MILITARY SERVICE.

(a) IN GENERAL.—For purposes of section 401(a)(1)(A) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note), the Secretary of Defense is deemed to have determined that qualified service of a person constituted active military service.

(b) DETERMINATION OF DISCHARGE STATUS.—(1) The Secretary of Defense shall issue an honorable discharge under section 401(a)(1)(B) of the GI Bill Improvement Act of 1977 to each person whose qualified service warrants an honorable discharge.

(2) Such discharge shall be issued before the end of the one-year period beginning on the date of the enactment of this Act.

SEC. 3. PROHIBITION OF RETROACTIVE BENEFITS.

No benefits may be paid to any person as a result of the enactment of this Act for any period before the date of the enactment of this Act.

SEC. 4. DEFINITION.

For purposes of this Act, the term ''qualified service'' means service of a person as a member of the organization known as the United States Cadet Nurse Corps during the period beginning on July 1, 1943, and ending on December 15, 1945.

By Mr. BIDEN:

S. 1949. A bill to establish The Return of Talent Program to allow aliens who are legally present in the United States to return temporarily to the country of citizenship of the alien if that country is engaged in post-conflict reconstruction, and for other purposes; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, one of the greatest challenges we face today is how to address the needs of failed states—or countries that are on the verge of becoming failed states—and how to rebuild post-conflict countries. It is a critical issue, and one that we cannot afford to get wrong—for the sake of the people living in those nations, and for the sake of our own security.

Last January, a bipartisan commission organized by the Center for Strategic and International Studies and the Association of the U.S. Army found to no one's surprise that ''failed states matter—for national security as well as for humanitarian reasons. If left to their own devices, such states can become sanctuaries for terrorist networks, organized crime and drug traffickers, as well as posing grave humanitarian challenges and threats to regional stability.''

The most obvious case in point is the reconstruction of Iraq. I've spent many hours on this floor making clear that we have to get it right in Iraq. And in addition to Iraq, unfortunately, we can talk about many other states that are either unstable, or are tenuously recovering from past conflicts including Liberia, Afghanistan, East Timor, Kosovo, Bosnia, Haiti, and Somalia. We need comprehensive strategies to address the many needs in rebuilding all of these struggling countries.

A significant component of reconstruction, in my view, is to tap into the store of human as well as financial resources here in the United States. We should allow, and indeed encourage, immigrants from post-conflict countries to use their skills, talents,and knowledge to be part of the efforts to rebuild. In fact, the diaspora presents one of the best collective resources that exists: these people know the communities. They know the culture. They know the language—more than any contractors, more than any humanitarian workers from the outside, no matter how well-trained, no matter how much expertise they may have.

So today, Mr. President, I am introducing legislation creating a visa ''Return of Talent'' program.

The idea is simple: a Return of Talent program would allow legal immigrants in the United States to return home to help with reconstruction. ''Legal Permanent Residents'' will be able to return temporarily to their countries after a conflict to help rebuild, without their time out of the United States affecting their ability to meet their requirements for U.S. citizenship.

Under current law, a Legal Permanent Resident who want to apply for U.S. citizenship is required to be physically present in the United States for at least half of the five years immediately preceding the date of filing the naturalization application.

This residency requirement could be particularly difficult to meet for those who may have family and friends at home who are in desperate need of help. We should not stand in their way of going home, holding over them their hope for citizenship here in the United States. We should be helping them bring their talent and expertise home, helping them help their country of origin at a time of greatest need.

Recent press articles have highlighted stories of such indivduals—engineers, bankers, teachers and translators—who are willing to contribute to reconstruction efforts. They simply cannot do so without jeopardizing their immigration status.

This legislation would encourage those skilled and committed individuals to return to their countries of origin to revive the business, industry, agriculture, education and other sectors that have been weakened or destroyed after years of conflict.

The Return of Talent program would include any individual who demonstrates an ability and willingness to make a material contribution to the post-conflict reconstruction in their countries of origin.

The program would apply to immigrants from countries where U.S. armed forces are, or have engaged in the past ten years, in armed conflict or peacekeeping, or to immigrants who are from countries where the United Nations Security Council has authorized peacekeeping operations in the past ten years.

Estimates of individuals who could participate in this program are relatively low. For example, the United States admitted 1,764 Afghani and 5,196 Iraqi immigrants in 2002, and similar levels since 1992, who are not Legal Permanent Residents eligible to pursue U.S. citizenship. Yet, while the program would have a small impact on the U.S. naturalization process, the contributions of even a few hundred individuals could have a tremendous positive effect on post-conflict reconstruction work.

In simple terms, a Return of Talent program makes sense. Everybody wins: The United States is able to support rebuilding efforts; immigrants are able to use their skills and resources to help rebuild their communities without jeopardizing their immigration status; and post-conflict countries, and the people in them, receive much-needed assistance.

We have not done enough in Iraq, Afghanistan and many other countries that are—or are on the verge of becoming—failed states. As the ''Winning the Peace'' report also states, ''Despite over a decade of recent experience in trying to address the challenges of . . . rebuilding countries following conflict, U.S. capacity of addressing these challenges remains woefully inadequate.''

A Return of Talent program is an important piece of our overall strategy to stabilize and rebuild countries torn by conflict. I urge my colleagues to support his 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. 1949

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 ''Return of Talent Act''.

SEC. 2. RETURN OF TALENT PROGRAM.

(a) IN GENERAL.—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

''TEMPORARY ABSENCE OF PERSONS PARTICIPATING IN THE RETURN OF TALENT PROGRAM

''SEC. 317A. (a) IN GENERAL.—The Secretary of Homeland Security shall establish the Return of Talent Program to permit eligible aliens to temporarily return to the alien's country of citizenship in order to make a material contribution to that country if the country is engaged in post-conflict reconstruction activities, for a period not exceeding 24 months, unless an exception is granted under subsection (d).

''(b) ELIGIBLE ALIEN.—An alien is eligible to participate in the Return of Talent Program established under subsection (a) if the alien meets the special immigrant description under section 101(a)(27)(N).

''(c) FAMILY MEMBERS.—The spouse, parents, siblings, and any children of an alien who participates in the Return of Talent Program established under subsection (a) may return to such alien's country of citizenship with the alien and reenter the United States with the alien.

''(d) EXTENSION OF TIME.—The Secretary of Homeland Security may extend the 24-month period referred to in subsection (a) upon a showing that circumstances warrant that an extension is necessary for post-conflict reconstruction efforts.

''(e) RESIDENCY REQUIREMENTS.—An immigrant described in section 101(a)(27)(N) who participates in the Return of Talent Program established under subsection (a), and the spouse, parents, siblings, and any children who accompany such immigrant to that immigrant's country of citizenship, shall be considered, during such period of participation in the program—

''(1) for purposes of section 316(a), physically present and residing in the United States for purposes of naturalization within the meaning of that section; and

''(2) for purposes of section 316(b), to meet the continuous residency requirements in that section.

''(f) OVERSIGHT AND ENFORCEMENT.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall oversee and enforce the requirements of this section.''.

(b) TABLE OF CONTENTS.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 317 the following:

''317A. Temporary absence of persons participating in the Return of Talent Program.''.

SEC. 3. ELIGIBLE IMMIGRANTS.

Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended—

(1) in subparagraph (L), by inserting a semicolon after ''Improvement Act of 1998'';

(2) in subparagraph (M), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(N) an immigrant who—

''(i) has been lawfully admitted to the United States for permanent residence;

''(ii) demonstrates an ability and willingness to make a material contribution to the post-conflict reconstruction in the alien's country of citizenship; and

''(iii) as determined by the Secretary of State in consultation with the Secretary of Homeland Security—

''(I) is a citizen of a country in which Armed Forces of the United States are engaged, or have engaged in the 10 years preceding such determination, in combat or peacekeeping operations; or

''(II) is a citizen of a country where authorization for United Nations peacekeeping operations was initiated by the United Nations Security Council during the 10 years preceding such determination.''.

SEC. 4. REPORT TO CONGRESS.

Not later than 24 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to Congress that describes—

(1) the countries of citizenship of the participants in the Return of Talent Program established under section 2;

(2) the post-conflict reconstruction efforts that benefited, or were made possible, through participation in the program; and

(3) any other information that the Secretary of Homeland Security determines to be appropriate.

SEC. 5. REGULATIONS.

Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall promulgate regulations to carry out this Act.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Bureau of Citizenship and Immigration Services for each of the fiscal years 2004 and 2005, such sums as may be necessary to carry out this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 273—CONDEMNING THE TERRORIST ATTACKS IN ISTANBUL, TURKEY, ON NOVEMBER 15 AND 20, 2003, EXPRESSING CONDOLENCES TO THE FAMILIES OF THE INDIVIDUALS MURDERED IN THE ATTACKS, EXPRESSING SYMPATHIES TO THE INDIVIDUALS INJURED IN THE ATTACKS, AND EXPRESSING SOLIDARITY WITH THE REPUBLIC OF TURKEY AND THE UNITED KINGDOM IN THE FIGHT AGAINST TERRORISM

Mr. BROWNBACK (for himself and Mr. BIDEN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 273

Whereas, in Istanbul, Turkey, on November 15, 2003, two explosions set off minutes apart during Sabbath morning services devastated Neve Shalom, the largest synagogue in the city, and the Beth Israel synagogue, about 3 miles away from Neve Shalom;

Whereas the casualties of more than 20 people killed and more than 300 people wounded in the bombing attacks on the synagogues included both Muslims and Jews;

Whereas, on November 20, 2003, two bombs exploded in Istanbul at the Consulate of the United Kingdom and the HSBC Bank;

Whereas the casualties of more than 25 people killed and 450 people wounded in the November 20, 2003, bombing attacks included Muslims and Christians, and Turks, British diplomats, and visitors to the Republic of Turkey;

Whereas troops of the United Kingdom are part of the United States-led coalition that liberated Iraq from the regime of Saddam Hussein and are now present in Iraq under the auspices of the United Nations Security Council;

Whereas the acts of murder committed on November 15 and 20, 2003, in Istanbul, Turkey, were cowardly and brutal manifestations of international terrorism;

Whereas the Government of Turkey immediately condemned the terrorist attacks in the strongest possible terms and has vowed to bring the perpetrators to justice at all costs;

Whereas the United States, the United Kingdom, and Turkey equally abhor and denounce these hateful, repugnant, and loathsome acts of terrorism;

Whereas, in light of the escalation of anti-Semitic activities, the safety and security of Jewish people throughout the world is a matter of serious concern;

Whereas, since Turkey cherishes its traditions of hospitality and religious tolerance, and in particular its history of more than 500 years of good relations between Jews and Muslims, the attacks on synagogues, consular premises, and commercial buildings came as a special shock to the people of Turkey and to their friends throughout the world;

Whereas the United States and Turkey are allied by shared values and a common interest in building a stable, peaceful, and prosperous world;

Whereas Turkey, a predominantly Muslim nation with a secular government, has close relations with Israel and is also the only predominantly Muslim member of the North Atlantic Treaty Organization; and

Whereas the acts of murder committed on November 15 and 20, 2003, demonstrate again that terrorism respects neither boundaries nor borders: Now, therefore, be it

Resolved, That the Senate—

(1) condemns in the strongest possible terms the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003;

(2) expresses its condolences to the families of the individuals murdered in the terrorist attacks, expresses its sympathies to the individuals injured in the attacks, and conveys its hope for the rapid and complete recovery of all such injured individuals;

(3) expresses its condolences to the people and the governments of the Republic of Turkey and the United Kingdom over the losses they suffered in these attacks; and

(4) expresses its solidarity with the United Kingdom, Turkey, and all other countries that stand united against terrorism and work together to bring to justice the perpetrators of these and other terrorist attacks.

SENATE RESOLUTION 274—TO AUTHORIZE THE PRODUCTION OF RECORDS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. FRIST (for himself, and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 274

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry;

Whereas, the Subcommittee has received requests from law enforcement and regulatory officials and agencies for access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide to law enforcement and regulatory entities and officials, court-appointed officials, and other entities or individuals duly authorized by Federal, State, or foreign governments, records of the Subcommittee's investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry.

AMENDMENTS SUBMITTED & PROPOSED

SA 2212. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

SA 2213. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2799, supra; which was ordered to lie on the table.

SA 2214. Mr. ENSIGN (for Mr. VOINOVICH (for himself and Mr. CARPER)) proposed an amendment to the bill S. 610, to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.

SA 2215. Mr. ENSIGN (for Mr. INHOFE (for himself and Mr. JEFFORDS)) proposed an amendment to the bill H.R. 1006, to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species.

SA 2216. Mr. ENSIGN (for Mr. SHELBY) proposed an amendment to the bill S. 811, to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes.

TEXT OF AMENDMENTS

SA 2212. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 54, beginning on line 1, strike all through line 7.

SA 2213. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 30, line 10, strike ''$36,994,000'' and insert ''$41,994,000''.

SA 2214. Mr. ENSIGN (for Mr. VOINOVICH (for himself and Mr. CARPER)) proposed an amendment to the bill S. 610, to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''NASA Flexibility Act of 2003''.

SEC. 2. COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL.

(a) IN GENERAL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking ''the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended,'' and inserting ''the rate of basic pay payable for level III of the Executive Schedule,''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the first day of the first pay period beginning on or after the date of enactment of this Act.

SEC. 3. WORKFORCE AUTHORITIES.

(a) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by inserting after chapter 97, as added by section 841(a)(2) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2229), the following:

''CHAPTER 98—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

''Sec.
''9801. Definitions.
''9802. Planning, notification, and reporting requirements.
''9803. Restrictions.
''9804. Recruitment, redesignation, and relocation bonuses.
''9805. Retention bonuses.
''9806. Term appointments.
''9807. Pay authority for critical positions.
''9808. Assignments of intergovernmental personnel.
''9809. Science and technology scholarship program.
''9810. Distinguished scholar appointment authority.
''9811. Travel and transportation expenses of certain new appointees
''9812. Annual leave enhancements.
''9813. Limited appointments to Senior Executive Service positions.
''9814. Qualifications pay.
''9815. Reporting requirement.

''§ 9801. Definitions

''For purposes of this chapter—

''(1) the term 'Administration' means the National Aeronautics and Space Administration;

''(2) the term 'Administrator' means the Administrator of the National Aeronautics and Space Administration;

''(3) the term 'critical need' means a specific and important safety, management, engineering, science, research, or operations requirement of the Administration's mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because—

''(A) of the inability to fill positions; or

''(B) employees do not possess the requisite skills;

''(4) the term 'employee' means an individual employed in or under the Administration;

''(5) the term 'workforce plan' means the plan required under section 9802(a);

''(6) the term 'appropriate committees of Congress' means—

''(A) the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and

''(B) the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate;

''(7) the term 'redesignation bonus' means a bonus under section 9804 paid to an individual described in subsection (a)(2) thereof;

''(8) the term 'supervisor' has the meaning given such term by section 7103(a)(10); and

''(9) the term 'management official' has the meaning given such term by section 7103(a)(11).

''§ 9802. Planning, notification, and reporting requirements

''(a) Not later than 90 days before exercising any of the workforce authorities made available under this chapter, the Administrator shall submit a written plan to the appropriate committees of Congress. Such plan shall be approved by the Office of Personnel Management.

''(b) A workforce plan shall include a description of—

''(1) each critical need of the Administration and the criteria used in the identification of that need;

''(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

''(i) address critical needs; and

''(ii) would be eligible for each authority proposed to be exercised under this chapter; and

''(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

''(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this chapter; and

''(B) the reasons why those needs would not be so addressed;

''(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

''(5) the safeguards or other measures that will be applied to ensure that this chapter is carried out in a manner consistent with merit system principles;

''(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);

''(7) the methods that will be used to determine if the authorities exercised under this chapter have successfully addressed each critical need identified under paragraph (1);

''(8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals; and

''(B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of

highly qualified individuals, including how it intends to use—

''(i) nongovernmental recruitment or placement agencies; and

''(ii) Internet technologies; and

''(9) any workforce-related reforms required to resolve the findings and recommendations of the Columbia Accident Investigation Board, the extent to which those recommendations were accepted, and, if necessary, the reasons why any of those recommendations were not accepted.

''(c) Not later than 60 days before first exercising any of the workforce authorities made available under this chapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.

''(d)(1)(A) The Administrator may from time to time modify the workforce plan. Any modification to the workforce plan shall be submitted to the Office of Personnel Management for approval by the Office before the modification may be implemented.

''(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.

''(2) Any reference in this chapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

''(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

''(1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);

''(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and

''(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

''(f) None of the workforce authorities made available under this chapter may be exercised in a manner inconsistent with the workforce plan.

''(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

''(h) Not later than 6 years after the date of enactment of this chapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this chapter, including—

''(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this chapter successfully addressed each critical need identified under subsection (b)(1);

''(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

''(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

''(i) The budget request for the Administration for the first fiscal year beginning after the date of enactment of this chapter and for each fiscal year thereafter shall include a statement of the total amount of appropriations requested for such fiscal year to carry out this chapter.

''§ 9803. Restrictions

''(a) None of the workforce authorities made available under this chapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

''(b) Unless specifically stated otherwise, all workforce authorities made available under this chapter shall be subject to section 5307.

''(c)(1) None of the workforce authorities made available under section 9804, 9805, 9806, 9807, 9809, 9812, 9813, 9814, or 9815 may be exercised with respect to a political appointee.

''(2) For purposes of this subsection, the term 'political appointee' means an employee who holds—

''(A) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

''(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined in section 3132(a)).

''§ 9804. Recruitment, redesignation, and relocation bonuses

''(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

''(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

''(2) the individual—

''(A) is newly appointed as an employee of the Federal Government;

''(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

''(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

''(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

''(1) 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

''(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

''(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (excluding comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

''(B) At a minimum, the service agreement shall include—

''(i) the required service period;

''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

''(iii) the amount of the bonus and the basis for calculating that amount; and

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

''(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

''(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

''(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

''(f) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials.

''§ 9805. Retention bonuses

''(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

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

''(2) the employee would be likely to leave in the absence of a retention bonus.

''(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

''(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (excluding comparability payments under sections 5304 and 5304a).

''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

''(B) At a minimum, the service agreement shall include—

''(i) the required service period;

''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

''(iii) the amount of the bonus and the basis for calculating the amount; and

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

''(2) The employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

''(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

''(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

''(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 or under section 9804.

''(g) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials.

''§ 9806. Term appointments

''(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

''(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

''(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

''(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

''(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

''(4) the employee's performance under such term appointment was at least fully successful or equivalent; and

''(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

''(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

''(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

''(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

''§ 9807. Pay authority for critical positions

''(a) In this section, the term 'position' means—

''(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

''(2) a position under the Executive Schedule under sections 5312 through 5317;

''(3) a position established under section 3104; or

''(4) a senior-level position to which section 5376(a)(1) applies.

''(b) Authority under this section—

''(1) may be exercised only with respect to a position that—

''(A) is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A); and

''(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

''(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

''(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

''(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

''(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

''(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

''(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

''(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.

''§ 9808. Assignments of intergovernmental personnel

''For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking 'two' and inserting 'four'.

''§ 9809. Science and technology scholarship program

''(a)(1) The Administrator shall establish a National Aeronautics and Space Administration Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Administration.

''(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act.

''(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Administration, for the period described in subsection (f)(1), in positions needed by the Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

''(b) In order to be eligible to participate in the Program, an individual must—

''(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under subsection (d);

''(2) be a United States citizen or permanent resident; and

''(3) at the time of the initial scholarship award, not be an employee (as defined in section 2105).

''(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

''(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

''(e)(1) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

''(2) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

''(3) The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Administrator, but shall in no case exceed the cost of attendance.

''(4) A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.

''(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

''(f)(1) The period of service for which an individual shall be obligated to serve as an employee of the Administration is, except as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided. Under no circumstances shall the total period of obligated service be more than 4 years.

''(2)(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

''(B) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate. The Administrator shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

''(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation.

''(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

''(A) the total amount of scholarships received by such individual under this section; plus

''(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

''(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

''(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

''(i) For purposes of this section—

''(1) the term 'cost of attendance' has the meaning given that term in section 472 of the Higher Education Act of 1965;

''(2) the term 'institution of higher education' has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

''(3) the term 'Program' means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

''(j)(1) There is authorized to be appropriated to the Administration for the Program $10,000,000 for each fiscal year.

''(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

''§ 9810. Distinguished scholar appointment authority

''(a) In this section—

''(1) the term 'professional position' means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

''(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

''(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

''(2) the term 'research position' means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

''(b) The Administration may appoint, without regard to the provisions of section 3304(b) and sections 3309 through 3318, but subject to subsection (c), candidates directly to General Schedule professional, competitive service positions in the Administration for which public notice has been given (in accordance with regulations of the Office of Personnel Management), if—

''(1) with respect to a position at the GS–7 level, the individual—

''(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

''(2) with respect to a position at the GS–9 level, the individual—

''(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

''(3) with respect to a position at the GS–11 level, the individual—

''(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

''(4) with respect to a research position at the GS–12 level, the individual—

''(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

''(c) In making any selections under this section, preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of non-preference eligibles.

''(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

''§ 9811. Travel and transportation expenses of certain new appointees

''(a) In this section, the term 'new appointee' means—

''(1) a person newly appointed or reinstated to Federal service to the Administration to—

''(A) a career or career-conditional appointment or an excepted service appointment to a continuing position;

''(B) a term appointment;

''(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

''(D) a career or limited term Senior Executive Service appointment;

''(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

''(F) an appointment to a position established under section 3104; or

''(G) an appointment to a position established under section 5108; or

''(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

''(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

''§ 9812. Annual leave enhancements

''(a) In this section—

''(1) the term 'newly appointed employee' means an individual who is first appointed—

''(A) as an employee of the Federal Government; or

''(B) as an employee of the Federal Government following a break in service of at least 90 days after that individual's last period of Federal employment, other than—

''(i) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

''(ii) employment as a law clerk trainee;

''(iii) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

''(iv) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

''(v) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

''(2) the term 'period of qualified non-Federal service' means any period of service performed by an individual that—

''(A) was performed in a position the duties of which were directly related to the duties of the position in the Administration which that individual will fill as a newly appointed employee; and

''(B) except for this section, would not otherwise be service performed by an employee for purposes of section 6303; and

''(3) the term 'directly related to the duties of the position' means duties and responsibilities in the same line of work which require similar qualifications.

''(b)(1) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

''(2) A decision under paragraph (1) to treat a period of qualified non-Federal service as if it were service performed as an employee shall continue to apply so long as that individual serves in or under the Administration.

''(c)(1) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS–15, step 10, shall be 1 day for each full biweekly pay period.

''(2) The accrual rate established under this subsection shall continue to apply to the employee so long as such employee serves in or under the Administration.

''§ 9813. Limited appointments to Senior Executive Service positions

''(a) In this section—

''(1) the term 'career reserved position' means a position in the Administration designated under section 3132(b) which may be filled only by—

''(A) a career appointee; or

''(B) a limited emergency appointee or a limited term appointee—

''(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

''(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

''(2) the term 'limited emergency appointee' has the meaning given under section 3132; and

''(3) the term 'limited term appointee' means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

''(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

''(c) Notwithstanding sections 3132 and 3394(b)—

''(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

''(A) 4 years or less to a position the duties of which will expire at the end of such term; or

''(B) 1 year or less to a position the duties of which are continuing; and

''(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

''(A) paragraph (1)(A) for a period not to exceed 2 years; and

''(B) paragraph (1)(B) for a period not to exceed 1 year.

''(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

''(e) Notwithstanding section 3394(b) and section 3395—

''(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

''(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

''(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

''(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

''§ 9814. Qualifications pay

''(a) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, if such employee—

''(1) possesses unusually high or unique qualifications; and

''(2) is assigned—

''(A) new duties, without a change of position; or

''(B) to a new position.

''(b) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee's contribution in the new position will exceed that in the former position, before setting pay under this section.

''(c) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

''(d) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

''(e) Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management and the appropriate committees of Congress, that includes—

''(1) criteria for approval of actions to set pay under this section;

''(2) the level of approval required to set pay under this section;

''(3) all types of actions and positions to be covered;

''(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

''(5) a process to evaluate the effectiveness of this section.

''§ 9815. Reporting requirement

''The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 6 years beginning after the date of enactment of this chapter, a report that provides the following:

''(1) A summary of all bonuses paid under subsections (b) and (c) of section 9804 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

''(2) A summary of all bonuses paid under subsections (b) and (c) of section 9805 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

''(3) The total number of term appointments converted during the preceding fiscal year under section 9806 and, of that total number, the number of conversions that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(4) The number of positions for which the rate of basic pay was fixed under section 9807 during the preceding fiscal year, the number of positions for which the rate of basic pay under such section was terminated during the preceding fiscal year, and the number of times the rate of basic pay was fixed under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(5) The number of scholarships awarded under section 9809 during the preceding fiscal year and the number of scholarship recipients appointed by the Administration during the preceding fiscal year.

''(6) The total number of distinguished scholar appointments made under section 9810 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(7) The average amount paid per appointee, and the largest amount paid to any appointee, under section 9811 during the preceding fiscal year for travel and transportation expenses.

''(8) The total number of employees who were awarded enhanced annual leave under section 9812 during the preceding fiscal year; of that total number, the number of employees who were serving in a position addressing a critical need described in the workforce plan pursuant to section 9802(b)(2); and, for employees in each of those respective groups, the average amount of additional annual leave such employees earned in the preceding fiscal year (over and above what they would have earned absent section 9812).

''(9) The total number of appointments made under section 9813 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(10) The number of employees for whom the Administrator set the pay under section 9814 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(11) A summary of all recruitment, relocation, redesignation, and retention bonuses paid under authorities other than this chapter and excluding the authorities provided in sections 5753 and 5754 of this title, during the preceding fiscal year. Such summary shall include, for each type of bonus, the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:

''98. National Aeronautics and Space Administration ..... 9801''.

SA 2215. Mr. ENSIGN (for Mr. INHOFE (for himself and Mr. JEFFORDS)) proposed an amendment to the bill H.R. 1006, to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species; as follows:

On page 2, strike lines 11 through 14 and insert the following:

''(g) PROHIBITED WILDLIFE SPECIES.—The term 'prohibited wildlife species' means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species.''.

On page 3, line 1, strike ''live animal of a''.

On page 3, strike lines 20 through 22 and insert the following:

''(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to that species;

On page 4, line 12, insert ''listed in section 2(g)'' after ''animals''.

On page 4, line 14, insert ''listed in section 2(g)'' after ''animals''.

On page 5, line 3, strike the quotation marks and the following period.

On page 5, between lines 3 and 4, insert the following:

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to

carry out subsection (a)(2)(C) $3,000,000 for each of fiscal years 2004 through 2008.''.

SA 2216. Mr. ENSIGN (for Mr. SHELBY) proposed an amendment to the bill S. 811, to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—DOWNPAYMENT ASSISTANCE

Sec. 101. Short title.
Sec. 102. Downpayment assistance initiative.

TITLE II—INTERGENERATIONAL HOUSING ASSISTANCE

Sec. 201. Short title.
Sec. 202. Definitions.
Sec. 203. Demonstration program for elderly housing for intergenerational families.
Sec. 204. Training for HUD personnel regarding grandparent-headed and relative-headed families issues.
Sec. 205. Study of housing needs of grandparent-headed and relative-headed families.

TITLE III—ADJUSTABLE RATE SINGLE FAMILY MORTGAGES AND LOAN LIMIT ADJUSTMENTS

Sec. 301. Hybrid arms.
Sec. 302. FHA multifamily loan limit adjustments.

TITLE IV—HOPE VI PROGRAM REAUTHORIZATION

Sec. 401. Short title.
Sec. 402. Hope VI program reauthorization.
Sec. 403. Hope VI grants for assisting affordable housing through main street projects.

TITLE V—COMMUNITY DEVELOPMENT BLOCK GRANTS

Sec. 501. Funding for insular areas.

TITLE I—DOWNPAYMENT ASSISTANCE

SEC. 101. SHORT TITLE.

This title may be cited as the ''American Dream Downpayment Act''.

SEC. 102. DOWNPAYMENT ASSISTANCE INITIATIVE.

(a) DOWNPAYMENT ASSISTANCE INITIATIVE.—Subtitle E of title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12821) is amended to read as follows:

''Subtitle E—Other Assistance

''SEC. 271. DOWNPAYMENT ASSISTANCE INITIATIVE.

''(a) DEFINITIONS.—In this section:

''(1) DOWNPAYMENT ASSISTANCE.—The term ''downpayment assistance'' means assistance to help a family acquire a principal residence.

''(2) HOME REPAIRS.—The term ''home repairs'' means capital improvements or repairs that—

''(A) are identified in an appraisal or home inspection completed in conjunction with a home purchase; or

''(B) are completed within 1 year of the purchase of a home, and are necessary to bring the housing into compliance with health and safety housing codes of the unit of general local government in which the housing is located, including the remediation of lead paint or other home health hazards.

''(3) PARTICIPATING JURISDICTION.—The term ''participating jurisdiction'' means a State or unit of general local government designated under section 216.

''(4) STATE.—The term ''State'' means any State of the United States and the District of Columbia.

''(b) GRANT AUTHORITY.—The Secretary may award grants to participating jurisdictions to assist low-income families to achieve homeownership, in accordance with this section.

''(c) ELIGIBLE ACTIVITIES.—

''(1) IN GENERAL.—

''(A) DOWNPAYMENT ASSISTANCE.—Subject to subparagraph (B), grants awarded under this section may be used only for downpayment assistance toward the purchase of single family housing (including 1 to 4 unit family dwelling units, condominium units, cooperative units, and manufactured housing units which are located on land which is owned by the manufactured housing unit owner, owned as a cooperative, or is subject to a leasehold interest with a term equal to at least the term of the mortgage financing on the unit, and manufactured housing lots) by low-income families who are first-time home-buyers.

''(B) HOME REPAIRS.—Not more than 20 percent of the grant funds provided under subsection (d) to a participating jurisdiction may be used to provide assistance to low-income, first-time home-buyers for home repairs.

''(2) LIMITATIONS.—

''(A) AMOUNT OF ASSISTANCE.—The amount of assistance provided to any low-income families under paragraph (1) shall not exceed the greater of—

''(i) 6 percent of the purchase price of a single family housing unit; or

''(ii) $10,000.

''(B) PARTICIPATION.—A participating jurisdiction may not use any amount of a grant awarded under this section to provide funding to an entity or organization that provides downpayment assistance if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing.

''(d) FORMULA ALLOCATION.—

''(1) IN GENERAL.—For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this section to each State that is a participating jurisdiction in an amount equal to a percentage of the total allocation that is equal to the percentage of the national total of low-income households residing in rental housing in the State, as determined on the basis of the most recent census data compiled by the Bureau of the Census.

''(2) PARTICIPATING JURISDICTIONS OTHER THAN STATES.—

''(A) IN GENERAL.—Subject to subparagraph (B), for each fiscal year, of the amount allocated to each State under paragraph (1), the Secretary shall further allocate from such amount to each participating jurisdiction located within such State an amount equal to the percentage of the allocation made to the State under paragraph (1) that is equal to the percentage of the State-wide total of low-income households residing in rental housing in such participating jurisdiction, as determined on the basis of the most recent census data compiled by the Bureau of the Census.

''(B) LIMITATION.—

''(i) IN GENERAL.—Direct allocations made under subparagraph (A) shall be made to a local participating jurisdiction only if—

''(I) the participating jurisdiction has a total population of 150,000 individuals or more, as determined on the basis of the most recent census data compiled by the Bureau of the Census; or

''(II) the participating jurisdiction would receive an allocation of $50,000 or more.

''(ii) REVERSION.—Any allocation that would have otherwise been made to a participating jurisdiction that does not meet the requirements of clause (i) shall revert back to the State in which the participating jurisdiction is located.

''(e) REALLOCATION.—If any amounts allocated to a participating jurisdiction under this section become available for reallocation, the amounts shall be reallocated to other participating jurisdictions in accordance with subsection (d).

''(f) APPLICABILITY OF OTHER PROVISIONS.—

''(1) IN GENERAL.—Except as otherwise provided in this section, grants made under this section shall not be subject to the provisions of this title.

''(2) APPLICABLE PROVISIONS.—In addition to the requirements of this section, grants made under this section shall be subject to the provisions of title I, sections 215(b), 218, 219, 221, 223, 224, and 226(a) of subtitle A of this title, and subtitle F of this title.

''(3) REFERENCES.—In applying the requirements of subtitle A referred to in paragraph (2)—

''(A) any references to funds under subtitle A shall be considered to refer to amounts made available for assistance under this section; and

''(B) any references to funds allocated or reallocated under section 217 or 217(d) shall be considered to refer to amounts allocated or reallocated under subsection (d) or (e) of this section, respectively.

''(g) HOUSING STRATEGY.—To be eligible to receive a grant under this section in any fiscal year, a participating jurisdiction shall include in its comprehensive housing affordability strategy developed under section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) for such fiscal year—

''(1) a description of the anticipated use of any grant received under this section;

''(2) a plan for conducting targeted outreach to residents and tenants of public housing, trailer parks, and manufactured housing, and to other families assisted by public housing agencies, for the purpose of ensuring that grant amounts provided under this section to a participating jurisdiction are used for downpayment assistance for such residents, tenants, and families; and

''(3) a description of the actions to be taken to ensure the suitability of families receiving downpayment assistance under this section to undertake and maintain homeownership.

''(h) REPORT.—Not later than June 30, 2006, the Comptroller General of the United States shall submit a report containing a State-by-State analysis of the impact of grants awarded under this section to—

''(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(2) the Committee on Financial Services of the House of Representatives.

''(i) SUNSET.—The Secretary shall have no authority to make grants under this Act after December 31, 2007.

''(j) RELOCATION ASSISTANCE AND DOWNPAYMENT ASSISTANCE.—The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) shall not apply to downpayment assistance under this section.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 2004 through 2007.''.

TITLE II—INTERGENERATIONAL HOUSING ASSISTANCE

SECTION 201. SHORT TITLE.

This title may be cited as the ''Living Equitably: Grandparents Aiding Children and Youth Act of 2003'' or the ''LEGACY Act of 2003''.

SEC. 202. DEFINITIONS.

In this title:

(1) CHILD.—The term ''child'' means an individual who—

(A) is not attending school and is not more than 18 years of age; or

(B) is attending school and is not more than 19 years of age.

(2) COVERED FAMILY.—The term ''covered family'' means a family that—

(A) includes a child; and

(B) has a head of household who is—

(i) a grandparent of the child who is raising the child; or

(ii) a relative of the child who is raising the child.

(3) ELDERLY PERSON.—The term ''elderly person'' has the same meaning as in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).

(4) GRANDPARENT.—

(A) IN GENERAL.—The term ''grandparent'' means, with respect to a child, an individual who is a grandparent or stepgrandparent of the child by blood or marriage, regardless of the age of such individual.

(B) CASE OF ADOPTION.—In the case of a child who was adopted, the term includes an individual who, by blood or marriage, is a grandparent or stepgrandparent of the child as adopted.

(5) INTERGENERATIONAL DWELLING UNIT.—The term ''intergenerational dwelling unit'' means a qualified dwelling unit that is reserved for occupancy only by an intergenerational family.

(6) INTERGENERATIONAL FAMILY.—The term ''intergenerational family'' means a covered family that has a head of household who is an elderly person.

(7) PRIVATE NONPROFIT ORGANIZATION.—The term ''private nonprofit organization'' has the same meaning as in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).

(8) QUALIFIED DWELLING UNIT.—The term ''qualified dwelling unit'' means a dwelling unit that—

(A) has not fewer than 2 separate bedrooms;

(B) is equipped with design features appropriate to meet the special physical needs of elderly persons, as needed; and

(C) is equipped with design features appropriate to meet the special physical needs of young children, as needed.

(9) RAISING A CHILD.—The term ''raising a child'' means, with respect to an individual, that the individual—

(A) resides with the child; and

(B) is the primary caregiver for the child—

(i) because the biological or adoptive parents of the child do not reside with the child or are unable or unwilling to serve as the primary caregiver for the child; and

(ii) regardless of whether the individual has a legal relationship to the child (such as guardianship or legal custody) or is caring for the child informally and has no such legal relationship with the child.

(10) RELATIVE.—

(A) IN GENERAL.—The term ''relative'' means, with respect to a child, an individual who—

(i) is not a parent of the child by blood or marriage; and

(ii) is a relative of the child by blood or marriage, regardless of the age of the individual.

(B) CASE OF ADOPTION.—In the case of a child who was adopted, the term ''relative'' includes an individual who, by blood or marriage, is a relative of the family who adopted the child.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

SEC. 203. DEMONSTRATION PROGRAM FOR ELDERLY HOUSING FOR INTERGENERATIONAL FAMILIES.

(a) DEMONSTRATION PROGRAM.—The Secretary shall carry out a demonstration program (referred to in this section as the ''demonstration program'') to provide assistance for intergenerational dwelling units for intergenerational families in connection with the supportive housing program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q).

(b) INTERGENERATIONAL DWELLING UNITS.—The Secretary shall provide assistance under this section only to private nonprofit organizations selected under subsection (d) for use only for expanding the supply of intergenerational dwelling units, which units shall be provided—

(1) by designating and retrofitting, for use as intergenerational dwelling units, existing dwelling units that are located within a project assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(2) through development of buildings or projects comprised solely of intergenerational dwelling units; or

(3) through the development of an annex or addition to an existing project assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), that contains intergenerational dwelling units, including through the development of elder cottage housing opportunity units that are small, freestanding, barrier free, energy efficient, removable dwelling units located adjacent to a larger project or dwelling.

(c) PROGRAM TERMS.—Assistance provided pursuant to this section shall be subject to the provisions of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), except that—

(1) notwithstanding subsection (d)(1) of that section 202 or any provision of that section restricting occupancy to elderly persons, any intergenerational dwelling unit assisted under the demonstration program may be occupied by an intergenerational family;

(2) subsections (e) and (f) of that section 202 shall not apply;

(3) in addition to the requirements under subsection (g) of that section 202, the Secretary shall—

(A) ensure that occupants of intergenerational dwelling units assisted under the demonstration program are provided a range of services that are tailored to meet the needs of elderly persons, children, and intergenerational families; and

(B) coordinate with the heads of other Federal agencies as may be appropriate to ensure the provision of such services; and

(4) the Secretary may waive or alter any other provision of that section 202 necessary to provide for assistance under the demonstration program.

(d) SELECTION.—The Secretary shall—

(1) establish application procedures for private nonprofit organizations to apply for assistance under this section; and

(2) to the extent that amounts are made available pursuant to subsection (f), select not less than 2 and not more than 4 projects that are assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) for assistance under this section, based on the ability of the applicant to develop and operate intergenerational dwelling units and national geographical diversity among those projects funded.

(e) REPORT.—Not later than 36 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that—

(1) describes the demonstration program; and

(2) analyzes the effectiveness of the demonstration program.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 to carry out this section.

(g) SUNSET.—The demonstration program carried out under this section shall terminate 5 years after the date of enactment of this Act.

SEC. 204. TRAINING FOR HUD PERSONNEL REGARDING GRANDPARENT-HEADED AND RELATIVE-HEADED FAMILIES ISSUES.

Section 7 of the Department of Housing and Urban Development Act (42 U.S.C. 3535) is amended by adding at the end the following:

''(t) TRAINING REGARDING ISSUES RELATING TO GRANDPARENT-HEADED AND RELATIVE-HEADED FAMILIES.—The Secretary shall ensure that all personnel employed in field offices of the Department who have responsibilities for administering the housing assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) or the supportive housing program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), and an appropriate number of personnel in the headquarters office of the Department who have responsibilities for those programs, have received adequate training regarding how covered families (as that term is defined in section 202 of the LEGACY Act of 2003) can be served by existing affordable housing programs.''.

SEC. 205. STUDY OF HOUSING NEEDS OF GRANDPARENT-HEADED AND RELATIVE-HEADED FAMILIES.

(a) IN GENERAL.—The Secretary and the Director of the Bureau of the Census jointly shall—

(1) conduct a study to determine an estimate of the number of covered families in the United States and their affordable housing needs; and

(2) submit a report to Congress regarding the results of the study conducted under paragraph (1).

(b) REPORT AND RECOMMENDATIONS.—The report required under subsection (a) shall—

(1) be submitted to Congress not later than 12 months after the date of enactment of this Act; and

(2) include recommendations by the Secretary and the Director of the Bureau of the Census regarding how the major assisted housing programs of the Department of Housing and Urban Development, including the supportive housing for the elderly program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) can be used and, if appropriate, amended or altered, to meet the affordable housing needs of covered families.

TITLE III—ADJUSTABLE RATE SINGLE FAMILY MORTGAGES AND LOAN LIMIT ADJUSTMENTS

SEC. 301. HYBRID ARMS.

(a) IN GENERAL.—Section 251(d)(1)(C) of the National Housing Act (12 U.S.C. 1715z–16(d)(1)(C)) is amended by striking ''five'' and inserting ''3''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to mortgages executed on or after the date of the enactment of this title.

SEC. 302. FHA MULTIFAMILY LOAN LIMIT ADJUSTMENTS.

(a) SHORT TITLE.—This section may be cited as the ''FHA Multifamily Loan Limit Adjustment Act of 2003''.

(b) MAXIMUM MORTGAGE AMOUNT LIMIT FOR MULTIFAMILY HOUSING IN HIGH-COST AREAS.—Sections 207(c)(3), 213(b)(2)(B)(i), 220(d)(3)(B)(iii)(III), 221(d)(3)(ii)(II), 221(d)(4)(ii)(II), 231(c)(2)(B), and 234(e)(3)(B) of

the National Housing Act (12 U.S.C. 1713(c)(3), 1715e(b)(2)(B)(i), 1715k(d)(3)(B)(iii)(II), 1715*l*(d)(3)(ii)(III), 1715*l*(d)(4)(ii)(II), 1715v(c)(2)(B)), and 1715y(e)(3)(B)) are each amended—

(1) by striking ''110 percent'' and inserting ''140 percent''; and

(2) by inserting '', or 170 percent in high cost areas,'' after ''140 percent''.

(c) CATCH-UP ADJUSTMENTS TO CERTAIN MAXIMUM MORTGAGE AMOUNT LIMITS.—

(1) SECTION 207 LIMITS.—Section 207(c)(3)(A) of the National Housing Act (12 U.S.C. 1713(c)(3)(A)) is amended by striking ''$11,250'' and inserting ''$17,460''.

(2) SECTION 213 LIMITS.—Section 213(b)(2)(A) of the National Housing Act (12 U.S.C. 1715e(b)(2)(A)) is amended—

(A) by striking ''$38,025'' and inserting ''$41,207'';

(B) by striking ''$42,120'' and inserting ''$47,511'';

(C) by striking ''$50,310'' and inserting ''$57,300'';

(D) by striking ''$62,010'' and inserting ''$73,343'';

(E) by striking ''$70,200'' and inserting ''$81,708'';

(F) by striking ''$49,140'' and inserting ''$49,710'';

(G) by striking ''$60,255'' and inserting ''$60,446'';

(H) by striking ''$75,465'' and inserting ''$78,197''; and

(I) by striking ''$85,328'' and inserting ''$85,836''.

(d) REHABILITATION AND NEIGHBORHOOD CONSERVATION HOUSING MORTGAGE INSURANCE.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii) is amended—

(1) by striking ''with respect to dollar amount limitations applicable to rehabilitation projects described in subclause (II),'' and inserting ''; (III)''; and

(2) by redesignating subclauses (III) and (IV) as subclauses (IV) and (V), respectively.

TITLE IV—HOPE VI PROGRAM REAUTHORIZATION

SEC. 401. SHORT TITLE.

This title may be cited as the ''HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003''.

SEC. 402. HOPE VI PROGRAM REAUTHORIZATION.

(a) SELECTION CRITERIA.—Section 24(e)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437v(e)(2)) is amended—

(1) by striking the matter preceding subparagraph (A) and inserting the following:

''(2) SELECTION CRITERIA.—The Secretary shall establish criteria for the award of grants under this section and shall include among the factors—'';

(2) in subparagraph (B), by striking ''large-scale'';

(3) in subparagraph (D)—

(A) by inserting ''and ongoing implementation'' after ''development''; and

(B) by inserting '', except that the Secretary may not award a grant under this section unless the applicant has involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of an application'' before the semicolon at the end;

(4) in subparagraph (H), by striking ''and'' at the end;

(5) by redesignating subparagraph (I) as subparagraph (L); and

(6) by inserting after subparagraph (H) the following:

''(I) the extent to which the plan minimizes permanent displacement of current residents of the public housing site who wish to remain in or return to the revitalized community and provides for community and supportive services to residents prior to any relocation;

''(J) the extent to which the plan sustains or creates more project-based housing units available to persons eligible for public housing in markets where the plan shows there is demand for the maintenance or creation of such units;

''(K) the extent to which the plan gives to existing residents priority for occupancy in dwelling units which are public housing dwelling units, or for residents who can afford to live in other units, priority for those units in the revitalized community; and''.

(b) DEFINITION OF SEVERELY DISTRESSED PUBLIC HOUSING.—Section 24(j)(2)(A)(iii) of the United States Housing Act of 1937 (42 U.S.C. 1437v(j)(2)(A)(iii)) is amended—

(1) in subclause (I), by striking ''or'' at the end;

(2) in subclause (II), by inserting ''or'' after the semicolon at the end; and

(3) by inserting at the end the following:

''(III) is lacking in sufficient appropriate transportation, supportive services, economic opportunity, schools, civic and religious institutions, and public services, resulting in severe social distress in the project;''.

(c) STUDY OF ELDERLY AND DISABLED PUBLIC HOUSING NEEDS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress regarding the extent of severely distressed elderly and non-elderly disabled public housing, and recommendations for improving that housing through the HOPE VI program or other means, taking into account the special needs of the residents.

(d) AUTHORIZATION OF APPROPRIATIONS.—Paragraph (1) of section 24(m) of the United States Housing Act of 1937 (42 U.S.C. 1437v(m)(1)) is amended by striking '', 2001, and 2002'' and inserting ''through 2006''.

(e) EXTENSION OF PROGRAM.—Section 24(n) of the United States Housing Act of 1937 (42 U.S.C. 1437v(n)) is amended by striking ''September 30, 2004'' and inserting ''September 30, 2006''.

SEC. 403. HOPE VI GRANTS FOR ASSISTING AFFORDABLE HOUSING THROUGH MAIN STREET PROJECTS.

(a) PURPOSES.—Section 24(a) of the United States Housing Act of 1937 (42 U.S.C. 1437v(a)) is amended by adding after and below paragraph (4) the following:

''It is also the purpose of this section to provide assistance to smaller communities for the purpose of facilitating the development of affordable housing for low-income families that is undertaken in connection with a main street revitalization or redevelopment project in such communities.''.

(b) GRANTS FOR ASSISTING AFFORDABLE HOUSING DEVELOPED THROUGH MAIN STREET PROJECTS IN SMALLER COMMUNITIES.—Section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v) is amended—

(1) by redesignating subsection (n) as subsection (o); and

(2) by inserting after subsection (m) the following new subsection:

''(n) GRANTS FOR ASSISTING AFFORDABLE HOUSING DEVELOPED THROUGH MAIN STREET PROJECTS IN SMALLER COMMUNITIES.—

''(1) AUTHORITY AND USE OF GRANT AMOUNTS.—The Secretary may make grants under this subsection to smaller communities. Such grant amounts shall be used by smaller communities only to provide assistance to carry out eligible affordable housing activities under paragraph (4) in connection with an eligible project under paragraph (2).

''(2) ELIGIBLE PROJECT.—For purposes of this subsection, the term 'eligible project' means a project that—

''(A) the Secretary determines, under the criteria established pursuant to paragraph (3), is a main street project;

''(B) is carried out within the jurisdiction of smaller community receiving the grant; and

''(C) involves the development of affordable housing that is located in the commercial area that is the subject of the project.

''(3) MAIN STREET PROJECTS.—The Secretary shall establish requirements for a project to be consider a main street project for purposes of this section, which shall require that the project—

''(A) has as its purpose the revitalization or redevelopment of a historic or traditional commercial area;

''(B) involves investment, or other participation, by the government for, and private entities in, the community in which the project is carried out; and

''(C) complies with such historic preservation guidelines or principles as the Secretary shall identify to preserve significant historic or traditional architectural and design features in the structures or area involved in the project.

''(4) ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.—For purposes of this subsection, the activities described in subsection (d)(1) shall be considered eligible affordable housing activities, except that—

''(A) such activities shall be conducted with respect to affordable housing rather than with respect to severely distressed public housing projects; and

''(B) eligible affordable housing activities under this subsection shall not include the activities described in subparagraphs (B) through (E), (J), or (K) of subsection (d)(1).

''(5) MAXIMUM GRANT AMOUNT.—A grant under this subsection for a fiscal year for a single smaller community may not exceed $1,000,000.

''(6) CONTRIBUTION REQUIREMENT.—A smaller community applying for a grant under this subsection shall be considered an applicant for purposes of subsection (c) (relating to contributions by applicants), except that—

''(A) such supplemental amounts shall be used only for carrying out eligible affordable housing activities; and

''(B) paragraphs (1)(B) and (3) shall not apply to grants under this subsection.

''(7) APPLICATIONS AND SELECTION.—

''(A) APPLICATION.—Pursuant to subsection (e)(1), the Secretary shall provide for smaller communities to apply for grants under this subsection, except that the Secretary may establish such separate or additional criteria for applications for such grants as may be appropriate to carry out this subsection.

''(B) SELECTION CRITERIA.—The Secretary shall establish selection criteria for the award of grants under this subsection, which shall be based on the selection criteria established pursuant to subsection (e)(2), with such changes as may be appropriate to carry out the purposes of this subsection.

''(8) COST LIMITS.—The cost limits established pursuant to subsection (f) shall apply to eligible affordable housing activities assisted with grant amounts under this subsection.

''(9) INAPPLICABILITY OF OTHER PROVISIONS.—The provisions of subsections (g) (relating to disposition and replacement of severely distressed public housing), and (h) (relating to administration of grants by other entities), shall not apply to grants under this subsection.

''(10) REPORTING.—The Secretary shall require each smaller community receiving a grant under this subsection to submit a report regarding the use of all amounts provided under the grant.

''(11) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) AFFORDABLE HOUSING.—The term 'affordable housing' means rental or homeownership dwelling units that—

''(i) are made available for initial occupancy to low-income families, with a subset of units made available to very- and extremely-low income families; and

''(ii) are subject to the same rules regarding occupant contribution toward rent or purchase and terms of rental or purchase as dwelling units in public housing projects assisted with a grant under this section.

''(B) SMALLER COMMUNITY.—The term 'smaller community' means a unit of general local government (as such term is defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) that—

''(i) has a population of 50,000 or fewer; and

''(ii)(I) is not served by a public housing agency; or

''(II) is served by a single public housing agency, which agency administers 100 or fewer public housing dwelling units.''.

(c) ANNUAL REPORT.—Section 24(l) of the United States Housing Act of 1937 (42 U.S.C. 1437v(l)) is amended—

(1) in paragraph (3), by striking ''; and'' and inserting '', including a specification of the amount and type of assistance provided under subsection (n);'';

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

''(4) the types of projects funded, and number of affordable housing dwelling units developed with, grants under subsection (n); and''.

(d) FUNDING.—Section 24(m) of the United States Housing Act of 1937 (42 U.S.C. 1437v(m)) is amended by adding at the end the following:

''(3) SET-ASIDE FOR MAIN STREET HOUSING GRANTS.—Of the amount appropriated pursuant to paragraph (1) for any fiscal year, the Secretary shall provide up to 5 percent for use only for grants under subsection (n).''.

TITLE V—COMMUNITY DEVELOPMENT BLOCK GRANTS

SEC. 501. FUNDING FOR INSULAR AREAS.

(a) DEFINITION OF INSULAR AREAS.—Section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)) is amended by adding at the end the following:

''(24) The term 'insular area' means each of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.''.

(b) DEFINITION OF UNIT OF GENERAL GOVERNMENT.—The first sentence of section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)) is amended—

(1) by inserting ''and'' after ''Secretary;''; and

(2) by striking ''; and the Trust Territory of the Pacific Islands''.

(c) STATEMENT OF ACTIVITIES AND REVIEW.—Section 104 of the Housing and Community Development Act of 1974 (42 U.S.C. 5304) is amended—

(1) in subsection (a)(1)—

(A) in the first sentence—

(i) by striking ''or'' after ''State,''; and

(ii) by inserting ''or under section 106(a)(3) by any insular area,'' after ''government,''; and

(B) in the second sentence—

(i) by striking ''and in the case of'' and inserting a comma; and

(ii) by inserting ''and insular areas receiving grants pursuant to section 106(a)(3),'' after ''106(d)(2)(B),'';

(2) in subsection (e)(1), by striking ''section 106(b) or section 106(d)(2)(B)'' and inserting ''subsection (a)(3), (b), or (d)(2)(B) of section 106''; and

(3) in subsection (m)—

(A) in paragraph (1), by inserting ''(a)(2),'' after ''under subsection''; and

(B) in paragraph (2), by striking ''government—'' and inserting ''government other than an insular area—''.

(d) ALLOCATION AND DISTRIBUTION OF FUNDS.—Section 106(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(a)) is amended—

(1) in the first sentence of paragraph (1)—

(A) by striking ''an appropriation Act'' and inserting ''appropriation Acts''; and

(B) by striking ''in any year'' and inserting ''for such fiscal year'';

(2) in paragraph (2), by inserting ''under paragraph (1) and after reserving such amounts for insular areas under paragraph (2)'' after ''tribes'';

(3) in paragraph (3), by striking ''paragraphs (1) and (2)'' and inserting ''paragraphs (1), (2), and (3)''

(4) by redesignating paragraphs (2) and (3) (as so amended) as paragraphs (3) and (4); and

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

''(2) For each fiscal year, of the amount approved in appropriation Acts under section 103 for grants for such fiscal year (excluding the amounts provided for use in accordance with section 107), the Secretary shall reserve for grants to insular areas $7,000,000. The Secretary shall provide for distribution of amounts under this paragraph to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas. In determining the distribution of amounts to insular areas, the Secretary may also include other statistical criteria as data become available from the Bureau of the Census, but only if such criteria are contained in a regulation promulgated by the Secretary after notice and public comment.''.

(e) CONFORMING AMENDMENT.—The first sentence of section 106(d)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)(1)) is amended by striking ''paragraphs (1) and (2)'' and inserting ''paragraphs (1), (2), and (3)''.

(f) SPECIAL PURPOSE GRANTS.—Section 107 of the Housing and Community Development Act of 1974 (42 U.S.C. 5307) is amended—

(1) in subsection (a)(1)—

(A) by striking subparagraph (A); and

(B) by redesignating subparagraphs (B) through (H) as subparagraphs (A) through (G), respectively; and

(2) in subsection (b)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (7) as paragraphs (1) through (6), respectively.

(g) REGULATIONS.—The Secretary of Housing and Urban Development shall issue regulations to carry out the amendments made by this section, which shall take effect not later than the expiration of the 90-day period beginning on the date of the enactment of this Act.

PRIVILEGE OF THE FLOOR

Mr. GRASSLEY. Mr. President, I would like to make a unanimous consent request for Senator BAUCUS. He asked consent that John Colleran, Jill Davidsaver, Mandon Lovett, Justin Bonsey, Brittany Dalton, and Diana Birkett be granted the privilege of the floor for the duration of the floor debate on Medicare.

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

NASA FLEXIBILITY ACT OF 2003

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item No. 236, S. 610.

The PRESIDING OFFICER. The clerk will State the bill by title.

A bill (S. 610) to amend the provision of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel positions to the National Aeronautics and Space Administration, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 610

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 ''NASA Workforce Flexibility Act of 2003''.

[SEC. 2. WORKFORCE AUTHORITIES AND PERSONNEL PROVISIONS.

[(a) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

["CHAPTER 99—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

''SUBCHAPTER I—WORKFORCE AUTHORITIES

[''Sec.
[''9901. Definitions.
[''9902. Planning, notification, and reporting requirements.
[''9903. Workforce authorities.
[''9904. Recruitment, redesignation, and relocation bonuses.
[''9905. Retention bonuses.
[''9906. Term appointments.
[''9907. Pay authority for critical positions.
[''9908. Assignments of intergovernmental personnel.
[''9909. Enhanced demonstration project authority.

[''SUBCHAPTER II—PERSONNEL PROVISIONS

[''9931. Definitions.
[''9932. Administration and private sector exchange assignments.
[''9933. Science and technology scholarship program.
[''9934. Distinguished scholar appointment authority.
[''9935. Travel and transportation expenses of certain new appointees.
[''9936. Annual leave enhancements.
[''9937. Limited appointments to Senior Executive Service positions.
[''9938. Superior qualifications pay.

[''SUBCHAPTER I—WORKFORCE AUTHORITIES

["§ 9901. Definitions

[In this subchapter—

[''(1) the term 'Administration' means the National Aeronautics and Space Administration;

[''(2) the term 'Administrator' means the Administrator of the National Aeronautics and Space Administration;

[''(3) the term 'critical need' means a specific and important requirement of the Administration's mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because of—

[''(A) the inability to fill positions; or

[''(B) employees do not possess the requisite skills;

[''(4) the term 'employee' means an individual employed in or under the Administration; and

[''(5) the term 'workforce plan' means the plan required under section 9902(a).

[''§ 9902. Planning, notification, and reporting requirements

[''(a) Before exercising any of the workforce authorities under this subchapter, the Administrator shall submit a written plan to the Office of Personnel Management for approval. A plan under this subchapter may not be implemented without the approval of the Office of Personnel Management.

[''(b) A workforce plan shall include a description of—

[''(1) each critical need of the Administration and the criteria used in the identification of that need;

[''(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

[''(i) address critical needs; and

[''(ii) would be eligible for each authority proposed to be exercised under section 9903; and

[''(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

[''(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under section 9903; and

[''(B) the reasons why those needs would not be so addressed;

[''(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9904 and 9905 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

[''(5) the safeguards or other measures that will be applied to ensure that this subchapter is carried out in a manner consistent with merit system principles;

[''(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B); and

[''(7) the methods that will be used to determine if the authorities exercised under section 9903 have successfully addressed each critical need identified under paragraph (1).

[''(c) Not later than 60 days before first exercising any of the workforce authorities made available under this subchapter, the Administrator shall provide to all employees the workforce plan, and any additional information which the Administrator considers appropriate.

[''(d)(1)(A) The Administrator may submit any modifications to the workforce plan to the Office of Personnel Management. Modifications to the workforce plan may not be implemented without the approval of the Office of Personnel Management.

[''(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration.

[''(2) Any reference in this subchapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

[''(e) None of the workforce authorities made available under section 9903 may be exercised in a manner inconsistent with the workforce plan.

[''(f) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to—

[''(1) the Committee on Governmental Affairs and the Committee on Appropriations of the Senate; and

[''(2) the Committee on Government Reform and the Committee on Appropriations of the House of Representatives.

[''§ 9903. Workforce authorities

[''(a) The workforce authorities under this subchapter are the following:

[''(1) The authority to pay recruitment, redesignation, and relocation bonuses under section 9904.

[''(2) The authority to pay retention bonuses under section 9905.

[''(3) The authority to make term appointments and to take related personnel actions under section 9906.

[''(4) The authority to fix rates of basic pay for critical positions under section 9907.

[''(5) The authority to extend intergovernmental personnel act assignments under section 9908.

[''(b) No authority under this subchapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

[''(c) Unless specifically stated otherwise, all authorities provided under this subchapter are subject to section 5307.

[''§ 9904. Recruitment, redesignation, and relocation bonuses

[''(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

[''(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

[''(2) the individual—

[''(A) is newly appointed as an employee of the Federal Government;

[''(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

[''(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

[''(b) If the position is described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed—

[''(1) 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a, as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

[''(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

[''(c) If the position is not described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed—

[''(1) 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

[''(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

[''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

[''(B) At a minimum, the service agreement shall include—

[''(i) the required service period;

[''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

[''(iii) the amount of the bonus and the basis for calculating that amount; and

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

[''(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

[''(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

[''(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

[''§ 9905. Retention bonuses

[''(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

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

[''(2) the employee would be likely to leave in the absence of a retention bonus.

[''(b) If the position is described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

[''(c) If the position is not described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

[''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

[''(B) At a minimum, the service agreement shall include—

[''(i) the required service period;

[''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

[''(iii) the amount of the bonus and the basis for calculating the amount; and

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

[''(2) The employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

[''(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of

any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

[''(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

[''(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753, or under section 9904.

[''§ 9906. Term appointments

[''(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

[''(b) Notwithstanding chapter 33, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

[''(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33, to the term position;

[''(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

[''(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

[''(4) the employee's performance under such term appointment was at least fully successful or equivalent; and

[''(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

[''(c) Notwithstanding chapter 33, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

[''(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

[''(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

[''§ 9907. Pay authority for critical positions

[''(a) In this section, the term 'position' means—

[''(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

[''(2) a position under the Executive Schedule under sections 5312 through 5317;

[''(3) a position established under section 3104; or

[''(4) a senior-level position to which section 5376(a)(1) applies.

[''(b) Authority under this section—

[''(1) may be exercised only with respect to a position that—

[''(A) is described as addressing a critical need in the workforce plan under section 9902(b)(2)(A); and

[''(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

[''(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

[''(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

[''(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

[''(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

[''(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

[''(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

[''(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.

[''§ 9908. Assignments of intergovernmental personnel

[''For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking 'two' and inserting 'four'.

[''§ 9909. Enhanced demonstration project authority

[''When conducting a demonstration project at the Administration, section 4703(d)(1)(A) may be applied by substituting 'such numbers of individuals as determined by the Administrator' for 'not more than 5,000 individuals'.

''SUBCHAPTER II—PERSONNEL PROVISIONS

[''§ 9931. Definitions

[In this subchapter—

[''(1) the term 'Administration' means the National Aeronautics and Space Administration; and

[''(2) the term 'Administrator' means the Administrator of the National Aeronautics and Space Administration.

[''§ 9932. Administration and private sector exchange assignments

[''(a) In this section—

[''(1) the term 'private sector employee' means an employee of a private sector entity; and

[''(2) the term 'private sector entity' means an organization, company, corporation, or other business concern, or a foreign government or agency of a foreign government, that is not a State, local government, Federal agency, or other organization as defined under section 3371 (1), (2), (3), and (4), respectively.

[''(b)(1) On request from or with the concurrence of a private sector entity, and with the consent of the employee concerned, the Administrator may arrange for the assignment of—

[''(A) an employee of the Administration serving under a career or career-conditional appointment, a career appointee in the Senior Executive Service, or an individual under an appointment of equivalent tenure in an excepted service position, but excluding employees in positions which have been excepted from the competitive service by reasons of their confidential, policy-determining, policymaking, or policy-advocating character, to a private sector entity; and

[''(B) an employee of a private sector entity to the Administration,

for work of mutual concern to the Administration and the private sector entity that the Administrator determines will be beneficial to both.

[''(2) The period of an assignment under this section may not exceed 2 years. However, the Administrator may extend the period of assignment for not more than 2 additional years.

[''(3) An employee of the Administration may be assigned under this section only if the employee agrees, as a condition of accepting an assignment, to serve in the Administration upon the completion of the assignment for a period equal to the length of the assignment. The Administrator may waive the requirement under this paragraph, with the approval of the Office of Management and Budget, with respect to any employee if the Administrator determines it to be in the best interests of the United States to do so.

[''(4) Each agreement required under paragraph (3) shall provide that if the employee fails to carry out the agreement (except in the case of a waiver made under paragraph (3)), the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount due shall be treated as a debt due the United States.

[''(c)(1) An Administration employee assigned to a private sector entity under this section is deemed, during the assignment, to be on detail to a work assignment (as a detailee to the entity).

[''(2) An Administration employee assigned under this section on detail remains an employee of the Administration. Chapter 171 of title 28 and any other Federal tort liability statute apply to the Administration employee so assigned, and all defenses available to the United States under these laws or applicable provisions of State law shall remain in effect. The supervision of the duties of an Administration employee assigned to the private sector entity through detail may be governed by agreement between the Administration and the private sector entity concerned.

[''(3) The assignment of an Administration employee on detail to a private sector entity under this section may be made with or without reimbursement by the private sector entity for the travel and transportation expenses to or from the place of assignment, for the pay, or supplemental pay, or a part thereof, of the employee, or for the contribution of the Administration to the employee's benefit systems during the assignment. Any reimbursements shall be credited to the appropriation of the Administration used for paying the travel and transportation expenses, pay, or benefits, and not paid to the employee.

[''(d)(1) An employee of a private sector entity who is assigned to the Administration under an arrangement under this section shall be deemed on detail to the Administration.

[''(2) During the period of assignment, a private sector employee on detail to the Administration—

[''(A) is not entitled to pay from the Administration, except to the extent that the pay received from the private sector entity is less than the appropriate rate of pay which the duties would warrant under the pay provisions of this title or other applicable authority;

[''(B) is deemed an employee of the Administration for the purpose of chapter 73 of this title, the Ethics in Government Act of 1978, section 27 of the Office of Federal Procurement Policy Act, sections 201, 203, 205, 207, 208, 209, 602, 603, 606, 607, 610, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, chapter 171 of title 28, and any other Federal tort liability statute, and any other provision of Federal criminal law, unless otherwise specifically exempted;

[''(C) notwithstanding subparagraph (B), is also deemed to be an employee of his or her private sector employer for purposes of section 208 of title 18; and

[''(D) is subject to such regulations as the Administrator may prescribe.

[''(3) The supervision of the duties of an employee assigned under this subsection may be governed by agreement between the Administration and the private sector entity.

[''(4) A detail of a private sector employee to the Administration may be made with or without reimbursement by the Administration for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the private sector entity, or a part thereof, to employee benefit systems.

[''(5)(A) A private sector employee on detail to the Administration under this section who suffers disability or dies as a result of personal injury sustained while in the performance of duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81 as an employee as defined under section 8101 who had sustained the injury in the performance of duties.

[''(B) When an employee (or the employee's dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 is also entitled to benefits from the employee's private sector employer for the same injury or death, the employee (or the employee's dependents in case of death) shall elect which benefits the employee will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable.

[''(C) Except as provided in subparagraphs (A) and (B), and notwithstanding any other law, the United States, any instrumentality of the United States, or an employee, agent, or assign of the United States shall not be liable to—

[''(i) a private sector employee assigned to the Administration under this section;

[''(ii) such employee's legal representative, spouse, dependents, survivors, or next of kin; or

[''(iii) any other person, including any third party as to whom such employee, or that employee's legal representative, spouse, dependents, survivors, or next of kin, has a cause of action arising out of an injury or death sustained in the performance of duty pursuant to an assignment under this section, otherwise entitled to recover damages from the United States, any instrumentality of the United States, or any employee, agency, or assign of the United States, with respect to any injury or death suffered by a private sector employee sustained in the performance of duties pursuant to an assignment under this section.

[''(e)(1) Appropriations of the Administration are available to pay, or reimburse, an Administration or private sector employee in accordance with—

[''(A) subchapter I of chapter 57 for the expenses of—

[''(i) travel, including a per diem allowance, to and from the assignment location;

[''(ii) a per diem allowance at the assignment location during the period of the assignment; and

[''(iii) travel, including a per diem allowance, while traveling on official business away from the employee's designated post of duty during the assignment when the Administrator considers the travel to be in the interest of the United States;

[''(B) section 5724 for the expenses of transportation of the employee's immediate family, household goods, and personal effects to and from the assignment location;

[''(C) section 5724a(a) for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

[''(D) section 5724a(c) for subsistence expenses of the employee and immediate family while occupying temporary quarters at the assignment location and on return to the employee's former post of duty;

[''(E) section 5724a(g) to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

[''(F) section 5726(c) for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

[''(2) Expenses specified in paragraph (1), other than those in paragraph (1)(A)(iii), may not be allowed in connection with the assignment of an Administration or private sector employee under this section, unless and until the employee agrees in writing to complete the entire period of his assignment or 1 year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Administrator. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The Administrator may waive in whole or in part a right of recovery under this paragraph with respect to a private sector employee on assignment with the Administration or an Administration employee on assignment with a private sector entity.

[''(3) Appropriations of the Administration are available to pay expenses under section 5742 with respect to an Administration or private sector employee assigned under this authority.

[''(f) A private sector entity may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the entity to an employee assigned to the Administration under this section for the period of the assignment.

[''§ 9933. Science and technology scholarship program

[''(a)(1) The Administrator may carry out a program of entering into contractual agreements with individuals described under paragraph (2) under which—

[''(A) the Administrator agrees to provide to the individuals scholarships for pursuing, at accredited institutions of higher education, academic programs appropriate for careers in professions needed by the Administration; and

[''(B) the individuals agree to serve as employees of the Administration, for the period described under subsection (b), in positions needed by the Administration and for which the individuals are qualified.

[''(2) The individuals referred to under paragraph (1) are individuals who—

[''(A) are enrolled or accepted for enrollment as full-time students at accredited institutions of higher education in an academic field or discipline prescribed by the Administration;

[''(B) are United States citizens; and

[''(C) at the time of the initial scholarship award, are not Federal employees as defined under section 2105.

[''(b)(1) For purposes of subsection (a)(1)(B), the period of service for which an individual is obligated to serve as an employee of the Administration is, subject to subparagraph (A) of paragraph (2), 12 months for each academic year for which the scholarship under such subsection is provided.

[''(2)(A) Subject to subparagraph (B), the Administrator may provide a scholarship under this section if the individual applying for the scholarship agrees that, not later than 60 days after obtaining the educational degree involved, the individual will begin serving full-time as an employee in satisfaction of the period of service that the individual is obligated to provide.

[''(B) The Administrator may defer the obligation of an individual to provide a period of service under this subsection, if the Administrator determines that such a deferral is appropriate.

[''(c)(1) The Administrator may provide a scholarship under subsection (a) for an academic year if—

[''(A) the individual applying for the scholarship has submitted to the Administrator a proposed academic program leading to a degree in an academic field or discipline approved by the Administration; or

[''(B) the individual agrees that the program will not be altered without the approval of the Administrator.

[''(2) The Administrator may provide a scholarship under this section for an academic year if the individual applying for the scholarship agrees to maintain a high level of academic standing as defined by regulation.

[''(3) The dollar amount of a scholarship for an academic year shall not exceed—

[''(A) the limits established by regulation under paragraph (4); or

[''(B) the total costs incurred in attending the institution involved.

[''(4) A scholarship may be expended for tuition, fees, and other authorized expenses as established by regulation.

[''(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided in the scholarship for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which a scholarship is provided.

[''(6) An individual may not receive a scholarship for longer than 4 academic years, unless an extension is granted by the Administrator.

[''(d)(1)(A) Any scholarship recipient who fails to maintain a high level of academic standing, who is dismissed from an educational institution for disciplinary reasons, or who voluntarily terminates academic training before graduation from the educational program for which the scholarship was awarded, shall—

[''(i) be in breach of the contractual agreement; and

[''(ii) in lieu of any service obligation arising under such agreement, be liable to the United States for repayment of all scholarship funds paid to that recipient and to the

educational institution on their behalf under the agreement within 1 year after the date of default.

[''(B) The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation. A penalty for failure to complete the academic program for which the scholarship was awarded may be assessed at the discretion of the Administrator, in addition to the repayment with interest as provided under paragraph (3).

[''(2)(A) A scholarship recipient who, for any reason, fails to begin or complete that recipient's service obligation after completion of academic training, or fails to comply with the terms and conditions of deferment established by the Administrator, shall be in breach of the contractual agreement.

[''(B)(i) In this subparagraph—

[''(I) the term 'A' means the amount the United States is entitled to recover;

[''(II) the term 'F' means the sum of the amounts paid to or on behalf of the participant;

[''(III) the term 't' means the total number of months of the period of obligated service the participant is required to serve; and

[''(IV) the term 's' means the number of months of the period of obligated service served by the participant.

[''(ii) When a recipient breaches the agreement as provided under subparagraph (A), the United States shall be entitled to recover damages equal to 3 times the scholarship award, in accordance with the following formula:

[''A=(3F)[(t-s)/t]

[''(C) The damages that the United States is entitled to recover shall be paid within 1 year after the date of default.

[''(3) Beginning 90 days after default, interest shall accrue on the payments required to be made under this subsection, at a rate to be determined by regulation established by the Administrator.

[''(e)(1) Any obligation of an individual incurred under this section for service or payment of damages may be canceled upon the death of the individual.

[''(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under this section if—

[''(A) the compliance by the individual is impossible or would involve extreme hardship to the individual; or

[''(B) enforcement of such obligation with respect to any individual would be contrary to the best interests of the Government.

[''(f) The Administrator may provide a scholarship under this section if an application for the scholarship is submitted to the Administrator and the application is in such form, is made in such manner, and contains such agreements, assurance, and information as the Administrator determines to be necessary to carry out this section.

[''(g)(1) There are authorized to be appropriated to the Administration to carry out this section $10,000,000 for fiscal year 2004 and $10,000,000 for each succeeding fiscal year.

[''(2) Amounts appropriated for a fiscal year for scholarships under this section shall remain available for 2 fiscal years.

[''§ 9934. Distinguished scholar appointment authority

[''(a) In this section—

[''(1) the term 'professional position' means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

[''(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

[''(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

[''(2) the term 'research position' means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

[''(b) The Administration may appoint, without regard to the provisions of sections 3304(b) and 3309 through 3318, candidates directly to General Schedule professional positions in the Administration for which public notice has been given, if—

[''(1) with respect to a position at the GS–7 level, the individual—

[''(A) received, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

[''(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

[''(2) with respect to a position at the GS–9 level, the individual—

[''(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

[''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

[''(3) with respect to a position at the GS–11 level, the individual—

[''(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

[''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

[''(4) with respect to a research position at the GS–12 level, the individual—

[''(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

[''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

[''(c) Veterans' preference procedures shall apply when selecting candidates under this section. Preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of nonpreference eligibles.

[''(d) An appointment made under this authority shall be a career conditional appointment in the competitive civil service.

[''§ 9935. Travel and transportation expenses of certain new appointees

[''(a) In this section, the term 'new appointee' means—

[''(1) a person newly appointed or reinstated to Federal service to the Administration to—

[''(A) a career or career-conditional appointment;

[''(B) a term appointment;

[''(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

[''(D) a career or limited term Senior Executive Service appointment;

[''(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

[''(F) an appointment to a position established under section 3104; or

[''(G) an appointment to a position established under section 5108; or

[''(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

[''(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

[''§ 9936. Annual leave enhancements

[''(a)(1) In this subsection—

[''(A) the term 'newly appointed employee' means an individual who is first appointed—

[''(i) regardless of tenure, as an employee of the Federal Government; or

[''(ii) as an employee of the Federal Government following a break in service of at least 90 days after that individual's last period of Federal employment, other than—

[''(I) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

[''(II) employment as a law clerk trainee;

[''(III) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

[''(IV) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

[''(V) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

[''(B) the term 'period of qualified non-Federal service' means any period of service performed by an individual that—

[''(i) was performed in a position the duties of which were directly related to the duties of the position in the Administration to which that individual will fill as a newly appointed employee; and

[''(ii) except for this section would not otherwise be service performed by an employee for purposes of section 6303; and

[''(C) the term 'directly related to the duties of the position' means duties and responsibilities in the same line of work which require similar qualifications.

[''(2)(A) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

[''(B) A period deemed by the Administrator under subparagraph (A) shall continue to apply to the employee during—

[''(i) the period of Federal service in which the deeming is made; and

[''(ii) any subsequent period of Federal service.

[''(3)(A) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position

paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS–15, step 10, shall be 1 day for each full biweekly pay period.

[''(B) The accrual rate established under this paragraph shall continue to apply to the employee during—

[''(i) the period of Federal service in which such accrual rate first applies; and

[''(ii) any subsequent period of Federal service.

[''§ 9937. Limited appointments to Senior Executive Service positions

[''(a) In this section—

[''(1) the term 'career reserved position' means a position in the Administration designated under section 3132(b) which may be filled only by—

[''(A) a career appointee; or

[''(B) a limited emergency appointee or a limited term appointee—

[''(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

[''(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

[''(2) the term 'limited emergency appointee' has the meaning given under section 3132; and

[''(3) the term 'limited term appointee' means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

[''(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

[''(c) Notwithstanding sections 3132 and 3394(b)—

[''(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

[''(A) 4 years or less to a position the duties of which will expire at the end of such term; or

[''(B) 1 year or less to a position the duties of which are continuing; and

[''(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

[''(A) paragraph (1)(A) for a period not to exceed 2 years; and

[''(B) paragraph (1)(B) for a period not to exceed 1 year.

[''(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

[''(e) Notwithstanding section 3394(b) and section 3395—

[''(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

[''(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

[''(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

[''(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

[''§ 9938. Superior qualifications pay

[''(a) In this section the term 'employee' means an employee as defined under section 2105 who is employed by the Administration.

[''(b) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, based on the superior qualifications of the employee, or the special need of the Administration.

[''(c) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee's contribution in the new position will exceed that in the former position, before setting pay under this section.

[''(d) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

[''(e) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

[''(f) The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under subsection (g).

[''(g) Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management, that includes—

[''(1) criteria for approval of actions to set pay under this section;

[''(2) the level of approval required to set pay under this section;

[''(3) all types of actions and positions to be covered;

[''(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

[''(5) a process to evaluate the effectiveness of this section.''.

[(b) TECHNICAL AND CONFORMING AMENDMENT.—

[(1) TABLE OF CHAPTERS.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:

[''99. National Aeronautics and Space Administration ..... **9901''.**

[(2) COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL.—

[(A) IN GENERAL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking ''the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended,'' and inserting ''the rate of basic pay payable for level III of the Executive Schedule,''.

[(B) EFFECTIVE DATE.—Notwithstanding section 3, the amendment made by this paragraph shall take effect on the first day of the first pay period beginning on or after the effective date of this Act.

[(3) COMPENSATION CLARIFICATION.—Section 209 of title 18, United States Code, is amended by adding at the end the following:

[''(g)(1) In this subsection, the term 'private sector entity' has the meaning given under section 9932(a) of title 5.

[''(2) This section does not prohibit an employee of a private sector entity, while assigned to the National Aeronautics and Space Administration under section 9932 of title 5, from continuing to receive pay and benefits from that entity in accordance with section 9932 of that title.''.

[SEC. 3. EFFECTIVE DATE.

[This Act shall take effect 180 days after the date of enactment of this Act.]

SECTION 1. NASA WORKFORCE AUTHORITIES AND PERSONNEL PROVISIONS.

(a) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by inserting after chapter 97, as added by section 841(a)(2) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2229), the following:

''CHAPTER 98—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

''SUBCHAPTER I—WORKFORCE AUTHORITIES

''Sec.
''9801. Definitions.
''9802. Planning, notification, and reporting requirements.
''9803. Workforce authorities.
''9804. Recruitment, redesignation, and relocation bonuses.
''9805. Retention bonuses.
''9806. Term appointments.
''9807. Pay authority for critical positions.
''9808. Assignments of intergovernmental personnel.

''SUBCHAPTER II—PERSONNEL PROVISIONS

''9831. Definitions.
''9832. Administration and private sector exchange assignments.
''9833. Science and technology scholarship program.
''9834. Distinguished scholar appointment authority.
''9835. Travel and transportation expenses of certain new appointees.
''9836. Annual leave enhancements.
''9837. Limited appointments to Senior Executive Service positions.
''9838. Superior qualifications pay.

''SUBCHAPTER I—WORKFORCE AUTHORITIES

''§ 9801. Definitions

''For purposes of this subchapter—

''(1) the term 'Administration' means the National Aeronautics and Space Administration;

''(2) the term 'Administrator' means the Administrator of the National Aeronautics and Space Administration;

''(3) the term 'critical need' means a specific and important requirement of the Administration's mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because—

''(A) of the inability to fill positions; or

''(B) employees do not possess the requisite skills;

''(4) the term 'employee' means an individual employed in or under the Administration;

''(5) the term 'workforce plan' means the plan required under section 9802(a);

''(6) the term 'appropriate committees of Congress' means—

''(A) the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and

''(B) the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate; and

''(7) the term 'redesignation bonus' means a bonus under section 9804 paid to an individual described in subsection (a)(2) thereof.

''§ 9802. Planning, notification, and reporting requirements

''(a) Not later than 60 days before exercising any of the workforce authorities under this subchapter, the Administrator shall submit a written plan to the appropriate committees of Congress. A plan under this subchapter may not be

implemented without the approval of the Office of Personnel Management.

''(b) A workforce plan shall include a description of—

''(1) each critical need of the Administration and the criteria used in the identification of that need;

''(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

''(i) address critical needs; and

''(ii) would be eligible for each authority proposed to be exercised under section 9803; and

''(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

''(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this subchapter; and

''(B) the reasons why those needs would not be so addressed;

''(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

''(5) the safeguards or other measures that will be applied to ensure that this subchapter is carried out in a manner consistent with merit system principles;

''(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);

''(7) the methods that will be used to determine if the authorities exercised under this subchapter have successfully addressed each critical need identified under paragraph (1); and

''(8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals;

''(B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of highly qualified individuals, including how it intends to use—

''(i) nongovernmental recruitment or placement agencies; and

''(ii) Internet technologies; and

''(9) any reforms to the Administration's workforce management practices recommended by the Columbia Accident Investigation Board, the extent to which those recommendations will be accepted, and, if necessary, the reasons why any recommendations were not accepted.

''(c) Not later than 60 days before first exercising any of the workforce authorities made available under this subchapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.

''(d)(1)(A) The Administrator may submit any modifications to the workforce plan to the Office of Personnel Management. Modifications to the workforce plan may not be implemented without the approval of the Office of Personnel Management.

''(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.

''(2) Any reference in this subchapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

''(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

''(1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);

''(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and

''(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

''(f) None of the workforce authorities made available under this subchapter may be exercised in a manner inconsistent with the workforce plan.

''(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

''(h) Not later than 6 years after date of enactment of this subchapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this subchapter, including—

''(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this subchapter successfully addressed each critical need identified under subsection (b)(1);

''(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

''(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

''§ 9803. Workforce authorities

''(a) The workforce authorities under this subchapter are the following:

''(1) The authority to pay recruitment, redesignation, and relocation bonuses under section 9804.

''(2) The authority to pay retention bonuses under section 9805.

''(3) The authority to make term appointments and to take related personnel actions under section 9806.

''(4) The authority to fix rates of basic pay for critical positions under section 9807.

''(5) The authority to extend intergovernmental personnel act assignments under section 9808.

''(6) The authority to apply subchapter II of chapter 35 in accordance with section 9810.

''(b) No authority under this subchapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

''(c) Unless specifically stated otherwise, all authorities provided under this subchapter are subject to section 5307.

''§ 9804. Recruitment, redesignation, and relocation bonuses

''(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

''(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

''(2) the individual—

''(A) is newly appointed as an employee of the Federal Government;

''(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

''(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

''(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

''(1) 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

''(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

''(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

''(1) 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

''(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

''(B) At a minimum, the service agreement shall include—

''(i) the required service period;

''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

''(iii) the amount of the bonus and the basis for calculating that amount; and

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

''(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

''(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

''(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

''(f) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials (as such terms are defined in section 7103(a) (10) and (11), respectively).

''§ 9805. Retention bonuses

''(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

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

''(2) the employee would be likely to leave in the absence of a retention bonus.

''(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

''(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

''(B) At a minimum, the service agreement shall include—

''(i) the required service period;

''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

''(iii) the amount of the bonus and the basis for calculating the amount; and

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

''(2) The employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

''(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

''(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

''(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 or under section 9804.

''(g) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials (as such terms are defined in section 7103(a) (10) and (11), respectively).

''§ 9806. Term appointments

''(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

''(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

''(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

''(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

''(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

''(4) the employee's performance under such term appointment was at least fully successful or equivalent; and

''(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

''(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

''(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

''(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

''§ 9807. Pay authority for critical positions

''(a) In this section, the term 'position' means—

''(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

''(2) a position under the Executive Schedule under sections 5312 through 5317;

''(3) a position established under section 3104; or

''(4) a senior-level position to which section 5376(a)(1) applies.

''(b) Authority under this section—

''(1) may be exercised only with respect to a position that—

''(A) is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A); and

''(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

''(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

''(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

''(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

''(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

''(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

''(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

''(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.

''§ 9808. Assignments of intergovernmental personnel

''For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking 'two' and inserting 'four'.

''SUBCHAPTER II—PERSONNEL PROVISIONS

''§ 9831. Definitions

''For purposes of this subchapter, the terms 'Administration' and 'Administrator' have the meanings set forth in section 9801.

''§ 9832. Administration and private sector exchange assignments

''(a) In this section—

''(1) the term 'private sector employee' means an employee of a private sector entity; and

''(2) the term 'private sector entity' means an organization, company, corporation, or other business concern, or a foreign government or agency of a foreign government, that is not a State, local government, Federal agency, or other organization as defined under section 3371 (1), (2), (3), and (4), respectively.

''(b)(1) On request from or with the concurrence of a private sector entity, and with the consent of the employee concerned, the Administrator may arrange for the assignment of—

''(A) an employee of the Administration serving in a scientific or technical position as designated by the Administrator, to a private sector entity; and

''(B) an employee of a private sector entity serving in a scientific or technical position to the Administration,

for work of mutual concern to the Administration and the private sector entity that the Administrator determines will be beneficial to both.

''(2) The period of an assignment under this section may not exceed 2 years. However, the Administrator may extend the period of assignment for not more than 2 additional years.

''(3) An employee of the Administration may be assigned under this section only if the employee agrees, as a condition of accepting an assignment, to serve in the Administration upon the completion of the assignment for a period equal to the length of the assignment. The Administrator may waive the requirement under this paragraph, with the approval of the Office of Management and Budget, with respect to any employee if the Administrator determines it to be in the best interests of the United States to do so.

''(4) Each agreement required under paragraph (3) shall provide that if the employee fails to carry out the agreement (except in the case of a waiver made under paragraph (3)), the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount due shall be treated as a debt due the United States.

''(c)(1) An Administration employee assigned to a private sector entity under this section is deemed, during the assignment, to be on detail to a work assignment (as a detailee to the entity).

''(2) An Administration employee assigned under this section on detail remains an employee of the Administration. Chapter 171 of title 28 and any other Federal tort liability statute apply to the Administration employee so assigned, and all defenses available to the United States under these laws or applicable provisions of State law shall remain in effect. The supervision of the duties of an Administration employee assigned to the private sector entity through detail may be governed by agreement between the Administration and the private sector entity concerned.

''(3) The assignment of an Administration employee on detail to a private sector entity under this section may be made with or without reimbursement by the private sector entity for the travel and transportation expenses to or from the place of assignment, for the pay, or supplemental pay, or a part thereof, of the employee, or for the contribution of the Administration to the employee's benefit systems during the assignment. Any reimbursements shall be credited to the appropriation of the Administration used for paying the travel and transportation expenses, pay, or benefits, and not paid to the employee.

''(d)(1) An employee of a private sector entity who is assigned to the Administration under an arrangement under this section shall be deemed on detail to the Administration.

''(2) During the period of assignment, a private sector employee on detail to the Administration—

''(A) is not entitled to pay from the Administration, except to the extent that the pay received from the private sector entity is less than the appropriate rate of pay which the duties would warrant under the pay provisions of this title or other applicable authority;

''(B) is deemed an employee of the Administration for the purpose of chapter 73 of this title, the Ethics in Government Act of 1978, section 27 of the Office of Federal Procurement Policy Act, sections 201, 203, 205, 207, 208, 209, 602, 603, 606, 607, 610, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, chapter 171 of title 28, and any other Federal tort liability statute, and any other provision of Federal criminal law, unless otherwise specifically exempted;

''(C) notwithstanding subparagraph (B), is also deemed to be an employee of his or her private sector employer for purposes of section 208 of title 18; and

''(D) is subject to such regulations as the Administrator may prescribe.

''(3) The supervision of the duties of an employee assigned under this subsection may be governed by agreement between the Administration and the private sector entity.

''(4) A detail of a private sector employee to the Administration may be made with or without reimbursement by the Administration for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the private sector entity, or a part thereof, to employee benefit systems.

''(5)(A) A private sector employee on detail to the Administration under this section who suffers disability or dies as a result of personal injury sustained while in the performance of duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81 as an employee as defined under section 8101 who had sustained the injury in the performance of duties.

''(B) When an employee (or the employee's dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 is also entitled to benefits from the employee's private sector employer for the same injury or death, the employee (or the employee's dependents in case of death) shall elect which benefits the employee will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable.

''(C) Except as provided in subparagraphs (A) and (B), and notwithstanding any other law, the United States, any instrumentality of the United States, or an employee, agent, or assign of the United States shall not be liable to—

''(i) a private sector employee assigned to the Administration under this section;

''(ii) such employee's legal representative, spouse, dependents, survivors, or next of kin; or

''(iii) any other person, including any third party as to whom such employee, or that employee's legal representative, spouse, dependents, survivors, or next of kin, has a cause of action arising out of an injury or death sustained in the performance of duty pursuant to an assignment under this section, otherwise entitled to recover damages from the United States, any instrumentality of the United States, or any employee, agency, or assign of the United States, with respect to any injury or death suffered by a private sector employee sustained in the performance of duties pursuant to an assignment under this section.

''(e)(1) Appropriations of the Administration are available to pay, or reimburse, an Administration or private sector employee in accordance with—

''(A) subchapter I of chapter 57 for the expenses of—

''(i) travel, including a per diem allowance, to and from the assignment location;

''(ii) a per diem allowance at the assignment location during the period of the assignment; and

''(iii) travel, including a per diem allowance, while traveling on official business away from the employee's designated post of duty during the assignment when the Administrator considers the travel to be in the interest of the United States;

''(B) section 5724 for the expenses of transportation of the employee's immediate family, household goods, and personal effects to and from the assignment location;

''(C) section 5724a(a) for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

''(D) section 5724a(c) for subsistence expenses of the employee and immediate family while occupying temporary quarters at the assignment location and on return to the employee's former post of duty;

''(E) section 5724a(g) to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

''(F) section 5726(c) for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

''(2) Expenses specified in paragraph (1), other than those in paragraph (1)(A)(iii), may not be allowed in connection with the assignment of an Administration or private sector employee under this section, unless and until the employee agrees in writing to complete the entire period of his assignment or 1 year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Administrator. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The Administrator may waive in whole or in part a right of recovery under this paragraph with respect to a private sector employee on assignment with the Administration or an Administration employee on assignment with a private sector entity.

''(3) Appropriations of the Administration are available to pay expenses under section 5742 with respect to an Administration or private sector employee assigned under this authority.

''(f) A private sector entity may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the entity to an employee assigned to the Administration under this section for the period of the assignment.

''§9833. Science and technology scholarship program

''(a)(1) The Administrator shall establish a National Aeronautics and Space Administration Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Administration.

''(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act.

''(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Administration, for the period described in subsection (f)(1), in positions needed by the Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

''(b) In order to be eligible to participate in the Program, an individual must—

''(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under subsection (d);

''(2) be a United States citizen; and

''(3) at the time of the initial scholarship award, not be an employee (as defined in section 2105).

''(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

''(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

''(e)(1) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

''(2) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

''(3) The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Administrator, but shall in no case exceed the cost of attendance.

''(4) A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.

''(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

''(f)(1) The period of service for which an individual shall be obligated to serve as an employee of the Administration is, except as provided in subsection (h)(2), 12 months for each academic year for which a scholarship under this section is provided.

''(2)(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

''(B) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate. The Administrator shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

''(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation.

''(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

''(A) the total amount of scholarships received by such individual under this section; plus

''(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

''(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

''(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

''(i) For purposes of this section—

''(1) the term 'cost of attendance' has the meaning given that term in section 472 of the Higher Education Act of 1965;

''(2) the term 'institution of higher education' has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

''(3) the term 'Program' means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

''(j)(1) There is authorized to be appropriated to the Administration for the Program $10,000,000 for each fiscal year.

''(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

''§ 9834. Distinguished scholar appointment authority

''(a) In this section—

''(1) the term 'professional position' means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

''(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

''(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

''(2) the term 'research position' means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

''(b) The Administration may appoint, without regard to the provisions of sections 3304(b) and 3309 through 3318, candidates directly to General Schedule professional positions in the Administration for which public notice has been given, if—

''(1) with respect to a position at the GS–7 level, the individual—

''(A) received, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

''(2) with respect to a position at the GS–9 level, the individual—

''(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

''(3) with respect to a position at the GS–11 level, the individual—

''(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

''(4) with respect to a research position at the GS–12 level, the individual—

''(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

''(c) Veterans' preference procedures shall apply when selecting candidates under this section. Preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of nonpreference eligibles.

''(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

''§ 9835. Travel and transportation expenses of certain new appointees

''(a) In this section, the term 'new appointee' means—

''(1) a person newly appointed or reinstated to Federal service to the Administration to—

''(A) a career or career-conditional appointment;

''(B) a term appointment;

''(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

''(D) a career or limited term Senior Executive Service appointment;

''(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

''(F) an appointment to a position established under section 3104; or

''(G) an appointment to a position established under section 5108; or

''(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

''(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

''§ 9836. Annual leave enhancements

''(a)(1) In this section—

''(A) the term 'newly appointed employee' means an individual who is first appointed—

''(i) regardless of tenure, as an employee of the Federal Government; or

''(ii) as an employee of the Federal Government following a break in service of at least 90 days after that individual's last period of Federal employment, other than—

''(I) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

''(II) employment as a law clerk trainee;

''(III) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

''(IV) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

''(V) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

''(B) the term 'period of qualified non-Federal service' means any period of service performed by an individual that—

''(i) was performed in a position the duties of which were directly related to the duties of the position in the Administration to which that individual will fill as a newly appointed employee; and

''(ii) except for this section, would not otherwise be service performed by an employee for purposes of section 6303; and

''(C) the term 'directly related to the duties of the position' means duties and responsibilities in the same line of work which require similar qualifications.

''(b)(1) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

''(2) A period deemed by the Administrator under paragraph (1) shall continue to apply to the employee during—

''(A) the period of Federal service in which the deeming is made; and

''(B) any subsequent period of Federal service.

''(c)(1) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS–15, step 10, shall be 1 day for each full biweekly pay period.

''(2) The accrual rate established under this paragraph shall continue to apply to the employee during—

''(A) the period of Federal service in which such accrual rate first applies; and

''(B) any subsequent period of Federal service.

''§ 9837. Limited appointments to Senior Executive Service positions

''(a) In this section—

''(1) the term 'career reserved position' means a position in the Administration designated under section 3132(b) which may be filled only by—

''(A) a career appointee; or

''(B) a limited emergency appointee or a limited term appointee—

''(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

''(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

''(2) the term 'limited emergency appointee' has the meaning given under section 3132; and

''(3) the term 'limited term appointee' means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

''(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

''(c) Notwithstanding sections 3132 and 3394(b)—

''(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

''(A) 4 years or less to a position the duties of which will expire at the end of such term; or

''(B) 1 year or less to a position the duties of which are continuing; and

''(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

''(A) paragraph (1)(A) for a period not to exceed 2 years; and

''(B) paragraph (1)(B) for a period not to exceed 1 year.

''(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

''(e) Notwithstanding section 3394(b) and section 3395—

''(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

''(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

''(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

''(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

''§ 9838. Superior qualifications pay

''(a) In this section the term 'employee' means an employee as defined under section 2105 who is employed by the Administration.

''(b) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, based on the superior qualifications of the employee, or the special need of the Administration.

''(c) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee's contribution in the new position will exceed that in the former position, before setting pay under this section.

''(d) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

''(e) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

''(f) The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under subsection (g).

''(g) Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management, that includes—

''(1) criteria for approval of actions to set pay under this section;

''(2) the level of approval required to set pay under this section;

''(3) all types of actions and positions to be covered;

''(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

''(5) a process to evaluate the effectiveness of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF CHAPTERS.—The table of chapters for subchapter I of part III of title 5, United States Code, is amended by adding after the item relating to chapter 97 the following:

''98. National Aeronautics and Space Administration ..... 9801''.

(2) COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking ''the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended,'' and inserting ''the rate of basic pay payable for level III of the Executive Schedule,''.

(3) COMPENSATION CLARIFICATION.—Section 209 of title 18, United States Code, as amended by section 209(g)(2) of the E-Government Act of 2002 (Public Law 107–347; 116 Stat. 2932), is amended by adding at the end the following:

''(h) This section does not prohibit an employee of a private sector organization, while assigned to the National Aeronautics and Space Administration under section 9832 of title 5, from continuing to receive pay and benefits from that organization in accordance with section 9832 of that title.''.

(4) CONTINUED TSP ELIGIBILITY.—Section 125(c)(1) of Public Law 100–238 (5 U.S.C. 8432 note), as amended by section 209(g)(3) of the E-Government Act of 2002 (Public Law 107–347; 116 Stat. 2932), is amended—

(A) in subparagraph (C), by striking ''or'' at the end;

(B) in subparagraph (D), by striking ''and'' at the end and inserting ''or''; and

(C) by adding at the end the following:

''(E) an individual assigned from the National Aeronautics and Space Administration to a private sector organization under section 9832 of title 5, United States Code; and''.

(5) ETHICS PROVISIONS.—

(A) ONE-YEAR RESTRICTION ON CERTAIN COMMUNICATIONS.—Section 207(c)(2)(A)(v) of title 18, United States Code, is amended by inserting ''or section 9832'' after ''chapter 37''.

(B) DISCLOSURE OF CONFIDENTIAL INFORMATION.—Section 1905 of title 18, United States Code, is amended by inserting ''or section 9832'' after ''chapter 37''.

(6) CONTRACT ADVICE.—Section 207(l) of title 18, United States Code, is amended by inserting ''or section 9832'' after ''chapter 37''.

(7) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(A) in section 3111(d), by inserting ''or section 9832'' after ''chapter 37''; and

(B) in section 7353(b)(4), by inserting ''or section 9832'' after ''chapter 37''.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the substitute amendment at the desk be agreed to, the committee amendment, as amended, be agreed to, the bill, as amended, 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 amendment (No. 2214) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment, as amended, was agreed to.

The bill, as amended, was read the third time and passed.

CONVEYING CERTAIN LAND IN THE STATE OF ARKANSAS

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of S. 1537 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1537) to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery.

There being no objection, the Senate proceeded to consider the bill.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the bill be read three times and passed; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to this measure be printed in the RECORD.

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

The bill (S. 1537) was read the third time and passed, as follows:

S. 1537

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

SECTION 1. CONVEYANCE OF PROPERTY IN POPE COUNTY, ARKANSAS.

(a) CONVEYANCE ON CONDITION SUBSEQUENT.—Not later than 90 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c), the Secretary of Agriculture, acting through the Chief of the Forest Service (referred to in this section as the ''Secretary''), shall convey to the New Hope Cemetery Association (referred to in this section as the ''association''), for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of National Forest System land (including any improvements on the land) that—

(1) is known as ''New Hope Cemetery Tract 6686c'';

(2) consists of approximately 1.1 acres; and

(3) is more particularly described as a portion of the SE ¼ of the NW ¼ of section 30, T. 11, R. 17W, Pope County, Arkansas.

(c) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—The association shall use the parcel conveyed under subsection (a) as a cemetery.

(2) REVERSION.—If the Secretary, after notice to the association and an opportunity for a hearing, makes a finding that the association has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1), and the association fails to discontinue that use, title to the parcel shall, at the option of the Secretary, revert to the United States, to be administered by the Secretary.

AUTHORIZING TO SELL OR EXCHANGE CERTAIN ADMINISTRATIVE SITES AND OTHER LAND

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of S. 33 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 33) to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites.

There being no objection, the Senate proceeded to consider the bill.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the bill be read three times and passed; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to this measure be printed in the RECORD.

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

The bill (S. 33) was read the third time and passed, as follows:

S. 33

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

SECTION 1. SALE OR EXCHANGE OF LAND.

(a) IN GENERAL.—The Secretary of Agriculture (referred to in this Act as the ''Secretary'') may, under such terms and conditions as the Secretary may prescribe, sell or exchange any right, title, and interest of the United States in and to the following National Forest System land and improvements:

(1) In the Ouachita National Forest—

(A) tract 1, ''Work Center and two Residences'' (approximately 12.4 acres), as identified on the map entitled ''Ouachita National Forest, Waldron, Arkansas, Work Center and Residences'' and dated July 26, 2000;

(B) tract 2, ''Work Center'' (approximately 10 acres), as identified on the map entitled ''Ouachita National Forest, Booneville, Arkansas, Work Center'' and dated July 26, 2000;

(C) tract 3, ''Residence'' (approximately ½ acre), as identified on the map entitled ''Ouachita National Forest, Glenwood, Arkansas, Residence'' and dated July 26, 2000;

(D) tract 4, ''Work Center'' (approximately 10.12 acres), as identified on the map entitled ''Ouachita National Forest, Thornburg, Arkansas, Work Center'' and dated July 26, 2000;

(E) tract 5, ''Office Building'' (approximately 1.5 acres), as identified on the map entitled ''Ouachita National Forest, Perryville, Arkansas, Office Building'' and dated July 26, 2000;

(F) tract 6, ''Several Buildings, Including Office Space and Equipment Depot'' (approximately 3 acres), as identified on the map entitled ''Ouachita National Forest, Hot Springs, Arkansas, Buildings'' and dated July 26, 2000;

(G) tract 7, ''Isolated Forestland'' (approximately 120 acres), as identified on the map entitled ''Ouachita National Forest, Sunshine, Arkansas, Isolated Forestland'' and dated July 26, 2000;

(H) tract 8, ''Isolated Forestland'' (approximately 40 acres), as identified on the map entitled ''Ouachita National Forest, Sunshine, Arkansas, Isolated Forestland'' and dated July 26, 2000;

(I) tract 9, ''Three Residences'' (approximately 9.89 acres), as identified on the map entitled ''Ouachita National Forest, Heavener, Oklahoma, Three Residences'' and dated July 26, 2000;

(J) tract 10, ''Work Center'' (approximately 38.91 acres), as identified on the map entitled ''Ouachita National Forest, Heavener, Oklahoma, Work Center'' and dated July 26, 2000;

(K) tract 11, ''Residence #1'' (approximately 0.45 acres), as identified on the map entitled ''Ouachita National Forest, Talihina, Oklahoma, Residence #1'' and dated July 26, 2000;

(L) tract 12, ''Residence #2'' (approximately 0.21 acres), as identified on the map entitled ''Ouachita National Forest, Talihina, Oklahoma, Residence #2'' and dated July 26, 2000;

(M) tract 13, ''Work Center'' (approximately 5 acres), as identified on the map entitled ''Ouachita National Forest, Big Cedar, Oklahoma, Work Center'' and dated July 26, 2000;

(N) tract 14, ''Residence'' (approximately 0.5 acres), as identified on the map entitled ''Ouachita National Forest, Idabel, Oklahoma, Residence'' and dated July 26, 2000;

(O) tract 15, ''Residence and Work Center'' (approximately 40 acres), as identified on the map entitled ''Ouachita National Forest, Idabel, Oklahoma, Residence and Work Center'' and dated July 26, 2000; and

(P) tract 16, ''Isolated Forestland'' at sec. 30, T. 2 S., R. 25 W. (approximately 2.08 acres), as identified on the map entitled ''Ouachita National Forest, Mt. Ida, Arkansas, Isolated Forestland'' and dated August 27, 2001.

(2) In the Ozark-St. Francis National Forest—

(A) tract 1, ''Tract 750, District 1, Two Residences, Administrative Office'' (approximately 8.96 acres), as identified on the map entitled ''Ozark-St. Francis National Forest, Mountain View, Arkansas, Tract 750, District 1, Two Residences, Administrative Office'' and dated July 26, 2000;

(B) tract 2, ''Tract 2736, District 5, Mountainburg Work Center'' (approximately 1.61 acres), as identified on the map entitled ''Ozark-St. Francis National Forest, Mountainburg, Arkansas, Tract 2736, District 5, Mountainburg Work Center'' and dated July 26, 2000;

(C) tract 3, ''Tract 2686, District 6, House'' (approximately 0.31 acres), as identified on the map entitled ''Ozark-St. Francis National Forest, Paris, Arkansas, Tract 2686, District 6 House'' and dated July 26, 2000;

(D) tract 4, ''Tract 2807, District 6, House'' (approximately 0.25 acres), as identified on the map entitled ''Ozark-St. Francis National Forest, Paris, Arkansas, Tract 2807, District 6, House'' and dated July 26, 2000;

(E) tract 5, ''Tract 2556, District 3, Dover Work Center'' (approximately 2.0 acres), as identified on the map entitled ''Ozark-St. Francis National Forest, Dover, Arkansas, Tract 2556, District 3, Dover Work Center'' and dated July 26, 2000;

(F) tract 6, ''Tract 2735, District 2, House'' (approximately 0.514 acres), as identified on the map entitled ''Ozark-St. Francis National Forest, Jasper, Arkansas, Tract 2735, District 2, House'' and dated July 26, 2000; and

(G) tract 7, ''Tract 2574, District 2, House'' (approximately 0.75 acres), as identified on the map entitled ''Ozark-St. Francis National Forest, Jasper, Arkansas, Tract 2574, District 2, House'' and dated July 26, 2000.

(b) APPLICABLE AUTHORITIES.—Except as otherwise provided in this Act, any sale or exchange of land described in subsection (a) shall be subject to laws (including regulations) applicable to the conveyance and acquisition of land for National Forest System purposes.

(c) CASH EQUALIZATION.—Notwithstanding any other provision of law, the Secretary may accept cash equalization payments in excess of 25 percent of the total value of the land described in subsection (a) from any exchange under subsection (a).

(d) SOLICITATIONS OF OFFERS.—

(1) IN GENERAL.—In carrying out this Act, the Secretary may use solicitations of offers for sale or exchange under this Act on such terms and conditions as the Secretary may prescribe.

(2) REJECTION OF OFFERS.—The Secretary may reject any offer under this Act if the Secretary determines that the offer is not adequate or not in the public interest.

SEC. 2. DISPOSITION OF FUNDS.

Any funds received by the Secretary through sale or by cash equalization from an exchange—

(1) shall be deposited into the fund established by Public Law 90–171 (commonly known as the ''Sisk Act'') (16 U.S.C. 484a); and

(2) shall be available for expenditure, without further Act of appropriation, for the acquisition, construction, or improvement of administrative facilities, land, or interests in land for the national forests in the States of Arkansas and Oklahoma.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

ADJUSTING BOUNDARIES OF GREEN MOUNTAIN NATIONAL FOREST

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of S. 1499 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1499) to adjust the boundaries of Green Mountain National Forest.

There being no objection, the Senate proceeded to consider the bill.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the bill be read three times and passed; that 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. 1499) was read the third time and passed, as follows:

S. 1499

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

SECTION 1. GREEN MOUNTAIN NATIONAL FOREST EXPANSION.

(a) IN GENERAL.—The boundaries of the Green Mountain National Forest are modified to include all parcels of land depicted on the forest maps entitled ''Green Mountain Expansion Area Map I'' and ''Green Mountain Expansion Area Map II'', each dated

February 20, 2002, which shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia.

(b) MANAGEMENT.—Federally owned land delineated on the maps acquired for National Forest purposes shall continue to be managed in accordance with the laws (including regulations) applicable to the National Forest System.

(c) LAND AND WATER CONSERVATION FUND.—For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9), the boundaries of the Green Mountain National Forest, as adjusted by this Act, shall be considered to be the boundaries of the national forest as of January 1, 1965.

NATIONAL VETERINARY MEDICAL SERVICES ACT

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 1367 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I am wondering if the Senator from Nevada is qualified to talk about a bill such as this.

Mr. ENSIGN. Mr. President, this is legislation that I authored and was very proud to have authored. This is the bill that is going to help protect large cats from being owned in a place such as New York and kept in apartments.

Mr. REID. I ask that the Senator from Nevada be listed as cosponsor of this important legislation.

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

Without objection, the clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1367) to authorize the Secretary of Agriculture to conduct a loan repayment program regarding the provision of veterinary services in shortage situations, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, will the Senator withhold? We have had a very difficult day. I was trying to add a little levity to it. Senator ENSIGN is, of course, a veterinarian. He is the acting majority leader. I thought he was moving a bill dealing with veterinarians. I should bring to the attention of the American public, we have a veterinarian serving in the Senate.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the bill be read three times 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 (H.R. 1367) was read the third time and passed.

THE CALENDAR

Mr. ENSIGN. Mr. President, I ask unanimous consent that it be in order for the Senate to proceed en bloc to the consideration of the following calendar items: Calendar No. 41, S. 425; Calendar No. 255, S. 391; Calendar No. 256, S. 434; Calendar No. 257, S. 435; Calendar No. 258, S. 452; Calendar No. 259, S. 714; Calendar No. 260, S. 1003; Calendar No. 261, H.R. 622; and Calendar No. 262, H.R. 1012.

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

Mr. ENSIGN. I ask unanimous consent that any amendments, where applicable, be agreed to, the bills, as amended, if amended, be read three times, passed, and the motions to reconsider be laid upon the table en bloc; the consideration of these items appear separately in the RECORD and that any statements related thereto be printed in the RECORD, without intervening action or debate.

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

WIND CAVE NATIONAL PARK BOUNDARY REVISION ACT OF 2003

The bill (S. 425) to revise the boundary of the Wind Cave National Park in the State of South Dakota, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 425

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 ''Wind Cave National Park Boundary Revision Act of 2003''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term ''map'' means the map entitled ''Wind Cave National Park Boundary Revision'', numbered 108/80,030, and dated June 2002.

(2) PARK.—The term ''Park'' means the Wind Cave National Park in the State.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) STATE.—The term ''State'' means the State of South Dakota.

SEC. 3. LAND ACQUISITION.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may acquire the land or interest in land described in subsection (b)(1) for addition to the Park.

(2) MEANS.—An acquisition of land under paragraph (1) may be made by donation, purchase from a willing seller with donated or appropriated funds, or exchange.

(b) BOUNDARY.—

(1) MAP AND ACREAGE.—The land referred to in subsection (a)(1) shall consist of approximately 5,675 acres, as generally depicted on the map.

(2) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(3) REVISION.—The boundary of the Park shall be adjusted to reflect the acquisition of land under subsection (a)(1).

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer any land acquired under section 3(a)(1) as part of the Park in accordance with laws (including regulations) applicable to the Park.

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

(1) IN GENERAL.—The Secretary shall transfer from the Director of the Bureau of Land Management to the Director of the National Park Service administrative jurisdiction over the land described in paragraph (2).

(2) MAP AND ACREAGE.—The land referred to in paragraph (1) consists of the approximately 80 acres of land identified on the map as ''Bureau of Land Management land''.

SEC. 5. GRAZING.

(a) GRAZING PERMITTED.—Subject to any permits or leases in existence as of the date of acquisition, the Secretary may permit the continuation of livestock grazing on land acquired under section 3(a)(1).

(b) LIMITATION.—Grazing under subsection (a) shall be at not more than the level existing on the date on which the land is acquired under section 3(a)(1).

(c) PURCHASE OF PERMIT OR LEASE.—The Secretary may purchase the outstanding portion of a grazing permit or lease on any land acquired under section 3(a)(1).

(d) TERMINATION OF LEASES OR PERMITS.—The Secretary may accept the voluntary termination of a permit or lease for grazing on any acquired land.

WILD SKY WILDERNESS ACT OF 2003

The Senate proceeded to consider the bill (S. 391) to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 391

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 ''Wild Sky Wilderness Act of 2003''.

[SEC. 2. FINDINGS AND STATEMENT OF POLICY.

[(a) FINDINGS.—Congress finds the follwing:

[(1) Americans cherish the continued existence of diverse wilderness ecosystems and wildlife found on their Federal lands and share a strong sense of moral responsibility to protect their wilderness heritage as an enduring resource to cherish, protect, and bequeath undisturbed to future generations of Americans.

[(2) The values of an area of wilderness offer to this and future generations of Americans are greatly enhanced to the degree that the area is diverse in topography, elevation, life zones and ecosystems, and to the extent that it offers a wide range of outdoor recreational and educational opportunities accessible in all seasons of the year.

[(3) Large blocks of wildlands embracing a wide range of ecosystems and topography, including low-elevation forests, have seldom remained undisturbed due to many decades of development.

[(4) Certain wildlands on the western slope of the Cascade Range in the Skykomish River valley of the State of Washington offer an outstanding representation of the original character of the forested landscape, ranging from high alpine meadows and extremely rugged peaks to low-elevation mature and old-growth forests, including groves with some of the largest and most spectacular

trees in Washington, with diameters of eight feet and larger.

[(5) These diverse, thickly forested mountain slopes and valleys of mature and old-growth trees in the Skykomish River valley harbor nearly the full complement of the original wildlife and fish species found by settlers of the 19th century, including mountain goats, bald eagles, black bear, pine marten, black-tailed deer, as well as rare and endangered wildlife such as northern spotted owls and goshawks, Chinook and Coho salmon, and steelhead and bull trout.

[(6) An ecologically and topographically diverse wilderness area in the Skykomish River valley accessible in all seasons of the year will be enjoyable to users of various kinds, such as hikers, horse riders, hunters, anglers, and educational groups, but also to the many who cherish clean water and clean air, fish and wildlife (including endangered species such as wild salmon), and pristine mountain and riverside scenery.

[(b) STATEMENT OF POLICY.—Congress hereby declares that it is the policy of the United States:

[(1) to better serve the diverse wilderness and environmental education needs of the people of the State of Washington and its burgeoning metropolitan regions by granting wilderness protection to certain lower elevation wildlands in the Skykomish River valley of the State of Washington; and

[(2) to protect additional lands adjacent to the Henry M. Jackson Wilderness designated by the Washington Wilderness Act of 1984 (Public Law 98–339), in further tribute to the ecologically enlightened vision of the distinguished Senator from the State of Washington and former Chairman of the Senate Committee on Energy and Natural Resources (formerly the Senate Interior and Insular Affairs Committee).]

SEC. [3] *2.* ADDITIONS TO THE NATIONAL WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following Federal lands in the State of Washington are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System: certain lands which comprise approximately 106,000 acres, as generally depicted on a map entitled ''Wild Sky Wilderness Proposal'', ''Map #1'', and dated January 7, 2003, which shall be known as the Wild Sky Wilderness.

(b) MAPS AND LEGAL DESCRIPTIONS.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall file a map and a legal description for the wilderness area designated under this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives. The map and description shall have the same force and effect as if included in this Act, except that the Secretary of Agriculture may correct clerical and typographical errors in the legal description and map. The map and legal description shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

SEC. [4] *3.* ADMINISTRATION PROVISIONS.

(a) IN GENERAL.—

(1) Subject to valid existing rights, lands designated as wilderness by this Act shall be managed by the Secretary of Agriculture in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(2) To fulfill the purposes of this Act and the Wilderness Act and to achieve administrative efficiencies, the Secretary of Agriculture may manage the area designated by this Act as a comprehensive part of the larger complex of adjacent and nearby wilderness areas.

(b) NEW TRAILS.—

(1) The Secretary of Agriculture shall consult with interested parties and shall establish a trail plan for Forest Service lands in order to develop:

(a) a system of hiking and equestrian trails within the wilderness designated by this Act in a manner consistent with the Wilderness Act, Public Law 88–577 (16 U.S.C. 1131 et seq.); and

(b) a system of [trail] *trails* adjacent to or to provide access to the wilderness designated by this Act.

(2) Within two years after the date of enactment of this Act, the Secretary of Agriculture shall complete a report on the implementation of the trail plan required under this Act. This report shall include the identification of priority trail for development.

(c) REPEATER SITE.—Within the Wild Sky Wilderness, the Secretary of Agriculture is authorized to use helicopter access to construct and maintain a joint Forest Service and Snohomish County *telecommunications* repeater site, in compliance with a Forest Service approved communications site plan, for the purposes of improving communications for safety, health, and emergency services.

(d) FLOAT PLANE ACCESS.—As provided by section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)), the use of floatplanes on Lake Isabel, where such use has already become established, shall be permitted to continue subject to such reasonable restrictions as the Secretary of Agriculture determines *to be* desirable.

(e) EVERGREEN MOUNTAIN LOOKOUT.—The designation under this Act shall not preclude the operation and maintenance of the existing Evergreen Mountain Lookout in the same manner and degree in which the operation and maintenance of such lookout was occurring as of the date of enactment of this Act.

SEC. [5] *4.* AUTHORIZATION FOR LAND ACQUISITION.

(a) IN GENERAL.—The Secretary of Agriculture is authorized to acquire lands and interests therein, by purchase, donation, or exchange, and shall give priority consideration to those lands identified as ''Priority Acquisition Lands'' on the map described in [section 3(a)(1)] *section 2(a)(1)*. The boundaries of the Mt. Baker-Snoqualmie National Forest and the Wild Sky Wilderness shall be adjusted to encompass any lands acquired pursuant to this section.

(b) ACCESS.—Consistent with section 5(a) of the Wilderness Act (Public Law 88–577; 16 U.S.C. 1134(a)), the Secretary of Agriculture shall [assure] *ensure* adequate access to private inholdings within the Wild Sky Wilderness.

(c) APPRAISAL.—Valuation of private lands shall be determined without reference to any restrictions on access or use which arise out of designation as a wilderness area as a result of this Act.

SEC. [6] *5.* LAND EXCHANGES.

The Secretary of Agriculture shall exchange lands and interests in lands, as generally depicted on a map entitled Chelan County Public Utility District Exchange and dated May 22, 2002, with the Chelan County Public Utility District in accordance with the following provisions:

(1) If the Chelan County Public Utility District, within ninety days after the date of enactment of this Act, offers to the Secretary of Agriculture approximately 371.8 acres within the Mt. Baker-Snoqualmie National Forest in the State of Washington, the Secretary shall accept such lands.

(2) Upon acceptance of title by the Secretary of Agriculture to such lands and interests therein, the Secretary of Agriculture shall convey to the Chelan County Public Utility District a permanent easement, including helicopter access, consistent with such levels as used as of date of enactment, to maintain an existing [snowtel site] *telemetry site to monitor snow pack* on 1.82 acres on the Wenatchee National Forest in the State of Washington.

(3) The exchange directed by this Act shall be consummated if Chelan County Public Utility District conveys title acceptable to the Secretary and provided there is no hazardous material on the site, which is objectionable to the Secretary.

(4) In the event Chelan County Public Utility District determines there is no longer a need to maintain a [snowtel] *telemetry* site to monitor the snow pack for calculating expected runoff into the Lake Chelan hydroelectric project and the hydroelectric projects in the Columbia River Basin, the [secretary] *Secretary* shall be notified in writing and the easement shall be extinguished and all rights conveyed by this exchange shall revert to the United States.

The committee amendments were agreed to.

The bill (S. 391), as amended, was read the third time and passed, as follows:

S. 391

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 ''Wild Sky Wilderness Act of 2003''.

SEC. 2. ADDITIONS TO THE NATIONAL WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following Federal lands in the State of Washington are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System: certain lands which comprise approximately 106,000 acres, as generally depicted on a map entitled ''Wild Sky Wilderness Proposal'', ''Map #1'', and dated January 7, 2003, which shall be known as the Wild Sky Wilderness.

(b) MAPS AND LEGAL DESCRIPTIONS.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall file a map and a legal description for the wilderness area designated under this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives. The map and description shall have the same force and effect as if included in this Act, except that the Secretary of Agriculture may correct clerical and typographical errors in the legal description and map. The map and legal description shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

SEC. 3. ADMINISTRATION PROVISIONS.

(a) IN GENERAL.—

(1) Subject to valid existing rights, lands designated as wilderness by this Act shall be managed by the Secretary of Agriculture in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(2) To fulfill the purposes of this Act and the Wilderness Act and to achieve administrative efficiencies, the Secretary of Agriculture may manage the area designated by this Act as a comprehensive part of the larger complex of adjacent and nearby wilderness areas.

(b) NEW TRAILS.—

(1) The Secretary of Agriculture shall consult with interested parties and shall establish a trail plan for Forest Service lands in order to develop:

(a) a system of hiking and equestrian trails within the wilderness designated by this Act in a manner consistent with the Wilderness Act, Public Law 88–577 (16 U.S.C. 1131 et seq.); and

(b) a system of trails adjacent to or to provide access to the wilderness designated by this Act.

(2) Within two years after the date of enactment of this Act, the Secretary of Agriculture shall complete a report on the implementation of the trail plan required under this Act. This report shall include the identification of priority trail for development.

(c) REPEATER SITE.—Within the Wild Sky Wilderness, the Secretary of Agriculture is authorized to use helicopter access to construct and maintain a joint Forest Service and Snohomish County telecommunications repeater site, in compliance with a Forest Service approved communications site plan, for the purposes of improving communications for safety, health, and emergency services.

(d) FLOAT PLANE ACCESS.—As provided by section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)), the use of floatplanes on Lake Isabel, where such use has already become established, shall be permitted to continue subject to such reasonable restrictions as the Secretary of Agriculture determines to be desirable.

(e) EVERGREEN MOUNTAIN LOOKOUT.—The designation under this Act shall not preclude the operation and maintenance of the existing Evergreen Mountain Lookout in the same manner and degree in which the operation and maintenance of such lookout was occurring as of the date of enactment of this Act.

SEC. 4. AUTHORIZATION FOR LAND ACQUISITION.

(a) IN GENERAL.—The Secretary of Agriculture is authorized to acquire lands and interests therein, by purchase, donation, or exchange, and shall give priority consideration to those lands identified as ''Priority Acquisition Lands'' on the map described in section 2(a)(1). The boundaries of the Mt. Baker-Snoqualmie National Forest and the Wild Sky Wilderness shall be adjusted to encompass any lands acquired pursuant to this section.

(b) ACCESS.—Consistent with section 5(a) of the Wilderness Act (Public Law 88–577; 16 U.S.C. 1134(a)), the Secretary of Agriculture shall ensure adequate access to private inholdings within the Wild Sky Wilderness.

(c) APPRAISAL.—Valuation of private lands shall be determined without reference to any restrictions on access or use which arise out of designation as a wilderness area as a result of this Act.

SEC. 5. LAND EXCHANGES.

The Secretary of Agriculture shall exchange lands and interests in lands, as generally depicted on a map entitled Chelan County Public Utility District Exchange and dated May 22, 2002, with the Chelan County Public Utility District in accordance with the following provisions:

(1) If the Chelan County Public Utility District, within ninety days after the date of enactment of this Act, offers to the Secretary of Agriculture approximately 371.8 acres within the Mt. Baker-Snoqualmie National Forest in the State of Washington, the Secretary shall accept such lands.

(2) Upon acceptance of title by the Secretary of Agriculture to such lands and interests therein, the Secretary of Agriculture shall convey to the Chelan County Public Utility District a permanent easement, including helicopter access, consistent with such levels as used as of date of enactment, to maintain an existing telemetry site to monitor snow pack on 1.82 acres on the Wenatchee National Forest in the State of Washington.

(3) The exchange directed by this Act shall be consummated if Chelan County Public Utility District conveys title acceptable to the Secretary and provided there is no hazardous material on the site, which is objectionable to the Secretary.

(4) In the event Chelan County Public Utility District determines there is no longer a need to maintain a telemetry site to monitor the snow pack for calculating expected runoff into the Lake Chelan hydroelectric project and the hydroelectric projects in the Columbia River Basin, the Secretary shall be notified in writing and the easement shall be extinguished and all rights conveyed by this exchange shall revert to the United States.

IDAHO PANHANDLE NATIONAL FOREST IMPROVEMENT ACT OF 2003

The Senate proceeded to consider the bill (S. 434) to authorize the Secretary of Agriculture to sell or exchange all or part of certain parcels of National Forest System land in the State of Idaho and use the proceeds derived from the sale or exchange for National Forest System purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 434

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 ''Idaho Panhandle National Forest Improvement Act of 2003''.

[SEC. 2. DEFINITION OF SECRETARY.

[In this Act, the term ''Secretary'' means the Secretary of Agriculture.

[SEC. 3. SALE OR EXCHANGE OF ADMINISTRATIVE SITES.

[(a) IN GENERAL.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any or all right, title and interest of the United States in and to the following National Forest System land and improvements:

[(1) Granite/Reeder Bay, Priest Lake Parcel, T. 61 N., R. 4 E., B.M., sec. 17, S½NE¼ (80 acres, more or less).

[(2) North South Ski area, T. 43 N., R. 3 W., B.M., sec. 13, SE¼SE¼SW¼, S½SW¼SE¼, NE¼SW¼SE¼, and SW¼SE¼SE¼ (50 acres more or less).

[(3) Shoshone work camp (including easements for utilities), T. 50 N., R. 4 E., B.M., sec. 5, a portion of the S½SE¼.

[(b) DESCRIPTIONS.—The Secretary may modify the descriptions in subsection (a) to correct errors or to reconfigure the properties in order to facilitate a conveyance.

[(c) CONSIDERATION.—Consideration for a sale or exchange of land under subsection (a)—

[(1) shall be equal to the market value of the land; and

[(2) may include cash, improved or unimproved land, or land with improvements constitutes in accordance with specifications of the Secretary.

[(d) APPLICABLE LAW.—Except as otherwise provided in this Act, any sale or exchange of National Forest System land under subsection (a) shall be subject to the laws applicable to the conveyance and acquisition of land for the National Forest System.

[(e) VALUATION.—The market value of the land and the improvements to be sold, exchanged, or constructed under this Act shall be determined by an appraisal that is acceptable to the Secretary and conforms to the ''Uniform Appraisal Standards for Federal Land Acquisitions''.

[(f) CASH EQUALIZATION.—Notwithstanding any other provision of law, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of land exchanged under subsection (a).

[(g) SOLICITATIONS OF OFFERS.—The Secretary may solicit offers for the sale or exchange of land under this section on such terms and conditions as the Secretary may prescribe. The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

[(h) METHODS OF SALE.—The Secretary may sell land under subsection (a) at public or private sale, including at auction, in accordance with such terms, conditions, and procedures as the Secretary determines to be in the best interests of the United States.

[SEC. 4. DISPOSITION OF FUNDS.

[(a) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of a sale or exchange under section 3(a) in the fund established under Public Law 90–171 (16 U.S.C. 484a, commonly known as the ''Sisk Act'').

[(b) USE OF PROCEEDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation—

[(1) for the acquisition of, construction of, or rehabilitation of existing facilities for, a new ranger station in the Silver Valley portion of the Panhandle National Forest; or,

[(2) to the extent that the amount of funds deposited exceeds the amount needed for the purpose described in paragraph (1), for the acquisition, construction, or rehabilitation of other facilities in the Panhandle National Forest.

[(c) LIMITATIONS.—Proceeds from the sale or exchange of land under this Act shall not be paid or distributed to states or counties under any provision of law, or otherwise considered to be moneys from units of the National Forest System for the purposes of—

[(1) the Act of May 23, 1908 (16 U.S.C. 500);

[(2) the Act of March 1, 1911 (16 U.S.C. 500, commonly known as the ''Weeks Law''); or

[(3) the Act of March 4, 1913 (16 U.S.C. 501).

[(d) DEPARTMENTAL REGULATIONS.—The Agriculture Property Management Regulations shall not apply to any disposition of National Forest System land under this Act or any other action taken under this Act.

[(e) MANAGEMENT OF LANDS ACQUIRED BY THE UNITED STATES.—Land transferred to or otherwise acquired by the Secretary under this Act shall be managed in accordance with the Act of March 1, 1911 (16 U.S.C. 480 et seq., commonly known as the ''Weeks Law'') and other laws relating to the National Forest System.

[(f) WITHDRAWAL AND REVOCATIONS.—

[(1) PUBLIC LAND ORDERS.—As of the date of this Act, any public land order withdrawing land described in section 3(a) from all forms of appropriation under the public land laws is revoked with respect to any portion of the land conveyed by the Secretary under this section.

[(2) WITHDRAWAL.—Subject to valid existing rights, all land described in section 3(a) is withdrawn from location, entry, and patent under the mining laws of the United States.

[SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as are necessary to carry out this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Idaho Panhandle National Forest Improvement Act of 2003''.

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term ''Secretary'' means the Secretary of Agriculture.

SEC. 3. SALE OR EXCHANGE OF ADMINISTRATIVE SITES.

(a) IN GENERAL.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any or all right, title, and interest of the United States in and to the following National Forest System land and improvements:

(1) Granite/Reeder Bay, Priest Lake Parcel, T61N, R4E, Boise Principal Meridian, section 17, S½NE¼ (80 acres, more or less).

(2) North South Ski area, T43N, R3W, Boise Principal Meridian, section 13, SE¼SE¼SW¼, S½SW¼SE¼, NE¼SW¼SE¼, and SW¼SE¼SE¼ (50 acres more or less).

(3) Shoshone work camp (including easements for utilities), T50N, R4E, Boise Principal Meridian, section 5, a portion of the S½SE¼ (19 acres, more or less).

(b) DESCRIPTIONS.—The Secretary may modify the descriptions in subsection (a) to correct errors or to make minor adjustments to the parcels in order to facilitate the conveyance of the parcels.

(c) CONSIDERATION.—Consideration for a sale or exchange of land under subsection (a)—

(1) shall be equal to the fair market value of the land; and

(2) may include cash or improved or unimproved land.

(d) APPLICABLE LAW.—Except as otherwise provided in this Act, any sale or exchange of National Forest System land under subsection (a) shall be subject to the laws applicable to the conveyance and acquisition of land for the National Forest System.

(e) VALUATION.—The market value of the land and the improvements to be sold or exchanged under this Act shall be determined by an appraisal that is acceptable to the Secretary and conforms with the Uniform Appraisal Standards for Federal Land Acquisitions.

(f) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), the Secretary may accept a cash equalization payment in excess of 25 percent of the value of land exchanged under subsection (a).

(g) SOLICITATIONS OF OFFERS.—

(1) IN GENERAL.—The Secretary may solicit offers for the sale or exchange of land under this section on such terms and conditions as the Secretary may prescribe.

(2) REJECTION OF OFFERS.—The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

(h) METHODS OF SALE.—The Secretary may sell land under subsection (a) at public or private sale (including at auction), in accordance with any terms, conditions, and procedures that the Secretary determines to be in the best interests of the United States.

SEC. 4. DISPOSITION OF FUNDS.

(a) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of a sale or the cash equalization proceeds, if any, from an exchange under section 3(a) in the fund established under Public Law 90–171 (commonly known as the ''Sisk Act'') (16 U.S.C. 484a).

(b) USE OF PROCEEDS.—Amounts deposited under subsection (a) shall be available to the Secretary, without further appropriation—

(1) for the acquisition of, construction of, or rehabilitation of existing facilities for, a new ranger station in the Silver Valley portion of the Panhandle National Forest; or

(2) to the extent that the amount of funds deposited exceeds the amount needed for the purpose described in paragraph (1), for the acquisition, construction, or rehabilitation of other facilities in the Panhandle National Forest.

(c) NONDISTRIBUTION OF PROCEEDS.—Proceeds from the sale or exchange of land under this Act shall not be paid or distributed to States or counties under any provision of law, or otherwise treated as money received from a national forest, for purposes of—

(1) the Act of May 23, 1908 (16 U.S.C. 500);

(2) section 13 of the Act of March 1, 1911 (commonly known as the ''Weeks Law'') (16 U.S.C. 500); or

(3) the Act of March 4, 1913 (16 U.S.C. 501).

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—Land transferred to or otherwise acquired by the Secretary under this Act shall be managed in accordance with—

(1) the Act of March 1, 1911 (commonly known as the ''Weeks Law'') (16 U.S.C. 480 et seq.); and

(2) other laws relating to the National Forest System.

(b) EXEMPTION FROM PROPERTY MANAGEMENT REGULATIONS.—Part 1955 of title 7, Code of Federal Regulations (or any successor regulation), shall not apply to any actions taken under this Act.

(c) WITHDRAWALS AND REVOCATIONS.—

(1) WITHDRAWAL.—Subject to valid existing rights, all land described in section 3(a) is withdrawn from—

(A) location, entry, and patent under the mining laws; and

(B) the operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(2) REVOCATION OF PUBLIC LAND ORDERS.—As of the date of this Act, any public land order withdrawing land described in section 3(a) from all forms of appropriation under the public land laws is revoked with respect to any portion of the land conveyed by the Secretary under this section.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 434), as amended, was read the third time and passed.

SANDPOINT LAND AND FACILITIES CONVEYANCE ACT OF 2003

The Senate proceeded to consider the bill (S. 435) to provide for the conveyance by the Secretary of Agriculture of the Sandpoint Federal Building and adjacent land in Sandpoint, Idaho, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 435

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 ''Sandpoint Land and Facilities Conveyance Act of 2003''.

SEC. 2. CONVEYANCE OF SANDPOINT FEDERAL BUILDING AND ADJACENT LAND, SANDPOINT, IDAHO.

(a) TRANSFER OF ADMINISTRATIVE JURISDICTION.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services shall transfer to the Secretary of Agriculture, without reimbursement, administrative jurisdiction over the Sandpoint Federal Building and approximately 3.17 acres of land in Sandpoint, Idaho, as depicted on the map entitled ''Sandpoint Federal Building,'' dated September 12, 2002, on file in the Office of the Chief of the Forest Service and the Office of the Supervisor, Idaho National Panhandle Forest, Coeur d'Alene, Idaho.

(b) ASSUMPTION AND REPAYMENT OF DEBT.—As of the date on which administrative jurisdiction of the property is transferred under subsection (a), the Secretary shall assume the obligation of the Administrator of General Services to repay to the Federal Finance Bank the debt incurred with respect to the transferred property. The Secretary may repay the debt using—

(1) the proceeds of the conveyance of the property under this section;

(2) amounts appropriated to the Forest Service for the rental, upkeep, and maintenance of facilities; and

(3) any other unobligated appropriated amounts available to the Secretary.

(c) CONVEYANCE OF PROPERTY.—

(1) CONVEYANCE AUTHORIZED.—The Secretary may convey, by quitclaim deed, all right, title, and interest of the United States in and to the property transferred to the Secretary under subsection (a). The conveyance may be made by sale or by exchange.

(2) SOLICITATIONS OF OFFERS.—The Secretary may solicit offers for the conveyance of the property under this section on such terms and conditions as the Secretary may prescribe. The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

(d) CONSIDERATION.—

(1) CONDITIONS OF SALE.—If the property is conveyed under subsection (c) by sale, the purchaser shall pay to the Secretary an amount equal to the fair market value of the property as determined under paragraph (3). At the election of the Secretary, the consideration may be in the form of cash or other consideration, including the construction of administrative facilities for the National Forest System in Bonner County, Idaho.

(2) CONDITIONS OF EXCHANGE.—If the property is conveyed in exchange for construction of administrative facilities, the conveyance shall be subject to—

(A) construction of the administrative facilities in accordance with terms or conditions that the Secretary may prescribe, including final building design and costs;

(B) completion of the administrative facilities in a manner satisfactory to the Secretary;

(C) the condition that the exchange be an equal value exchange, or if the value of the property and the administrative facilities are not equal, as determined under paragraph (3), that the values be equalized in accordance with paragraph (4); and

(D) any requirements of the Secretary that the entity acquiring the property assume any outstanding indebtedness on the property to the Federal Finance Bank.

(3) VALUATION.—The value of the property to be conveyed under subsection (c), and the value of any administrative facilities in exchange for the property, shall be determined by an appraisal that conforms to the Uniform Appraisal Standards for Federal Land Acquisitions and is acceptable to the Secretary.

(4) EQUALIZATION OF VALUES.—Notwithstanding any other provision of law, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of the property conveyed under subsection (c).

SEC. 3. DISPOSITION OF FUNDS.

(a) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds derived for the conveyance of the property under this section in the fund established by Public Law 90–171 (commonly known as the ''Sisk Act''; 16 U.S.C. 484a).

(b) USE OF PROCEEDS.—Amounts deposited under subsection (a) shall be available to the Secretary, without further appropriation and until expended, for—

(1) the acquisition, construction, or improvement of administrative facilities and associated land; and

(2) the acquisition of land and interests in land for addition to the National Forest System in the Northern Region of the Forest Service in the State of Idaho.

(c) LIMITATIONS.—Funds deposited under subsection (a) shall not be paid or distributed to States or counties under any provision of law, or otherwise considered moneys received from units of the National Forest System for purposes of—

(1) the Act of May 23, 1908 (16 U.S.C. 500);

(2) *section 13 of* the Act of March 1, 1911 (16 U.S.C. 500, commonly known as the ''Weeks Law''); or

(3) [the fourteenth paragraph under the heading ''Forest Service'' in] the Act of March 4, 1913 (16 U.S.C. 501).

(d) MANAGEMENT OF LANDS ACQUIRED BY THE UNITED STATES.—Subject to valid existing rights, the Secretary shall manage any land acquired under this Act, in accordance with the Act of March 1, 1911 (16 U.S.C. 480 et seq., commonly known as the ''Weeks Law'') and other laws relating to the National Forest System.

(e) APPLICABLE LAW.—Except as otherwise provided in this section, the conveyance of property under this section shall be subject to the laws applicable to conveyances of National Forest System land. Part 1955 of title 7, Code of Federal Regulations, shall not apply to any action carried out under this section.

The committee amendments were agreed to.

The bill (S. 435), as amended, was read the third time and passed, as follows:

S. 435

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sandpoint Land and Facilities Conveyance Act of 2003''.

SEC. 2. CONVEYANCE OF SANDPOINT FEDERAL BUILDING AND ADJACENT LAND, SANDPOINT, IDAHO.

(a) TRANSFER OF ADMINISTRATIVE JURISDICTION.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services shall transfer to the Secretary of Agriculture, without reimbursement, administrative jurisdiction over the Sandpoint Federal Building and approximately 3.17 acres of land in Sandpoint, Idaho, as depicted on the map entitled ''Sandpoint Federal Building,'' dated September 12, 2002, on file in the Office of the Chief of the Forest Service and the Office of the Supervisor, Idaho National Panhandle Forest, Coeur d'Alene, Idaho.

(b) ASSUMPTION AND REPAYMENT OF DEBT.—As of the date on which administrative jurisdiction of the property is transferred under subsection (a), the Secretary shall assume the obligation of the Administrator of General Services to repay to the Federal Finance Bank the debt incurred with respect to the transferred property. The Secretary may repay the debt using—

(1) the proceeds of the conveyance of the property under this section;

(2) amounts appropriated to the Forest Service for the rental, upkeep, and maintenance of facilities; and

(3) any other unobligated appropriated amounts available to the Secretary.

(c) CONVEYANCE OF PROPERTY.—

(1) CONVEYANCE AUTHORIZED.—The Secretary may convey, by quitclaim deed, all right, title, and interest of the United States in and to the property transferred to the Secretary under subsection (a). The conveyance may be made by sale or by exchange.

(2) SOLICITATIONS OF OFFERS.—The Secretary may solicit offers for the conveyance of the property under this section on such terms and conditions as the Secretary may prescribe. The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

(d) CONSIDERATION.—

(1) CONDITIONS OF SALE.—If the property is conveyed under subsection (c) by sale, the purchaser shall pay to the Secretary an amount equal to the fair market value of the property as determined under paragraph (3). At the election of the Secretary, the consideration may be in the form of cash or other consideration, including the construction of administrative facilities for the National Forest System in Bonner County, Idaho.

(2) CONDITIONS OF EXCHANGE.—If the property is conveyed in exchange for construction of administrative facilities, the conveyance shall be subject to—

(A) construction of the administrative facilities in accordance with terms or conditions that the Secretary may prescribe, including final building design and costs;

(B) completion of the administrative facilities in a manner satisfactory to the Secretary;

(C) the condition that the exchange be an equal value exchange, or if the value of the property and the administrative facilities are not equal, as determined under paragraph (3), that the values be equalized in accordance with paragraph (4); and

(D) any requirements of the Secretary that the entity acquiring the property assume any outstanding indebtedness on the property to the Federal Finance Bank.

(3) VALUATION.—The value of the property to be conveyed under subsection (c), and the value of any administrative facilities in exchange for the property, shall be determined by an appraisal that conforms to the Uniform Appraisal Standards for Federal Land Acquisitions and is acceptable to the Secretary.

(4) EQUALIZATION OF VALUES.—Notwithstanding any other provision of law, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of the property conveyed under subsection (c).

SEC. 3. DISPOSITION OF FUNDS.

(a) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds derived for the conveyance of the property under this section in the fund established by Public Law 90–171 (commonly known as the ''Sisk Act''; 16 U.S.C. 484a).

(b) USE OF PROCEEDS.—Amounts deposited under subsection (a) shall be available to the Secretary, without further appropriation and until expended, for—

(1) the acquisition, construction, or improvement of administrative facilities and associated land; and

(2) the acquisition of land and interests in land for addition to the National Forest System in the Northern Region of the Forest Service in the State of Idaho.

(c) LIMITATIONS.—Funds deposited under subsection (a) shall not be paid or distributed to States or counties under any provision of law, or otherwise considered moneys received from units of the National Forest System for purposes of—

(1) the Act of May 23, 1908 (16 U.S.C. 500);

(2) section 13 of the Act of March 1, 1911 (16 U.S.C. 500, commonly known as the ''Weeks Law''); or

(3) the Act of March 4, 1913 (16 U.S.C. 501).

(d) MANAGEMENT OF LANDS ACQUIRED BY THE UNITED STATES.—Subject to valid existing rights, the Secretary shall manage any land acquired under this Act, in accordance with the Act of March 1, 1911 (16 U.S.C. 480 et seq., commonly known as the ''Weeks Law'') and other laws relating to the National Forest System.

(e) APPLICABLE LAW.—Except as otherwise provided in this section, the conveyance of property under this section shall be subject to the laws applicable to conveyances of National Forest System land. Part 1955 of title 7, Code of Federal Regulations, shall not apply to any action carried out under this section.

COMMEMORATION AND INTERPRETATION OF THE COLD WAR

The Senate proceeded to consider the bill (S. 452) to require that the Secretary of the Interior conduct a study to identify sites and resources, to recommend alternatives for commemorating and interpreting the Cold War, and for other purposes, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment, as follows:

[Insert the part shown in italic.]

S. 452

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

SECTION 1. COLD WAR STUDY.

(a) SUBJECT OF STUDY.—The Secretary of the Interior, in consultation with the Secretary of Defense, *the Secretary of Energy*, State historic preservation offices, State and local officials, Cold War scholars, and other interested organizations and individuals, shall conduct a National Historic Landmark theme study to identify sites and resources in the United States that are significant to the Cold War. In conducting the study, the Secretary of the Interior shall—

(1) consider the inventory of sites and resources associated with the Cold War completed by the Secretary of Defense pursuant to section 8120(b)(9) of the Department of Defense Appropriations Act, 1991 (Public Law 101–511; 104 Stat. 1906);

(2) consider historical studies and research of Cold War sites and resources such as intercontinental ballistic missiles, nuclear weapons sites (such as the Nevada test site), flight training centers, manufacturing facilities, communications and command centers (such as Cheyenne Mountain, Colorado), defensive radar networks (such as the Distant Early Warning Line), and strategic and tactical aircraft; and

(3) inventory and consider nonmilitary sites and resources associated with the people, events, and social aspects of the Cold War.

(b) CONTENTS.—The study shall include—

(1) recommendations for commemorating and interpreting sites and resources identified by the study, including—

(A) sites for which studies for potential inclusion in the National Park System should be authorized;

(B) sites for which new national historic landmarks should be nominated; and

(C) other appropriate designations;

(2) recommendations for cooperative arrangements with State and local governments, local historical organizations, and other entities; and

(3) cost estimates for carrying out each of those recommendations.

(c) GUIDELINES.—The study shall be—

(1) conducted with public involvement; and

(2) submitted to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate no later than 3 years after the date that funds are made available for the study.

SEC. 2. INTERPRETIVE HANDBOOK ON THE COLD WAR.

Not later than 4 years after funds are made available for that purpose, the Secretary of the Interior shall prepare and publish an interpretive handbook on the Cold War and shall disseminate information gathered through the study through appropriate means in addition to the handbook.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $300,000 to carry out this Act.

The committee amendment was agreed to.

The bill (S. 452), as amended, was read the third time and passed.

CONVEYANCE OF A PARCEL OF LAND IN DOUGLAS COUNTY, OREGON

The Senate proceeded to consider the bill (S. 714) to provide for the conveyance of a small parcel of Bureau of Land Management land in Douglas County, Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 714

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

SECTION 1. CONVEYANCE OF BUREAU OF LAND MANAGEMENT LAND IN DOUGLAS COUNTY, OREGON.

(a) IN GENERAL.—

(1) CONVEYANCE.—The Secretary of the Interior shall convey, without consideration *and subject to valid existing rights,* to Douglas County, Oregon (referred to in this section as the ''County''), all right, title, and interest of the United States in and to the parcel described in paragraph (2) for use by the County for recreational purposes.

[(2) PARCEL.—The parcel referred to in paragraph (1) is the parcel of real property consisting of approximately 68.8 acres under the administrative jurisdiction of the Bureau of Land Management in the County, as depicted on the map entitled ''Umpqua River Lighthouse and Coast Guard Museum Master Plan Study'', dated April 17, 2002.**]**

(2) PARCEL.—The parcel referred to in paragraph (1) is the parcel of land consisting of approximately 68.8 acres under the administrative jurisdiction of the Bureau of Land Management, as generally depicted on the map entitled ''S. 714, Douglas County, Oregon Land Conveyance'', dated May 21, 2003.

(b) PURPOSES OF CONVEYANCE.—The purposes of the conveyance under subsection (a) are to improve management of and recreational access to the Oregon Dunes National Recreation Area by—

(1) improving public safety and reducing traffic congestion along Salmon Harbor Drive (County Road No. 251) in the County;

(2) providing a staging area for off-highway vehicles; and

(3) facilitating policing of unlawful camping and parking along Salmon Harbor Drive and adjacent areas.

[(c) REVERSIONARY INTEREST.—

[(1) IN GENERAL.—If the Secretary determines that the parcel conveyed under subsection (a) is not being used by the County for a recreational purpose—

[(A) all right, title, and interest in and to the parcel, including any improvements on the parcel, shall revert to the United States; and

[(B) the United States shall have the right of immediate entry onto the parcel.

[(2) DETERMINATION ON THE RECORD.—Any determination of the Secretary under this subsection shall be made on the record after an opportunity for an agency hearing.

[(d)**]***(c)* SURVEY.—The exact acreage and legal description of the parcel to be conveyed under subsection (a) shall be determined by a survey—

(1) that is satisfactory to the Secretary; and

(2) the cost of which shall be paid by the County.

[(e)**]***(d)* ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

The committee amendments were agreed to.

The bill (S. 714), as amended, was read the third time and passed, as follows:

S. 714

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

SECTION 1. CONVEYANCE OF BUREAU OF LAND MANAGEMENT LAND IN DOUGLAS COUNTY, OREGON.

(a) IN GENERAL.—

(1) CONVEYANCE.—The Secretary of the Interior shall convey, without consideration and subject to valid existing rights, to Douglas County, Oregon (referred to in this section as the ''County''), all right, title, and interest of the United States in and to the parcel described in paragraph (2) for use by the County for recreational purposes.

(2) PARCEL.—The parcel referred to in paragraph (1) is the parcel of land consisting of approximately 68.8 acres under the administrative jurisdiction of the Bureau of Land Management, as generally depicted on the map entitled ''S. 714, Douglas County, Oregon Land Conveyance'', dated May 21, 2003.

(b) PURPOSES OF CONVEYANCE.—The purposes of the conveyance under subsection (a) are to improve management of and recreational access to the Oregon Dunes National Recreation Area by—

(1) improving public safety and reducing traffic congestion along Salmon Harbor Drive (County Road No. 251) in the County;

(2) providing a staging area for off-highway vehicles; and

(3) facilitating policing of unlawful camping and parking along Salmon Harbor Drive and adjacent areas.

(c) SURVEY.—The exact acreage and legal description of the parcel to be conveyed under subsection (a) shall be determined by a survey—

(1) that is satisfactory to the Secretary; and

(2) the cost of which shall be paid by the County.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

COMMERCIAL OUTFITTER HUNTING CAMPS ON THE SALMON RIVER

The Senate proceeded to consider the bill (S. 1003) to clarify the intent of Congress with respect to the continued use of established commercial outfitter hunting camps on the Salmon River, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

[Insert the part shown in italic.]

S. 1003

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

SECTION 1.—Section 3(a)(24) of Public Law 90–542 (16 U.S.C. sec. 1274) is amended to add the following after paragraph (C) and redesignate subsequent paragraphs accordingly:

''(D) The established use and occupancy *as of June 6, 2003,* of lands and maintenance or replacement of facilities and structures for commercial recreation services at Stub Creek located in section 28, T24N, R14E, Boise Principal Meridian, at Arctic Creek located in section 21, T25N, R12E, Boise Principal Meridian and at Smith Gulch located in section 27, T25N, R12E, Boise Principal Meridian shall continue to be authorized, subject to such reasonable regulation as the Secretary deems appropriate, including rules that would provide for termination for noncompliance, and if terminated, reoffering the site through a competitive process.''.

The committee amendment was agreed to.

The bill (S. 1003), as amended, was read the third time and passed, as follows:

S. 1003

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

SECTION 1.—Section 3(a)(24) of Public Law 90–542 (16 U.S.C. sec. 1274) is amended to add the following after paragraph (C) and redesignate subsequent paragraphs accordingly:

''(D) The established use and occupancy of lands and maintenance or replacement of facilities and structures for commercial recreation services at Stub Creek located in section 28, T24N, R14E, Boise Principal Meridian, at Arctic Creek located in section 21, T25N, R12E, Boise Principal Meridian and at Smith Gulch located in section 27, T25N, R12E, Boise Principal Meridian shall continue to be authorized, subject to such reasonable regulation as the Secretary deems appropriate, including rules that would provide for termination for non-compliance, and if terminated, reoffering the site through a competitive process.''.

EXCHANGE OF CERTAIN LANDS IN THE COCONINO AND TONTO NATIONAL FORESTS IN ARIZONA

The Senate proceeded to consider the bill (H.R. 622) to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 622

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

SECTION 1. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Certain private lands adjacent to the Montezuma Castle National Monument in Yavapai County, Arizona, are desirable for Federal acquisition to protect important riparian values along Beaver Creek and the scenic backdrop for the National Monument.

(2) Certain other inholdings in the Coconino National Forest are desirable for Federal acquisition to protect important public values near Double Cabin Park.

(3) Approximately 108 acres of land within the Tonto National Forest, northeast of Payson, Arizona, are currently occupied by 45 residential cabins under special use permits from the Secretary of Agriculture, and have been so occupied since the mid-1950s, rendering such lands of limited use and enjoyment potential for the general public. Such lands are, therefore, appropriate for transfer to the cabin owners in exchange for lands that will have higher public use values.

(4) In return for the privatization of such encumbered lands the Secretary of Agriculture has been offered approximately 495 acres of non-Federal land (known as the Q Ranch) within the Tonto National Forest, east of Young, Arizona, in an area where the Secretary has completed previous land exchanges to consolidate public ownership of National Forest lands.

(5) The acquisition of the Q Ranch non-Federal lands by the Secretary will greatly increase National Forest management efficiency and promote public access, use, and enjoyment of the area and surrounding National Forest System lands.

(b) PURPOSE.—The purpose of this Act is to authorize, direct, facilitate, and expedite the consummation of the land exchanges set forth herein in accordance with the terms and conditions of this Act.

SEC. 2. DEFINITIONS.

As used in this Act:

(1) DPSHA.—The term ''DPSHA'' means the Diamond Point Summer Homes Association, a nonprofit corporation in the State of Arizona.

(2) FEDERAL LAND.—The term ''Federal land'' means land to be conveyed into non-Federal ownership under this Act.

(3) FLPMA.—The term ''FLPMA'' means the Federal Land Policy Management Act of 1976 *(43 U.S.C. 1701 et seq.)*.

(4) MCJV.—The term ''MCJV'' means the Montezuma Castle Land Exchange Joint Venture Partnership, an Arizona Partnership.

(5) NON-FEDERAL LAND.—The term ''non-Federal land'' means land to be conveyed to the Secretary of Agriculture under this Act.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture, unless otherwise specified.

SEC. 3. MONTEZUMA CASTLE LAND EXCHANGE.

(a) LAND EXCHANGE.—Upon receipt of a binding offer from MCJV to convey title acceptable to the Secretary to the land described in subsection (b), the Secretary shall convey to MCJV all right, title, and interest of the United States in and to the Federal land described in subsection (c).

(b) NON-FEDERAL LAND.—The land described in this subsection is the following:

(1) The approximately 157 acres of land adjacent to the Montezuma Castle National Monument, as generally depicted on the map entitled ''Montezuma Castle Contiguous Lands'', dated May 2002.

(2) Certain private land within the Coconino National Forest, Arizona, comprising approximately 108 acres, as generally depicted on the map entitled ''Double Cabin Park Lands'', dated September 2002.

(c) FEDERAL LAND.—The Federal land described in this subsection is the approximately 222 acres in the Tonto National Forest, Arizona, and surveyed as Lots 3, 4, 8, 9, 10, 11, 16, *and* 17, and Tract 40 in section 32, Township 11 North, Range 10 East, Gila and Salt River Meridian, Arizona.

(d) EQUAL VALUE EXCHANGE.—The values of the non-Federal and Federal land directed to be exchanged under this section shall be equal or equalized as determined by the Secretary through an appraisal performed by a qualified appraiser mutually agreed to by the Secretary and MCJV and performed in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions (U.S. Department of Justice, December 2000), and section 206(d) [of the] *of* FLPMA (43 U.S.C. 1716(d)). If the values are not equal, the Secretary shall delete Federal lots from the conveyance to MCJV in the following order and priority, as necessary, until the values of Federal and non–Federal land are within the 25 percent cash equalization limit of 206(b) of FLPMA *(43 U.S.C. 1716(b))*:

(1) Lot 3.
(2) Lot 4.
(3) Lot 9.
(4) Lot 10.
(5) Lot 11.
(6) Lot 8.

(e) CASH EQUALIZATION.—Any difference in value remaining after compliance with subsection (d) shall be equalized by the payment of cash to the Secretary or MCJV, as the circumstances dictate, in accordance with section 206(b) of FLPMA (43 U.S.C. 1716(b)). Public Law 90–171 (16 U.S.C. 484a; commonly known as the ''Sisk Act'') shall, without further appropriation, apply to any cash equalization payment received by the United States under this section.

SEC. 4. DIAMOND POINT—Q RANCH LAND EXCHANGE.

(a) IN GENERAL.—Upon receipt of a binding offer from DPSHA to convey title acceptable to the Secretary to the land described in subsection (b), the Secretary shall convey to DPSHA all right, title, and interest of the United States in and to the land described in subsection (c).

(b) NON-FEDERAL LAND.—The land described in this subsection is the approximately 495 acres of non-Federal land generally depicted on the map entitled ''Diamond Point Exchange—Q Ranch Non–Federal Lands'', dated May 2002.

(c) FEDERAL LAND.—The Federal land described in this subsection is the approximately 108 acres northeast of Payson, Arizona, as generally depicted on [a map] *the map* entitled ''Diamond Point Exchange—Federal Land'', dated May 2002.

(d) EQUAL VALUE EXCHANGE.—The values of the non-Federal and Federal land directed to be exchanged under this section shall be equal or equalized as determined by the Secretary through an appraisal performed by a qualified appraiser mutually agreed to by the Secretary and DPSHA and in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions (U.S. Department of Justice, December 2000), and section 206(d) of FLPMA (43 U.S.C. 1716(d)). If the values are not equal, they shall be equalized by the payment of cash to the Secretary or DPSHA pursuant to section 206(b) of FLPMA (43 U.S.C. 1716(b)). Public Law 90–171 (16 U.S.C. 484a; commonly known as the ''Sisk Act'') shall, without further appropriation, apply to any cash equalization payment received by the United States under this section.

(e) SPECIAL USE PERMIT TERMINATION.—Upon execution of the land exchange authorized by this section, all special use cabin permits on the Federal land shall be terminated.

SEC. 5. MISCELLANEOUS PROVISIONS.

(a) EXCHANGE TIMETABLE.—Not later than 6 months after the Secretary receives an offer under section 3 or 4, the Secretary shall execute the exchange under section 3 or 4, respectively, unless the Secretary and MCJV or DPSHA, respectively, mutually agree to extend such deadline.

(b) EXCHANGE PROCESSING.—Prior to executing the land exchanges authorized by this Act, the Secretary shall perform any necessary land surveys and required preexchange clearances, reviews, and approvals relating to threatened and endangered species, cultural and historic resources, wetlands and floodplains and hazardous materials. If 1 or more of the Federal land parcels or lots, or portions thereof, cannot be transferred to MCJV or DPSHA due to hazardous materials, threatened or endangered species, cultural or historic resources, or wetland and flood plain problems, the parcel or lot, or portion thereof, shall be deleted from the exchange, and the values of the lands to be exchanged adjusted in accordance with subsections (d) and (e) of section 3 or section 4(d), as appropriate. In order to save administrative costs to the United States, the costs of performing such work, including the appraisals required pursuant to this Act, shall be paid by MCJV or DPSHA for the relevant property, except for the costs of any such work (including appraisal reviews and approvals) that the Secretary is required or elects to have performed by employees of the Department of Agriculture.

(c) FEDERAL LAND RESERVATIONS AND ENCUMBRANCES.—The Secretary shall convey the Federal land under this Act subject to valid existing rights, including easements, rights-of-way, utility lines and any other valid encumbrances on the Federal land as of the date of the conveyance under this Act. If applicable to the land conveyed, the Secretary shall also retain any right of access as may be required by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9620(h)) for remedial or corrective action relating to hazardous substances as may be necessary in the future.

(d) ADMINISTRATION OF ACQUIRED LAND.—The land acquired by the Secretary pursuant to this Act shall become part of the Tonto or Coconino National Forest, as appropriate, and be administered as such in accordance with the laws, rules, and regulations generally applicable to the National Forest System. Such land may be made available for domestic livestock grazing if determined appropriate by the Secretary in accordance with the laws, rules, and regulations applicable thereto on National Forest System land.

(e) TRANSFER OF LAND TO NATIONAL PARK SERVICE.—Upon their acquisition by the United States, the ''Montezuma Castle Contiguous Lands'' identified in section [3(d)(1)] *3(b)(1)* shall be transferred to the administrative jurisdiction of the National Park Service, and shall thereafter be permanently incorporated in, and administered by the Secretary of the Interior as part of, the Montezuma Castle National Monument.

The committee amendments were agreed to.

The bill (H.R. 622), as amended, was read the third time and passed.

CARTER G. WOODSON HOME NATIONAL HISTORIC SITE ACT

The Senate proceeded to consider the bill (H.R. 1012) to establish the Carter

G. Woodson Home National Historic Site in the District of Columbia, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 1012

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 ''Carter G. Woodson Home National Historic Site Establishment Act of 2003''.

[SEC. 2. FINDINGS AND PURPOSE.

[(a) FINDINGS.—The Congress finds that:

[(1) Dr. Carter G. Woodson, considered the father of African-American history, founded in 1915 The Association for the Study of Negro Life and History, renamed as The Association for the Study of African-American Life and History.

[(2) Through the Association, Dr. Woodson, the son of slaves who earned a Ph.D. degree from Harvard University, dedicated his life to educating the American public about the extensive and positive contributions of African Americans to the Nation's history and culture.

[(3) Under Dr. Woodson's leadership, Negro History Week was designated in 1926. That designation has since evolved into Black History Month in February of each year.

[(4) The headquarters and operations of the Association was Dr. Woodson's home at 1538 Ninth Street, Northwest, Washington, D.C., where he lived from 1915 to 1950.

[(5) The Carter G. Woodson Home was designated as a National Historic Landmark in 1976 for its national significance in African-American cultural heritage.

[(6) A National Park Service study of the Carter G. Woodson Home dated June 2002, found that the Carter G. Woodson Home is suitable for designation as a unit of the National Park System, and is feasible for designation so long as property adjacent to the home is available for National Park Service administrative, curatorial, access, and visitor interpretative needs.

[(7) Establishment of the Carter G. Woodson Home National Historic Site would foster opportunities for developing and promoting interpretation of African-American cultural heritage throughout the Shaw area of Washington, D.C.

[(b) PURPOSE.—The purpose of this Act is to preserve, protect, and interpret for the benefit, education, and inspiration of present and future generations, the home of the preeminent historian and educator Dr. Carter G. Woodson, founder of the organization known today as The Association for the Study of African-American Life and History.

[SEC. 3. DEFINITIONS.

[In this Act:

[(1) The term ''Secretary'' means the Secretary of the Interior.

[(2) The term ''historic site'' means the Carter G. Woodson Home National Historic Site.

[(3) The term ''map'' means the map entitled ''Carter G. Woodson Home National Historic Site'', numbered 876/82338 and dated February 10, 2003.

[SEC. 4. CARTER G. WOODSON HOME NATIONAL HISTORIC SITE.

[(a) ESTABLISHMENT.—After the Secretary has acquired, or agreed to a long-term lease for, the majority of the property described in subsection (b), the Secretary shall establish as a unit of the National Park System the Carter G. Woodson Home National Historic Site.

[(b) BOUNDARY.—The historic site shall consist of the property located at 1538 Ninth Street, Northwest, in the District of Columbia and three adjoining houses north of that address, as depicted on the map, if acquired or leased by the Secretary.

[(c) AVAILABILITY OF MAP.—The map shall be available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

[(d) ACQUISITION.—The Secretary may acquire lands or interests in lands, and improvements thereon, within the boundary of the historic site from willing owners by donation, purchase with donated or appropriated funds, or exchange.

[(e) ADMINISTRATION..—

[(1) IN GENERAL.—The Secretary shall administer the historic site in accordance with this Act and with laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (commonly known as the Historic Sites, Buildings, and Antiquities Act; 16 U.S.C. 461 et seq.).

[(2) REHABILITATION AGREEMENT.—In order to achieve cost efficiencies in the restoration of property, the Secretary may enter into an agreement with the Shiloh Community Development Corporation for the purpose of rehabilitating the Carter G. Woodson Home and other property within the boundary of the historic site. The agreement may contain such terms and conditions as the Secretary deems appropriate.

[(3) OPERATION AGREEMENT.—In order to reestablish the historical connection between the home of Dr. Woodson and the association he founded and to facilitate interpretation of Dr. Woodson's achievements, the Secretary may enter into an agreement with The Association for the Study of African-American Life and History that allows the association to use a portion of the historic site for its own administrative purposes. The agreement may contain such terms and conditions as the Secretary deems appropriate.

[(4) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with public and private entities for the purpose of fostering interpretation of African-American heritage in the Shaw area of Washington, D.C.

[(5) GENERAL MANAGEMENT PLAN.—The Secretary shall prepare a general management plan for the historic site within three years after funds are made available for that purpose.

[SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as are necessary to carry out this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Carter G. Woodson Home National Historic Site Act''.

SEC. 2. DEFINITIONS.

As used in this Act:

(1) CARTER G. WOODSON HOME.—The term ''Carter G. Woodson Home'' means the property located at 1538 Ninth Street, Northwest, in the District of Columbia, as depicted on the map.

(2) HISTORIC SITE.—The term ''historic site'' means the Carter G. Woodson Home National Historic Site.

(3) MAP.—The term ''map'' means the map entitled ''Carter G. Woodson Home National Historic Site'', numbered 876/82338–A and dated July 22, 2003.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. CARTER G. WOODSON HOME NATIONAL HISTORIC SITE.

(a) ESTABLISHMENT.—Upon acquisition by the Secretary of the Carter G. Woodson Home, or interests therein, the Secretary shall establish the historic site as a unit of the National Park System by publication of a notice to that effect in the Federal Register.

(b) ADDITIONS TO HISTORIC SITE.—

(1) IN GENERAL.—The Secretary may acquire any of the 3 properties immediately north of the Carter G. Woodson Home located at 1540, 1542, and 1544 Ninth Street, Northwest, described on the map as ''Potential Additions to National Historic Site'', for addition to the historic site.

(2) BOUNDARY REVISION.—Upon the acquisition of any of the properties described in paragraph (1), the Secretary shall revise the boundaries of the historic site to include the property.

(c) AVAILABILITY OF MAP.—The map shall be available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

(d) ACQUISITION AUTHORITY.—The Secretary may acquire the Carter G. Woodson Home or any of the properties described in subsection (b)(1), including interests therein, and any improvements to the land by donation, purchase from a willing seller with donated or appropriated funds, or exchange.

(e) ADMINISTRATION.—(1) The Secretary shall administer the historic site in accordance with this Act and with laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (16 U.S.C. 1, 2–4) and the Act of August 21, 1935 (16 U.S.C. 461 et seq.).

(2) GENERAL MANAGEMENT PLAN.—The Secretary shall prepare a general management plan for the historic site not later than three years after the date on which funds are made available for that purpose.

SEC. 4. COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary may enter into cooperative agreements with public or private entities to provide public interpretation and education of African-American heritage in the Shaw area of the District of Columbia.

(b) REHABILITATION.—In order to achieve cost efficiencies in the restoration of properties within the historic site, the Secretary may enter into an agreement with public or private entities to restore and rehabilitate the Carter G. Woodson Home and other properties within the boundary of the historic site, subject to such terms and conditions as the Secretary deems necessary.

(c) AGREEMENT WITH THE ASSOCIATION FOR THE STUDY OF AFRICAN-AMERICAN LIFE AND HISTORY.—In order to reestablish the historical connection between the Carter G. Woodson Home and the association Dr. Woodson founded, and to facilitate interpretation of Dr. Woodson's achievements, the Secretary may enter into an agreement with The Association for the Study of African-American Life and History that allows the association to use a portion of the historic site for its own administrative purposes. Such agreement shall ensure that the association's use of a portion of the historic site is consistent with the administration of the historic site, including appropriate public access and rent, and such other terms and conditions as the Secretary deems necessary.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The committee amendment, in the nature of a substitute, was agreed to.

The bill (H.R. 1012), as amended, was read the third time and passed.

CAPTIVITY WILDLIFE SAFETY ACT

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of H.R. 1006, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1006) to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species.

There being no objection, the Senate proceeded to consider the bill.

Mr. ENSIGN. I ask unanimous consent that the Inhofe amendment at the desk be adopted, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table en bloc, and that nay statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2215) was agreed to, as follows:

On page 2, strike lines 11 through 14 and insert the following:

''(g) PROHIBITED WILDLIFE SPECIES.—The term 'prohibited wildlife species' means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species.''.

On page 3, line 1, strike ''live animal of a''.

On page 3, strike lines 20 through 22 and insert the following:

''(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to that species;

On page 4, line 12, insert ''listed in section 2(g)'' after ''animals''.

On page 4, line 14, insert ''listed in section 2(g)'' after ''animals''.

On page 5, line 3, strike the quotation marks and the following period.

On page 5, between lines 3 and 4, insert the following:

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (a)(2)(C) $3,000,000 for each of fiscal years 2004 through 2008.''.

The bill (H.R. 1006), as amended, was read the third time and passed.

PRESERVING INDEPENDENCE OF FINANCIAL INSTITUTION EXAMINATIONS ACT OF 2003

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1947, which was introduced earlier today.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1947) to prohibit the offer of credit by a financial institution to a financial institution examiner, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. HATCH. Mr. President, I rise to join my friend and distinguished colleague, Senator LEAHY, in the introduction of the Preserving Independence of Financial Institution Examiners Act of 2003. This bill modifies two criminal statutes, sections 212 and 213 of title 18 of the United States Code, which impose criminal penalties on bank examiners who are offered, or who accept, a loan or gratuity from a financial institution they are examining. These revisions are needed to reflect the changes in our national banking system.

When originally enacted, the criminal statutes were designed to ensure that bank examiners were not subjected to undue and improper influences from the subject banks. With the increased consolidation and globalization of the banking industry, it is difficult in today's banking economy for examiners, particularly those who examine credit card banks, to obtain nationally available credit cards. The statutes, which were originally enacted in 1948, include no exception for routine, ordinary business transactions that were never intended to fall within the ambit of the statutes. The proposed legislation provides an exception to the statutes for bank examiners who hold everyday credit cards and residential home mortgage loans from the banks they are examining. The exceptions are narrow and the purposes of the statutes to prohibit such conflicts of interest will remain intact.

I want to thank Senator LEAHY for his willingness to address this problem. I urge my colleagues to support this measure and quickly pass it.

Mr. LEAHY. Mr. President, today's passage of the Preserving Independence of Financial Examinations Act of 2003 is an example of solid, efficient bipartisan work on a needed legislative reform. I am pleased to have seen its passage so swiftly through the U.S. Senate and I thank my friend from Utah, Senator HATCH, for his assistance and advice.

The bill provides a logical and necessary modification to important, but outdated, criminal statutes originally written to ensure the objectivity and integrity of financial institution examinations. Sections 212 and 213 of title 18 of the United States Code, first drafted in 1948, appropriately provide criminal penalties for bank examiners who are offered, or who accept, a loan or gratuity from the financial institution they are examining. This bill exempts from the law's reach ordinary credit card and residential home mortgage loans sought and held by bank examiners in their everyday lives.

Several factors supported the proposed blanket credit card and residential loan exceptions. Most important, consolidation within the banking industry made it increasingly difficult for examiners to obtain nationally available credit cards and mortgage loans and for the banking agencies to assign examiners to work.

The Leahy-Hatch bill strictly defines the circumstances under which the exceptions to the criminal statute apply with a keen eye on preserving the independence of financial institution examinations and the original legislative intent of the statute.

I thank Senator HATCH for his assistance in this bill forward and making it possible for bank examiners to engage in arms-length and routine business transactions without fear of prosecution. I also thank our friends in the banking agencies, including the Federal Reserve Bank, the Office of Thrift Supervision and the Federal Deposit Insurance Corporation for bringing this important issue to our attention.

Mr. ENSIGN. Mr. President, I further ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to this measure be printed in the RECORD.

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

The bill (S. 1947) was read the third time and passed, as follows:

S. 1947

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 ''Preserving Independence of Financial Institution Examinations Act of 2003''.

SEC. 2. OFFER AND ACCEPTANCE OF CREDIT.

(a) IN GENERAL.—Title 18, United States Code, is amended by striking sections 212 and 213 and inserting the following:

''§ 212. Offer of loan or gratuity to financial institution examiner

''(a) IN GENERAL.—Except as provided in subsection (b), whoever, being an officer, director or employee of a financial institution, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, branch, agency, organization, corporation, association, or institution—

''(1) shall be fined under this title, imprisoned not more than 1 year, or both; and

''(2) may be fined a further sum equal to the money so loaned or gratuity given.

''(b) REGULATIONS.—A Federal financial institution regulatory agency may prescribe regulations establishing additional limitations on the application for and receipt of credit under this section and on the application and receipt of residential mortgage loans under this section, after consulting with each other Federal financial institution regulatory agency.

''(c) DEFINITIONS.—In this section:

''(1) EXAMINER.—The term 'examiner' means any person—

''(A) appointed by a Federal financial institution regulatory agency or pursuant to the laws of any State to examine a financial institution; or

''(B) elected under the law of any State to conduct examinations of any financial institutions.

''(2) FEDERAL FINANCIAL INSTITUTION REGULATORY AGENCY.—The term 'Federal financial institution regulatory agency' means—

''(A) the Office of the Comptroller of the Currency;

''(B) the Board of Governors of the Federal Reserve System;

''(C) the Office of Thrift Supervision;

''(D) the Federal Deposit Insurance Corporation;

''(E) the Federal Housing Finance Board;

''(F) the Farm Credit Administration;

''(G) the Farm Credit System Insurance Corporation; and

''(H) the Small Business Administration.

''(3) FINANCIAL INSTITUTION.—The term 'financial institution' does not include a credit union, a Federal Reserve Bank, a Federal home loan bank, or a depository institution holding company.

''(4) LOAN.—The term 'loan' does not include any credit card account established under an open end consumer credit plan or a loan secured by residential real property

that is the principal residence of the examiner, if—

''(A) the applicant satisfies any financial requirements for the credit card account or residential real property loan that are generally applicable to all applicants for the same type of credit card account or residential real property loan;

''(B) the terms and conditions applicable with respect to such account or residential real property loan, and any credit extended to the examiner under such account or residential real property loan, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts or residential real property loans offered by the same financial institution to other borrowers cardholders in comparable circumstances under open end consumer credit plans or for residential real property loans; and

''(C) with respect to residential real property loans, the loan is with respect to the primary residence of the applicant.

''§ 213. Acceptance of loan or gratuity by financial institution examiner

''(a) IN GENERAL.—Whoever, being an examiner or assistant examiner, accepts a loan or gratuity from any bank, branch, agency, organization, corporation, association, or institution examined by the examiner or from any person connected with it, shall—

''(1) be fined under this title, imprisoned not more than 1 year, or both;

''(2) may be fined a further sum equal to the money so loaned or gratuity given; and

''(3) shall be disqualified from holding office as an examiner.

''(b) DEFINITIONS.—In this section, the terms 'examiner', 'Federal financial institution regulatory agency', 'financial institution', and 'loan' have the same meanings as in section 212.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections of chapter 11 of title 18, United States Code, is amended by striking the matter relating to sections 212 and 213 and inserting the following:

''212. Offer of loan or gratuity to financial institution examiner.
''213. Acceptance of loan or gratuity by financial institution examiner.''.

AMERICAN DREAM DOWNPAYMENT ACT

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of S. 811 and the Senate now proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 811) to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. SARBANES. Mr. President, we spend a lot of time talking about homeownership, both in the Banking, Housing, and Urban Affairs Committee and back in our States. I want to spend just a moment reminding everyone why some of us put so much effort into achieving this very important goal for so may American families.

Homeownership is an asset-building engine for families and neighborhoods, indeed for society as a whole. When a family buys a home, they are buying more than bricks and mortar. They are buying into a community. With each homeowner, we create another anchor in a neighborhood, another advocate for better schools, safer streets, and small business development.

Expanding homeownership, particularly in struggling areas, will help replace the vicious cycle of decline that we see in some neighborhoods with a virtuous cycle of wealth accumulation and economic growth. Once you own a home, you are able to build equity, equity that can be used to send your children to college, finance your retirement, and serve as a needed reserve to protect against emergencies.

Increasing homeownership, and especially minority homeownership, has long been a national goal. In fact, the Joint Center for Housing Studies at Harvard points out that the 1990s was a period of significant growth in minority homeownership and in mortgage lending to minorities. Unfortunately, over the last few years, we have seen that progress level off as the economy has cooled down.

Today, we bring before the Senate S. 811, the American Dream Downpayment Assistance Act, originally introduced by my colleague on the Banking Committee, Senator ALLARD. This bill authorizes $200 million for a downpayment assistance program targeted to first time, low-income homebuyers. I support this legislation, and I appreciate the efforts of the Senator from Colorado, as well as Chairman SHELBY. I also note that the bill includes important provisions to expand the supply of affordable rental housing. Senator CORZINE amended the bill to raise the FHA multifamily loan limits to account for the rising costs of producing rental housing. This amendment will facilitate the annual construction of up to 6,000 units of multifamily housing affordable to working families around the country. This is an important contribution to the legislation we are considering.

Likewise, Senator JOHNSON has contributed a provision to make the FHA single family adjustable rate mortgage, ARMs, insurance program more effective. ARMs are an important tool in helping families achieve homeownership, and the Johnson amendment will be a welcome addition to the FHA program.

Finally, I would like to thank Senator STABENOW for bringing to the attention of the committee the special needs of a growing segment of our population, families headed by grandparents. The legislation includes an amendment that will create a demonstration program to examine how existing HUD programs can better serve these families. It also requires HUD to study ways in which barriers to existing programs for these families may be reduced.

Again, I want to thank Chairman SHELBY, as well as Senators ALLARD and REED, chair and ranking member of the Housing Subcommittee, for all their work on this legislation and for their willingness to work in a bipartisan way to produce a good final product. I also want to thank Chairman OXLEY, Ranking Member FRANK, and the other members of the House Financial Services Committee for their contributions to this process and this product.

I support passage of the American Dream Downpayment Assistance Act and urge it passage.

Mr. ENSIGN. I ask unanimous consent that the substitute amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

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

The amendment (No. 2216) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (S. 811), as amended, was read the third time and passed.

EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM

Mr. ENSIGN. I ask that the Chair now lay before the Senate the House message to accompany S. 1768.

The Presiding Officer laid before the Senate the following message:

Resolved, That the bill from the Senate (S. 1768) entitled ''An Act to extend the national flood insurance program'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Flood Insurance Program Reauthorization Act of 2004''.

SEC. 2. EXTENSION OF PROGRAM.

(a) EXTENSION.—The National Flood Insurance Act of 1968 is amended as follows:

(1) AUTHORITY FOR CONTRACTS.—In section 1319 (42 U.S.C. 4026), by striking ''December 31, 2003'' and inserting ''March 31, 2004.''.

(2) BORROWING AUTHORITY.—In the first sentence of section 1309(a) (42 U.S.C. 4016(a)), by striking ''December 31, 2003'' and inserting ''the date specified in section 1319''.

(3) EMERGENCY IMPLEMENTATION.—In section 1336(a) (42 U.S.C. 4056(a)), by striking ''December 31, 2003'' and inserting ''on the date specified in section 1319''.

(4) AUTHORIZATION OF APPROPRIATIONS FOR STUDIES.—In section 1376(c) (42 U.S.C. 4127(c)), by striking ''December 31, 2003'' and inserting ''the date specified in section 1319''.

(b) EFFECTIVE DATE.—The amendments made by this section shall be considered to have taken effect on December 31, 2003.

Mr. ENSIGN. I ask unanimous consent that the Senate concur in the House amendment, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

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

GAO HUMAN CAPITAL REFORM ACT OF 2003

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 407, S. 1522.

The PRESIDING OFFICER (Mr. COLEMAN). The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1522) to provide new human capital flexibilities with respect to the GAO, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 1522

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

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 31.

(a) SHORT TITLE.—This Act may be cited as the ''GAO Human Capital Reform Act of 2003''.

(b) AMENDMENT OF TITLE 31.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 31, United States Code.

[SEC. 2. AMENDMENTS TO PUBLIC LAW 106–303.

Sections 1 and 2 of Public Law 106–303 (5 U.S.C. 8336 note and 5597 note) are amended by striking ''for purposes of the period beginning on the date of enactment of this Act and ending on December 31, 2003'' each place it appears and inserting ''October 13, 2000''.]

SEC. 2. AMENDMENTS TO PUBLIC LAW 106–303.

(a) EXTENSION OF AUTHORITIES.—Sections 1 and 2 of Public Law 106–303 (5 U.S.C. 8336 note and 5597 note) are amended by striking ''for purposes of the period beginning on the date of enactment of this Act and ending on December 31, 2003'' each place it appears and inserting ''October 13, 2000''.

(b) EXCLUSION OF CERTAIN EMPLOYEES RECEIVING STUDENT LOAN BENEFITS.—Section 2(b) of Public Law 106–303 (5 U.S.C. 5597 note) is amended by striking paragraph (2) and inserting the following:

''(2)(A) subsection (a)(2)(G) of such section shall be applied by construing the citations therein to be references to the appropriate authorities in connection with employees of the General Accounting Office; and

''(B) employees excluded under subsection (a)(2)(G) of such section, shall include any employee who, during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379 of title 5, United States Code;''.

(c) SENSE OF CONGRESS.—

(1) VOLUNTARY EARLY RETIREMENT AUTHORITY.—Section 1 of Public Law 106–303 (5 U.S.C. 8336 note) is amended by adding at the end the following:

''(e) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.''.

(2) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—Section 2 of Public Law 106–303 (5 U.S.C. 5597 note) is amended by adding at the end the following:

''(g) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.''.

SEC. 3. ANNUAL PAY ADJUSTMENTS.

(a) OFFICERS AND EMPLOYEES GENERALLY.—Paragraph (3) of section 732(c) is amended to read as follows:

[''(3) except as provided under section 733(a)(3)(B) of this title, basic pay rates of officers and employees of the Office shall be adjusted annually to such extent as the Comptroller General shall determine, taking into consideration—**]**

''(3) except as provided under section 733(a)(3)(B) of this title, basic rates of officers and employees of the Office shall be adjusted annually to such extent as determined by the Comptroller General, and in making that determination the Comptroller General shall consider—

''(A) the principle that **[**there be equal pay for substantially equal work**]** *equal pay should be provided for work of equal value* within each local pay area;

[''(B) the Consumer Price Index;

''(B) the need to protect the purchasing power of officers and employees of the Office, taking into consideration the Consumer Price Index or other appropriate indices;

''(C) any existing pay disparities between officers and employees of the Office and non-Federal employees in each local pay area;

''(D) the pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area;

''(E) the appropriate distribution of agency funds between annual adjustments under this section and performance-based compensation; and

''(F) such other criteria as the Comptroller General considers appropriate, including, but not limited to, the funding level for the Office, amounts allocated for performance-based compensation, and the extent to which the Office is succeeding in fulfilling its mission and accomplishing its strategic plan;

notwithstanding any other provision of this paragraph, an adjustment under this paragraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;''.

(b) OFFICERS AND EMPLOYEES IN THE OFFICE SENIOR EXECUTIVE SERVICE.—Subparagraph (B) of section 733(a)(3) is amended to read as follows:

''(B) adjusted annually by the Comptroller General after taking into consideration the factors listed under section 732(c)(3) of this title, except that an adjustment under this subparagraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;''.

(c) CONFORMING AMENDMENT.—Section 732(b)(6) is amended by striking ''title 5.'' and inserting ''title 5, except as provided under subsection (c)(3) of this section and section 733(a)(3)(B) of this title.''.

SEC. 4. PAY RETENTION.

Paragraph (5) of section 732(c) is amended to read as follows:

''(5) the Comptroller General shall prescribe regulations under which an officer or employee of the Office shall be entitled to pay retention if, as a result of any reduction-in-force or other workforce adjustment procedure, position reclassification, or other appropriate circumstances as determined by the Comptroller General, such officer or employee is placed in or holds a position in a lower grade or band with a maximum rate of basic pay that is less than the rate of basic pay payable to the officer or employee immediately before the reduction in grade or band; such regulations—

''(A) shall provide that the officer or employee shall be entitled to continue receiving the rate of basic pay that was payable to the officer or employee immediately before the reduction in grade or band until such time as the retained rate becomes less than the maximum rate for the grade or band of the position held by such officer or employee; and

''(B) shall include provisions relating to the minimum period of time for which an officer or employee must have served or for which the position must have been classified at the higher grade or band in order for pay retention to apply, the events that terminate the right to pay retention (apart from the one described in subparagraph (A)), and exclusions based on the nature of an appointment; in prescribing regulations under this subparagraph, the Comptroller General shall be guided by the provisions of sections 5362 and 5363 of title 5.''.

SEC. 5. RELOCATION BENEFITS.

Section 731 is amended by adding after subsection (e) the following:

''(f) The Comptroller General shall prescribe regulations under which officers and employees of the Office may, in appropriate circumstances, be reimbursed for any relocation expenses under subchapter II of chapter 57 of title 5 for which they would not otherwise be eligible, but only if the Comptroller General determines that the transfer giving rise to such relocation is of sufficient benefit or value to the Office to justify such reimbursement.''.

SEC. 6. INCREASED ANNUAL LEAVE FOR KEY EMPLOYEES.

Section 731 is amended by adding after subsection (f) (as added by section 5 of this Act) the following:

''(g) The Comptroller General shall prescribe regulations under which key officers and employees of the Office who have less than 3 years of service may accrue leave in accordance with section 6303(a)(2) of title 5, in those circumstances in which the Comptroller General has determined such increased annual leave is appropriate for the recruitment or retention of such officers and employees. Such regulations shall define key officers and employees and set forth the factors in determining which officers and employees should be allowed to accrue leave in accordance with this subsection.''.

SEC. 7. EXECUTIVE EXCHANGE PROGRAM.

Section 731 is amended by adding after subsection (g) (as added by section 6 of this Act) the following:

''(h) The Comptroller General may by regulation establish an executive exchange program under which officers and employees of the Office **[**in high-grade, managerial, or supervisory positions**]** may be assigned to private sector organizations, and employees of private sector organizations may be assigned to the Office, **[**for work of mutual concern and benefit.**]** *to further the institutional interests of the Office or Congress, including for the purpose of providing training to officers and employees of the Office.* Regulations to carry out any such program—

''(1) shall include **[**provisions which define high-grade, managerial, or supervisory positions, and**]** provisions (consistent with sections 3702 through 3704 of title 5) as to matters concerning—

''(A) the duration and termination of assignments;

''(B) reimbursements; and

''(C) status, entitlements, benefits, and obligations of program participants; **[**and**]**

''(2) shall limit—

''(A) the number of officers and employees who are assigned to private sector organizations at any one time to not more than [30]*15*; and

''(B) the number of employees from private sector organizations who are assigned to the Office at any one time to not more than 30.'';

''(3) shall require that an employee of a private sector organization assigned to the Office may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee is assigned;

''(4) shall require that, before approving the assignment of an officer or employee to a private sector organization, the Comptroller General shall determine that the assignment is an effective use of the Office's funds, taking into account the best interests of the Office and the costs and benefits of alternative methods of achieving the same results and objectives; and

''(5) shall not allow any assignment under this subsection to commence after the end of the 5-year period beginning on the date of the enactment of this subsection.

''(i) An employee of a private sector organization assigned to the Office under the executive exchange program shall be considered to be an employee of the Office for purposes of—

''(1) chapter 73 of title 5;

''(2) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

''(3) sections 1343, 1344, and 1349(b) of this title;

''(4) chapter 171 of title 28 (commonly referred to as the Federal Tort Claims Act) and any other Federal tort liability statute;

''(5) the Ethics in Government Act of 1978 (5 U.S.C. App.);

''(6) section 1043 of the Internal Revenue Code of 1986; and

''(7) section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423).''.

SEC. 8. REDESIGNATION.

(a) IN GENERAL.—The General Accounting Office is hereby redesignated the Government Accountability Office.

(b) REFERENCES.—Any reference to the General Accounting Office in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Government Accountability Office.

SEC. 9. PERFORMANCE MANAGEMENT SYSTEM.

Paragraph (1) of section 732(d) is amended to read as follows:

''(1) for a system to appraise the performance of officers and employees of the General Accounting Office that meets the requirements of section 4302 of title 5 and in addition includes—

''(A) a link between the performance management system and the agency's strategic plan;

''(B) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system;

''(C) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period and setting timetables for review;

''(D) effective transparency and accountability measures to ensure that the management of the system is fair, credible, and equitable, including appropriate independent reasonableness, reviews, internal assessments, and employee surveys; and

''(E) a means to ensure that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.''.

SEC. 10. CONSULTATION.

Before the implementation of any changes authorized under this Act, the Comptroller General shall consult with any interested groups or associations representing officers and employees of the General Accounting Office.

[SEC. 9.] *SEC. 11.* REPORTING REQUIREMENTS.

(a) ANNUAL REPORTS.—The Comptroller General shall include—

(1) in each report submitted to Congress under section 719(a) of title 31, United States Code, during the 5-year period beginning on the date of enactment of this Act, a summary review of all actions taken under sections 2, 3, 4, 6, [and 7] *7, 9, and 10* of this Act during the period covered by such report, including—

(A) the respective numbers of officers and employees—

(i) separating from the service under section 2 of this Act;

(ii) receiving pay retention under section 4 of this Act;

(iii) receiving increased annual leave under section 6 of this Act; and

(iv) engaging in the executive exchange program under section 7 of this Act, as well as the number of private sector employees participating in such program and a review of the general nature of the work performed by the individuals participating in such program;

(B) a review of all actions taken to formulate the appropriate methodologies to implement the pay adjustments provided for under section 3 of this Act, except that nothing under this subparagraph shall be required if no changes are made in any such methodology during the period covered by such report; and

(C) an assessment of the role of sections 2, 3, 4, 6, [and 7] 7, 9, and 10 of this Act in contributing to the *General Accounting* Office's ability to carry out its mission, meet its performance goals, and fulfill its strategic plan; and

(2) in each report submitted to Congress under such section 719(a) after the effective date of section 3 of this Act and before the close of the [5 year] *5-year* period referred to in paragraph (1)—

(A) a detailed description of the methodologies applied under section 3 of this Act and the manner in which such methodologies were applied to determine the appropriate annual pay adjustments for officers and employees of the Office;

(B) the amount of the annual pay adjustments afforded to officers and employees of the Office under section 3 of this Act; and

(C) a description of any extraordinary economic conditions or serious budget constraints which had a significant impact on the determination of the annual pay adjustments for officers and employees of the Office.

(b) FINAL REPORT.—Not later than 6 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report concerning the implementation of this Act. Such report shall include—

(1) a summary of the information included in the annual reports required under subsection (a);

(2) recommendations for any legislative changes to section 2, 3, 4, 6, [or 7] *7, 9, or 10* of this Act; and

(3) any assessment furnished by the General Accounting Office Personnel Appeals Board or any interested groups or associations representing officers and employees of the Office for inclusion in such report.

(c) ADDITIONAL REPORTING.—Notwithstanding any other provision of this section, the reporting requirement under subsection (a)(2)(C) shall apply in the case any report submitted under section 719(a) of title 31, United States Code, whether during the 5-year period beginning on the date of enactment of this Act (as required by subsection (a)) or at any time thereafter.

SEC. 12. TECHNICAL AMENDMENT.

Section 732(h)(3)(A) is amended by striking ''reduction force'' and inserting ''reduction in force''.

[SEC. 10.] *SEC. 13.* EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) PAY ADJUSTMENTS.—

(1) IN GENERAL.—Section 3 of this Act and the amendments made by that section shall take effect on October 1, 2005, and shall apply in the case of any annual pay adjustment taking effect on or after that date.

(2) INTERIM AUTHORITIES.—In connection with any pay adjustment taking effect under section 732(c)(3) or 733(a)(3)(B) of title 31, United States Code, before October 1, 2005, the Comptroller General may by regulation—

(A) provide that such adjustment not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment; and

(B) provide that such adjustment be reduced if and to the extent necessary because of extraordinary economic conditions or serious budget constraints.

(3) ADDITIONAL AUTHORITY.—

(A) IN GENERAL.—The Comptroller General may by regulation delay the effective date of section 3 of this Act and the amendments made by that section for groups of officers and employees that the Comptroller General considers appropriate.

(B) INTERIM AUTHORITIES.—If the Comptroller General provides for a delayed effective date under subparagraph (A) with respect to any group of officers or employees, paragraph (2) shall, for purposes of such group, be applied by substituting such date for ''October 1, 2005''.

Mr. ENSIGN. I ask unanimous consent that the committee amendments be agreed to en bloc, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table en bloc, and that any statements related to the bill be printed in the RECORD.

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

The committee amendments were agreed to.

The bill (S. 1522), as amended, was read the third time and passed, as follows:

S. 1522

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

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 31.

(a) SHORT TITLE.—This Act may be cited as the ''GAO Human Capital Reform Act of 2003''.

(b) AMENDMENT OF TITLE 31.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 31, United States Code.

SEC. 2. AMENDMENTS TO PUBLIC LAW 106–303.

(a) EXTENSION OF AUTHORITIES.—Sections 1 and 2 of Public Law 106–303 (5 U.S.C. 8336 note and 5597 note) are amended by striking ''for purposes of the period beginning on the date of enactment of this Act and ending on December 31, 2003'' each place it appears and inserting ''October 13, 2000''.

(b) EXCLUSION OF CERTAIN EMPLOYEES RECEIVING STUDENT LOAN BENEFITS.—Section

2(b) of Public Law 106–303 (5 U.S.C. 5597 note) is amended by striking paragraph (2) and inserting the following:

''(2)(A) subsection (a)(2)(G) of such section shall be applied by construing the citations therein to be references to the appropriate authorities in connection with employees of the General Accounting Office; and

''(B) employees excluded under subsection (a)(2)(G) of such section, shall include any employee who, during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379 of title 5, United States Code;''.

(c) SENSE OF CONGRESS.—

(1) VOLUNTARY EARLY RETIREMENT AUTHORITY.—Section 1 of Public Law 106–303 (5 U.S.C. 8336 note) is amended by adding at the end the following:

''(e) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.''.

(2) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—Section 2 of Public Law 106–303 (5 U.S.C. 5597 note) is amended by adding at the end the following:

''(g) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.''.

SEC. 3. ANNUAL PAY ADJUSTMENTS.

(a) OFFICERS AND EMPLOYEES GENERALLY.—Paragraph (3) of section 732(c) is amended to read as follows:

''(3) except as provided under section 733(a)(3)(B) of this title, basic rates of officers and employees of the Office shall be adjusted annually to such extent as determined by the Comptroller General, and in making that determination the Comptroller General shall consider—

''(A) the principle that equal pay should be provided for work of equal value within each local pay area;

''(B) the need to protect the purchasing power of officers and employees of the Office, taking into consideration the Consumer Price Index or other appropriate indices;

''(C) any existing pay disparities between officers and employees of the Office and non-Federal employees in each local pay area;

''(D) the pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area;

''(E) the appropriate distribution of agency funds between annual adjustments under this section and performance-based compensation; and

''(F) such other criteria as the Comptroller General considers appropriate, including, but not limited to, the funding level for the Office, amounts allocated for performance-based compensation, and the extent to which the Office is succeeding in fulfilling its mission and accomplishing its strategic plan;

notwithstanding any other provision of this paragraph, an adjustment under this paragraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;''.

(b) OFFICERS AND EMPLOYEES IN THE OFFICE SENIOR EXECUTIVE SERVICE.—Subparagraph (B) of section 733(a)(3) is amended to read as follows:

''(B) adjusted annually by the Comptroller General after taking into consideration the factors listed under section 732(c)(3) of this title, except that an adjustment under this subparagraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;''.

(c) CONFORMING AMENDMENT.—Section 732(b)(6) is amended by striking ''title 5.'' and inserting ''title 5, except as provided under subsection (c)(3) of this section and section 733(a)(3)(B) of this title.''.

SEC. 4. PAY RETENTION.

Paragraph (5) of section 732(c) is amended to read as follows:

''(5) the Comptroller General shall prescribe regulations under which an officer or employee of the Office shall be entitled to pay retention if, as a result of any reduction-in-force or other workforce adjustment procedure, position reclassification, or other appropriate circumstances as determined by the Comptroller General, such officer or employee is placed in or holds a position in a lower grade or band with a maximum rate of basic pay that is less than the rate of basic pay payable to the officer or employee immediately before the reduction in grade or band; such regulations—

''(A) shall provide that the officer or employee shall be entitled to continue receiving the rate of basic pay that was payable to the officer or employee immediately before the reduction in grade or band until such time as the retained rate becomes less than the maximum rate for the grade or band of the position held by such officer or employee; and

''(B) shall include provisions relating to the minimum period of time for which an officer or employee must have served or for which the position must have been classified at the higher grade or band in order for pay retention to apply, the events that terminate the right to pay retention (apart from the one described in subparagraph (A)), and exclusions based on the nature of an appointment; in prescribing regulations under this subparagraph, the Comptroller General shall be guided by the provisions of sections 5362 and 5363 of title 5.''.

SEC. 5. RELOCATION BENEFITS.

Section 731 is amended by adding after subsection (e) the following:

''(f) The Comptroller General shall prescribe regulations under which officers and employees of the Office may, in appropriate circumstances, be reimbursed for any relocation expenses under subchapter II of chapter 57 of title 5 for which they would not otherwise be eligible, but only if the Comptroller General determines that the transfer giving rise to such relocation is of sufficient benefit or value to the Office to justify such reimbursement.''.

SEC. 6. INCREASED ANNUAL LEAVE FOR KEY EMPLOYEES.

Section 731 is amended by adding after subsection (f) (as added by section 5 of this Act) the following:

''(g) The Comptroller General shall prescribe regulations under which key officers and employees of the Office who have less than 3 years of service may accrue leave in accordance with section 6303(a)(2) of title 5, in those circumstances in which the Comptroller General has determined such increased annual leave is appropriate for the recruitment or retention of such officers and employees. Such regulations shall define key officers and employees and set forth the factors in determining which officers and employees should be allowed to accrue leave in accordance with this subsection.''.

SEC. 7. EXECUTIVE EXCHANGE PROGRAM.

Section 731 is amended by adding after subsection (g) (as added by section 6 of this Act) the following:

''(h) The Comptroller General may by regulation establish an executive exchange program under which officers and employees of the Office may be assigned to private sector organizations, and employees of private sector organizations may be assigned to the Office, to further the institutional interests of the Office or Congress, including for the purpose of providing training to officers and employees of the Office. Regulations to carry out any such program—

''(1) shall include provisions (consistent with sections 3702 through 3704 of title 5) as to matters concerning—

''(A) the duration and termination of assignments;

''(B) reimbursements; and

''(C) status, entitlements, benefits, and obligations of program participants;

''(2) shall limit—

''(A) the number of officers and employees who are assigned to private sector organizations at any one time to not more than 15; and

''(B) the number of employees from private sector organizations who are assigned to the Office at any one time to not more than 30;

''(3) shall require that an employee of a private sector organization assigned to the Office may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee is assigned;

''(4) shall require that, before approving the assignment of an officer or employee to a private sector organization, the Comptroller General shall determine that the assignment is an effective use of the Office's funds, taking into account the best interests of the Office and the costs and benefits of alternative methods of achieving the same results and objectives; and

''(5) shall not allow any assignment under this subsection to commence after the end of the 5-year period beginning on the date of the enactment of this subsection.

''(i) An employee of a private sector organization assigned to the Office under the executive exchange program shall be considered to be an employee of the Office for purposes of—

''(1) chapter 73 of title 5;

''(2) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

''(3) sections 1343, 1344, and 1349(b) of this title;

''(4) chapter 171 of title 28 (commonly referred to as the Federal Tort Claims Act) and any other Federal tort liability statute;

''(5) the Ethics in Government Act of 1978 (5 U.S.C. App.);

''(6) section 1043 of the Internal Revenue Code of 1986; and

''(7) section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423).''.

SEC. 8. REDESIGNATION.

(a) IN GENERAL.—The General Accounting Office is hereby redesignated the Government Accountability Office.

(b) REFERENCES.—Any reference to the General Accounting Office in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Government Accountability Office.

SEC. 9. PERFORMANCE MANAGEMENT SYSTEM.

Paragraph (1) of section 732(d) is amended to read as follows:

''(1) for a system to appraise the performance of officers and employees of the General Accounting Office that meets the requirements of section 4302 of title 5 and in addition includes—

''(A) a link between the performance management system and the agency's strategic plan;

''(B) adequate training and retraining for supervisors, managers, and employees in the

implementation and operation of the performance management system;

''(C) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period and setting timetables for review;

''(D) effective transparency and accountability measures to ensure that the management of the system is fair, credible, and equitable, including appropriate independent reasonableness, reviews, internal assessments, and employee surveys; and

''(E) a means to ensure that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.''.

SEC. 10. CONSULTATION.

Before the implementation of any changes authorized under this Act, the Comptroller General shall consult with any interested groups or associations representing officers and employees of the General Accounting Office.

SEC. 11. REPORTING REQUIREMENTS.

(a) ANNUAL REPORTS.—The Comptroller General shall include—

(1) in each report submitted to Congress under section 719(a) of title 31, United States Code, during the 5-year period beginning on the date of enactment of this Act, a summary review of all actions taken under sections 2, 3, 4, 6, 7, 9, and 10 of this Act during the period covered by such report, including—

(A) the respective numbers of officers and employees—

(i) separating from the service under section 2 of this Act;

(ii) receiving pay retention under section 4 of this Act;

(iii) receiving increased annual leave under section 6 of this Act; and

(iv) engaging in the executive exchange program under section 7 of this Act, as well as the number of private sector employees participating in such program and a review of the general nature of the work performed by the individuals participating in such program;

(B) a review of all actions taken to formulate the appropriate methodologies to implement the pay adjustments provided for under section 3 of this Act, except that nothing under this subparagraph shall be required if no changes are made in any such methodology during the period covered by such report; and

(C) an assessment of the role of sections 2, 3, 4, 6, 7, 9, and 10 of this Act in contributing to the General Accounting Office's ability to carry out its mission, meet its performance goals, and fulfill its strategic plan; and

(2) in each report submitted to Congress under such section 719(a) after the effective date of section 3 of this Act and before the close of the 5-year period referred to in paragraph (1)—

(A) a detailed description of the methodologies applied under section 3 of this Act and the manner in which such methodologies were applied to determine the appropriate annual pay adjustments for officers and employees of the Office;

(B) the amount of the annual pay adjustments afforded to officers and employees of the Office under section 3 of this Act; and

(C) a description of any extraordinary economic conditions or serious budget constraints which had a significant impact on the determination of the annual pay adjustments for officers and employees of the Office.

(b) FINAL REPORT.—Not later than 6 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report concerning the implementation of this Act. Such report shall include—

(1) a summary of the information included in the annual reports required under subsection (a);

(2) recommendations for any legislative changes to section 2, 3, 4, 6, 7, 9, or 10 of this Act; and

(3) any assessment furnished by the General Accounting Office Personnel Appeals Board or any interested groups or associations representing officers and employees of the Office for inclusion in such report.

(c) ADDITIONAL REPORTING.—Notwithstanding any other provision of this section, the reporting requirement under subsection (a)(2)(C) shall apply in the case any report submitted under section 719(a) of title 31, United States Code, whether during the 5-year period beginning on the date of enactment of this Act (as required by subsection (a)) or at any time thereafter.

SEC. 12. TECHNICAL AMENDMENT.

Section 732(h)(3)(A) is amended by striking ''reduction force'' and inserting ''reduction in force''.

SEC. 13. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) PAY ADJUSTMENTS.—

(1) IN GENERAL.—Section 3 of this Act and the amendments made by that section shall take effect on October 1, 2005, and shall apply in the case of any annual pay adjustment taking effect on or after that date.

(2) INTERIM AUTHORITIES.—In connection with any pay adjustment taking effect under section 732(c)(3) or 733(a)(3)(B) of title 31, United States Code, before October 1, 2005, the Comptroller General may by regulation—

(A) provide that such adjustment not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment; and

(B) provide that such adjustment be reduced if and to the extent necessary because of extraordinary economic conditions or serious budget constraints.

(3) ADDITIONAL AUTHORITY.—

(A) IN GENERAL.—The Comptroller General may by regulation delay the effective date of section 3 of this Act and the amendments made by that section for groups of officers and employees that the Comptroller General considers appropriate.

(B) INTERIM AUTHORITIES.—If the Comptroller General provides for a delayed effective date under subparagraph (A) with respect to any group of officers or employees, paragraph (2) shall, for purposes of such group, be applied by substituting such date for ''October 1, 2005''.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 108–12

Mr. ENSIGN. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on November 24, 2003, by the President of the United States:

Mutual Legal Assistance Treaty With Japan, Treaty Document 108–12.

Mr. ENSIGN. I further ask unanimous consent that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the United States of America and Japan on Mutual Legal Assistance in Criminal Matters, signed at Washington on August 5, 2003. I transmit also, for the information of the Senate, a related exchange of notes and the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties negotiated by the United States in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the investigation and prosecution of a wide variety of crimes. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: taking testimony, statements, or items; examining persons, items, or places; locating or identifying persons, items, or places; providing items from governmental departments or agencies; inviting persons to testify in the requesting Party; transferring persons in custody for testimony or other purposes; assisting in proceedings related to forfeiture and immobilization of assets; and any other form of assistance permitted under the laws of the requested Party and agreed upon by the Central Authorities of the two Contracting Parties.

I recommend that the Senate give early and favorable consideration to the Treaty, and give its advice and consent to ratification.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 24, 2003.*

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 94–201, as amended by Public Law 105–275, appoints Dr. Daniel Botkin, of California, as a member of the Board of Trustees of the American Folklife Center of the Library of Congress, vice Susan Barksdale Howorth, of Mississippi.

SENATE PAGES

Mr. FRIST. Mr. President, it is late tonight and we will be in session early tomorrow morning, but I did want to take a brief moment and give thanks to a very special group of people around this institution. There are a number of professional and dedicated individuals who spend each and every day working to keep this body functioning. But I want to give special thanks to one group of people tonight, and that is our Senate pages.

These are hard-working young men and women who help us each day with a broad range of tasks. They do really pretty much everything from preparing these desks today—as you look around here and see what is on these desks, you can see that that can be a huge task—to running errands for Members, errands that we greatly depend upon as we try to juggle our various responsibilities of the day, to making copies of amendments literally just one after another. In fact, you see the copies of the Medicare legislation on the desks today. When you look at them, you know that somebody has generated each and every one of those copies. The duties really go on and on.

In the middle of my talk last night, I was speaking from this desk. And I thought, I have to get rid of this. How will I do it? I was thinking, and all of a sudden the page came and slipped it away so I could continue my discussion at the time.

I thank them and praise the tremendous work they do each and every day. This past week we have had very busy days. It has been unusual working through last week, through Saturday, through Sunday, through Monday, today. Very late seems to be the norm these last few days, as we have really worked to complete our work before the holidays. It is the pages who have been with us in the past few days where we had not anticipated being here this late.

We have had very special pages with us. I will slip out in a few minutes as we close down, and they will still be here as they tidy up for early tomorrow morning. They will soon be out for their Thanksgiving holiday as well. I really do I want to thank them, several of whom are sitting right here looking at me on the floor tonight. I thank them for their hard work these last several days: Yael Bortnick, Emily Holmgren, Ferrell Oxley, Sarah Smith, Melissa Meyer—and it is her birthday today—Margaret Leddy, and Krista Warner. In particular, I want to thank Melissa Meyer. But I thank them again for their tremendous work.

AUTHORIZING PRODUCTION OF RECORDS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 274 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 274) to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs.

There being no objection, Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has received requests from various law enforcement and regulatory officials and agencies for assistance in connection with pending investigations for copies of records that the subcommittee obtained during its recent investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry.

This resolution would authorize the chairman and ranking member of the Permanent Subcommittee on Investigations, acting jointly, to provide investigative records, obtained by the subcommittee in the course of its investigation, in response to these requests.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 274) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 274

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry;

Whereas, the Subcommittee has received requests from law enforcement and regulatory officials and agencies for access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide to law enforcement and regulatory entities and officials, court-appointed officials, and other entities or individuals duly authorized by Federal, State, or foreign governments, records of the Subcommittee's investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry.

ORDERS FOR TUESDAY, NOVEMBER 24, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 8:15 a.m., Tuesday, November 25. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of the conference report to accompany H.R. 1, the Medicare Prescription Drug Modernization Act, as provided under the previous order. I further ask unanimous consent that the final 10 minutes prior to the 9:15 a.m. vote be equally divided between the two leaders, with the majority leader in control of the final 5 minutes.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow morning there will be 1 hour of debate prior to the vote adoption of the conference report to accompany H.R. 1, the Medicare Prescription Drug Modernization Act. We have had 3 days of vigorous debate on this monumental legislation. Tomorrow it will culminate in a historic vote. I do thank all Senators who have participated in the discussion, and I particularly congratulate the chairman and ranking member of the Finance Committee who have worked to bring this legislation to completion.

I also announce that we are continuing our efforts to finish action on the remaining appropriations bills. It is my hope that we will be able to move forward with the appropriations process tomorrow. I will have more to say about this tomorrow, but Senators should expect the possibility of additional votes tomorrow.

ADJOURNMENT UNTIL 8:15 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 11:12 p.m., adjourned until 8:15 a.m., Tuesday, November 25, 2003.

NOMINATIONS

Executive nomination received by the Senate November 24, 2003:

THE JUDICIARY

JANE J. BOYLE, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS, VICE JERRY L. BUCHMEYER, RETIRED.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S15669–S15879

Measures Introduced: Fifteen bills and two resolutions were introduced, as follows: S. 1936–1950, and S. Res. 273–274. **Page S15812**

Measures Reported:

S. 1940, to reauthorize the Head Start Act. (S. Rept. No. 108–208)

Report to accompany S. 710, to amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad. (S. Rept. No. 108–209)

S. 1786, to revise and extend the Community Services Block Grant Act, the Low-Income Home Energy Assistance Act of 1981, and the Assets for Independence Act, with an amendment in the nature of a substitute. (S. Rept. No. 108–210)

S. 573, to amend the Public Health Service Act to promote organ donation, with an amendment in the nature of a substitute.

S. 606, to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 1881, to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments by the Medical Device User Fee and Modernization Act of 2002, with an amendment in the nature of a substitute. **Pages S15811–12**

Measures Passed:

NASA Workforce Flexibility Act: Senate passed S. 610, to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, after agreeing to the committee amendment in the nature of a substitute, and the following amendment proposed thereto: **Page S15853**

Ensign (for Voinovich/Carper) Amendment No. 2214, in the nature of a substitute. **Page S15863**

New Hope Cemetery: Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of S. 1537, to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery, and the bill was then passed. **Page S15863**

Ozark Land Exchange: Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of S. 33, to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites, and the bill was then passed. **Page S15864**

Green Mountain National Forests Boundaries: Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of S. 1499, to adjust the boundaries of Green Mountain National Forest, and the bill was then passed. **Pages S15864–65**

National Veterinary Medical Services Act: Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of H.R. 1367, to authorize the Secretary of Agriculture to conduct a loan repayment program regarding the provision of veterinary services in shortage situations, and the bill was then passed, clearing the measure for the President. **Page S15865**

Wind Cave National Park Boundary Revision Act: Senate passed S. 425, to revise the boundary of the Wind Cave National Park in the State of South Dakota. **Page S15865**

Wild Sky Wilderness Act: Senate passed S. 391, to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands

as wilderness, after agreeing to the committee amendments. **Pages S15865–67**

Idaho Panhandle National Forest Improvement Act: Senate passed S. 434, to authorize the Secretary of Agriculture to sell or exchange all or part of certain parcels of National Forest System land in the State of Idaho and use the proceeds derived from the sale or exchange for National Forest System purposes, after agreeing to the committee amendment in the nature of a substitute. **Pages S15867–68**

Sandpoint Land and Facilities Conveyance Act: Senate passed S. 435, to provide for the conveyance by the Secretary of Agriculture of the Sandpoint Federal Building and adjacent land in Sandpoint, Idaho, after agreeing to the committee amendments. **Pages S15868–69**

Cold War Study: Senate passed S. 452, to require that the Secretary of the Interior conduct a study to identify sites and resources, to recommend alternatives for commemorating and interpreting the Cold War, after agreeing to the committee amendment. **Pages S15869–70**

Oregon Dunes National Recreation Area Act: Senate passed S. 714, to provide for the conveyance of a small parcel of Bureau of Land Management land in Douglas County, Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, after agreeing to the committee amendments. **Page S15870**

Salmon River Commercial Outfitting Act: Senate passed S.1003, to clarify the intent of Congress with respect to the continued use of established commercial outfitter hunting camps on the Salmon River, after agreeing to the committee amendment. **Page S15870**

Coconino and Tonto National Forests Act: Senate passed H.R. 622, to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, after agreeing to the committee amendments. **Pages S15870–71**

Carter G. Woodson Home National Historic Site Establishment Act: Senate passed H.R. 1012, to establish the Carter G. Woodson Home National Historic Site in the District of Columbia, after agreeing to the committee amendment in the nature of a substitute. **Pages S15871–72**

Captive Wildlife Safety Act: Senate passed H.R. 1006, to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species, after agreeing to the following amendment proposed thereto: **Pages S15872–73**

Ensign (for Inhofe/Jeffords) Amendment No. 2215, to make certain modifications to improve the bill. **Page S15873**

Preserving Independence of Financial Institution Examinations Act: Senate passed S. 1947, to prohibit the offer of credit by a financial institution to a financial institution examiner. **Pages S15873–74**

American Dream Downpayment Act: Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of S. 811, to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and the bill was then passed, after agreeing to the following amendment proposed thereto. **Page S15874**

Ensign (for Shelby) Amendment No. 2216, in the nature of a substitute. **Page S15874**

GAO Human Capital Reform Act: Senate passed S. 1522,to provide new human capital flexibilities with respect to the GAO, after agreeing to the committee amendments. **Pages S15875–78**

Authorizing Document Production: Senate agreed to S. Res. 274, to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs. **Page S15879**

Medicare Prescription Drug, Improvement, and Modernization Act Agreement: Senate continued consideration of the conference report to accompany H.R. 1, to amend title XVIII of the Social Security Act to provide for a voluntary prescription drug coverage program under the Medicare program, to modernize, strengthen, and improve the Medicare program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts, to amend the Federal Food, Drug, and Cosmetic Act with respect to abbreviated applications for the approval of new drugs and the importation of prescription drugs. **Pages S15670–S15771**

By 70 yeas to 29 nays (Vote No. 457), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the conference report. **Page S15698**

During consideration of this measure today, Senate also took the following action:

By 61 yeas to 39 nays (Vote No. 458), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to waive sections 311(A)(2) and 302(f) of the Congressional Budget Act of 1974, with respect to the

conference report to accompany H.R. 1. Subsequently, the point of order that the conference report was in violation of sections 311(A)(2) and 302(f) of the Congressional Budget Act of 1974, was not sustained, and thus falls. **Pages S15698–S15711**

A unanimous-consent agreement was reached providing for further consideration of the conference report at 8:15 a.m., on Tuesday, November 25, 2003, with a vote on adoption of the conference report to occur at 9:15 a.m. **Page S15879**

National Flood Insurance Program Reauthorization Act: Senate concurred in the amendment of the House to S. 1768, to extend the national flood insurance program, clearing the measure for the President. **Page S15874**

Removal of Injunction of Secrecy: The injunction of secrecy was removed from the following treaty:

Mutual Legal Assistance Treaty with Japan (Treaty Doc. No. 108–12).

The treaty was transmitted to the Senate today, considered as having been read for the first time, and referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed. **Page S15878**

Appointments:

American Folklife Center of the Library of Congress: The Chair, on behalf of the President pro tempore, pursuant to Public Law 94–201, as amended by Public Law 105–275, appointed Dr. Daniel Botkin, of California, as a member of the Board of Trustees of the American Folklife Center of the Library of Congress, vice Susan Barksdale Howorth, of Mississippi. **Page S15878**

Nominations Received: Senate received the following nomination:

Jane J. Boyle, of Texas, to be United States District Judge for the Northern District of Texas. **Page S15879**

Enrolled Bills Signed: **Page S15811**

Additional Cosponsors: **Page S15812**

Statements on Introduced Bills/Resolutions: **Pages S15813–45**

Additional Statements: **Pages S15809–11**

Amendments Submitted: **Pages S15845–53**

Privilege of the Floor: **Page S15853**

Record Votes: Two record votes were taken today. (Total—458) **Pages S15698, S15711**

Adjournment: Senate met at 9 a.m. and adjourned at 11:12 p.m. until 8:15 a.m. on Tuesday, November 25, 2003. (For Senate's Program, see the remarks of the Acting Majority Leader in today's Record on page S15879.)

Committee Meetings

(Committees not listed did not meet)

No committee meetings were held.

House of Representatives

Chamber Action

The House was not in session today. It will meet at 12 p.m. Tuesday, November 25 in pro forma session.

Committee Meetings

No committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D1294)*

S. 313, to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs. Signed on November 18, 2003. (Public Law 108–130).

H.R. 274, to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge. Signed on November 22, 2003. (Public Law 108–131).

H.R. 2559, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004. Signed on November 22, 2003. (Public Law 108–132).

H.R. 3054, to amend the Policemen and Firemen's Retirement and Disability Act to permit military service previously performed by members and former members of the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police, and the United States Secret Service to count as creditable service for purposes of calculating retirement annuities payable to such members upon payment of a contribution by such members. Signed on November 22, 2003. (Public Law 108–133).

H.R. 3232, to reauthorize certain school lunch and child nutrition programs through March 31, 2004. Signed on November 22, 2003. (Public Law 108–134).

H.J. Res. 79, making further continuing appropriations for the fiscal year 2004. Signed on November 22, 2003. (Public Law 108–135).

COMMITTEE MEETINGS FOR TUESDAY, NOVEMBER 25, 2003

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

No committee meetings are scheduled.

Next Meeting of the **SENATE**

8:15 a.m., Tuesday, November 25

Senate Chamber

Program for Tuesday: Senate will continue consideration of the conference report to accompany H.R. 1, to amend title XVIII of the Social Security Act to provide for a voluntary prescription drug coverage program under the Medicare program, to modernize, strengthen, and improve the Medicare program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts, to amend the Federal Food, Drug, and Cosmetic Act with respect to abbreviated applications for the approval of new drugs and the importation of prescription drugs, with a vote on adoption of the conference report to occur at 9:15 a.m.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

12 p.m., Tuesday, November 25

House Chamber

Program for Tuesday: The House will meet in pro forma session.

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